

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

CLAIM PETITION NO. 94/SB/2022

Sri Bharampal Singh, s/o Late Sri Baru Singh, aged about 67 years, r/o Durga Colony, Near Badoni Chowk, Tuntowala, Dehradun.

.....Petitioner

VS.

1. State of Uttarakhand through Principal Secretary, Irrigation, Secretariat, , Dehradun.
2. Engineer-in-Chief, Irrigation Department, Uttarakhand Dehradun.

.....Respondents.

Present: Sri M.C.Pant (online) & Sri Abhishek Chamoli, Advocates,
for the petitioner.
Sri V.P.Devrani, A.P.O., for the Respondents.

JUDGMENT

DATED: APRIL 04, 2024

Justice U.C.Dhyani (Oral)

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

“i) To declare the impugned order dated 23.04.2022 and 07.05.2022 arbitrary and illegal by which the Respondent No. 2 rejected the claim of the petitioner for payment of remaining unpaid gratuity and leave encashment of petitioner.

ii) To issue an order or direction to the respondents to pay the complete gratuity of the petitioner after including the service of petitioner under muster roll with work-charge and regular service of

the petitioner calculating from the year 1975, along with the interest for the delay in payment of gratuity.

iii) To issue an order or direction to the respondents to pay the unpaid leave encashment of remaining 106 days after adding the service of the work-charge with regular service from 1997 along with interest.

iv) To issue any other order or direction, which this Hon'ble Court may deem fit and proper in the circumstances of the case.

v) Cost of the petition be awarded to the petitioner.”

[Emphasis supplied]

2. Claim petition is supported by the affidavit of Sri Bharampal Singh, petitioner along with relevant documents.

3. The claim petition has been contested on behalf of respondents. Counter Affidavit has been filed by Sri Harshit Kumar, Executive Engineer, Infrastructure Division, Dakpathar, Dehradun, Uttarakhand. Material averments contained in the claim petition have been denied. Relevant documents have been filed in support of the Counter Affidavit.

4. At the very outset, Ld. Counsel for the petitioner submitted that present claim of the petitioner is covered by judgment rendered by Hon'ble Apex Court on 23.03.2018 in *Civil Appeal No. 1254/ 2018 Netram Sahu vs. State of Chhattisgarh & another*. In reply, Ld. A.P.O. submitted that the decision rendered in Netram Sahu is not applicable to the facts of instant case, inasmuch as Netram Sahu was engaged as daily wager and he retired from the work-charged establishment. His services were never regularized. In the instant case, petitioner was engaged as muster-roll employee in a project, his services were never continuous. He was re-appointed with the intervention of the Hon'ble Court. Thereafter, he worked in the work-charged establishment, whereafter his services were regularized. Ld. A.P.O. further submitted that the entire amount of gratuity, for the period the petitioner served in work-charged establishment, (approximately 11 years) and as regular employee (approximately 06 years), has been released to him. According to Ld. A.P.O., nothing remains to be paid to the petitioner, as per Rules, therefore, the claim petition is liable to be dismissed.

5. Sri Abhishek Chamoli, Ld. Counsel for the petitioner further submitted that the petitioner served as daily wager from the year 1975 to

1982, whereafter his services were terminated along with other workmen. He remained out of service from 1982 to 1993. Petitioner was re-appointed in service in the year 1993, and he continued to serve the respondent department as daily wager Semi-Skilled Beldar till 1997. In the year 1997 he was inducted in work-charged establishment, whereafter he worked in such establishment till 2009. In the year 2009, petitioner's services were regularized. Thereafter, he continued to serve the respondent department as regular employee till 31.12.2015, when he retired.

6. It is an admitted fact that the petitioner has been given gratuity for the period he worked in work-charged establishment and as regular employee in the respondent department. It may be noted here, at the cost of repetition, that he worked as work-charged employee for 11 years and as regular employee for approx. 06 years.

7. In response to the query of the Tribunal, Ld. A.P.O. submitted that petitioner was released gratuity for the period he worked as work-charged employee, on the strength of decision rendered by Hon'ble Apex Court in Special Leave Petition titled as State of U.P. vs. Prem Singh. He also submitted that payment of gratuity, during the period the petitioner served as regular employee, was governed by the then prevailing Pension Rules, 1961. The total amount of gratuity paid to him is Rs.2,43,000/-.

