

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

CLAIM PETITION NO. 55/DB/2018

Vijay Kumar Sharma s/o Sri Bishan Singh, retd. Carpenter, from the office of Executive Engineer (Construction Division), Irrigation Department, Govt. of Uttarakhand, Dehradun, r/o P/4, Yamuna Colony, Dehradun.

.....Petitioner.

vs.

1. State of Uttarakhand through Secretary, Department of Irrigation, Government of Uttarakhand, Subhash Road, Dehradun.
2. Chief Engineer and Head of the Department, Irrigation Department, Yamuna Colony, Dehradun.
3. Executive Engineer, Investigation and Planning Division, Yamuna Colony, Dehradun.
4. Director, Treasuries, Pension & Entitlement, Uttarakhand, 23 Laxmi Road, Dalanwala, Dehradun.
5. H.D.F.C. Life Insurance Company Private Limited, Hathibarkala, Dehradun, through its Branch Manager.

.....Respondents.

Present: Sri L.K.Maithani, Counsel, for the petitioner.

Sri V.P.Devrani, A.P.O., for Respondents.

Ms. Priya Chhabra, Advocate on behalf of HDFC

JUDGMENT

DATED: APRIL 03, 2019

Justice U.C.Dhyani(Oral)

By means of present claim petition, petitioner seeks following reliefs:

- “(i) To issue an order or direction to the concerned respondents to sanction and release the pension and other retiral dues to the petitioner under the old pension scheme applicable to the

employees of State appointed prior to the year 2005 as his date of regularization in service is 04.09.2004..

- (ii) To issue an order or direction to the concerned respondents to grant interest at the G.P.F. rate on the amount of monthly pension, amount of gratuity and commutation since the date of retirement up to the date of actual payment.
- (iii) To issue an order or direction which this Court may deem fit and proper in the circumstances of case in favour of the petitioner.
- (iv) To award the cost of petition.”

2. Facts, necessary for adjudication of present claim petition, are as follows:

Petitioner was appointed in work charge establishment of Irrigation Department, Dehradun, as Carpenter, on 04.07.1974. On 09.11.2000, the State of Uttarakhand came into existence. Since the date of appointment till June, 2008, the petitioner was continuously working under respondents in work charge establishment. On 26.08.2008, the services of the petitioner were regularized by the respondents.

A claim petition No. 19/2010 was filed by the petitioner before this Tribunal for seeking his regularization since 01.06.2000 in the pay scale of Rs.3050-4590/-. This Tribunal, *vide* judgment dated 04.03.2015, allowed the claim petition and directed the respondents to regularize the services of the petitioner *w.e.f.* 04.09.2004, in the pay scale of Rs.2740-4400/-, along with arrears of pay (photocopy of the judgment: Annexure- A1). When this order was not complied with, then the petitioner filed an Execution Application no. Ex.01/DB/2016 before this Tribunal on 25.01.2016, but instead of complying with the judgment, respondent no.2, *vide* order dated 16.03.2016 cancelled the regularization order dated 26.05.2008 on the ground that the petitioner has not fulfilled the educational qualification required for the post. Petitioner filed a contempt petition in Execution Application No. 01/DB/2016. Respondents filed a Writ Petition No. 302/16 SB against the judgment dated 04.03.2015, before Hon'ble High Court of

Uttarakhand, who *vide* judgment dated 22.04.2017 dismissed the writ petition of the respondents (Copy of the judgment: Annexure- A 2). When this Tribunal called the personal appearance of respondents in execution application/ contempt application, then only the respondent no.2, *vide* order dated 16.08.2017 regularized the services of the petitioner *w.e.f.* 04.09.2004. *Vide* office order dated 30.08.2017 of Executive Engineer, Research and Planning Division, pay scale of the petitioner was fixed (Copy: Annexure- A 3 colly). Petitioner retired on 31.05.2016. After his retirement, pension and other retiral dues were sanctioned and paid to him under the old pension scheme, as this Tribunal *vide* judgment dated 04.03.2015 directed the respondents to regularize the services of the petitioner *w.e.f.* 04.09.2004, i.e., from the date of regularization of his juniors. Respondents sanctioned and paid the retiral benefits to the petitioner under the new pension scheme, which came into force in 2005, on the basis of the date of previous regularization, i.e., 26.05.2008, of the petitioner.

The department, under the Contributory Pension Scheme (for short, CPS), now known as Central National Pension Scheme (for short, CNPS), deposited 60% of retiral dues in the account of the petitioner on 06.03.2017. Remaining 40% was deposited by the department in the H.D.F.C. Life Insurance company Private Limited (for short, HDFC), Respondent No.5, for the purpose of pension, whereby Rs.1144/- as monthly pension, has been paid to the petitioner. Under CNPS, retiral dues are sanctioned to the employees from contributory funds, in which the share of employee and employer is 50-50%. It is averred in the pleadings that 50% amount was contributed by the petitioner from his monthly salary since his regularization. The amount of gratuity of the petitioner has been withheld. However, leave encashment of 238 days has been paid to the petitioner. After orders dated 16.08.2017 and 30.08.2017 were passed, the petitioner becomes entitled for leave encashment of 300 days. *Vide* office order dated 15.09.2017 of Executive Engineer, the amount of leave encashment of remaining 62 days has been sanctioned and paid to the petitioner, but other retiral

