

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

Present: Hon'ble Mr. Capt. Alok Shekhar Tiwari

----- Member (A)

Claim Petition No. 29/NB/SB/2022

1. Sri Madan Lal Arya (Male) a/a 62 years, S/o Late Sri Dhani Ram Arya, R/o House No. 6-148/3A Anandpuri, Talli Bamori Phase 3rd, Mukhani, Haldwani, District-Nainital
2. Sri Narayan Dutt Dhyani (dead through L.R.) Smt. Nandi Devi, aged about 59 years, w/o Late Sri Narayan Dutt Dhyani, R/o 409, Bhomiya Mandir Ke pass, Pampapur, Ramnagar, District Nainital
3. Sri Rajendra Singh Bisht (Male), a/a 63 years, S/o Late Sri Prem Singh, R/o Village-Bari Khatta, Jawahar Jyoti, Hydle Gate, Kathgodam, District Nainital

..... Petitioners

Versus

1. State of Uttarakhand, through Secretary, Transport at Secretariat, Dehradun.
2. Managing Director, Uttarakhand Transport Corporation at Dehradun.
3. Regional Manager (Technical) Uttarakhand Transport Corporation, Nainital Region, Kathgodam.

..... Respondents

Present : Ms. Ayushi Arya, Advocate for the petitioners (Online)
Sri Kishore Kumar, A.P.O. for the respondent No. 1
Sri Sobhit Joshi, Advocate, brief holder for Sri Ashish
Joshi, Advocate for the respondents No. 2 & 3

JUDGMENT

DATED : DECEMBER 03, 2024

By means of this petition, the petitioners seek the following reliefs:

- “i. To set aside the condition no. 3 of the government order dated 4.11.2019 issued by the State Government, and the orders dated 1.11.2021 contained in Annexure No. 1 & 2 to the claim petition.
 - ii. To direct the respondent grant the enhanced gratuity amount to the petitioner as per Government Order dated 30.12.2016 issued by the State Government and the Notification dated 29.3.2018 issued by the Center Government contained in Annexure No. 6 & 7 to this claim petition.
 - iii. To pass any other suitable order, which this Hon’ble Tribunal may deem fit and proper on the basis of the facts and circumstances of the case.
 - iv. Award the cost of the petition to the petitioners.”
2. Brief facts of the case are that in the month of January 1982 and on 08.10.1979 the petitioner Nos. 1 & 2 were initially appointed as Mechanic in the erstwhile Transport Corporation, i.e., U.P. State Transport Corporation, thereafter, he was promoted time to time and on account of creation of State of Uttarakhand, Uttarakhand Transport Corporation was created and the petitioner No. 1 was allocated to the Uttarakhand Transport Corporation. On 24.11.1986 the petitioner No. 3 was initially appointed as Mechanic Incharge in the erstwhile Transport Corporation, i.e., U.P. State Transport Corporation, thereafter, they were promoted time to time and on account of creation of State of Uttarakhand, Uttarakhand Transport Corporation was created and the same were allocated to the Uttarakhand Transport Corporation. While the

petitioner No. 1 was posted as Store Superintendent and on account of attaining the age of superannuation on 31.12.2018, he was retired from service and on account of attaining the age of superannuation on 30.04.2019, the petitioner No. 2 who was posted as Station Incharge & the petitioner No. 3 who was posted as Senior Forman, were retired from service. The Uttarakhand Transport Corporation is Government owned Corporation and the said Corporation is managed and controlled by the State Government through its Officers/employee. As such, the said Corporation is totally working under the control of the State Government, therefore, its falls under Article 12 of the Constitution of India. On 30.12.2016 the State of Uttarakhand issued a Government Order, whereby, accepted and implemented the recommendations of 7th Pay Commission to its employees. The recommendations of 7th Pay Commission was made applicable w.e.f. 01.01.2016. Since the amount of gratuity was enhanced upto Rs. 20.00 Lakhs in place of Rs. 10.00 Lakhs by virtue of 7th Pay Commission, which is applicable w.e.f. 01.01.2016, therefore, the enhance rate of gratuity deemed to be enhanced w.e.f. 01.01.2016. In order to provide the enhanced gratuity amount as per 7th Pay Commission, the amendment was made in Payment of Gratuity Act, 1972 on 28.03.2018, which was known as Payment of Gratuity (Amendment) Act, 2018. The said amendment sub-section-3 of Section 4 of the Payment of Gratuity Act, 1972 is read as under:-

“In Section 4 of the Principal Act, in sub-Section (3), for the words ‘ten lakh rupees’ , the words “such amount as may be notified by the Central Government from time to time” shall be substituted.”