8. Petitioner is also present in person before the Court. He submitted that he ought to have been released a sum of Rs.4,29,000/-, out of which he has been paid Rs.2,43,000/-, therefore, outstanding amount remains to be paid to him is Rs.1,86,000/-. Ld. Counsel for the petitioner submitted that the petitioner is entitled to parity with Sarvsri Barkhu Lal, Ramraj Maurya, Shyam Lal, Shiv Darshan and Algu Ram. Ld. A.P.O. clarified that although gratuity was released to Sri Barkhu Lal and others under the orders of Engineer-in-Chief, U.P., Lucknow *vide* order dated 20.09.2000 (Annexure: A-5), but subsequently, in Uttarakhand, the said order was clarified by the Secretary, Irrigation, *vide* order dated 21.05.2001 (Annexure: CA-3, followed by Annexure: CA-4). This fact is under no dispute that the gratuity, which forms part of retiral dues, cannot be given to a serving employee. Sri Barkhu Lal and others were undoubtedly serving employees, therefore, the Engineer-

in-Chief, U.P., Lucknow, erred in passing an order that a serving employee will be entitled to gratuity, which was rightly clarified by the Secretary, Irrigation, Govt. of Uttarakhand *vide* order dated 21.05.2001. Ld. A.P.O. also pointed out that the gratuity ordered to be released to Sri Barkhu Lal and others, has itself been withheld and withdrawn. Thus, the petitioner is not entitled to claim parity with Sri Barkhu Lal and others on the basis of an illegal order. Otherwise also, parity can only be claimed with a lawful order, and not an illegal order.

9. Coming back to the point, whether the petitioner is entitled to gratuity for the period he served the respondent department as casual labour-master roll or not? The Tribunal is of the opinion that the petitioner is entitled to gratuity for the period 1993 (28.04.1993) to 1997, during which he served as casual labour in the respondent department. He served continuously for the said period, whereafter he was inducted in work-charged establishment and thereafter his services were regularized. The Tribunal has arrived at this conclusion, on the basis of various decisions rendered by Hon'ble Apex Court and Hon'ble High Courts.

(i) It will be useful to reproduce relevant paragraphs of judgment rendered by Hon'ble Apex Court on 23.03.2018 in Netram Sahu's case (*supra*) as under:

“3 The appellant was appointed as daily wager on 01.04.1986 by the Water Resources Department of the State of Chhattisgarh and was attached to the office of SDO (E/M) Light Machinery Tubewell & Gage Sub-Division Sakri, P.S. Charkarbhata, District Bastar (CG). Subsequently, the services of the appellant were regularized on work charge establishment to the post of Pump Operator by order dated 06.05.2008. After attaining the age of superannuation, the appellant retired on 30.07.2011.

4. The appellant was, however, not paid the gratuity amount by the State which, according to him, was payable to him after his retirement. Therefore, the appellant filed an application before the Controlling Authority under the Payment of Gratuity Act, 1972 (hereinafter referred to as “the Act”) and prayed for payment of gratuity amount to him in accordance with the provisions of the Act.

6. The State felt aggrieved and filed appeal before the specified Appellate Authority under the Act. By order dated 30.01.2013, the Appellate Court dismissed the appeal filed by the State and affirmed the order of the Controlling Authority.

9. The short question, which arises for consideration in this appeal, is whether the High Court (Single Judge/Division Bench) was justified in holding that the appellant (employee) was not entitled to claim gratuity from the State (respondent herein) for the services rendered by him or in other words, the question arises for consideration is whether the appellant can be held to have rendered qualified

service, i.e., continuous service as specified in Section 2(e) read with Section 2A of the Act so as to make him eligible to claim gratuity, as provided under the Act, from the State.

12. It is not in dispute that the appellant has actually rendered the total service for a period of 25 years 3 months, i.e., from 01.04.1986 to 30.07.2011 to the State. It is also not in dispute that the appellant's services were regularized by the State by order dated 06.05.2008, i.e., much prior to the appellant attained the age of superannuation. It is also not in dispute that the appellant's 25 years and 3 months period of service satisfied the rigor of the expression "continuous service" as defined under Section 2-A of the Act.

13. The submission of the learned counsel for the respondent-State was that the appellant could not be held eligible to claim the gratuity amount because out of the total period of 25 years of his service, he worked 22 years as daily wager and only 3 years as regular employee. It is for this reason, the learned counsel urged that the appellant could not be said to have worked continuously for a period of 5 years as provided under the Act so as to make him eligible to claim gratuity.

