

**BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL
BENCH AT NAINITAL**

Present: Hon'ble Mr. Justice U.C. Dhyani

----- Chairman

Hon'ble Mr. Rajeev Gupta

-----Vice Chairman (A)

CONTEMPT PETITION NO. 04/NB/DB/2023

[Arising out of judgment dated 15.02.2022,
passed in Claim petition No. No. 11/NB/DB/2020 and
judgment dated 20.02.2023, passed in Execution Application No. 05/NB/DB/2023]

Madho Ram Arya, aged about 64 years, s/o Late Sri Har Ram, r/o Talli Haldwani,
J.R. Puram, near Satwal Petrol Pump, Transport Nagar, Haldwani, District Nainital.

.....Petitioner

Vs.

Smt. Radhika Jha, w/o not known, presently serving as Secretary, Rural
Development Department, Government of Uttarakhand, Dehradun.

..... Respondent/Contemnor

Present: Sri Bhagwat Mehra, Advocate, for the Petitioner
Sri Kishore Kumar, A.P.O. in assistance of the Tribunal

JUDGEMENT

DATED: SEPTEMBER 05, 2023

Justice U.C. Dhyani (Oral)

Present contempt petition has been filed by the petitioner against
the respondent (alleged contemnor), for the following prayer:

*"it is. therefore, most respectfully prayed that this Hon'ble Court
may graciously be pleased to summon and punish the Opposite
Party for committing willful disobedience of the Judgment dated
15-02- 2022 passed by this Hon'ble Tribunal in Claim Petition No.
11/NB/DB/2020 (Madho Ram Arya Vs. State of Uttarakhand and
others) as well as the judgment dated 20-02-2023 passed by this
Hon'ble Tribunal in Execution Application No. 05/NB/DB/2023
(Madho Ram Arya Vs. State of Uttarakhand and others), and/or to
pass any other order as this Hon'ble Tribunal may deem fit and
proper in the facts and circumstances of the case, or else the*

petitioner/applicant shall suffer irreparable loss and injury which cannot be compensated in terms of money.”

2. Rule 50 of the U.P. Public Services (Tribunal) (Procedure) Rules, 1992 reads as below:

“50. Initiation of proceedings.- (1) Any petition, information or motion for action being taken under the Contempt shall, in the first instance, be placed before the Chairman.

(2) The Chairman or the Vice-Chairman or such other Members as may be designated by him of this purpose, shall determine the expediency or propriety of taking action under the Contempt Act.”

3. The claim petition was initially decided by this Tribunal *vide* order dated 15.02.2022. Relevant paragraphs of the judgment and order dated 15.02.2022, passed in claim petition no. 11/NB/DB/2020, read as under:

“10. The Block Development Officer, Gadarpur in his letter to the petitioner dated 05.11.2019 (Annexure no. 1) has explained the reasons for delay in payment of the gratuity. This letter states that at the time of retirement itself, vide office letter No. 401 dated 31.05.2018, the petitioner has been informed about the wrong fixation of his pay in the earlier years and also about certain documents to be produced by the petitioner in the matter. We observe that subsequently vide letter dated 21.07.2018, the petitioner has been informed to deposit the excess payment made earlier and on the same day, the petitioner has given a cheque for that amount vide his letter (Annexure no. 8 to the claim petition) without objecting to this recovery. Subsequently his No Dues Certificate has been issued. Vide his letter dated 02.12.2019 addressed to the Block Development Officer, Gadarpur (Annexure no. 16), the petitioner has stated that on the date of his retirement (31.05.2018) there were no government dues on him and no enquiry was pending and as per rules, the gratuity should have been paid to him by 31.08.2018 which was not done. Therefore, interest is due on the gratuity from 01.09.2019 onwards. In this letter, the petitioner has demanded interest on the delayed payment of gratuity at the rate of 8%. We observe that at the time of retirement itself petitioner was informed about certain recoveries which were being worked out and also about certain documents to be produced by the petitioner. Ideally, this exercise should have been completed before the retirement of the petitioner but it was completed in July 2018 only, after a period of two months. Since the petitioner was also required to produce certain documents, this delay of two months cannot be attributed to the department alone. However, after issue of ‘No Dues Certificate’ in July, 2018, his pension papers should have been processed in the next three months i.e. upto October, 2018 and immediately thereafter his gratuity should have been paid.

