

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

Present: Hon'ble Mr. Justice U.C.Dhyani

----- Chairman

Hon'ble Mr. Rajeev Gupta

-----Vice Chairman (A)

**CLAIM PETITION NO. 23/SB/2019**

Smt. Pushpa Tyagi, W/o Late Sri Kailash Chand Tyagi, aged about 58 years, R/o 37-C, Aam Bagh, Garhi Cantt, Dehradun.

.....Petitioner.

**vs.**

1. State of Uttarakhand through Secretary, Public Works Department, Govt. of Uttarakhand, Secretariat, Subhash Road, Dehradun.
2. Engineer-in-Chief and Head of Department, Public Works Department, Yamuna Colony, Dehradun.
3. Chief Engineer, PMGSY, Indra Nagar Road, Dehradun.
4. Executive Engineer, Provincial Division, PWD, Uttarkashi.
5. Executive Engineer, Irrigation Division, PWD, Uttarkashi.

.....Respondents.

Present: Sri M.C.Pant, Sri L.K.Maithani & Dr. Aparna Singh, Counsel  
for the petitioner.

Sri V.P.Devrani, A.P.O., for Respondents.

**JUDGMENT**

**DATED: JULY 16, 2019**

**Justice U.C.Dhyani (Oral)**

By means of present claim petition, petitioner seeks to direct the respondents to release all retiral dues of the husband of the petitioner, including gratuity, pension, leave encashment, GIS,, 10% of GPF, and after the demise of her husband, family pension with all arrears together

with 18% interest within such time limit as this Tribunal deems fit; hold that non-payment of subsistence allowance is *per-se* illegal; quash the departmental proceedings held against petitioner's husband; direct the respondents to pay Rs.60,000/- as insurance risk with GPF amount, 90% of which has already been paid to the petitioner after the death of her husband and pay insurance amount and award damages/ compensation to the tune of Rs.25 lacs.

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

Petitioner's husband joined Public Works Department, U.P. on 13.03.1982 as Junior Engineer (Civil). On 09.11.2000, the State of Uttarakhand was carved out from the erstwhile State of U.P.. Petitioner's husband gave option for serving in the State of U.P., but he had to serve the State of Uttarakhand till his retirement on 31.01.2018. When petitioner's husband was posted with respondent no.5, he was assigned the work of acquisition of land for *Gramin Motor Marg*. On the basis of a complaint, a preliminary inquiry was initiated, whereafter husband of the petitioner was placed under suspension by respondent no.1, *vide* order dated 26.05.2016. A regular inquiry was initiated against him. Chief Engineer, URRDA, Dehradun was appointed as inquiry officer. A vigilance inquiry was also ordered against him. Besides above, an FIR was also lodged against him. Charge sheet was issued to him on 11.08.2016. He was held guilty for violation of Rule 3 of the Government Servants Conduct Rules, 2003. He was unable to file reply against the charge sheet issued to him by the inquiry officer. Allegation of embezzlement of Government money was levelled against him by the senior officers, in order to save their own skin. No subsistence allowance was paid to him from March, 2015 till the date of his retirement on 31.01.2018.

No formalities were initiated by the respondent department during his service period as per the Uttarakhand Pension Case (Submission, Disposal and Avoidance of Delay) Rules, 2003, whereby pension/ family pension and other retiral benefits were to be paid under the Time Schedule specified in Column 3, in respect of work specified in Column 2 of the Schedule, as per Rule 3(b) and 3(k) of the Rules of

1995. *Vide* office order dated 23.07.2018, Respondent No.1 dropped departmental proceedings against him and reinstated his services from his date of retirement, i.e., 31.01.2018. Payment of his retiral dues was ordered. Whereas the departmental proceedings were dropped against him, no order for treating the suspension period as duty period was passed. His period of absence was adjusted against earned leave due and, therefore, E.L. due for encashment on retirement, was reduced by 45 days. Respondent No.4 is not willing to pay his genuine dues. Respondent No.2, being HOD, is responsible for non-payment of pension/ family pension and other retiral benefits, on time.

Petitioner made several representations to the respondents, but to no avail. Thereafter, legal notice was served upon Respondents No.4 and 5, who gave reply to the notice, but till date no retirement dues/ family pension has been paid to the petitioner, except the amount of 90% GPF. Since GIS reduction was made from the salary of the husband of the petitioner, which will cover his life till the end of February, 2018, therefore, insurance amount along with saving fund is liable to be paid to the petitioner. Since the retiral dues along with family pension were not paid to the petitioner, therefore, the petitioner was compelled to file present claim petition.