14. We do not agree with this submission of learned counsel for the respondent-State for more than one reason. First, the appellant has actually rendered the service for a period of 25 years; Second, the State actually regularized his services by passing the order dated 06.05.2008; Third, having regularized the services, the appellant became entitled to claim its benefit for counting the period of 22 years regardless of the post and the capacity on which he worked for 22 years; Fourth, no provision under the Act was brought to our notice which disentitled the appellant from claiming the gratuity and nor any provision was brought to our notice which prohibits the appellant from taking benefit of his long and continuous period of 22 years of service, which he rendered prior to his regularization for calculating his continuous service of five years.

16. In our considered opinion, once the State regularized the services of the appellant while he was in State services, the appellant became entitled to count his total period of service for claiming the gratuity amount subject to his proving continuous service of 5 years as specified under Section 2A of the Act which, in this case, the appellant has duly proved.

17. In the circumstances appearing in the case, it would be the travesty of justice, if the appellant is denied his legitimate claim of gratuity despite rendering "continuous service" for a period of 25 years which even, according to the State, were regularized. The question as to from which date such services were regularized was of no significance for calculating the total length of service for claiming gratuity amount once the services were regularized by the State.

18. It was indeed the State who took 22 years to regularize the service of the appellant and went on taking work from the appellant on payment of a meager salary of Rs.2776/- per month for 22 long years uninterruptedly and only in the last three years, the State started paying a salary of Rs.11,107/- per month to the appellant. Having regularized the services of the appellant, the State had no justifiable reason to deny the benefit of gratuity to the appellant which was his statutory right under the Act. It being a welfare legislation meant for the benefit of the employees, who serve their employer for a long time, it is the duty of the State to voluntarily pay the gratuity amount to the appellant rather than to force the employee to approach the Court to get his genuine claim.

19. In view of the foregoing discussion, we cannot agree with the reasoning and the conclusion arrived at by the High Court which is legally unsustainable. It is really unfortunate that the genuine claim of the appellant was being denied by the State at every stage of the proceedings up to this Court and dragged him in fruitless litigation for all these years.

20. Indeed, this reminds us of the apt observations made by the Chief Justice M.C. Chagla (as he then was) in the case of Firm Kaluram Sitaram vs. The Dominion of India (AIR 1954 Bombay 50). The learned Chief Justice in his distinctive style of writing while deciding the case between an individual citizen and the State made the following pertinent observations:

‘Now, we have often had occasion to say that when the State deals with a citizen it should not ordinarily reply on technicalities, and if the State is satisfied that the case of the citizen is a just one, even though legal defences may be open to it, it must act, as has been said by eminent Judges, as an honest person’.”

[Emphasis supplied]

(ii) Respondents of Special Civil Application No. 10446/ 2020, State of Gujarat vs. Takhubha Pratapsinh Jadeja and connected Special Civil Applications, worked as daily wagers, whereafter their services were regularized. Hon’ble High Court of Gujarat at Ahmedabad observed as below:

“1. In the captioned group of petitions, the petitioner-State has challenged the order passed by the Controlling Authority confirmed by the Appellate Authority granting gratuity to the respondent-workmen by counting their entire service from the dates of appointment till the retirement. It is the case of the petitioner-State that the respondent-workmen are not entitled to gratuity for the service which they have rendered prior to their having been made permanent.

2.1 The respondent-workman was working since 01.10.1980 as a daily wager and he superannuated on 30.09.2008 on attaining age of superannuation.

3. the workmen are entitled to the gratuity for a period after they have become permanent or their services are regularized. It is submitted that the said gratuity amount was paid to the workmen as per the Government Resolution dated 17.10.1988 and the Government Resolution dated 24.03.2006. the respondent-workmen will not be entitled to the gratuity under the payment of Gratuity Act, 1972 and also under Rules 81 and 82 of the Gujarat Civil Services (Pension) Rules, 2002 and hence, the gratuity, which was paid to the respondent-workman under the Pension Rules by counting his 27 years of service...

6., regularization has calculated the gratuity and has ordered the petitioner-State to pay the same under the Payment of Gratuity Act. It was the case of the petitioner before the Controlling Authority that the services rendered prior to the regularization of the respondent-workman, cannot be granted for the calculation of gratuity in view of the Government Resolution dated 24.03.2006. In the written statement filed before the Controlling Authority filed by the petitioner, a stand was taken that the respondent-workman is paid the amount of gratuity as per the provisions of the Gujarat Civil Services and Pension Rules, 2002. The petitioner has contended that the workman is not entitled to gratuity under two different provisions of law i.e. under the Payment of Gratuity Act and Gujarat Civil Services(Pension)Rules, 2002.

