

**BEFORE THE UTTARAKHAND PUBLIC SERVICES
TRIBUNAL AT DEHRADUN**

Present: Sri V.K. Maheshwari

----- Vice Chairman (J)

&

Sri U. D. Chaube

----- Member (A)

CLAIM PETITION NO. 42/2012

Swaraj Kumar Gupta (now dead) represented through Legal Representatives namely:

(1/1) Smt. Taresh Gupta, widow of Late Sri Swaraj Kumar Gupta, R/o 52, Maliyan Mohalla, Dehradun,

(1/2) Smt. Reena Agarwal, d/o Late Sri Swaraj Kumar Gupta and w/o Sri Vaibhav Agarwal, R/o Kiratpur, Nahtor, Bhattewala, District Bijnor,

(1/3) Smt. Pooja Agarwal, d/o Late Sri Swaraj Kumar Gupta, w/o Deepesh Agarwal, R/o 407, R.P. Apartment, Indore.

.....Petitioners

Versus

1. State of Uttarakhand through Principal Secretary, Urban Development Department, Secretariat, Govt of Uttarakhand, Dehradun
2. Director, Urban Development, Uttarakhand 43, Mata Mandir Marg, Dharampur, Dehradun
3. Mukhya Nagar Adhikari, Nagar Nigam, Dehradun

.....Respondents

Present: Sri V.P. Sharma, Counsel
for the petitioners

Sri U.C.Dhaundiyal, A.P.O.
for the respondents

JUDGMENT**DATE: DECEMBER 11, 2015****DELIVERED BY SRI V.K.MAHESHWARI, VICE CHAIRMAN (J)**

1. The petitioner has sought the relief for payment of retiral benefits i.e. gratuity, leave encashment, arrears of pension and arrears of pay as per recommendations of the 6th Pay Commission along with interest @ 15 %. The petitioner has also sought a direction to the respondents not to recover an amount of Rs. 19,450/- from the petitioner.

2. The facts as stated in the petition are that petitioner had joined the Nagar Palika (Now Nagar Nigam), Dehradun as Accounts Clerk on 05.08.1967 and was finally promoted to the post of Tax Superintendent on 30.05.1998. The petitioner was transferred from Nagar Nigam, Dehradun to Nagar Palika, Roorkee on 14.07.2006 and again was transferred to Dehradun on 24.05.2007. The petitioner retired after attaining the age of superannuation on 31.07.2008 after completing spotless service for about 41 years.

3. That during his service tenure at Dehradun, the petitioner was entrusted to look after the legal work i.e. the paiokari of the court cases before High Court of Allahabad for which the petitioner had to undertake journey from Dehradun to Allahabad. The petitioner had submitted the T.A. bills for the period w.e.f 12.04.1986 to 12.06.1996, but respondents did not make payment for the amount and respondents had illegally deducted an amount of 19,450/- paid to the petitioner as advance vide order dated 03.06.2005 (copy of impugned order is Annexure: A-12).The recovery of the said amount is illegal and unwarranted. The petitioner is entitled to recover the said amount from the respondent no 3.

4. It is further stated that a charge sheet was issued to the petitioner on 26.03.2003 which was properly responded to and replied by the petitioner on 15.09.2003. However, the charges were framed against the petitioner along with some other persons and enquiry was ordered but that enquiry was deliberately kept pending for more than 9 years and was finally concluded on 12.03.2012 after the retirement of the petitioner and an amount of one third of the alleged loss caused to Nagar Nigam was ordered to be recovered from the pension and other retiral benefits of the petitioner, which is totally illegal, arbitrary and without any basis. It is further stated that because of that enquiry, the retiral benefits as well as arrears of pay accrued to the petitioner on implementation of 6th Pay Commission have not been paid. Therefore, the petitioner had preferred this petition and sought the relief stated above.

5. The petition has been opposed on behalf of the respondents and it has been stated that all the retiral benefits accrued to the petitioner have been paid. Therefore, petition has become infructuous and is liable to be dismissed on this very ground. It is further stated that the petitioner had retired on 31.08.2008, whereas, the petition is preferred in the year 2012. Therefore, the petition is barred by limitation and is liable to be dismissed on this ground also.

6. A rejoinder affidavit has also been filed on behalf of the petitioner and the facts stated in the main petition have been reiterated and it is further stated that an amount of Rs. 2,47,812/- has been deducted from the retiral benefits of the petitioner, which is illegal. It is further stated that the calculation of the pension is illegal.

7. We have heard both the parties and perused the evidence available on record carefully.

8. In this petition, the main relief sought by the petitioner is regarding the payment of retiral benefits. In this connection, it has been

stated on behalf of the respondents that all the retiral dues accrued to the petitioner have been paid to the petitioner after deducting an amount of Rs. 2,47,812/-. The details of payment has also been given on behalf of the respondents i.e. as follows:

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|------|--|-----------------------|
| i. | Leave encashment for 223 days | Rs. 1,29,511/- |
| ii. | Arrears of pay due after implementation of 6 th Pay Commission. | Rs. 93,991/- |
| iii. | Gratuity | Rs. 2,87,483/- |
| iv. | Arrears of pension w.e.f. 01.09.2008 to 31.12.2012 | Rs. 5,41,832/- |
| v. | After deducting an amount of Rs. 2,47,812/- (one third of the loss allegedly caused to the Nigam), the amount was paid to the petitioner | Rs. 8,05,005/- |

9. There is no denial on the part of the petitioner regarding receipt of the aforesaid payment. Therefore, as regards the deduction of Rs. 2,47,812/- as the loss to Nagar Nigam, Dehradun is concerned, it has not been challenged in this petition. Therefore, it cannot be considered in this petition. From the aforesaid, it becomes clear that the payment of retiral benefits has been made to the petitioner.

10. The petitioner has claimed the interest on the basis of delayed payment, but it is apparent from the record that an enquiry was pending against the petitioner, which has been concluded in the year 2012 and payment of retiral benefits have been made in the year 2013. Thus, there appears no unreasonable delay on the part of respondents. Therefore, no case for payment of interest is made out.

11. The petitioner has also prayed for a direction to the respondent not to recover an amount of Rs. 19,450/-, but the petitioner

could not make out any case. In fact, it was the responsibility of the petitioner to establish that this amount was deducted or is about to be recovered from the petitioner illegally. As the petitioner could not make out any case so there is no question of any order or direction to the respondents. The respondents have also not claimed for this amount. It appears that the said amount has not been recovered from the petitioner. Under the above circumstances, we do not incline to pass any order or direction.

12. On the basis of above discussion, we reach to the conclusion that all the retiral benefits have been paid to the petitioner. Therefore, the petition is disposed of with this observation and we do not think it proper to pass any order as to the costs of petition.

ORDER

The claim petition is disposed with the observation that the retiral benefits have been paid to the petitioner. The petitioner is not entitled for any interest. No order or direction is required for an amount of Rs. 19,450/- No order as to costs.

U.D.CHAUBE
MEMBER (A)

V.K.MAHESHWARI
VICE CHAIRMAN (J)

DATE: DECEMBER 11, 2015
DEHRADUN

KNP