

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

Present: Hon'ble Mr. Justice U.C.Dhyani
----- Chairman
Hon'ble Mr. A.S.Nayal
-----Member (A)

CLAIM PETITION NO. 56/DB/2018

Ram Narayan Singh, aged about 60 years, s/o Late Sri Sansar Singh, r/o P-III,
18, Yamuna Colony, Dehradun.

.....Petitioner.

vs.

1. State of Uttarakhand through Secretary, Irrigation, Government of Uttarakhand, Secretariat, Dehradun.
2. Engineer-in-Chief, Irrigation Department, Yamuna Colony, Dehradun.

.....Respondents.

Present: Sri V.P.Sharma, Counsel, for the petitioner.
Sri V.P.Devrani, A.P.O., for Respondents.

JUDGMENT

DATED: MARCH 25, 2019

Justice U.C.Dhyani(Oral)

By means of present claim petition, principal reliefs, sought for by the petitioner, are as follows:

- “(i) To issue an order or direction to the respondents to pay all the retiral benefits to the petitioner considering the continuous 37 years' service and its consequential benefits.

- (ii) To issue an order or direction to the respondents to pay difference of gratuity amounting to Rs.2,91,637 along with interest @ 18% per annum from 01.02.2018 till the date of payment.
- (iii) To issue an order or direction to the respondents to pay the revised pension and amount of the commutation of the pension to the petitioner, considering his continuous service of 37 years."

2. Facts, giving rise to present claim petition, are as follows:

Petitioner was an employee of Irrigation Department. He served the department from 01.02.1981 to 31.01.2018. He was paid retiral benefits only for the period 20.01.1992 to 31.01.2018. The petitioner has relied upon an Office Order dated 18.01.1982, issued by the Chief Engineer, Irrigation Department, Yamuna Colony, Dehradun, which clearly stated that the petitioner served as Work Supervisor (Muster Roll Establishment) continuously since 1981. Petitioner's services were regularized on the post of Junior Clerk in the pay scale of Rs.950-20-1150 -EB-25-1500/-

The grievance of the petitioner is that although he continuously served the respondents department from 01.02.1981 to 31.01.2018, but retiral benefits have been given to him considering his services only from 20.01.1992 to 31.01.2018. Petitioner submitted his representation on 17.04.2018 for redressal of his grievances, but to no avail. Hence, present claim petition..

2. W.S./C.A. has been filed on behalf of respondents with the prayer to dismiss the claim petition with costs. It has been averred in W.S./C.A. that the petitioner was appointed on regular basis, as Junior Clerk in January, 1992. Before that, the petitioner worked as Daily Wager. His services were never regularized. He was never given substantive appointment.

3. Reliance has been placed on Articles 361 and 368 of Civil Services Regulations (CSR). The petition has been assailed on the ground of limitation also. A plea has been taken that the claim petition is barred by limitation and, therefore, the same is not maintainable.

4. Annexure: A-1 is a copy of appointment letter dated 08.01.1992, which shows that the petitioner was given appointment on a vacant post of Junior Clerk in the Irrigation Department. It was a fresh appointment, although the petitioner was working as Work Supervisor (Muster Roll) since 1981. He qualified the test for selection in General Clerical Cade. Annexure: A-2 is a copy of the representation given by the petitioner to Chief Engineer, for payment of gratuity only. Annexure: A-3 is a copy of certificate issued by Assistant Engineer, Civil Construction Division, Dhalipur, on 05.02.1992, certifying that the petitioner worked as Work Supervisor on daily muster roll basis from 01.02.1981 to 19.01.1992. Hence, his work and conduct was very good. Annexure: A-4 indicates that the petitioner joined as Junior Clerk in Irrigation Department on 20.01.1992. Annexure: A-5 is a copy of office letter dated 16.03.1992, issued by Chief Engineer, Irrigation Department, approving the appointment of the petitioner as Junior Clerk. Annexure: A-6 is a copy of forwarding letter, relating to pension, gratuity, etc., issued by the Directorate of Treasury, Pension and Entitlement. The petitioner gave a representation on 17.04.2018 (Copy: Annexure A-7) for inclusion of his services rendered as Daily Wager for releasing retiral dues. A copy of letter dated 01.05.2018, which was addressed by the petitioner to Chief Engineer, Irrigation Department, has also been filed to indicate that he had prayed for inclusion of eleven years of services for releasing gratuity in his favour.