8. At this stage, I may with profit refer to the decision of the Division Bench in the case of State of Gujarat vs Ranabha Ajmalbhai Harijan, 2018 JX (Guj.) 829, judgement dated 10.04.2018 passed in Letters Patent Appeal No.1518 of 2017, after considering the Government Resolutions dated 17.10.1988 and dated 24.03.2006, has held thus:

.....

9. the past continuous service cannot be wiped out for the purpose of pensionary benefits, and such stand of the authorities that only that service which the employee had put in after actual order of C/SCA/10446/2020 ORDER DATED: 09/08/2021 regularization would count for pension is thus in conflict with the Government circulars itself. Hence, the contention raised by the petitioner by placing reliance on the Government Resolution dated 24.03.2006 for denying the gratuity is liable to be rejected.

10..... the daily wagers are also entitled to the benefit of pay-scale as per the Gujarat Civil Services (Revision of Pay) Rules, 2009, as revised from time to time, however, it is clarified that such daily wagers though would not be entitled to the pay-scales of permanent employee, but they are entitled to pay-scales under those Rules as per their job description. It is specifically observed that on attaining the status of permanency/regular employees, they become at par with those employees who are appointed as permanent, after undergoing the proper selection procedure on proving their merit, however, such daily wagers cannot be given the pay-scales which are even better than the pay scales given to the regularly appointed employees.

11. Thus, the order of the Controlling Authority directing the payment of gratuity to the respondent-workman by counting the service from the date of his appointment cannot be said to be tainted with any perversity or illegality. It is held by the Controlling Authority that the workman has rendered 38 years of service. Thus, the order of the Controlling Authority dated 27.09.2019 as well as the order dated 29.07.2020 passed by the Appellate Authority are in consonance with the law declared by this Court in the afore-noted judgments.

12. So far as the submissions with regard to the dis-entitlement of the gratuity under the Act and the Rules, 2002 is concerned, it will be apposite to incorporate the observations made by the Division bench in the judgment dated 28.12.2017 passed in Letters Patent Appeal No.156 of 2017. The Division Bench, after considering similar issue of conferring the benefit of gratuity under the Payment of Gratuity Act viz-a-viz the provisions of the Gujarat Civil Services and Pension Rules, 2002 has held thus:

‘...4.1. That the concerned employees were not paid the gratuity under the Payment of Gratuity Act, 1972 for the period, they worked as a daily wager. They were also not paid the gratuity under the Gujarat Civil Services (Pension) Rules, 2002 for the aforesaid period, during which, they worked as a daily wager. Therefore, the concerned employee approached the Controlling Authority under the provisions of the Payment of Gratuity Act claiming the gratuity under the Payment of Gratuity Act for the period they worked as a daily wager i.e. in the case of Special Civil Application No. 214 of 2016 for the period from 24.06.1983 to 22.06.1997 and in the case of Special Civil Application No.213 of 2016 for the period between 16.07.1985 to 14.07.1997. The Controlling Authority rejected the claim. The Appellate Authority confirmed the same.’

That after considering the provisions of the Payment of Gratuity Act, 1972 and also provisions of Gujarat Civil Service (Pension) Rules, 2002, under which, the concerned employees were not paid the amount of gratuity during the period for which they worked as a daily wager and after considering the decision of the Hon'ble Supreme Court in the case of Ahmedabad Pvt. Primary Teachers Association vs. Administrative Officer reported in AIR 2004 SC 1426, decision of the Himachal Pradesh High Court in the case of State of H.P. vs. Lashkari Ram reported in 2008 ILLJ 137 and relying upon the other decisions of this Court referred to in para 13.1 to 13.2 of the impugned order, the learned Single Judge by impugned judgment and order has held that the concerned employees shall be

entitled to gratuity under the Payment of Gratuity Act also for the period they worked as a daily wager, the period for which they were not paid the gratuity either under the Payment of Gratuity Act or under the provisions of the Gujarat Civil Service (Pension) Rules, 2002.

