

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

CLAIM PETITION NO. 71/SB/2023

Ramraj Singh Parmar, aged about 60 years, s/o Late Sri Ranjit Singh Parmar, r/o Parmar Bhawan, Gyansu, Uttarkashi.

.....Petitioner

vs.

1. State of Uttarakhand through Secretary, Energy, Govt. of Uttarakhand, Secretariat, Subhash Road, Dehradun.
2. Uttarakhand Power Corporation Limited through its Managing Director, V.C.V.G.S. Urja Bhawan Kanwali Road, Dehradun.
3. Director Finance, Uttarakhand Power Corporation Limited V.C.V.G.S. Urja Bhawan Kanwali Road, Dehradun.
4. General Manager H.R., Uttarakhand Power Corporation Limited.
5. Deputy General Manager (Finance) Zonal Account Office, Dehradun.

.....Respondents

Present: Sri M.C.Pant (online) & Sri Abhishek Chamoli, Advocates,
for the petitioner.
Sri V.P.Devrani, A.P.O., for Respondent No. 1.
Sri Manish Kumar Singh, Advocate, for Respondents No.2 to 5
(online)

JUDGMENT

DATED: AUGUST 13, 2024

Justice U.C.Dhyani (Oral)

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

“i. To declare the communication dated 23.11.2022 (Annexure: A-1) of the General manager as arbitrary, contrary to law and the same amounts to superseding the order passed by the superior authority i.e. Managing Director and further to direct the Respondent to implement the order passed by the Managing Director dated 14.10.2022 whereby the petitioner was allowed the benefit of 2nd and 3rd ACP or to mould the relief appropriately, keeping in view the facts highlighted in the body of the petition.

ii. To direct the respondents to pay the benefit of 2nd and 3rd ACP to the petitioner and further to refix the pension, gratuity and other retiral dues of the petitioner and direct the respondent to pay the same to the petitioner on the basis of refixation along with 18% interest forthwith or within a time period which this Hon'ble Court may deem fit and proper under the circumstances of the case stated in the memo of the claim petition, after calling the entire records.

iii. To issue any other suitable order or direction to award damages and compensation to Petitioner such amount which may be quantify this Hon'ble Tribunal and same may be recovered from the respondents or any relief which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

iv. To award the cost of the petition to the petitioner.”

2. It is the submission of Ld. Counsel for the petitioner that a decision was taken by the Managing Director, UPCL, Dehradun (Respondent No.2), which was later on amended by the General Manager (H.R.), UPCL, Dehradun (Respondent No.4). The order passed by Respondent No.4 is under challenge in present claim petition. Ld. Counsel for the petitioner submitted that an order passed by the higher authority (Managing Director), cannot be amended or modified by an authority who is subordinate to him (General Manager).

3. The claim petition is supported by the affidavit of the petitioner. Relevant documents have been filed along with the claim petition.
4. The claim petition has been contested on behalf of the respondents. Counter Affidavit has been filed by Sri Surinder Kumar Bhatia, Deputy Chief Personnel Officer, H.R., Uttarakhand Power Corporation Ltd. Dehradun, on behalf of Respondents No. 2 to 5.
5. Rejoinder Affidavit to the Counter Affidavit has also been filed.
6. When interim relief was pressed on behalf of the petitioner, the Tribunal passed an order on 05.06.2023, which reads as under:

“.....An application has been moved on behalf of the petitioner with the prayer that the documents enclosed with such application be treated as part of the claim petition and the respondents be directed not to make any recovery from the retiral dues of the petitioner and to remit the amount of recovery, if any, after the retirement of the petitioner, with interest. Copy of this application has been supplied to Sri Manish Singh, Ld. Counsel for UPCL. Ld. A.P.O. submitted that the State of Uttarakhand is a formal party.

The petitioner is a retired Accountant (Group 'C' employee). He retired on 31.10.2022. It is the submission of Ld. Counsel for the petitioner that recovery from a retired Group 'C' and 'D' employee should not be made in view of the decision rendered by Hon'ble Apex Court in State of Punjab and others vs. Rafiq Masih (Whitewasher), (2015) 4 SCC 334, and, therefore, there should be stay on recovery from the retiral dues.

Legality of the impugned communication dated 23.11.2022 (Annexure: A-1) of the General Manager, UPCL, shall be decided at the time of final hearing of the claim petition. At present it appears to be a fit case for interim stay on recovery against the retired Accountant (Group 'C' employee) during the pendency of present claim petition.

It is directed, as an interim measure, that there shall be interim stay on the recovery against the petitioner, during the pendency of present claim petition.

Prayer for interim relief is, accordingly, disposed of.....”

7. Ld. Counsel for the petitioner submitted that a direction be given to Respondent No.2 to consider the prayer of the petitioner after hearing him in person. Sri Manish Kumar Singh, Ld. Counsel for Respondents No. 2 to 5 has no objection to the innocuous prayer of Ld. Counsel for the petitioner.

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

9. Innocuous prayer of the petitioner is worth accepting.

10. The claim petition is disposed of, with the consent of Ld. counsel for the parties, by directing Respondent No.2, to consider the case of the petitioner after affording opportunity of personal hearing to him, by a reasoned and speaking order, as per law, without unreasonable delay, on presentation of certified copy of this order along with representation, enclosing the documents in support thereof. No order as to costs.

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: AUGUST 13, 2024.
DEHRADUN

VM