

**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)

**WRIT PETITION NO 587 (S/B) OF 2018
[RECLASSIFIED AND RENUMBERED AS CLAIM PETITION NO. 73/NB/DB/2022]**

Bharat Lal Sah, s/o Late Sri Chandra Lal Sah, r/o 5, Bali Vihar, Radhika Kunj,
Model Colony, Rudrapur, Udham Singh Nagar.

.....Petitioner

vs.

1. State of Uttarakhand through Secretary, Irrigation Department, Govt. of Uttarakhand, Dheradun.
2. Chief Engineer and Head of Department, Minor Irrigation Department, Uttarakhand, Dehradun.
3. Executive Engineer, Minor Irrigation Circle, Bageshwar.
4. Accountant General, Uttarakhand, Dehradun.

.....Respondents.

Present: Ms. Shruti Joshi, Advocate for the petitioner (Virtual)
Sri Kishore Kumar, A.P.O. for the respondents no. 1 to 3(Virtual)
Sri Rajesh Sharma, Advocate for the respondent no. 4 (Virtual).

JUDGMENT

DATED: SEPTEMBER 19, 2022

Justice U.C.Dhyani (Oral)

Hon'ble High Court of Uttarakhand has been pleased to pass an order on 07.09.2022 in WPSB no. 587 of 2018, Bharat Lal Sah vs. State of Uttarakhand & others, which (order) reads as under:

“The reliefs sought in the present Writ Petition are the following:-

“1. To issue an appropriate order or direction directing the respondents to pay interest @ 8.5% on the delayed payment of GPF amount from 31.3.2011 (date of retirement) till 1.8.2017 (date of payment).

II. To issue an appropriate order or direction directing the respondents to pay difference of both the amount i.e. amount shown in calculation sheet (annexure-1) and amount shown in letter dated 11.5.16 (annexure-2) 1021895-872825= Rs. 1,49,070/- (Rs. One Lakh Forty Nine Thousand Seventy) to the petitioner with interest @ 8.5% from 31.3.2011 till the date of actual payment.”

2. Admittedly, the petitioner is a Public Servant. The subject matter of the writ petition squarely falls within the jurisdiction of the Uttarakhand Public Services Tribunal.

3. Considering the fact that the petition has been pending since the year 2018 and the pleadings have been exchanged, we direct the Registry to transmit the complete record of the present writ petition to the Tribunal forthwith to be registered as a Claim Petition.

4. The writ petition is disposed of accordingly.

5. In sequel thereto, all pending applications stand disposed of.”

2. The original record of the writ petition has been transferred to this Tribunal *vide* Letter No. 12984/UHC/Service (S/B) 2022 dated 13.09.2022 of the Deputy Registrar (Judicial) of the Hon’ble High Court. The same has been registered as Claim Petition No. 73/NB/DB/2022.

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

“I. To issue an appropriate order or direction directing the respondents to pay interest @8.5% on the delayed payment of GPF amount from 31.03.2011 (date of retirement) till 1.08.2017 (date of payment).

II. To issue an appropriate order or direction directing the respondents to pay difference of both the amount i.e. amount shown in calculation sheet (annexure-I) and amount shown in letter dated 11.5.16 (annexure-2) 1021895-872825=Rs. 1,49,070/- (Rs. One Lacs Forty Nine Thousand Seventy) to the petitioner with interest @ 8.5% from 31.3.2011 till the date of actual payment.

III. To issue such order suitable writ, order or direction which this Hon'ble Court may deem fit and proper.

IV. To award cost of the writ petition to the petitioner."

4. The facts of the case, in brief, are as follows:

The petitioner was serving in the Minor Irrigation Department till attaining the age of superannuation on 31.03.2011. He retired as Assistant Engineer (A.E.), Bageshwar. At the time of his retirement, an amount of Rs. 10,21,895/- (Rs. Ten Lac Twenty One Thousand Eight Hundred Ninety Five only) was deposited in his G.P.F. account, which was verified by the Executive Engineer (E.E.) and was forwarded to the Chief Engineer (C.E.), Minor Irrigation Department, Dehradun.

5. Counter Affidavit has been filed on behalf of respondent no. 3 by Sri Naresh Kumar, Executive Engineer, Minor Irrigation Division, Bageshwar. Similar Counter Affidavits have also been filed on behalf of respondents no. 1 & 2 also. The respondents, in the Counter Affidavit, have stated as below:

5.1 The record of GPF is maintained by the Drawing and Disbursing Officer/Executive Engineer of the concerned division. As per the calculation sheet provided by the Executive Engineer, Bageshwar, a total sum of Rs. 10,21,895/- including interest was deposited in the GPF account of the petitioner, upto September 2010. Since the petitioner himself was the D.D.O. therefore, the aforesaid amount of Rs. 10,21,895/- was sent through Form no. 425 to the respondent no.2 for payment. In G.O. no. 300 dated 03.06.2010, it has been provided that the payment of the 90% of the amount of GPF shall be made to the employee concerned by the Competent Authority.