‘5.0. Having heard the learned advocates for the respective parties and considering the provisions C/SCA/10446/2020 ORDER DATED: 09/08/2021 of Payment of Gratuity Act, under which there is no distinction between the regular employee and daily wager and there is no specific provision that daily wagers are not entitled to payment of gratuity and on the contrary considering the provisions of the Payment of Gratuity Act, more particularly, Section 3 to 5 of the Act, any employee who has worked for not less than 5 years shall be entitled to the amount of gratuity and considering the proviso to Section 4 of the Payment of Gratuity Act, daily rated worker and even seasonal workers are entitled to gratuity under the Payment of Gratuity Act, it cannot be said that the learned Single Judge has committed any error in holding that the concerned employees are entitled to the gratuity under the Payment of Gratuity Act for the period, for which, they worked as daily wager. At this stage, it is required to be noted that it is not the case on behalf of the State that for the aforesaid period, during which they worked as daily wagers, the concerned employees were paid the gratuity under the provisions of the Gujarat Civil Service (Pension) Rules, 2002.

9. Having considered the judgement rendered in Letters Patent Appeal No. 1195 of 2017, relevant portion of which is reproduced hereinabove, we are of the opinion that the view taken by the Controlling Authority and confirmed by the Appellate Authority as well as the learned Single Judge do not require interference. The provisions of the Payment Of Gratuity Act make no distinction between a regular employee and a daily wager. There is no specific provision that daily wagers are not entitled to the payment of gratuity. Considering the provisions of the Payment Of Gratuity Act, 1972 particularly Sections 3 to 5 and 14, it can very well be seen that the provisions of the Act shall have effect notwithstanding anything in consistent with any other enactments. The submission therefore made by learned counsel for the respective appellants that once having earned the gratuity under the relevant provisions of Gujarat Civil Service (Pension) Rules, 2002, the period rendered prior to such regularization and claimed under such rules would disentitle such employee from claiming gratuity under the Gratuity Act as a daily wager cannot be sustained’.”

[Emphasis supplied]

(iii) It will also be fruitful to reproduce relevant observations of Hon’ble High Court of Karnataka in Writ Petition No. 27075/ 2019, C.B. Nanjundappa vs. Chief Executive Officer, Zilla Panchayat, Mandya District Mandya and others & connected writ petition, herein below for convenience:

“1. The petitioner in W.P. No.27075/2019 is seeking a writ of mandamus directing the respondent No.2 to take action against respondent Nos.1, 3 and 4 and recover the gratuity amount to the petitioner in terms of the order dated 22.07.2015.

5. Petitioner is a retired government servant, who was working as a Junior Inspector in the office of respondent No.4, respondent extended the benefit of gratuity for the regular service rendered by him from 01.01.1990 to 31.03.2013. The petitioner approached the Controlling Authority under the Payment of Gratuity Act, 1972 (‘the PG Act,’ for short) seeking for difference of gratuity. The Authority vide order dated 22.07.2015 directed the respondent to pay the balance gratuity of Rs.1,62,000/- to the petitioner with simple interest.

7. Respondent Nos.1 and 4 filed W.P. No.48720/2019 now "assailing the order passed by the Controlling Authority in the year 2015" without exhausting the alternative efficacious remedy available under Section 7 (7) of the PG Act. The contention of respondent Nos.1 and 4 is that the post held by the petitioner is under the State Government and as per Section 2(e) of the PG Act, the petitioner being a government servant is excluded from the definition of 'employee' of the PG Act. It is also the submission of respondent Nos.1 and 4 that the petitioner being an employee of a State Government is not entitled for gratuity under the PG Act, 1972 and on the other hand, the Karnataka Civil Services Rules (KCSR for short) as per Rule 248-A is to be made applicable to the petitioner and it is the contention of respondent Nos.1 and 4 that the judgment of the Apex Court in the case of Netram Sahu Vs. State of Chhattisgarh and another1 (Netram Sahu) placed reliance by the learned counsel for the petitioner has been referred to the Larger Bench and the same cannot be placed reliance to hold that the petitioner is entitled for the benefit which he had rendered prior to his regularization for calculating his continuous service of 5 years and would contend that the writ petition before this Court by respondent Nos.1 and 4 is maintainable without exhausting the alternative efficacious remedy, as very jurisdiction of the Controlling Authority is assailed before this Court. The term employee as mentioned under Section 2(e) of the PG Act reads as under:

‘2(e) “employee” means any person (other than an apprentice) who is employed on wages, in any establishment, factory, mine, oilfield, plantation, port, railway company or shop to do any skilled, semi-skilled, or unskilled, manual, supervisory, technical or clerical work, whether the terms of such employment are express or implied, and whether or not such person is employed in a managerial or administrative capacity, but does not include any such person who holds a post under the Central Government or a State Government and is governed by any other Act or by any rules providing for payment of gratuity.’

