

BEFORE THE PUBLIC SERVICES TRIBUNAL UTTARAKHAND
AT NAINITAL.

Present: Sri V.K.Maheshwari
----- Vice Chairman (J).

Claim Petition No. 23/N.B./2007

Trilochan Bhatt, S/oLate Sri Prem Ballabh Bhatt R/o Kartike Colony, Kusumkhera, Haldwani, District Nainital. (Dead) through LRs namely

1.Mrs.Meena Bhatt w/o Late shri Trilochan Bhatt

2.Manoj Bhatt s/o Late Shri Trilochan Bhatt

3.Pradeep Bhatt s/o Late shri Trilochan Bhatt

All resident of Kartike Colony ,Kusumkhera,Haldwani ,District
Nainital

.....Petitioner.

Vs.

1. Director of Education, Uttarakhand, 2, Subhash Road, Dehradun.
2. District Education Officer, Pithoragarh.
3. State of Uttarakhand through the Secretary, Education, Govt. of Uttarakhand. Dehradun.

.....Respondents.

Present: Sri Vinod Tiwari, Advocate,
for the petitioner.

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

JUDGMENT.

DATED: NOVEMBER 30, 2011

1. The claim petition has been preferred for setting aside the order dated 22.10.2005 passed by the Director Basic Education, Government of Uttarakhand.

2. The facts relevant for disposal of the petition is that the petitioner retired after attaining the age of superannuation on 31.1.2001 from the post of District Inspector of School, Distt. Pithoragarh. At the time of retirement, a certificate was issued in favour of the petitioner that no departmental enquiry is pending against him and the relevant documents pertaining to grant of retrial benefits were also forwarded to the concerned authorities in time. All the retirement dues were paid to the petitioner except the encashment of the earned leave which were at the credit of the petitioner at the time of retirement. The amount of leave encashment has been withheld without any sufficient cause. The petitioner had made a representation before the concerned authority but that was also not decided hence no option was left with the petitioner but to file a writ petition before the Hon'ble High Court and High Court was pleased to issue directions to the concerned authorities for deciding the representation of the petitioner within a period of two months. In compliance of the orders of the Hon'ble High Court dated 6.5.2005, the representation of the petitioner was dismissed vide impugned order dated 22.10.2005 by the Director, Basic Education, Govt. of Uttarakhand. The representation of the petitioner was dismissed on the ground that he was instrumental and actively involved in the illegal appointments of his son and other relatives in the cadre of Class III employees of the Govt. of Uttarakhand. The petitioner is also said to be involved in the illegal appointments of Class-IV employees and allegations were that a departmental proceedings pending against him.
3. Aggrieved by this order, the petitioner again challenged the impugned order passed on his repretation before the Hon'ble High

Court by way of writ, which was disposed off on the ground that the petitioner has alternative remedy for redressal of his grievances before the Tribunal. Hence this petition.

4. The petitioner has challenged the impugned order on the ground that a report is said to have been submitted by the Regional Joint Director, Education on 7.11.2000 regarding some irregularities in the recruitment of Class-III and Class-IV employees, but petitioner was not given any opportunity for defending himself. Secondly there is no rule by which, the leave encashment could be withheld because of pendency of some enquiry. Thirdly, till date no punishment has been passed against the petitioner so also the amount of leave encashment can be withheld. Hence the impugned order is not sustainable and is liable to be set aside.
5. The petition is opposed on behalf of the respondents and it is stated that while serving a District Inspector of School in District Pithoragarh, the petitioner in connivance with the District Regional Joint Director, Nainital and Principals of Govt. Schools made illegal appointments on the post of Class-III and Class-IV, there were several complaints against the petitioner regarding these appointments and on the basis of these complaints which were made by the public representatives, a preliminary enquiry was conducted against the petitioner in which opportunity of hearing was afforded to the petitioner. On enquiry, the petitioner was found prima-facie guilty of committing illegalities in the appointments and the matter was referred for taking disciplinary action to the State Govt. of U.P. on 7.11.2000. Meanwhile, the State of Uttarakhand was carved out and shortly after the creation of State of Uttarakhand, the petitioner retired and he concealing the fact of

enquiry, had managed the clearance of his post retrial dues except the amount of encashment of leave. As the disciplinary proceedings are still pending against the petitioner and decision on these disciplinary proceedings is to be taken by the State of U.P and till the decision is taken it is justified to withheld the further payment to the petitioner hence the petitioner is not entitled for any relief and the petition is liable to be dismissed.

6. During the pendency of this petition, the petitioner had died and his heirs have been impleaded in this petition.
7. I have heard both the parties at length and perused the material available on record carefully. The amount of leave encashment has been withheld on the ground of pendency of some disciplinary proceedings against the petitioner. It is contended on behalf of the respondents that after conducting the preliminary enquiry and finding the petitioner guilty, the matter has been referred to the State of U.P. on 7.11.2000 with the strong recommendations for taking disciplinary action against the petitioner and the decision is to be taken by the State of U.P. as the matter relates to the erstwhile State of U.P and the decision is still awaited. Till any decision is taken, it is not justified to make any payment of retrial dues to the petitioner. However, the petitioner had managed the payment of all other retrial dues except the amount of leave encashment, which has been withheld. This contention of the respondents does not have any force because the matter is said to have been referred to the State of U.P. on 7.11.2000. In spite of long litigation before the Hon'ble High Court and this Tribunal, no decision has yet been taken and more than 10 years have elapsed since the matter was referred and it cannot be held justified from any angle to withhold

the payment of amount of encashment of leave due to the petitioner on the ground of indecisiveness manner. Apart from the retirement, the petitioner had died also. After the lapse of long period and death of the petitioner, the disciplinary proceedings have become infructuous and now it is not possible to take any action against the petitioner. Under these circumstances, it is not proper to withhold the amount of leave encashment due to the petitioner. Apart from the above facts, it is also contended on behalf of the petitioner that at the most, in case of the pendency of any disciplinary proceedings, only the payment of gratuity or other likewise dues can be withheld, but in no case, payment of leave encashment can be withheld. This contention seems reasonable. There is no rule on the basis of which the amount of encashment leave due to any employee at the time of his retirement can be withheld. Therefore, it is apparent from the above facts that the payment of leave encashment due to the petitioner has illegally been withheld by the respondents. So, the impugned order is not justified from any point of view and is liable to be set aside and the petition deserves to be allowed. Keeping in view the death of the petitioner during the pendency of this petition, I think it expedient to issue directions to the respondents to make payment of the amount of leave encashment to the present petitioners jointly within a period of three months. It is further made clear that no succession certificate or other documents shall be demanded from the present petitioners for making payment.

ORDER

The petition is allowed. The respondents are directed to make payment of the amount of leave encashment to the present

petitioners (LRs of the original petitioner) jointly within a period of three months. It is further made clear that no succession certificate or other documents shall be demanded from the present petitioners for making the payment of the aforesaid amount.

Sd/-
V.K.MAHESHWARI
VICE CHAIRMAN (J)

DATED: NOVEMBER 30 2011
NAINITAL