

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

Writ Petition No. 577 (S/B) of 2021

[Reclassified and Renumbered as Claim Petition No. 126/NB/SB/2022]

Khadak Singh Dhapola, retired Principal, aged about 61 years, s/o late Sri Trilok Singh Dhapola, r/o village Bithoria No.1, Post Office Haripur Nayak, Haldwani, District Nainital.

.....Petitioner

versus

1. State of Uttarakhand through Secretary, Secondary Education, Civil Secretariat, Dehradun.
2. Director (Secondary Education), Uttarakhand, Dehradun.
3. Additional Director (Secondary Education), Uttarakhand, Kumaun Region, Nainital.
4. Chief Education Officer, Nainital, District Nainital.
5. District Project Officer, Rashtriya Madhyamik Shiksha Abhiyan (RMSA), Nainital, District Nainital.
6. Smt. Sarojini Dhapola, Assistant Teacher, Government Inter College, Danya, w/o Sri Khadak Singh Dhapola, r/o Gaindda Nivas, Near Old Post Office Danya, Post Office Danya, Tehsil Bhanoli, District Almora-263622.

..... Respondents

Present: Sri Vikas Bahuguna, Advocate, for the Petitioner
Sri Kishore Kumar, A.P.O., for Respondents No. 1 to 5
Sri B.S. Kathayat and Sri K.N.S. Rautela, Advocates,
for Private Respondent No. 6

JUDGEMENT

Dated: 21st August, 2024

Justice U.C. Dhyani (Oral)

Hon'ble High Court of Uttarakhand has been pleased to pass an order on 23.09.2022 in WPSB No. 577 of 2021, Khadak

Singh Dhapola vs. State of Uttarakhand and others, which (order) reads as under:

“The petitioner retired as a public servant.

2. The reliefs sought in the writ petition are the following:-

“i). Issue a writ order or direction in the nature of mandamus directing respondents no. 1 to 5 to forthwith process pension of petitioner along with other retirement benefits applicable to petitioner with 18% interest from the date his pension was due for payment till actual payment is made.

ii). Issue a writ order or direction in the nature of mandamus directing respondents no. 1 to 5 to recompute salary of petitioner as per his applicable basic pay i.e., 84,900 and pay the shortfall to the petitioner with 18% interest from the date his salary was due for payment till actual payment is made.

iii) Issue a writ order or direction in the nature of mandamus directing respondents no. 1 to 5 to process the travelling allowance bill dated 17- 09-2020 as per rules, with 18% interest from the date this bill was due for payment till actual payment is made.”

3. These reliefs can be considered by the Uttarakhand Public Services Tribunal.

4. Considering the fact that the Writ Petition has been pending since 2021, we direct the Registry to transfer the complete record of this Writ Petition to the Uttarakhand Public Services Tribunal. The Tribunal shall register the same as a Claim Petition, and deal with the same accordingly. The Tribunal is requested to expedite the hearing of the Claim Petition, provided the petitioner does not seek any adjournment.

5. The Writ Petition stand disposed of accordingly.”

2. The original record of the writ petition has been transferred to this Tribunal *vide* letter no. 14785/UHC/Service (S/B) 2022 dated 17.10.2022 of the Deputy Registrar (Judicial) of the Hon'ble High Court. The same has been registered as claim petition no. 126/NB/SB/2022.

3. Petitioner was initially appointed as Assistant Teacher, Social Studies, on 13.12.1984. Subsequently, he was promoted to the post of Principal on 14.10.2017. After serving Department of Education for about 35 years, petitioner retired on 30.06.2020 as Principal, Govt. Higher Secondary School, Surang, Nainital. It has been stated in the petition that for the last 13 years, he is undergoing

treatment for arthritis in different hospitals for regaining proper limb functions.

3.1 Petitioner and his wife are having strained relations for the last 26 years. Both are living separately. After retirement, petitioner approached his wife for processing his pension papers, which requires joint photograph of petitioner with his wife and signatures thereto but his wife refused to process the pension papers.

3.2 In the year 2021, petitioner filed a petition being matrimonial case no. 126/2021 before learned Family Judge, Almora, under Section 13 Hindu Marriage Act, for seeking divorce on the grounds of cruelty and desertion. Matrimonial case is pending adjudication before learned Family Judge, Almora.