8. Learned counsel for respondent Nos.1 and 4, placing reliance on Section 2(e) of the PG Act which excludes the person who hold post with Central or State Government and are governed by any other Act or rules provided for payment of gratuity, would contend that petitioner could not have invoked Section 7 of the Act, as such Controlling Authority had no jurisdiction, the Rule 248-A of KCSR states that the persons borne on the workcharged establishments of Government either on daily or monthly wages system, when appointed to regular pensionable service under Government shall count for pension or gratuity 1/4th of their service rendered on the work-charged establishments, subject to a maximum of 3 years.

9. The Apex Court in the case of Municipal Corporation of Delhi Vs. Dharam Prakash Sharma and another2 (Dharam Prakash Sharma) has held that the Payment of Gratuity Act being a special provision for payment of gratuity, and notwithstanding separate pension rules, Municipal Corporation of Delhi employees were entitled to the benefits under the provisions of the PG Act, 1972 in view of the overriding effect of the PG Act as per Section 14 of the PG Act.

11. The Apex Court held that if the services are regularized the workman is entitled to claim benefit by counting his service rendered prior to his regularization for calculating his continuous service of five years.

12. Though the petitioner would be governed by the KCSR, and the gratuity amount has been paid to the petitioner under the KCSR, however, the gratuity paid was covering the period from the regularization till his retirement on superannuation, and the respondents did not take into consideration the service rendered by the petitioner prior to regularization.

15. Further, the Division Bench of this Court in Smt. Mahadevamma Vs. Assistant Executive Engineer and others4 (Mahadevamma) held that Payment of Gratuity

Act being a special provision are entitled to gratuity under the payment of Gratuity Act 1972, referring Netram Sahu's case referring to Section 248-A of the KCSR, held as under:

‘11. It is pertinent to note that the interpretation put forth by the learned Single Judge that in view of Rule 248A of the Rules, the provisions of the Act would not apply cannot be sustained as the Supreme Court in Municipal Corporation Delhi supra has held that payment of Gratuity Act being a special provision for payment of gratuity, unless there is any provision therein which excludes its applicability to an employee who is otherwise governed by provision of Pension Rules, it is not possible to hold that an employee is not entitled to gratuity under Payment of Gratuity Act, 1972. In view of aforesaid enunciation of law by Hon'ble Supreme Court in Netram Sahu supra, the order passed by the learned Single Judge cannot be sustained in the eye of law as the aforesaid decision binds this court.’

17. The Co-Ordinate bench of this Court in Chief Executive Officer, Zilla Panchayat, Mysuru and another Vs. Shri K.V. Puttaraju and others⁶ (Puttaraju) and in Sri Basavegowda Vs. The State of Karnataka and others⁷ (Basavegowda) placing reliance on the decision in Dharam Prakash Sharma, Netram Sahu's case held that employee is entitled to gratuity for his entire service, not restricting period of regular service as the Act does not differentiate between a regular employee and a daily wage employee and observed that State cannot deny payment of gratuity, if the employee is entitled under the Act.

18. In the light of the decisions stated supra in Netram Sahu case by Apex Court, in Mahadevamma Case by the Division Bench, the Co-Ordinate Bench of this Court in Puttaraju and Basavegowda, respondent Nos.1 and 4 that the petitioner being a State Government employee cannot seek gratuity under the PG Act needs to be rejected.”

[Emphasis supplied]

(iv) This Tribunal has decided a similar matter on 25.03.2019 in Claim Petition No. 56/DB/2018 Ram Narayan Singh vs. Stae of Uttarakhand and another. Relevant paragraphs of the same are reproduced herein below for convenience:

“2. Facts, giving rise to present claim petition, are as follows:

Petitioner was an employee of Irrigation Department. He served the department from 01.02.1981 to 31.01.2018. He was paid retiral benefits only for the period 20.01.1992 to 31.01.2018. The petitioner has relied upon an Office Order dated 18.01.1982, issued by the Chief Engineer, Irrigation Department, Yamuna Colony, Dehradun, which clearly stated that the petitioner served as Work Supervisor (Muster Roll Establishment) continuously since 1981. Petitioner's services were regularized on the post of Junior Clerk in the pay scale of Rs.950-20-1150 -EB-25-1500/-

The grievance of the petitioner is that although he continuously served the respondents department from 01.02.1981 to 31.01.2018, but retiral benefits have been given to him considering his services only from 20.01.1992 to 31.01.2018. Petitioner submitted his representation on 17.04.2018 for redressal of his grievances, but to no avail. Hence, present claim petition.