5. The first question, which arises for consideration of this Court is— whether the petitioner is entitled to gratuity?

6. Reliance is placed upon The Payment of Gratuity Act, 1972 (for short, Gratuity Act). It is the submission of Ld. Counsel for the petitioner that, Section 1(3) (c) of Gratuity Act, shall apply to such establishments, in which ten or more employees are employed, on any day of preceding twelve months. Ld. Counsel for the petitioner contended that since there is provision for Work Charge Establishment

in the Irrigation Department, therefore, Irrigation Department would be covered under the Gratuity Act. .

7. Reliance is also placed upon sub-section (1) of Section 4 of the Gratuity Act, to show that the gratuity shall be payable to an employee on termination of his employment after he rendered continuous service for not less than five years either on his superannuation or on his retirement or resignation etc.
8. For seeking reply to the question- whether an employee on Daily Wages shall get gratuity under the Gratuity Act, may be found in sub section (2) and sub section (3) of Section 4 of the Gratuity Act, which provision may profitably be reproduced herein below:-

“4.Payment of Gratuity- (2) for every completed year of service or part thereof in excess of six months, the employer shall pay gratuity to an employee at the rate of fifteen days’ wages based on the rate of wages last drawn by the employee concerned.

Provided that in the case of a piece-rated employee, daily wages shall be computed on the average of the total wages received by him for a period of three months immediately preceding the termination of his employment, and, for this purpose, the wages paid for any overtime work shall not be taken into account:

Provided further that in the case of [an employee who is employed in a seasonal establishment and who is not so employed throughout the year] the employer shall pay the gratuity at the rate of seven days’ wages for each season

[*Explanation-* In the case of a monthly rated employee, the fifteen days’ wages shall be calculated by dividing the monthly rate of wages last drawn by him by twenty-six and multiplying the quotient by fifteen.]

(3) The amount of gratuity payable to an employee shall not exceed [ten lakh rupees]”.

[*Emphasis supplied*]

9. Determination of the amount of gratuity has been provided in Section 7 of the Gratuity Act.
10. We may seek guidance from Hon'ble Apex Court in elucidating the controversy in hand. The decision of ***Netram Sahu vs. State of Chhattisgarh and Another, (2018)2 SCC 430*** comes handy for us, in an effort to get the reply of the vexed question. *Netram Sahu* had put in more than 25 years of continuous service, out of which 22 years were as Daily Wager and 3 years as regular employee. It was held that having regularized services of *Netram Sahu*, State had no justifiable reason to deny benefit of gratuity to him, which was his statutory right. The question, as to from which date the services were regularized, was of no consequence for calculating total length of service for claiming gratuity, once services were regularized. Since the Gratuity Act is a welfare legislation, which is meant for benefit of employees, who served their employer for long time, duty of State is to pay gratuity to employee rather than denying benefit on some technical ground and force the employee to approach Court to get his genuine claim.
11. **Facts of *Netram Sahu* may further be elaborated.** He was appointed as Daily Wager on 01.04.1986 by Water Resources Department of State of Chhattisgarh. Subsequently, his services were regularized on work charge establishment to the post of Pump Operator *vide* order dated 06.05.2008. After attaining the age of superannuation, *Netram Sahu* retired on 30.07.2011. He was not paid gratuity amount. He, therefore, filed an application before the controlling authority under the provision of Gratuity Act, for payment of gratuity. The controlling authority held that he was entitled to claim gratuity for the services rendered by him. The State felt aggrieved and filed appeal before the appellate authority, who affirmed the order of controlling authority. The State pursued the matter and filed writ petition against the order passed by the appellate authority. Learned Single Judge of Hon'ble High Court allowed the writ petition. *Netram*

Sahu filed writ appeal before Division Bench, who dismissed his appeal and upheld the order passed by Learned Single Judge.

