

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

Writ Petition No. 345 (S/B) of 2020

[Reclassified and Renumbered as Claim Petition No. 124/NB/SB/2022]

Sri Girish Chandra Pant, aged about 61 years, s/o late Sri J.N. Pant,
r/o Pant Villa, Village Lohariyasal Malla, Post Office Katghariya,
Haldwani, District Nainital.

.....Petitioner

versus

1. State of Uttarakhand through Secretary, Department of Forest and Environment, Government of Uttarakhand, Dehradun.
2. Uttarakhand Forest Development Corporation, Aranya Vikas Bhawan, 73, Nehru Road, Dehradun through its Managing Director.
3. Regional Manager, Uttarakhand Forest Development Corporation, Gas Godam Road, Gandhi Farm Kusumkhera, Haldwani, District Nainital.

..... Respondents

Present: Sri Girish Chandra Pant, Petitioner
Sri Kishore Kumar, A.P.O., for the Respondent No. 1
Ms. Seema Sah, Advocate, for Respondents No. 2 & 3

JUDGEMENT

Dated: 20th September, 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. 345 of 2020, Girish Chandra Pant 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). Writ or order in the nature of mandamus commanding and directing the respondents to forthwith release all the post retiral benefits i.e. Gratuity and Leave Encashment of the petitioner alongwith such penal interest, as may be deem fit by this Hon’ble Court in the facts and circumstances of the case at hand.”

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

4. Considering the fact that the Writ Petition has been pending since 2020, and the pleadings are complete, 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.

5. The Writ Petition stands disposed of accordingly.”

2. The original record of the writ petition has been transferred to this Tribunal *vide* letter no. 14619/UHC/Service (S/B) 2022 dated 14.10.2022 of the Deputy Registrar (Judicial) of the Hon’ble High Court. The same has been registered as claim petition no. 124/NB/SB/2022.

3. Petitioner retired as Regional Manager, Uttarakhand Forest Development Corporation on 31.07.2020. He served the department for a period of 39 years. All the formalities for grant of post retiral benefits were completed much prior to his date of superannuation.

4. The petitioner, in his petition, prayed for his post retiral dues. In para 8 of the petition, it has been mentioned that gratuity and leave encashment have not been released in his favour. No enquiry is pending against him. There is no reason for the respondents to withhold gratuity and leave encashment of the petitioner.

5. During the course of hearing, petitioner apprised the Bench that gratuity and leave encashment has although been released to him but the same has been given after a lapse of three years. He also apprised the Bench that no enquiry is pending against him. Hence, he is entitled to interest on delayed payment of gratuity and

leave encashment. He also submitted that a 'Trust Fund' has been created by Uttarakhand Forest Development Corporation, who is earning interest on the same, therefore, same rate of interest, which the Corporation is earning, may be awarded to him on delayed payment of gratuity and leave encashment.

6. In the counter affidavit, which has been filed by Sri Karuna Nidhi Bharti, Regional Manager (Kumaun), Uttarakhand Forest Development Corporation, Haldwani, it has been mentioned, in para 8, that the enquiry is pending against the petitioner and post retiral benefits *i.e.* gratuity and leave encashment cannot be given until the enquiry is completed.

7. Petitioner gave a responsible statement that no enquiry is pending against him. He was exonerated in the same three years ago and even 'no dues certificate' has been released by the Corporation in his favour.

8. Ms. Seema Sah, learned Counsel for respondents no. 2 and 3 submitted that the petitioner is not entitled to interest, inasmuch as the retiral benefits could not have been released in favour of the petitioner so long as the enquiry was pending. The delay occurred because of pending enquiry, therefore, petitioner is not entitled to interest on delayed payment of gratuity and leave encashment.

9. It has specifically been pleaded by the petitioner in para 9 of the petition that no enquiry is pending against him, therefore, there is no reason for the respondents to withhold his gratuity and leave encashment.

10. In para 10 of the petition, a reference of decisions of Hon'ble Supreme Court has been given to submit that gratuity and leave encashment are neither a bounty nor matter of grace depending upon the sweet will of the employer and it creates vested right. Gratuity or leave encashment is not *ex-gratia* payment but is

a payment for past service rendered by an employee. Gratuity and leave encashment is a social welfare measure rendering a socio-economic justice to those, who in the heyday of their life ceaselessly toiled for the employer on the assurance that in their old age, they would not be left in lurch.

11. The petition was filed by the petitioner for directing the respondents to forthwith the release all the post retiral benefits *i.e.* gratuity and leave encashment along with penal interest. The counter affidavit, which has been filed on behalf of respondents no. 2 and 3, envisages that the petitioner can be given post retiral benefits *i.e.* gratuity and leave encashment depending upon the result of the enquiry, which is pending against him. The petitioner has been stating from the very beginning that no enquiry is pending against him, as such there is no reason for the respondents to withhold the gratuity and leave encashment of the petitioner. When the petition was filed, retiral dues were not paid. It was only on 20.09.2024 when the hearing took place *virtually* that the petitioner disclosed that retiral dues have been paid to him.

12. Hon'ble Supreme Court in the case 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.

2. Usually the delay occurs by reason of non-production of the L.P.C. (Last Pay Certificate) and the N.L.C. (No Liability Certificate) from the concerned Departments but both these documents pertain to matters, records whereof would be with the concerned Government Departments. Since the date of retirement of every Government servant is very much known in advance we fail to appreciate why the process of collecting the requisite information and issuance of these two documents should not be completed atleast a week before the date of retirement so that the payment of gratuity amount could be made to the Government servant on the date he retires or on the following day and pension at the expiry of the following month. The necessity for prompt payment of the retirement dues to a Government servant immediately after his

retirement cannot be over-emphasised and it would not be unreasonable to direct that the liability to pay penal interest on these dues at the current market rate should commence at the expiry of two months from the date of retirement.

.....”

13. Normally, this Tribunal would have directed the respondents to grant interest on delayed payment of gratuity and leave encashment, but is not doing so at present because the main relief in the petition is to release post retiral benefits. Interest was secondary. Although learned Counsel respondents no. 2 and 3 submitted that the petitioner is not entitled to interest, but it has been held in catena of decisions by Hon'ble Apex Court that if there is delay in payment of retiral benefits, the employee is entitled to interest on delayed payment. Since the dispute of interest was not directly in issue when the petition was filed, therefore, instead of directing the respondents to grant interest, the Tribunal feels it proper to direct the respondents to consider granting interest to the petitioner for delayed payment of gratuity and leave encashment.

14. The respondents should, therefore, be directed to consider granting admissible interest on delayed payment of gratuity and leave encashment to the petitioner as was done in similar Claim Petition No. 48/NB/SB/2021, M.P.S. Rawat vs. State of Uttarakhand and others.

15. The petition is disposed of by directing the respondent-Corporation to consider paying admissible interest on delayed payment of gratuity and leave encashment to the petitioner. This should be done as expeditiously as possible and without unreasonable delay. No order as to costs.

(JUSTICE U.C. DHYANI)
CHAIRMAN

DATE: 20th September, 2024
DEHRADUN
RS