4. Annexure: A-1 is a copy of appointment letter dated 08.01.1992, which shows that the petitioner was given appointment on a vacant post of Junior Clerk

in the Irrigation Department. It was a fresh appointment, although the petitioner was working as Work Supervisor (Muster Roll) since 1981. He qualified the test for selection in General Clerical Cade. Annexure: A-2 is a copy of the representation given by the petitioner to Chief Engineer, for payment of gratuity only. Annexure: A-3 is a copy of certificate issued by Assistant Engineer, Civil Construction Division, Dhalipur, on 05.02.1992, certifying that the petitioner worked as Work Supervisor on daily muster roll basis from 01.02.1981 to 19.01.1992. Hence, his work and conduct was very good. Annexure: A-4 indicates that the petitioner joined as Junior Clerk in Irrigation Department on 20.01.1992. Annexure: A-5 is a copy of office letter dated 16.03.1992, issued by Chief Engineer, Irrigation Department, approving the appointment of the petitioner as Junior Clerk. Annexure: A-6 is a copy of forwarding letter, relating to pension, gratuity, etc., issued by the Directorate of Treasury, Pension and Entitlement. The petitioner gave a representation on 17.04.2018 (Copy: Annexure A-7) for inclusion of his services rendered as Daily Wager for releasing retiral dues. A copy of letter dated 01.05.2018, which was addressed by the petitioner to Chief Engineer, Irrigation Department, has also been filed to indicate that he had prayed for inclusion of eleven years of services for releasing gratuity in his favour.

5. The first question, which arises for consideration of this Court is— whether the petitioner is entitled to gratuity?

10 We may seek guidance from Hon'ble Apex Court in elucidating the controversy in hand. The decision of *Netram Sahu vs. State of Chhattisgarh and Another*, (2018)2 SCC 430 comes handy for us, in an effort to get the reply of the vexed question. *Netram Sahu* had put in more than 25 years of continuous service, out of which 22 years were as Daily Wager and 3 years as regular employee. It was held that having regularized services of *Netram Sahu*, State had no justifiable reason to deny benefit of gratuity to him, which was his statutory right. The question, as to from which date the services were regularized, was of no consequence for calculating total length of service for claiming gratuity, once services were regularized. Since the Gratuity Act is a welfare legislation, which is meant for benefit of employees, who served their employer for long time, duty of State is to pay gratuity to employee rather than denying benefit on some technical ground and force the employee to approach Court to get his genuine claim.

11 Facts of *Netram Sahu* may further be elaborated. He was appointed as Daily Wager on 01.04.1986 by Water Resources Department of State of Chhattisgarh. Subsequently, his services were regularized on work charge establishment to the post of Pump Operator *vide* order dated 06.05.2008. After attaining the age of superannuation, *Netram Sahu* retired on 30.07.2011. He was not paid gratuity amount. He, therefore, filed an application before the controlling authority under the provision of Gratuity Act, for payment of gratuity. The controlling authority held that he was entitled to claim gratuity for the services rendered by him. The State felt aggrieved and filed appeal before the appellate authority, who affirmed the order of controlling authority. The State pursued the matter and filed writ petition against the order passed by the appellate authority. Learned Single Judge of Hon'ble High Court allowed the writ petition. *Netram Sahu* filed writ appeal before Division Bench, who dismissed his appeal and upheld the order passed by Learned Single Judge.

12 Short question, which arose for consideration before Hon'ble Apex Court was, whether *Netram Sahu* could be held to have rendered qualified service, i.e., continuous service as specified in Section 2(e) read with Section 2-A of the Act, so as to make him eligible to claim gratuity as provided under the Act, from the State. The Hon'ble Apex Court held that since *Netram Sahu* served the department for more than 25 years, therefore, his case specifies the rigor of the expression 'continuous services' as defined under Section 2-A of the Act. The Hon'ble Apex Court repelled the contention of the State that *Netram Sahu* could not be said to have worked continuously for a period of five years as provided under the Act, so as to make him eligible to claim gratuity.

13 This Court, therefore, is of the opinion that the case of present petitioner is covered by the aforesaid decision of Hon'ble Apex Court, rendered in *Netram Sahu (supra)*.