12. Short question, which arose for consideration before Hon'ble Apex Court was, whether *Netram Sahu* could be held to have rendered qualified service, i.e., continuous service as specified in Section 2(e) read with Section 2-A of the Act, so as to make him eligible to claim gratuity as provided under the Act, from the State. The Hon'ble Apex Court held that since Netram Sahu served the department for more than 25 years, therefore, his case specifies the rigor of the expression 'continuous services' as defined under Section 2-A of the Act. The Hon'ble Apex Court repelled the contention of the State that Netram Sahu could not be said to have worked continuously for a period of five years as provided under the Act, so as to make him eligible to claim gratuity.
13. **This Court, therefore, is of the opinion that the case of present petitioner is covered by the aforesaid decision of Hon'ble Apex Court, rendered in *Netram Sahu (supra)*.**
14. The reasons are not far to seek. It is admitted that petitioner rendered services for more than five years. The question of his services to be regularized is not an issue, as contended by Ld. A.P.O., in giving the benefit of the Gratuity Act to the petitioner. Even if the petitioner got fresh appointment as Junior Clerk in the year 1992, and even if he was engaged as daily wager continuously since 1981, he would derive the benefit of the Gratuity Act. In other words, petitioner will be entitled to claim the benefit of counting the period of eleven years, regardless of the post and capacity on which he worked, prior to his fresh and regular appointment as Junior Clerk in the Irrigation Department of the State of Uttarakhand. To draw parity, Netram Sahu has worked as daily wager in the Water Resources Department of the State of Chhattisgarh.

15. The net result will, therefore, be that the petitioner becomes entitled to account for his total period of service (including that of eleven years, as daily rated employee) for claiming the gratuity amount. Since the Gratuity Act is a welfare legislation, meant for the benefit of the employees, who served their employer for a long time, therefore, it is the duty of the State to voluntarily pay the gratuity amount to the petitioner.
16. The question, thus posed above, is answered in favour of the petitioner.
17. The next question which arises for consideration is whether the petitioner is entitled to pension for the period 01.02.1981 to 20.01.1992? It may be noted here that the pension of the petitioner has been calculated keeping in view the fact that he had rendered 26 years of service. The grievance of the petitioner is that his services should be counted from the date he rendered his services as a daily wager and the total period of his services as daily wager comes to approximately eleven years.
18. The decision rendered by Hon'ble Apex Court on 23.08.2017 in *Habib Khan vs. State of Uttarakhand and others in Civil Appeal No. 10806/ 2017* has been placed before this Court to argue that the petitioner is entitled to reckon the period of work charged services for the purpose of commutation of 'qualifying service' for grant of pension. Hon'ble Apex Court accepted the contention of *Habib Khan* and directed that all necessary and consequential benefits will be paid and granted by the State to *Habib Khan* forthwith and without delay. Retiral benefits, including pension, were directed to be paid to the employee by Division Bench of Hon'ble High Court of Uttarakhand by order dated 27.04.2010, passed in *Special Appeal No. 225/2008, State of U.P. and another vs. Pitamber Dutt Sanwal*. Reliance is also placed upon the decision rendered by Division Bench of Hon'ble High Court on 26.04.2018 in Special appeal No. 494/17, State of Uttarakhand and another vs. Brahm Pal Singh and connected Special Appeals, in which

the Hon'ble Division Bench, relying on a catena of decisions, affirmed the decision rendered by Ld. Single Judge, and directed the respondents State and others to count the entire service of the petitioners/ workmen, rendered in work charged capacity, followed by their regularization, for the purpose of pensionary and other retiral benefits, including gratuity and thereafter, to release their pension and other retiral benefits including gratuity within a stipulated time. Reliance has also been placed on decision rendered by Hon'ble Apex Court in *Punjab State Electricity Board and others vs. Jagjeewan Ram and others*, (2009) 3 SCC 661.