11. We also observe that further delaying the payment of gratuity on account of subsequent complaint about excess disbursement of amount for construction of houses was not justified. At least, the department could have paid the remaining amount of gratuity after retaining Rs. 37,333/- which was recommended to be recovered from the petitioner. The field enquiry has been done by the District Development Officer, Udham Singh Nagar without participation of the petitioner in the same. Though the explanation of the petitioner has been subsequently called and the petitioner has furnished his explanation. The papers filed before us further show that the petitioner has deposited this recovery amount of Rs. 37,333/- on 27.02.2019 after which 'No Dues Certificate' has again been issued in his favour as mentioned in Annexure no. 2 of the claim petition. The respondent department according to this letter has attributed this delay also to the petitioner in the disposal of his pension matter. However, the Tribunal finds it to be unacceptable inasmuch as the department could have paid the gratuity in time and if this money was to be recovered, it could have been recovered from his pension and other retiral dues. In any case, the department should have at the most retained an amount of Rs. 37,333/- from his gratuity and paid the remaining amount.

12. In view of the above, we hold that the gratuity of the petitioner should have been paid by 31.10.2018 and for the delay in payment of gratuity after this date, he is entitled to get simple interest at the rate of 8% per annum till the date of actual payment of the gratuity. This Tribunal, in accordance with Govt. Orders and various rulings of Hon'ble Courts has ordered interest to be paid at the rate of 8% per annum on the delayed payment of gratuity in other claim petitions as well.

13. Regarding recovery of Rs. 37,333/- which the petitioner has already deposited, but is still aggrieved against the same, we hereby order that the petitioner shall make a representation to the Secretary, Rural Development, Govt. of Uttarakhand within a period of one month from the date of this order stating all the facts and circumstances and reasons as to why the recovery should not have been made from him. On the receipt of such representation with certified copy of this order, the Secretary, Rural Development Department, Govt. of Uttarakhand shall dispose of the same by a reasoned and speaking order within a period of three months thereafter and if this recovery or part thereof is found unjustified, the same shall be refunded to the petitioner.

14. Order, as above.

15. The claim petition is, accordingly disposed of. No order as to costs."

4. When order of the Tribunal was not complied with, petitioner filed Execution Petition No. 05/NB/DB/2023. The execution petition was

disposed of vide order dated 20.02.2023. Relevant paragraphs are quoted herein below for convenience:

“2. Learned Counsel for the petitioner contends that immediately after obtaining certified copy of the judgment dated 15.02.2022, the petitioner served the same upon opposite parties/ respondents along with detailed covering letters dated 11.03.2022 through registered posts. Thereafter, it appears that some letter was sent by the respondent no. 5 to the higher authorities on 28.04.2022 and in response thereto, the respondent no. 4 vide letter dated 30.04.2022 directed the respondent no. 5 to do the needful in the matter. Copy of the same was also sent to the petitioner as well as respondents no. 2 and 3. However, no further steps have been taken in the matter by the respondents. The above judgment dated 15.02.2022 has attained finality in the absence of any challenge.

3. At the admission stage itself, this Tribunal is inclined to dispose of the execution application by reminding the respondents that a duty was cast upon them to comply with the orders of this Tribunal within the time fixed which has not been done. The respondents may comply with the order dated 15.02.2022 at the earliest and positively within a period of two months of presentation of certified copy of this order, the matter shall be viewed seriously and defaulting respondents shall be held liable for contempt.

4. The execution application is, accordingly, disposed of at the admission stage itself with the consent of learned Counsel for the petitioner and learned A.P.O.”

5. It is the submission of learned Counsel for the petitioner that the aforesaid order has not been complied with therefore, the respondent is liable to face suitable action under the Contempt of Courts Act, 1971.

6. One of the objects of contempt jurisdiction is to uphold the majesty of law and dignity of courts, and to ensure compliance of the orders of the Court. This Tribunal has, on a number of occasions, observed that the contempt petition should be filed as a last resort. Normal course available to the petitioner, is to file execution application before the Tribunal. Petitioner did the same earlier, but without yielding any result. Considering the peculiar facts of the case, the Tribunal does not think it expedient or proper to take action under the Contempt of Courts Act. The contempt petition is, therefore, converted into (second) execution application.

7. The Tribunal reiterates its orders dated 15.02.2022 and 20.02.2023 and directs the respondent to comply with the said order, passed by this Tribunal in Claim Petition No. 11/NB/DB/2020, Madho ram Arya vs. State of Uttarakhand & others, without further loss of time, failing which the respondent may be liable to face appropriate action under the relevant law governing the field.

8. Petitioner is directed to place a copy of this order before the authority concerned, to remind that a duty is cast upon him /her to do something, which has not been done.

9. Contempt/Execution application is, accordingly, disposed of at the admission stage.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)
[Virtually from New Delhi]

(JUSTICE U.C.DHYANI)
CHAIRMAN
[Virtually from Dehradun]

DATE: SEPTEMBER 05, 2023
DEHRADUN
KNP