Thereafter, in exercise of the powers conferred by sub-Section 3 of Section 4 of the Payment of Gratuity Act, the Central Government

specifies that the amount of gratuity payable to an employee under the Act shall not exceed 20 Lakh rupees which was notified by way of publication in the Gazette of India vide notification dated 29.03.2018 and thereafter, on 30.05.2019 the State Government issued a Government Order whereby provided the enhanced gratuity amount Rs. 20.00 Lakhs in place of Rs., 10.00 Lacs shall also be applicable/admissible to the employee of Government owned Corporation to whom the benefit of gratuity is already applicable and the pay scale had been revised as per the recommendations of 7th Pay Commission. Though the recommendations of 7th Pay Commission were made applicable in Uttarakhand Transport Corporation w.e.f. 01.10.2017 and accordingly, as per the 7th Pay Commission, pay of all employees was revised. Since the enhanced rate of gratuity amount is part of 7th Pay Commission, therefore, the same should have been made applicable w.e.f. 01.01.2016. But ignoring all these aspects of the matter on 04.11.2019 the Principal Secretary had passed an order whereby arbitrarily provided that the enhanced gratuity amount of Rs. 20.00 Lacs shall be applicable to the employee of Uttarakhand Transport Corporation w.e.f. 30.05.2019. By virtue of recommendations of 7th Pay Commission as well as amendment in Payment of Gratuity Act, the petitioners were entitled for Rs. 13,63,464.00 against the gratuity amount, but the respondent arbitrarily by applying old provisions granted only Rs. 10.00 Lacs in the Head of gratuity amount, as such, in view of the recommendations of 7th Pay Commission as well as amendment in Section 4 (3) of the Payment of Gratuity Act the petitioners are entitled for difference of the gratuity amount of Rs. 3,63,464.00. The respondents had revised the scales of the petitioners as per the recommendations of 7th Pay Commission and thereafter paid the other retiral benefits by determining the same as per

the recommendations of 7th Pay Commission, but the gratuity amount which is not also part of recommendations of 7th Pay Commission is not being paid to them as per the recommendations of 7th Pay Commission. As such, the action of the respondents is illegal, arbitrary in nature, therefore, not sustainable in the eyes of law. Being inaction on the part of the respondents, on 07.02.2020 & 25.02.2020 the petitioners had submitted a representation before the respondent No. 2 through the respondent No. 3 stating therein that vide Government Order dated 30.12.2016 all the government employees have been granted the benefits of 7th Pay Commission as well as enhanced gratuity amount of Rs. 20.00 Lakhs and further the benefit of 7th Pay Commission has also been granted to the employee of the respondent corporation vide Government Order dated 11.10.2017, therefore, they may also be granted the difference of the amount enhanced gratuity and the gratuity amount actually paid to the petitioners, but till today, the respondents did not give any heed to the representation of the petitioners. Uttarakhand Forest Development Corporation which is also a Government Corporation like Transport Corporation, the said Forest Development Corporation vide order dated 28.09.2017 provided that the enhanced gratuity amount Rs. 20.00 Lakhs in place of Rs. 10.00 Lakhs shall be paid in cash to its employees w.e.f. 01.01.2017. The respondent Corporation was bifurcated from the erstwhile State of U.P. Transport Corporation and the counter part of the petitioners who are working in the Transport Corporation vide order dated 25.02.2020 granted the enhanced maximum gratuity amount of Rs. 20.00 Lakhs in place of Rs. 10.00 Lakhs from the date of notification issued by the Central Government, i.e. 29.03.2018. Being aggrieved, the petitioner Nos. 1, 2 & 3 had filed Writ Petition Nos. 1166 (S/S) of 2020, 1181 (S/S) of 2021 & 1180 (S/S) of 2021 before the