14 The reasons are not far to seek. It is admitted that petitioner rendered services for more than five years. The question of his services to be regularized is not an issue, as contended by Ld. A.P.O., in giving the benefit of the Gratuity Act to the petitioner. Even if the petitioner got fresh appointment as Junior Clerk in the year 1992, and even if he was engaged as daily wager continuously since 1981, he would derive the benefit of the Gratuity Act. In other words, petitioner will be entitled to claim the benefit of counting the period of eleven years, regardless of the post and capacity on which he worked, prior to his fresh and regular appointment as Junior Clerk in the Irrigation Department of the State of Uttarakhand. To draw parity, Netram Sahu has worked as daily wager in the Water Resources Department of the State of Chhattisgarh.

15 The net result will, therefore, be that the petitioner becomes entitled to account for his total period of service (including that of eleven years, as daily rated employee) for claiming the gratuity amount. Since the Gratuity Act is a welfare legislation, meant for the benefit of the employees, who served their employer for a long time, therefore, it is the duty of the State to voluntarily pay the gratuity amount to the petitioner.

16 The question, thus posed above, is answered in favour of the petitioner.”

[Emphasis supplied]

10. As per order dated 31.12.2015 (Annexure: CA-5), the petitioner was re-appointed as daily wager on 28.04.1993, whereafter, he continued to work in the respondent department, firstly, as daily wager, thereafter in the work-charged establishment and after that, as regular employee till his retirement. His services in the respondent department, from 28.04.1993 till 31.12.2015 were continuous and uninterrupted, therefore, he is entitled to gratuity from 28.04.1993 till 31.12.2015. Even assuming, for the sake of arguments, that the petitioner worked as daily wager-muster roll from the year 1975 to 1982, the fact remains that he remained out of service from 1982 to 1993, therefore, his services as daily wager, during such period cannot be said to be continuous. In all, petitioner is entitled to gratuity from 28.04.1993 till 31.12.2015. Gratuity amount from 15.07.1997 till 31.12.2015 has already been released to him. He is now entitled to gratuity from 28.04.1993 to 15.07.1997. Petitioner is also entitled to interest on delayed payment of remaining amount of gratuity after three months of retirement i.e. w.e.f. 01.04.2016 till the date of actual payment.

11. So far as leave encashment is concerned, Ld. A.P.O. submitted that prayer for leave encashment has already been rejected by the respondent department. Leave encashment is not admissible to him during the period he

served the department in work-charged establishment. Ld. Counsel for the petitioner, on the other hand, submitted that the prayer of the petitioner for giving him leave encashment during the period he worked as work-charged employee, has not been rejected by the respondent department, therefore, liberty may be granted to the petitioner to make representation to Respondent No.1, who may kindly be directed to decide such representation, in accordance with law. Ld. A.P.O. has no objection to such innocuous prayer of Ld. Counsel for the petitioner, if a direction is given to Respondent No.1 to decide the representation of the petitioner, as per Rules.

12. In the backdrop of the above noted facts, the only other question, which is left for determination of this Tribunal now is— how much interest should be awarded to the petitioner for delayed payment of gratuity?

13. 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. Regard may also be had to the decision of Hon'ble Apex Court in *S.K.Dua vs. State of Haryana and Another, (2008) 1 Supreme Court Cases (L&S) 563*, in this context.

14. 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.

15. It is pointed out that Government Order No.979/XXVII(3) Pay/2004 dated 10.08.2004 has been issued by Government of Uttarakhand to regulate interest on delayed payment of gratuity etc.

16. Ld. Counsel for the petitioner submitted that such an order may be passed by Single Bench of the Tribunal.

17. Respondent department is, accordingly, directed -

- (i) to pay the difference of gratuity as admissible, and the amount of gratuity which has already been paid, to the petitioner along

with interest, as per G.O. dated 10.08.2004, without any unreasonable delay. 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. In other words, the petitioner shall also get gratuity from 28.04.1993 to 15.07.1997 during the period he continuously worked as daily wager till he was inducted in work-charged establishment, along with interest which shall be calculated from 01.04.2016 till the date of actual payment.

(ii) to decide the representation of the petitioner for leave encashment during the period he served in work-charged establishment, by a reasoned and speaking order, as per rules, without unreasonable delay, preferably within 16 weeks of presentation of certified copy of this order along with representation, enclosing the documents in support thereof.

18. The claim petition is disposed of. No order as to costs.

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: APRIL 04, 2024.
DEHRADUN

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