3.3 Wife of the petitioner is Assistant Teacher in Govt. Inter College, Almora. Non-cooperation of respondent no. 6 has resulted in deprivation of pension benefits to the petitioner.

Hence, present petition.

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

5. Petition has been contested on behalf of the official respondents. Sri Kishore Kumar, learned A.P.O. has filed W.S. on behalf of respondent no. 4. C.A. has been filed by Sri Jagmohan Soni, Chief Education Officer, Nainital.

5.1 It has been mentioned in the C.A. thus filed that the petitioner has retired on 30.06.2020 after completing more than 35 years of service. The deponent, Chief Education Officer, has no knowledge about the personal facts between petitioner and respondent no. 6.

5.2 It has been stated in para 10 of the C.A. that since the petitioner has not submitted joint photograph with his wife, therefore

his pension matter could not be disposed of. Some of the retiral dues and medical claims of the petitioner have been released.

5.3 In para 11 of such C.A., it has been stated that respondent no. 6 is not ready to have joint photograph with the petitioner. He has been paid lesser amount of salary for the month of February 2020 (minus Rs. 2925/-) and his T.A. bills have not been credited in his account.

5.4 In para 13 of the C.A., it has been mentioned that a sum of Rs. 2925/-, balance pay of February, 2020, has been credited in the account of the petitioner on 15.12.2021.

5.5 In para 14 of the C.A., it has been stated that an amount of Rs. 13,222/- relating to T.A. has been credited in the account of the petitioner on 27.12.2021.

5.6 It has been stated in para 15 of the C.A. that gratuity worth Rs. 17,44,941/- has been released in favour of the petitioner. Copy of Pension Payment Order dated 21.06.2022 has been brought on record as Annexure: CA1.

5.7 It has further been mentioned in para 16 of the C.A. that official respondents did not do anything in violation of Article 14, 21 and 300A of the Constitution of India. Delayed payment of pension is attributable to the petitioner, who did not submit pension papers on time. The details of the payment made to the petitioner have been given in the chart as below:

Sl. No.	Admissible Payable Dues	Amount	Voucher No.	Date
1.	GPF 90%	11,86,000/-	B80090074	19.12.2020
2.	Leave Encashment	9,61,225/-	A20710262	22.12.2020
3.	GPF 10%	1,64,546/-	B80090115	20.02.2021

4.	GIC Insurance)	(Group	10,993/-	B80110050	29.06.2021
5.	Balance Arrear	Salary	74,229/-	A22020210	22.10.2021
6.	Balance Arrear	Salary	2,925/-	A22020135	15.12.2021
7.	On retirement TTT		13,222/-	B22020340	27.12.2021

6. Learned A.P.O. submitted that respondent department is not responsible for delayed payment of pension inasmuch as the petitioner has not filed pension papers and the joint photograph with his wife. Learned A.P.O. further submitted that all the retiral dues have been paid to the petitioner.

7. In reply, learned Counsel for the petitioner submitted that all the retiral dues have been given to the petitioner except medical claims for which signature and joint photograph of his wife is not required. Therefore, a direction may be given to respondent department to release medical claims of the petitioner and the matter should not be delayed further on account of the fact that petitioner has not filed joint photograph with his wife.

8. It will be appropriate to reproduce the judgement rendered by Hon'ble High Court of Uttarakhand on 18.11.2020 in **WPSS No. 367 of 2020, Bhagwan Singh vs. Union of India and others**, herein below for convenience:

"Petitioner has approached this Court seeking the following reliefs:-

i) Issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 05.10.2019 (Annexure No.6 of the writ petition).

ii) Issue a writ, order or direction in the nature of mandamus directing respondent nos.1 to 5 to forthwith process pension of petitioner along with other retirement benefits applicable to petitioner (including gratuity and leave encashment) with 18% interest from the date his pension was due for payment till actual payment is made.

iii) Issue any other relief, which this Hon'ble Court may deem fit and proper in the circumstances of the case be passed in favour of the petitioner.