Hon'ble High Court of Uttarakhand at Nainital regarding the matter in respect of which this petition is being filed, and the Hon'ble High Court vide its order dated 18.09.2021 disposed of the writ petitions with a direction to the respondents to decide the representation of the petitioners and in compliance of the Hon'ble High Court's order dated 18.09.2021, the respondent on 01.11.2021 had decided the representation of the petitioners and rejected the same on the ground that the Corporation vide order dated 04.11.2019 made applicable the enhanced amount of gratuity Rs. 20.00 Lakhs in place of Rs. 10.00 Lakhs to its employee w.e.f. 30.05.2019 and the petitioners had retired prior to the said date. Therefore, the petitioners do not cover under the said order. The respondents are sitting over the matter and not passing any order regarding payment of gratuity to the petitioners as per the recommendations of 7th Pay Commission. Hence, the claim petition has been filed by the petitioners before the learned Tribunal.

3. Counter affidavit has been filed by the respondents No. 2 & 3 stating therein that the State of Uttarakhand issued a Government Order No. 588 dated 04.11.2019 to all the Managing Directors of the Public Undertaking/Corporation that in pursuance to the Government Order No. 325/VII-I/2019-59 (Industry)/2011 T.C. dated 30.05.2019 issued by the Industrial Development Department, State of Uttarakhand, by which the limit of gratuity had been enhanced from Rs. 10.00 Lacs to Rs. 20.00 Lacs for the regular employee of the Corporation/Public Undertaking and Self Financed Institutions with effect from 30.05.2019. The Government Order dated 04.11.2019 was implemented to the retired employees/deceased employees/officers of the Uttarakhand Transport Corporation vide letter No. 883 dated 18.11.2019 issued by the

Headquarters, Uttarakhand Transport Corporation. In pursuance to the Government Order dated 30.05.2019 the limit of gratuity had been enhanced from Rs. 10.00 Lacs to Rs. 20.00 Lakhs with effect from 30.05.2019. The petitioner No. 1 Sri Madan Lal Arya attained the age of superannuation on 31.12.2018, the petitioner No. 2 Sri Narayan Dutt Dhyani and the petitioner No. 3 Sri Rajendra Singh Bisht attained the age of superannuation on 30.04.2019. Therefore, as per the Government Order dated 30.05.2019, the petitioners' claim for enhanced gratuity cannot be accepted as it does not come within the scope of enhanced gratuity. Hence, this present claim petition filed by the petitioners is liable to be dismissed.

4. Rejoinder Affidavit has been filed on behalf of the petitioners denying the contention of the respondents and have reiterated the averments made in the claim petition.

5. I have heard learned Counsel for the parties and perused the record carefully.

6. In the instant case, the chronology regarding outstanding payment of gratuity after the superannuation as claimed by the petitioners is as follows, for an easy reference:-

30.12.2016 The State of Uttarakhand issued a Government Order whereby it accepted and implemented the recommendation of the 7th Pay Commission to its government employees in accordance with the Government of India's acceptance of the same.

- 29.03.2018 Ministry of Labour and Employment, Government of India appoints the 29th day of March, 2018 as the enforcement date for the Payment of Gratuity (Amendment) Act, 2018, by which the amended provisions regarding the enhanced gratuity shall come into force.
- 31.12.2018 The petitioner No. 1 retires from service by superannuation.
- 30.04.2019 The petitioner Nos. 2 & 3 retire from service by superannuation.
- 30.05.2019 The State Government of Uttarakhand by its Government Order dated 30.05.2019 enhances the superannuation gratuity limit from Rs, 10,00,000/- to 20,00,000/-, in accordance with the Ministry of Heavy Industries and Public Enterprises, Government of India official Notification dated 10.07.2018 with a condition that the concerned PSUs will have to bear the financial burden from their own resources and no financial aid would be provided by the State Government for this purpose.
- 04.11.2019 The State Government by its order dated 04.11.2019 clarifies the legal/financial position for the payment of enhanced gratuity regarding the Public Sector Undertakings/Corporation employees that the enforcement date for the

payment of enhanced gratuity would be 30.05.2019.