5.2 After forwarding the documents/record to the Accountant General, if any mistake/anomaly is indicated by the Accountant General in

the account, after amending the same, further proceedings for remittance of amount are initiated.

5.3 The petitioner himself, being DDO of the Establishment, did not forward the documents for verification to the Accountant General. After his superannuation, his successor DDO/E.E., vide D.O. letter no. 66 dated 08.06.2011, sent the document relating to GPF amount of the petitioner to the office of respondent no. 2.

5.4 The documents forwarded by the Executive Engineer were examined by the office of the respondent no.2. It was found that account slip for the year 2009-10 did not match with the amount entered in the passbook of the petitioner.

5.5 For the removal of the said anomaly, the objections were invited. Further, no details were available of the advance taken by the petitioner from his GPF for the period 1970-80 to 1987-88.

5.6 The Executive Engineer forwarded all the documents to the Accountant General. After issuance of the Authority Letter from the office of the Accountant General *vide* letter dated 09-01-2011, the balance 10% of GPF was released to the petitioner. The entire amount of GPF has been paid to him.

5.7 Thus, according to Counter Affidavit, the petitioner has been paid a sum of Rs. 11,06, 876/- (i.e. 90% amount of GPF to the tune of Rs. 7,85,500/- and 10% amount of GPF to the tune of Rs. 3,21,376) towards GPF by the Executive Engineer, Minor Irrigation, Bageshwar.

6. Rejoinder Affidavit has also been filed by the petitioner stating the following:

6.1 When the petitioner retired on 31-03-2011, an amount of Rs. 10,21,895/- was deposited in the GPF account. Form No. 425 was sent to Respondent no. 2 for payment of said amount. This fact has been admitted by the respondents in their Counter Affidavit. GPF amount worth

Rs.10,21,895/- is admitted to the respondents as per the calculation sheet and letter dated 11.05.2016. The respondents failed to clarify as to how 90% of the total amount comes to Rs. 7,85,500/- instead of Rs. 9,19,705/-.

6.2 The petitioner never made any default in submitting his document for verification before the appropriate authority. He has followed the prescribed procedure on time. Wrongly calculated amount of the 90% of GPF has been sanctioned on 11.05.2016 and was paid to the petitioner on 01.08.2017, which became due on 31.03.2011 at the time of petitioner's retirement, as per the G.O dated 03.06.2010.

6.3 He is entitled to interest @ 8.5% from 31.03.2011 (date of retirement) till 01.08.2017 (date of payment) and also difference of both the amounts (amount shown in calculation sheet and amount shown in letter dated 11.05.2016) *i.e.* Rs. 1,49,070/-, to be paid to petitioner with interest @ 8.5% from 31.03.2011 till the date of actual payment and also as per calculation sheet of GPF, the amount accrued in September 2017 along with interest is Rs. 17,31,779/-.

6.4 The respondents have admitted that the total amount in the GPF account of petitioner was Rs 10,21,895/- on the date of his superannuation *i.e.* on 31-03-2011. They have paid Rs 7,85,500/- and mentioned it 90% of the total amount, which actually was 70% of the total amount. The aforementioned amount has been paid on 01-08-2017.

6.5 In para 9 of the Counter Affidavit, it has been stated that 10% of the GPF amount to the tune of Rs. 3,21,376/- was paid, which, in fact, was 30 % of the amount. The amount deposited in the GPF account of the petitioner had become Rs. 17,31,799/- in September 2017 which remains unpaid.

7. Learned Counsel for the petitioner did not press the relief no. II. She has submitted that the petition in respect of relief no. 1 should be allowed and interest on the delayed payment of GPF be awarded to the petitioner.