2. Factual matrix of the case is that petitioner was appointed in Central Industrial Security Force (hereinafter to be referred as CISF) on 05.12.1980 as Constable (GD). Due to his poor medical condition, he took voluntary retirement from services and was relieved from CISF on 01.11.2018. He was married to Smt. Susheela Devi in the year 1981, who left co-habitation with petitioner in the year 1985, and since then both are living separately. In the year 2016, petitioner filed a petition before the Family Judge, Dehradun under Section 13 of the Hindu Marriage Act, seeking decree of divorce, which is pending adjudication. It is stated that the petitioner is undergoing treatment at Shri Mahant Indresh Hospital, Patel Nagar, Dehradun since last two years. The grievance of the petitioner is that after retirement he is in dire need of money due to his ill health but his pension and other retirement benefits are not getting processed due to noncooperation of his wife. The office of Deputy Commandant CISF Jhakdi has informed the petitioner vide letter bearing no. E-28014/SJVNL/Lekha/Pension/BS/2019- 764 dated 01.03.2019 that petitioner need to supply his joint photograph with his wife and separate account of his wife for getting his pension processed. Petitioner has submitted his reply to the letter dated 01.03.2019 informing the higher authorities about his strained relationship with his wife and pendency of divorce suit before Family Judge, Dehradun. Thereafter, by another letter dated 28.06.2019, petitioner has again been asked to supply aforesaid documents of his wife and to remain personally present along his wife before CISF formation in ONGC Dehradun. Despite several request made by the petitioner, his wife is not cooperating in the process of preparing the pension papers and is causing hurdles in order to get the pension to the petitioner. It is further alleged that the petitioner's wife has clearly denied before Assistant Commandant CISF ONGC Dehradun on 08.07.2019 to supply any document for processing of pension to the petitioner. Petitioner contends that he has shown his inability to get the joint photograph with his wife and her account number before the respondent but despite all his requests still his pension is pending. Vide letter dated 05.10.2019, once again petitioner has been asked to supply documents of his wife, wherein this fact has also been recorded that on 08.07.2019 his wife has clearly denied supplying required document before Assistant Commandant CISF, ONGC, Dehradun.

3. A counter affidavit has been filed on behalf of respondent nos.1 to 5 stating that the petitioner was asked to provide joint photograph with his wife and a separate account detail of his wife to process and finalize his pension case vide office letters dated 18.02.2019, 01.03.2019 and 03.04.2019 but the petitioner did not submit any documents. Thereafter, one Sub-Officer SI/Exe Suryawanshi Ajay Ramesh was sent to visit petitioner's native place to collect the required documents from him and his wife but his wife Smt. Sushila Devi refused to provide the required documents. Both of them handed over their applications to the Sub Officer (unit representative) citing reason for not providing the required pension papers. It is also stated that CISF Unit ONGC Dehradun vide their office letter no.2351 dated 28.06.2019 had informed petitioner and his wife to discuss the matter together at CISF Unit ONGC Dehradun, so as to obtain remaining documents to ensure further necessary action by the CISF to finalize the petitioner's pension. Pursuant to said letter, petitioner and his wife came in the office whereby one officer tried to convince them but the petitioner and his

wife expressed inability to provide the documents. Subsequently, petitioner submitted request to PAO CISF New Delhi regarding his consent to pay half of the amount of pension fund to his wife. Thereafter, Group HQrs Chandigarh sent his pension case to DIG, CISF NZ-2 HQrs Jammu for directions/clarification in this pension case vide letter no.3606 dated 14.08.2019. Thereafter, Unit Office resubmitted petitioner's pension case along with all available documents to CISF NS HQrs, Pension Cell, New Delhi vide letter no.4029 dated 28.09.2019. CISF NS HQ Pension Cell, forwarded his pension papers to PAO New Delhi vide letter no11481 dated 14.10.2019 but PAO New Delhi again returned his pension case on 03.02.2020 for want of requisite documents. It is further stated that the payment of risk fund amount ` 44,478/-, GPF amount Rs. 9,92,374/- and CGEGIS ` 70,838/- has been made to the petitioner whereas papers regarding leave encashment, pension, gratuity, commutation, etc. are pending for want of complete requisite documents. It is further stated that despite respondents, having made all possible efforts to obtain all requisite documents from the petitioner and his wife, they could not submit all such documents, therefore, complete pensionary benefits could not be paid by PAO CISF (MHA), New Delhi.