19. The moot question, in all the aforesaid decisions was – whether the services rendered as work charged employee can be counted for commutation of period of 'qualifying service' for grant of pension? It appears to us that, in the above noted cases, including the one in *WPSS No. 1658/07 S.P.Joshi and others vs. State of Uttarakhand & others*, that the employees- petitioners were short of 'qualifying service', to be reckoned for the purpose of considering pension.
20. In the instant case, the petitioner has already put in about 26 years of qualifying service in the regular establishment. In other words, he had already worked in regular establishment from 20.01.1992 till 31.01.2018. The petitioner had, therefore, earned 'qualifying service' of more than 20 years, for seeking eligibility for 'full pension'. Even if services rendered by him from 01.02.1981 to 19.01.1992 are not reckoned for the purpose of pension, the same does not make any difference, for, he has already qualified for 'full pension'. The question, therefore, is of academic interest only and does not serve any purpose to the petitioner. We, therefore, do not intend to dwell further into the question, leaving it open to decide the matter on some other occasion, if and when so required. No other point is pressed nor arises.

21. It is pointed out by Ld. Counsel for the petitioner that an application for amendment was moved by the petitioner on 26.02.2019 for deleting relief clause no. 8(i) and 8(iii). It is submitted by Ld. Counsel for the petitioner that the petitioner seeks relief no. 8(ii) and 8(iv) only through present claim petition and also seeks liberty to seek appropriate remedy before the appropriate forum in respect of other reliefs, in accordance with law, if and when so required. Such liberty is granted. [The amendment application was allowed. Amendments, as allowed, were incorporated in the claim petition on 26.02.2019 itself. Reliefs No. 8(i) and 8(iii), therefore, stood deleted.]
22. In the backdrop of the above noted facts, the only other question, which is left for determination of this Tribunal now is— how much interest should be awarded to the petitioner for delayed payment of gratuity?
23. In the decision of *D.D.Tiwari (D) Thr. Lrs. vs. Uttar Haryana Bijli Vitran Nigam Ltd. and Others, 2014 (5) SLR 721 (S.C.)*, it was held by Hon'ble Supreme Court that retiral benefit is a valuable right of employee and culpable delay in settlement/ disbursement must be dealt with penalty of payment of interest. Regard may also be had to the decision of Hon'ble Apex Court in *S.K.Dua vs. State of Haryana and Another, (2008) 1 Supreme Court Cases (L&S) 563*, in this context.
24. The aforesaid decisions have been followed by this Tribunal in claim petition *No.30/DB/2013 Dwarika Prasad Bhatt vs. State and others, decided on 22.09.2016..* The direction given in claim petition No. 30/DB/2013 has also been carried out.
25. It is pointed out that Government Order No.979/XXVII(3)Pay/2004 dated 10.08.2004 has been issued by Government of Uttarakhand to regulate interest on delayed payment of gratuity etc. Respondents are, therefore, directed to pay the difference of gratuity, as admissible, and the amount of gratuity which has already been paid, to the petitioner,

as per G.O. dated 10.08.2004. The rate of interest of gratuity shall be simple rate of interest payable on General Provident Fund till the date of actual payment.

26. Respondents are directed to pay the difference in the amount of gratuity along with admissible interest, as per G.O. dated 10.08.2004, on or before 30.06.2019.y
27. The claim petition is, accordingly, disposed of. No order as to costs.

(A.S.NAYAL)
MEMBER (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: MARCH 25, 2019
DEHRADUN

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