8. It is the submission of learned Counsel for the petitioner that the petitioner retired on 31.03.2011 and payment of GPF has been made only on 01.08.2017. Learned Counsel for the petitioner, therefore, prayed for interest on delayed payment of General Provident Fund (GPF). Sri Kishore Kumar, learned A.P.O. relied upon the Supplementary Counter Affidavit filed on behalf of respondent no. 1 on 05.09.2021, paras 5 & 6 of which read as below:

“5. That the contents of para 6 & 7 of the rejoinder affidavit are not admitted hence denied. In reply thereof it is relevant to state that in any office it is the responsibility of Drawing & Disbursing Officer to send error free and proper documents/record to the headquarter for the sanction of 90% of G.P.F. amount of the concerned employees. The office of the respondent no. 2 examines the record thoroughly and directs the concerned office to correct the record in case of error/incomplete record. In present case the petitioner was himself working as Drawing & disbursing Officer and it was his responsibility to send error free proper documents/record the headquarter. But after the superannuation of the petitioner, the newly, appointed Drawing and Disbursing Officer/Executive Engineer vide letter no. 66 dated 8.6.2011 sent the document for the sanction of 90% of G.P.F. amount of the petitioner to the office of the Respondent no. 2. It is also relevant to mention here that the documents forwarded by the Executive Engineer, were examined by the office of the respondent no. 2 wherein it was found that the documents sent were not correct for example G.P.F. account slip issue by the Accountant General Office were not enclosed, complete service record details has not been filled and so on. In addition to this there was no detail/data was available in respect of amount in advance being drawn by the petitioner from G.P.F. for the period 1970-80 to 1987-88. For the removal of the said anomaly the concerned officer was directed by the respondent no. 2. After getting the documents again it was found that there was a big difference between account slip of the year 2009-10 issued by the Accountant General Office and the entries mentioned in the G.P.F. passbook. As per G.P.F passbook the total amount was Rs. 1021895 but calculated amount on the basis of the GP.F. account slip 2009-10 issued by Accountant General Office was Rs. 872825/-

It is also relevant to mention here that there is a post of Finance Controller in the Directorate Office for checking, controlling & advice about finance related works. In the case of superannuation the finance controller permits the amount payable to the employee and after that the respondent no. 2

issues an order about it. The Finance Controller is appointed by the State Government. In the case of superannuation it is compulsory that G.P.F. passbook should be sent to the Accountant General office for verification of entries made in the G.P.F. passbook by the concerned office and after that only 100% G.P.F. payment is made to the employee but as per Government direction 90% of the G.P.F. amount may be paid after the retirement and no verification from Accountant General Office is necessary, But for the payment of rest 10% of GPF amount verification of entries in G.P.F. passbook by Accountant General Office is compulsory. Accountant General office thoroughly verifies the entries, calculates the payable amount and issues an authority letter showing the amount (including interest amount) to be paid to the employees. After that the rest 10% amount is paid to the employees. This is a common practice that if there is a difference between amount entered in G.P.F. passbook and amount mentioned in G.P.F. account slip issued by the Accountant General Office then 90% of the amount calculated on the basis of the G.P.F. account slip is permitted by the Finance Controller. In petitioner's case also the Finance Controller permitted Rs. 785500/- only (i.e. 90% of Rs. 872825 which was calculated amount on the basis of G.P.F. account slip.). Accordingly the order was issued by the office of respondent no. 2 for the payment of mentioned amount to the petitioner. For the payment of rest 10% of G.P.F. amount therelated record/document were sent to the Accountant General Office by the Executive Engineer, Bageshwar. After receiving of Authority letter from Accountant General Office vide letter dated 09.01.2017 for the payment of the remaining 10% of G.P.F. amount has been paid to the petitioner by the Executive Engineer, Bageshwar.

In the present case also the amount of Rs. 785500 (90%) has been paid to the petitioner after the permission of Finance Controller and rest of Rs. 321376/- after the authority letter issued by the Accountant General Office. Thus Rs. 1106876 has been paid to the petitioner which is Rs. 84981 more that the amount mentioned in the G.P.F. passbook as petitioner has mentioned.

6. That the contents of para 8 of the rejoinder affidavit are not admitted hence denied. In reply thereof it is submitted that after the authority letter issued by the Accountant General Office a sum of total Rs. 1106876/- towards GPF has already been paid to the petitioner by the Executive Engineer, Minor Irrigation Division, Bageshwar, which is more than the amount calculated by the petitioner. In fact Rs. 785500 (90%) has been paid to the petitioner earlier and rest Rs. 321376 has been paid to the petitioner later on. As already mentioned that for the balance

10% of G.P.F. amount Accountant General Office thoroughly verifies the entries, calculates the payable amount and issues an authority letter showing the amount to be paid to the employees. After that the rest 10% amount is paid to the employee. So as such the petitioner is not entitled for any interest on the amount of GPF. In view thereof the averments made in the writ petition of the petitioner are devoid of merit and are liable to be dismissed.”

