

**BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL
BENCH AT NAINITAL**

Writ Petition No. 466 (S/B) of 2021

[Reclassified and Renumbered as Claim Petition No. 01/NB/SB/2023]

Bhuwan Chandra Joshi, aged about 65 years, s/o late Sri Badri Dutt Joshi, r/o Near Ganna Society, Sitarganj, District Udham Singh Nagar.

.....Petitioner

versus

1. State of Uttarakhand through Secretary, Department of Rural Development, Government of Uttarakhand, Dehradun.
2. Commissioner, Department of Rural Development, Government of Uttarakhand, Dehradun.
3. Chief Development Officer, Rudrapur, District Udham Singh Nagar.
4. Director, Lekha Evam Haqdari, 23 Laxmi Road, Dalanwala, Dehradun.
5. Chief Treasury Officer, Rudrapur, District Udham Singh Nagar.
6. Block Development Officer, Bazpur, District Udham Singh Nagar.

..... Respondents

Present: Sri Harendra Belwal, Advocate, for the Petitioner
Sri Kishore Kumar, A.P.O., for the Respondents

JUDGEMENT

Dated: 19th July, 2024

Justice U.C. Dhyani (Oral)

Hon'ble High Court of Uttarakhand has been pleased to pass an order on 18.11.2022 in WPSB No. 466 of 2021, Bhuwan Chandra Joshi vs. State of Uttarakhand and others, which (order) reads as under:

“Mr. Harendra Belwal, learned counsel for the petitioner.

Mr. Vikas Pande, learned Standing Counsel for the State.

MCC No.3 of 2022 (Recall Application)

The petitioner has preferred the present application with the limited prayer that the record of the writ petition be transmitted to the Uttarakhand Public Service Tribunal.

Since, the matter had been pending in the Court for some time and even counter affidavit has been filed by respondent nos.4 & 5, we, accordingly, modify our order dated 18.07.2022.

The petitioner was a public servant. The Uttarakhand Public Service Tribunal has the jurisdiction to deal with the issue raised in this writ-petition.

We direct the Registry to transfer the complete records of the case to the Tribunal, which shall be registered as a claim petition and be dealt with by the Tribunal, in accordance with law.

We request the Tribunal to endeavor to hear the petition on an early date, considering that the writ-petitioner is already a retired person.

This petition stands disposed of.”

2. The original record of the writ petition has been transferred to this Tribunal *vide* letter no. 18019 /UHC/Service Section(S/B)/PST/ Nainital dated 22.12.2022 of the Deputy Registrar (Judicial) of the Hon’ble High Court. The same has been registered as claim petition no. 01/NB/SB/2023.

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

(i) Issue a writ, order or direction in the nature of mandamus commanding the respondents to release the full pension along with its arrear in favour of the petitioner on the basis of the salary entitlement of the petitioner with Grade Pay Rs. 6600/- having its pay scale Rs. 89,900/-.

(ii) Issue a writ, order or direction in the nature of mandamus commanding the respondent department to release the Gratuity in favour of the petitioner including its statutory interest, as payable under section 7 (3) (A) of the payment of the Gratuity Act, 1972.

(iii) Issue a writ, order or direction in the nature of mandamus commanding the respondent department to release the salary of the

suspension period from 21.07.2010 to 14.12.2011, leave encashment and other admissible retiral dues in favour of the petitioner.

(iv) Issue a writ, order or direction in the nature of mandamus commanding the respondent department to release the interest for delayed of the payment in favour of the petitioner.

(v) Issue any suitable order or direction as this Hon'ble Court may deem fit and proper in the circumstance of the case.

(vi) To award the cost of the writ petition to the petitioner.”

4. The petitioner has filed affidavit in support of his petition. Relevant documents have been filed with the petition.

5. The petition has been contested on behalf of the respondents. Dr. Pankaj Kumar Shukla, Chief Treasury Officer, Udham Singh Nagar, has filed counter affidavit on behalf of respondents no. 4 and 5.

6. It has been mentioned in in para 4 of such C.A. that the petitioner retired on 31.01.2016 as group 'B' Gazetted Officer. According to Govt. Order No. 73 dated 28.02.2015 Khand (*kha*), on the retirement/ death of a person of Group 'A' or Group 'B' officer, his pension/ family pension as the case may be, would be disbursed by the Directorate, Treasury, Pension and Entitlement, Camp Office, Haldwani (copy of G.O. dated 28.02.2015: Annexure CA1). In view of such G.O., the pension case of the petitioner is not to be considered by the Director, Pension Treasury, Pension and Entitlement or by the Chief Treasury Officer, Udham Singh Nagar. The decision is to be taken by the concerned department itself.