4. I have heard learned counsel for the parties and perused the entire material available on record.

5. A Coordinate Bench of this Court, vide order dated 26.02.2020, had directed the Registry to issue registered as well as dasti notices to the respondent no.6- wife. Pursuant to such order, registered notices were issued to the respondent no.6. Thereafter, this Court, vide order dated 07.10.2020, has deemed sufficient service upon the respondent no.6. But there is no representation for respondent no.6.

6. Indisputably, petitioner was married to respondent no.6 and respondent no.6 is legally wedded wife of the petitioner. Thus, in order to process the pension papers of the petitioner, her documents are required to the department. By impugned letter/order dated 05.10.2019, petitioner has been again directed to submit the joint photograph and copy of bank passbook of his wife in the office for finalizing the pension case of the petitioner. Be that as it may. The fact remains that the petitioner and her wife are living separately for last 30 years and are having strained relationship and it is not possible for the petitioner to obtain the documents from his wife. A divorce suit is also pending adjudication in the court of Judge, Family Court, Dehradun. Under all these circumstances, when petitioner's wife is not coming forward to provide her documents and not cooperating with the petitioner in getting the pension papers processed and finalized, which fact is also recorded in the impugned letter, the petitioner cannot be made to suffer for no fault of his own. The purpose behind asking the joint photograph of the retired employee and his spouse and account details of the spouse along with the pension papers is that the spouse may not face any difficulty, in getting the family pension after the death of retired employee, and the process for switch over from pension to family pension may become easier. Since the spouse of the petitioner i.e. respondent no.6 is not willing to submit the joint photographs and separate account details, it seems that she is not interested in getting the family pension, in the event of death of the petitioner. That being the position, she cannot be compelled to submit the requisite documents, and in the absence of the same,

petitioner cannot be deprived of his pension. It is a trite law that pension payable to an employee upon retirement is a 'property' under Article 300-A of the Constitution of India and it constitutes a fundamental right to livelihood under Article 21 of the Constitution of India. The deprivation, even a part of this amount, cannot be accepted, except in accordance with and authority of law.

7. In the light of aforesaid, writ petition is allowed. Impugned/letter dated 05.10.2019 is quashed. A mandamus is hereby issued directing respondent nos.1 to 5 to forthwith consider the petitioner's case for pension and other retiral benefits, as admissible to him, without asking for the joint photograph(s) and account details of the spouse.

8. No order as to costs."

[Emphasis Supplied]

9. Hon'ble Apex Court has held, in the decision of **State of Kerala and others vs. M.Padmanabhan Nair, 1985 (1) SLR 750**, that "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 visited with the penalty of payment of interest at the current market rate till actual payment."

9.1 Hon'ble Apex Court, in the decision of **S.K. Dua vs. State of Haryana and Another, (2008)1 Supreme Court Cases (L&S) 563**, has observed that "it is well settled law, submitted the counsel, that retiral benefits are not in the nature of bounty and an employee is entitled as of right to get those benefits immediately after superannuation unless they are withdrawn or withheld as a matter of punishment."

9.2 The decision of **D.D. Tiwari (D) vs. Uttar Haryana Bijli Vitran Nigam Ltd. & Others, 2014 (5) SLR 721**, may also be referred to in this regard.

10. Petitioner has been paid all the retiral dues except medical claims for which signature or joint photograph of his wife is not required. A direction may, therefore, be given to the respondent department to release medical claims of the petitioner without

further delay and granting liberty to respondent no. 6 to pursue remedies available to her in law at the appropriate forum.

11. The petition is disposed of in terms of judgement rendered by Hon'ble High Court of Uttarakhand on 18.11.2020 in WPSS No. 367 of 2020, Bhagwan Singh vs. Union of India and others, by directing the respondent department to release the medical claims of the petitioner, as per rules, without further delay, and leaving it open to respondent no. 6 to pursue remedies available to her in law at the appropriate forum. No order as to costs.

(JUSTICE U.C. DHYANI)
CHAIRMAN

DATE: 21st August, 2024
DEHRADUN
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