9. In the decision of D.D.Tiwari (D) Thr. Lrs. vs. Uttar Haryana Bijli Vitran Nigam Ltd. and Others, 2014 (5) SLR 721 (S.C.), it was held by Hon’ble Supreme Court that retiral benefit is a valuable right of employee and culpable delay in settlement/ disbursement must be dealt with penalty of payment of interest.

10. In S.K.Dua vs. State of Haryana and Another, (2008) 1 Supreme Court Cases (L&S) 563, the Hon’ble Supreme Court has held that even in the absence of specific Rule or order for providing interest, an employee can claim interest on the basis of Articles 14,19 and 21 of the Constitution of India as retirement benefits are not a bounty. The relevant paragraph of this judgment is reproduced below:

“13. The fact remains that proceedings were finally dropped and all retiral benefits were extended to the appellant. But it also cannot be denied that those benefits were given to the appellant after four years.

*“In the circumstances, prima facie, we are of the view that the grievance voiced by the appellant appears to be well founded that he would be entitled to interest on such benefits. If there are statutory rules occupying the field, the appellant could claim payment of interest relying on such rules. **If there are administrative instructions, guidelines or norms prescribed for the purpose, the appellant may claim benefit of interest on that basis. But even in absence of statutory rules, administrative instructions or guidelines, an employee can claim interest under Part III of the Constitution relying on Articles 14,19 and 21 of the Constitution. The submission of the learned counsel for the appellant, that retiral benefits are not in the nature of “bounty” is, in our opinion, well founded and needs no authority in support thereof.....”***

[Emphasis supplied]

11. It will be worthwhile to reproduce paragraphs 3 & 4 of the judgment rendered by Hon'ble Apex Court in D.D. Tiwari (D) Versus Uttar Haryana Bijli Vitran Nigam Ltd. & Others (*supra*), as below:-

*"3. The retiral benefits of the appellant were withheld by the respondents on the alleged ground that some amount was due to the employer. The disciplinary proceedings were not pending against the appellant on the date of his retirement. Therefore, the appellant approached the High Court seeking for issuance of a direction to the respondents regarding payment of pension and release of the gratuity amount which are retiral benefits with an interest at the rate of 18% on the delayed payments. The learned single Judge has allowed the Writ Petition vide order dated 25.08.2010, after setting aside the action of the respondents in withholding the amount of gratuity and directing the respondents to release the withheld amount of gratuity within three months without awarding interest as claimed by the appellant. The High Court has adverted to the judgments of this Court particularly, in the case of **State of Kerala & Ors. Vs. M. Padmanabhan Nair**, wherein this Court reiterated its earlier view holding that the pension and gratuity are no longer any bounty to be distributed by the Government to its employees on their retirement, but, have become, under the decisions of this Court, valuable rights and property in their hands and any culpable delay in settlement and disbursement thereof must be dealt with the penalty of payment of interest at the current market rate till actual payment to the employees. The said legal principle laid down by this Court still holds good in so far as awarding the interest on the delayed payments to the appellant is concerned....."*

4. It is an undisputed fact that the appellant retired from service on attaining the age of superannuation on 31.10.2006 and the order of the learned single Judge after adverting to the relevant facts and the legal position has given a direction to the employer-respondent to pay the erroneously withheld pensionary benefits and the gratuity amount to the legal representatives of the deceased employee without awarding interest for which the appellant is legally entitled, therefore, this Court has to exercise its

appellate jurisdiction as there is a miscarriage of justice in denying the interest to be paid or payable by the employer from the date of the entitlement of the deceased employee till the date of payment as per the aforesaid legal principle laid down by this Court in the judgment referred to supra. We have to award interest at the rate of 9% per annum both on the amount of pension due and the gratuity amount which are to be paid by the respondent."

12. The aforesaid decisions have been followed by this Tribunal in claim petition No.30/DB/2013 Dwarika Prasad Bhatt vs. State and others, decided on 22.09.2016. The direction given in claim petition No. 30/DB/2013 has also been carried out.

13. It is pointed out that Government Order No.979/XXVII (3)Pay/2004 dated 10.08.2004 has been issued by the Government of Uttarakhand to regulate interest on delayed payment of gratuity etc. The rate of interest on delayed payment of gratuity shall be simple rate of interest payable on General Provident Fund till the date of actual payment.

14. Based on the above, we feel it appropriate to direct that the petitioner shall be given interest on delayed payment of GPF, from 31.03.2011 (date of retirement) till 01.08.2017 (the date of actual payment), according to the GPF rates of interest prevalent from time to time during the aforesaid period.

15. Order accordingly.

16. The claim petition thus stands disposed of. No order as to costs.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATED: SEPTEMBER 19, 2022
DEHRADUN.
KNP