- 07.02.2020
and
25.02.2020
- Having been allegedly denied the payment as per enhanced scale of gratuity in accordance with the provisions of the 7th Pay Commission, the petitioners submit their representations stating therein that vide Government Order dated 30.12.2016 all the State Government employees have already been granted benefits of the 7th Pay Commission alongwith an enhanced gratuity amount of Rs. 20,00,000/-. Therefore, the petitioners also must be paid an enhanced superannuation gratuity in the same manner.
- 18.09.2021
- Being aggrieved by the alleged inaction at the Corporation/State level the petitioner No. 1 filed a Writ Petition No. 1166 (S/S) of 2020, petitioner No. 2 filed a Writ Petition No. 1181 (S/S) of 2021, and the petitioner No. 3 filed a Writ Petition No. 1180 (S/S) of 2021 before the Hon'ble High Court of Uttarakhand at Nainital. However, these petitions were dismissed by the Hon'ble High Court on the ground of availability of an alternative remedy, i.e., the Uttarakhand Public Services Tribunal.
- 01.11.2021
- The respondent No. 2 rejected the representations of the petitioners in accordance

with the existing State Government's orders in this respect wherein the gratuity enhancement enforcement date had been determined w.e.f. 30.05.2019, emphasizing the fact that since the petitioners had retired prior to the said date, they are not entitled for the payment of enhanced gratuity.

7. Further, in the present claim petition, the petitioners have relied entirely upon the following four logics:-

- a. Since the State Government had accepted and implemented the recommendations of 7th Pay Commission to its employees, the payment of enhanced superannuation gratuity must spontaneously be enforced w.e.f. 30.12.2016
- b. Since the benefits of 7th Pay Commission have been granted to the employees of the respondent Corporation vide order dated 11.10.2017, therefore, the petitioners are entitled for the enhanced gratuity from this date because the ambit of the 7th Pay Commission does provide for the enhanced superannuation gratuity in its general directions.
- c. The Uttarakhand Forest Development Corporation which is also a Government Corporation like the respondent Transport Corporation had issued an order dated 28.09.2017 to the Branch Manager, Life Insurance Corporation of India, Connaught Place,

Dehradun informing him that in compliance with the Government Order dated 30.12.016 the enhanced superannuation gratuity had been sanctioned for the employees of Uttarakhand Forest Development Corporation also, by the Forest Department's G. O. Dated 22.09.2017. This letter implies that the Corporation's employees have been entitled like the regular State Government employees a payment of enhanced superannuation gratuity since 01.01.2017.

- d. According to the petitioners, there is arbitrariness in fixing the enforcement date 30.05.2019 in the Public Sector Undertaking/Corporation regarding their superannuating employees, in contravention to the State Government's acceptance of the recommendations of the 7th Pay Commission towards its regular State Government's employees, i.e. 30.12.2016.

8. As per the respondents' pleadings, the stand taken in this matter is purely based upon the legal position that the State of Uttarakhand issued the Government Order No. 588 dated 04.11.2019 to all the Managing Directors of the Public Undertaking/Corporations that in accordance with the Government Order No. 325/VII-I/2019-59 (Industry)/2011 T.C. dated 30.05.2019 issued by the Industrial Development Department, the limit of gratuity stands enhanced from Rs. 10 Lakhs to Rs. 20 Lakhs for the regular employee of the Corporation/Public Undertaking and Self-Financed Institutions with effect from 30.05.2019. The Government order dated 04.11.2019 was implemented to the retired

employees/deceased employees/officers of the Uttarakhand Transport Corporation vide letter No. 883 dated 18.11.2019 issued by the Headquarters, Uttarakhand Transport Corporation. In pursuance to the Government Order dated 30.05.2019 the limit of gratuity has been enhanced from Rs. 10 Lakhs to Rs. 20 Lakhs with effect from 30.05.2019. The petitioner No. 1 Sri Madan Lal Arya attained the age of superannuation on 31.12.2018 and the petitioner No. 2 and Sri Narayan Dutt Dhyani while Sri Rajendra Singh Bisht attained the age of superannuation on 30.04.2019. Therefore, as per the Government Order dated 30.05.2019, the petitioners' claim for enhanced gratuity cannot be accepted as it does not come within the scope of enhanced gratuity.