dues, such as- pension, gratuity and commutation have not been paid to the petitioner. Pension under the CNPS has been closed by the respondents after passing the regularization order of the petitioner. Petitioner wrote several letters to the respondents, but all in vain. The petitioner has been forced to deposit a sum of Rs.336127/- i.e., the amount of retiral benefits under the CNPS and refused to release the pension under the old pension scheme until deposition of 60% amount, which comes to Rs.336127/-. Only Rs.282295/- and not Rs.336127/-, were paid to the petitioner on 06.03.2017. Out of 60% amount, which has been paid to the petitioner, 50% has been contributed by the petitioner, hence, respondents are entitled to receive only 10% amount from the petitioner. It is pleaded by the petitioner that excess 10% amount may be deducted from his retiral dues. For remaining 40%, which is employer's share, the department has already written a letter to H.D.F.C., from which pension is given to the petitioner. According to the petitioner, directing him to deposit Rs.336127/-, which has been paid to him under CNPS, with interest, is illegal. Although the petitioner retired on 31.05.2016 and writ petition of respondents was dismissed on 22.04.2017, still the retiral benefits, under old pension scheme, have not been sanctioned and paid to the petitioner. The petitioner is fully entitled to get all his retiral dues including pension and gratuity etc., from respondents. Since the respondents delayed the matter of regularization and grant of sanction to the petitioner, therefore, he is legally entitled to get his pensionary dues from respondents.

3. Written Statement/ Counter Affidavit has been filed on behalf of Respondents No. 1, 2 & 3. In para 3 of the affidavit of Respondent No.3, it has been pleaded that amount of leave encashment, arrears of salary and GIS has been released in favour of the petitioner. When the matter was referred by Respondent No.3 to Director Treasuries, Pension & Entitlement (Respondent No.4), who raised an objection that until and unless the petitioner deposits the entire amount of CNPS, no amount under the old pension scheme will be released. Such

objections were raised by Respondent No.4 *vide* letter dated 24.04.2018 and the same were communicated to Respondent No.3 *vide* the selfsame letter (Copy: Annexure- R 1). The contents of the said letter were forwarded to the petitioner *vide* letter dated 08.05.2018 (Copy: Annexure- R 2). Respondent No.3 served the reminder on Respondent No.5 on 05.07.2018 (Copy: Annexure- R 3). Subsequent reminders were also given on 24.08.2018 (Copies: Annexure- R 4 and R 5).

4. Ms. Priya Chhabra, Advocate, has appeared on behalf of H.D.F.C., Respondent No.5. She, on seeking instructions from her client, has submitted that the Respondent No.5 is ready to deposit the 40% of annuity amount along with interest in favour of Respondent No.3, within a period of four weeks from today.
5. The petitioner has got an affidavit of him received in the office of Respondent No.3 yesterday. The affidavit is in the form of undertaking. The petitioner has undertaken that he is ready to return 60% amount along with interest under CNPS. He has further expressed, in the affidavit, that he is unable to deposit such amount either in cash or through demand draft. He has, however, submitted in the affidavit that such an amount may be deducted from his gratuity amount and the balance be paid to him. Petitioner has also undertaken that if the amount to be deducted by the department, exceeds 60%, then he is ready to deposit the same in cash.
6. Sri Vikram Singh Jantwal, Deputy Director, Treasuries, representing Respondent No.4, is present in person. Sri Jantwal has submitted that if subscriber, who was earlier part of CNPS, is subsequently, by order of this Tribunal, has become member of old pension scheme, then he is required to deposit subscriber's share of his accumulated pension fund under the CNPS. After depositing the said amount, the Respondent No. 3 is required to prepare the pension papers and submit the same to the pension sanctioning authority i.e., District Treasury, Deheradun.

7. This Court, accordingly, records the aforesaid statements of the petitioner, Respondents No. 1, 2, 3 & 4 and Respondent No.5 and disposes of the claim petition by directing as under:

Respondent No.5 shall deposit 40% of annuity amount along with interest in favour of Respondent No.3, within a period of four weeks from today. Respondent No. 3 shall prepare the pension papers of the petitioner within next two weeks. Since District Treasury, Dehradun, is competent authority to sanction the pension up to the rank of Class-III employees, therefore, Respondent No.3 shall submit the pension papers of the petitioner within next week to District Treasury, Dehradun, who, under the old pension scheme, shall issue pension payment order within two weeks of receipt of papers from Respondent No.3. It is directed that the entire exercise for payment of retiral dues to the petitioner shall be done at the earliest possible, but, in any case not beyond 12 weeks.

8. This Court records appreciation for Sri Vikram Singh Jantwal, Deputy Director, Treasuries, for rendering valuable assistance to the Court in resolving the controversy within no time, much to the satisfaction of all the parties.

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: APRIL 03, 2019
DEHRADUN

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