3. Counter Affidavit of Sri Tribhuvan Rawat, Assistant Engineer, PMGSY, Irrigation Division, Uttarkashi has been filed on behalf of Respondent No.5. Counter Affidavit of Sri Virendra Singh Pundir, Executive Engineer, Provincial Division, PWD, Uttarkashi has been filed on behalf of Respondents No. 1, 2 & 4. It is averred, in Para 9 of the C.A. filed on behalf of Respondent Nos. 1, 2 & 4, that the following retiral dues/ family pension etc. have been paid to the petitioner:

- “i) General Provident Fund 90%, Rs.2066121/- on 06.11.2018.
- ii) General Provident Fund 10%, Rs.362638/- on 22-01-2019
- iii) Arrears of 7<sup>th</sup> pay Commission Rs.302760/- on 11.10.2018.
- iv) Balance of salary Jan. 2017 to Jan. 2018 Rs.1120168/- on 26.12.2018.
- v) Travelling allowance Rs.216 on 18.12.2018.
- vi) Dues towards transfer posting Rs.23001/- on 29.01.2019.
- vii) Provisional Pension for March, 18 to June 2018 Rs.187036/- on 17.01.2019.

viii) Provisional Pension July, 18 to Jan. 19 Rs.333431/- on 02.03.2019.

Para-wise replies have also been given on behalf of respondents.

4. To sum up, according to respondents, most of the claims of the husband of the petitioner have been paid. So far as payment of gratuity and pension is concerned, the same is to be finalized by Directorate of Pension & Entitlement, which is under process. Therefore, the petitioner is not entitled to Relief 8(a) to 8(g) of the claim petition. It has also been averred in the C.A. that the sum of Rs.43,95,401/- has already been paid to the petitioner and gratuity along with final pension is under the process of finalization.
5. Rejoinder Affidavit against the C.A. of Respondents No. 1, 2 & 4 has been filed on behalf of petitioner. In Para 7 of R.A. (*undated*), payment of certain retiral dues has been admitted. Respondents have paid the following:

Sl. No.	Item	Amount in Rupees	Due Date of payment	Date of payment	Remarks
1.	GPF 90%	20,66,121.00	31.01.2018	06.11.2018	
2.	GPF 10%	3,62,666.00	31.01.2018	22.01.2019	Till date interest not paid
3.	Gratuity	7,80,000.00 Approx	31.01.2018	Not paid	-
4.	GPF Insurance	60,000.00	31.01.2018	Not paid	-
5.	Leave Encashment	8,01,138.00	31.01.2018	25.03.2019	Interest for delay not paid
6.	Arrears of pay as per 7 <sup>th</sup> CPC	3,02,760.00	Jan. 2016 to Dec. 2016	12.10.2018	Interest for delay not paid
7.	Arrears of pay	11,20,168.00	Jan. 2017 to Jan 2018.	27.12.2018	Interest for delay not paid
8.	Provisional/ Family Pension	1,87,036.00	March 2018 to June 2018	17.01.2019	
9.	-do-	3,33,431.00	July 2018 to Jan 2019	02.03.2019	
10.	Gr. Insurance Saving A/C	80,570.00	Feb 2018	Not paid	
11.	Gr. Insurance Saving A/C	5,00,000.00	Feb 2018	Not paid	
12.	Transfer TA on retirement	23,001.00	June 2018	30.01.2019	
13.	Transfer TA before retirement	216.00	June 2018	18.12.2018	Inadequate amount against rules allowed
14.	Transfer TA on suspension			Not paid Denied	-do-.

6. The above chart would indicated that final pension of the husband of the petitioner, from 01.02.2018 to 20.02.2018 is to be paid by the respondent department to the petitioner. From 21.02.2018 onwards, family pension is to be given to the petitioner, as per Rules.

7. It is admitted that gratuity has not been paid to the petitioner, which ought to have been paid on time.

8. It will be useful to quote the observations made by this Tribunal in *Ramnarayan Singh vs. State of Uttarakhand*, 2019(1) UD 698, herein below for convenience:

“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."
9. Appointing authority, respondent no.1 should also be directed to pass a specific order whether or not to treat the suspension period as duty in terms of Rule 54-B of the U.P. Fundamental Rules [FHB Vol. II to IV].
10. Order accordingly.
11. Respondents are directed to release (i) pension / family pension (ii) gratuity, as admissible, in favour of the petitioner (iii) other retiral dues, if any, shall also be paid by the respondents to the petitioner within a period of twelve weeks of presentation of certified copy of this order. The rate of interest on delayed payment of pension/ family pension, gratuity shall be simple rate of interest, payable on GPF, till the date of actual payment.
12. Appointing authority, respondent no.1, is directed to pass a specific order whether or not to treat the suspension period as duty in terms of Rule 54-B of the U.P. Fundamental Rules [F.H.B. Vol. 2 to 4].
- 13 The claim petition is, accordingly, disposed of. No order as to costs.

**(RAJEEV GUPTA)**  
VICE CHAIRMAN (A)

**(JUSTICE U.C.DHYANI)**  
CHAIRMAN

*DATE: JULY 16, 2019*  
*DEHRADUN*

*VM*