9. The respondent Corporation has relied upon the Government Orders dated 30.05.2019, 04.11.2019 and the order dated 18.11.2019 issued by the Finance Controller of the respondent Corporation in this regard, whereby the cut-off-date for the payment of enhanced superannuation gratuity has been determined as 30.05.2019.

10. As per the respondents the implementation of the recommendations of 7th Pay Commission has no mandatory connection with the implementation of the enhanced amount of gratuity, as the latter has been implemented vide G. O, dated 04.11.2019 in the respondent Corporation w.e.f. 30.05.2019.

11. The petitioners in their rejoinder affidavit have contended that the Payment of Gratuity Act is a Central Act passed by the Indian Parliament, and, therefore, the same is equally applicable to all, throughout the entire Country, As per sub-section-3 of Section-4 of Payment of Gratuity Act the gratuity amount shall be paid as may be notified by the Central Government from time to time, and the Central

Government vide Notification dated 29.03.2018 categorically stipulated that the amount of gratuity payable to an employee under the Payment of Gratuity Act shall not exceed Rs. 20 Lakhs. In other words, the Central Government enhanced the amount of gratuity for employees with effect from 29.03.2018 as Rs. 20,00,000/- in place of Rs. 10,00,000/- and, thus, the respondent Corporation has no right to amend the said date.

12. In this Court's opinion, the stand as taken in the claim petition is pretty self-centred, self-opiniated and not in accordance with the legal and financial provisions. The petitioners' logic is very much a layman's logic without any consideration for availability of the financial resources at the level of the respondent Corporation and the State Government. The petitioners also do not understand the financial implications of their expectations. Basically the recommendations of Finance Commission are always accepted or delayed in consideration of the available financial resources. This is why the enforcement dates always vary between the Central Government and State Governments, and within the different wings of the Central or State Governments, depending upon their level of autonomy, and available financial resources. This is the reasons that the financial implication has been clarified in the Government Order dated 30.05.2019, wherein, it has been stated that the concerning Corporation will not be financially aided by the State Government in this respect and the concerned Corporations will have to bear the brunt on their own. Obviously, some superannuating employees will always be effected by the cut-off-date whatsoever date the Corporation or the State Government determine. There will be always remain a number of retiring employees who will get less amounts than their colleagues retiring just

next day. This is a natural outcome. Therefore, the petitioners' logics fall flat on this account.

13. So far as the Uttarakhand Forest Development Corporation's letter dated 28.09.2017 is concerned which has been relied upon the petitioners is not a reliable document in the eyes of law as primarily it is addressed not to a subordinate corporate office, and secondly, such a letter/order cannot override the Government Orders in this regard. The ultimate fountain head of such financial decisions is the State Government within its jurisdictional boundaries.

14. The petitioners have preferred the words like "arbitrariness" and "whimsical" while describing the cut-off-date 30.05.2019 as determined by the State Government, whereas the logically and legally appropriate terminology for such Government's decisions would be "discretion" and "pragmatic" financial orders in this Court's opinion. The ultimate consideration for the State Government, or the corporate body is the availability of financial resources to meet-out the financial implications while determining such cut-off-dates. Therefore, the claim petition is not maintainable in the eyes of law.

15. In view of above, the claim petition is liable to be dismissed.

ORDER

Accordingly, the claim petition is hereby dismissed. No orders as to costs.

(Capt. Alok Shekhar Tiwari)
Member (A)

DATE: December 03, 2024

NAINITAL

BK