7. The facts, which cull out from the record suggest that respondents should be directed to decide representation of the petitioner for releasing full pension, gratuity, salary of his suspension period etc., as expeditiously as possible, in accordance withal law.

8. The reasons are not far to seek. Writ Petition was filed before the Hon'ble High Court. Six weeks' time was granted to the State to file the counter affidavit *vide* order dated 08.10.2021.

Registry of the Hon'ble Court made an endorsement on 24.12.2021 that the counter affidavit has not been filed. Subsequent thereto, as per further endorsement dated 21.03.2022, C.A. was filed on behalf of respondents no. 4 and 5. *Vide* order dated 18.07.2022, the petition was dismissed with liberty to the petitioner to approach this Tribunal. Subsequently, *vide* order dated 18.11.2022, registry of the Hon'ble Court was directed to transfer complete record of the case to the Tribunal. The Tribunal was directed to make an endeavour to hear the petition on an early date considering that the petitioner is already a retired petitioner.

9. In the counter affidavit of respondents no. 4 and 5, as has been mentioned above, it has been stated in para 4 that "the decision is to be taken by the concerned department itself." Hence, the respondent department should be directed to take a reasoned decision on the prayer of the petitioner.

10. Learned A.P.O. submitted that when the petitioner was posted as Block Development Officer, Sitarganj, District Udham Singh Nagar, a case under Section 7, (13)(1)(D) read with Section 13(2) of the Prevention of Corruption Act, 1988, was registered against him. He was enlarged on bail. The respondent department suspended him. Petitioner filed writ petition for revoking his suspension order before the Hon'ble Court, who was pleased to direct the authority concerned to decide application of the petitioner by a reasoned and speaking order. Subsequently, the petitioner was reinstated on the post of B.D.O., Kashipur. He retired from service on 31.10.2016. The petitioner was convicted by the Court under the Prevention of Corruption Act and was sentenced to undergo rigorous imprisonment for a period of four years with a fine of Rs. 10,000/- *vide* order 23.12.2017 of Special Judge (Anti-Corruption)/ District & Sessions Judge, Nainital in Sessions Trial No. 17/2010. The petitioner challenged the said order before Hon'ble High Court. The criminal appeal was registered as CRLA No. 393/2017. Petitioner was enlarged on bail. He moved an application to the respondent authority(ies) for payment of his post retiral benefits including gratuity etc., which, it appears, has not been decided so

far. There is no indication on the file that he same has been decided by the department concerned.

11. Learned A.P.O. further submitted that the petitioner is a convict under the Prevention of Corruption Act. His criminal appeal is pending, therefore, he is not entitled to the reliefs claimed.

12. Sri Harendra Belwal, learned Counsel for the petitioner submitted that the pension is right to property and cannot be taken away without due process of law. Petitioner is on bail. He is a retired person and it has become difficult for him and his family to survive in the absence of release of salary of his suspension period from 21.07.2010 to 14.12.2011, leave encashment and other admissible retiral dues including gratuity along with statutory interest.

13. So far as release of salary of the suspension period from 21.07.2010 to 14.12.2011 is concerned, it will be pertinent to reproduce Para 54-B, Financial Handbook, Vol. 2 to 4, as below:

“54-B (1) When a Government servant who has been suspended is reinstated or would have been so reinstated but for his retirement on superannuation while under suspension, the authority competent to order reinstatement shall consider and make a specific order—

(a) regarding the pay and allowances to be paid to the Government servant for the period of suspension ending with reinstatement or the date of his retirement on superannuation as the case may be; and

(b) whether or not the said period shall be treated as a period spent on duty.”

[Emphasis Supplied]

14. Petitioner is directed to make a representation, under Rule 54-B Financial Handbook, Vol. 2 to 4 as above, to the competent authority, who is directed to decide such representation as expeditiously as possible, without unreasonable delay.

15. So far as his pension is concerned, it has been mentioned in the counter affidavit filed on behalf of respondents no. 4 and 5 that the decision on release of pension has to be taken by the

concerned department itself. Respondent department should be directed accordingly.

16. The petition is disposed of by directing the department concerned to consider releasing pension, gratuity and other admissible retiral dues to the petitioner, by a reasoned and speaking order, as expeditiously as possible, without unreasonable delay, in accordance with law, on presentation of certified copy of this order along with representation of the petitioner, enclosing the documents in support thereof. No order as to costs.

(JUSTICE U.C. DHYANI)
CHAIRMAN

DATE: 19th July, 2024
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RS