

**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. 87/DB/2018

Mahesh Chandra Agarwal, Age about 71 years, S/o Late Sri Ram Prakash Agarwal, R/o Lane No. 10, H.No. 29, Pragati Vihar, Rishikesh, District Dehradun.

.....Petitioner.

vs.

1. State of Uttarakhand through Secretary, Irrigation, Govt. of Uttarakhand, Dehradun.
2. Chief Engineer, Irrigation Department of Uttarakhand, Yamuna Colony, Dehradun.
3. Executive Engineer, Testing and Control Division, , Irrigation Department, (presently known as Avasthapna Khand), Joshiyada, (Uttarkashi).

.....Respondents.

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

JUDGMENT

DATED: JULY 23 2019

Justice U.C.Dhyani (Oral)

By means of present claim petition, petitioner seeks following reliefs:

“(i) To issue an order or direction to set aside the order dated 29.08.2013, under which an amount of Rs.3,71,838/- was recovered from the gratuity of the petitioner and may kindly be directed to pay

Rs.3,71,838/- along with interest @ 18% from the date of retirement till the date of the payment and the interest on gratuity amount Rs.5,23,545/- is payable from 01.05.2008 to 29.07.2013 as per Annexure A-1 and A-2 of the claim petition.

(ii) An amount of Rs.20,41,789/- was paid to the petitioner towards the pension from 01.05.2008 to 31.08.2013 after the retirement of 5 years therefore the interest @ of 18% on the amount of Rs.20,41,789/- payable to the petitioner from 01.05.2008 to 20.08.2013 as per Annexure No. A-3 of this claim petition.

(iii) An amount of Rs.81,480/- was refunded to the petitioner which was payable to the petitioner on 01.05.2008 but paid on 16.05.2018 therefore the interest @ 18% is payable to the petitioner w.e.f. 1.05.2018 as per Annexure A-4 of this claim petition.

(iv) An amount of Rs.3,89,614/- was credited in the bank account of the petitioner on 21.08.2018 towards second time pay scale payable to the petitioner from 01.01.1993 to 30.04.2008 whenever the said amount was paid w.e.f. 01.03.2000 to 30.04.2008. The interest @ 18% on the said amount of Rs.3,89,614/- is payable w.e.f. due date till 20.08.2018 be directed to be paid and further the difference of second time pay scale w.e.f. 01.01.1993 to 29.02.2000.

(v) Against impugned order dated 15.09.2016 the second time scale was granted to the petitioner for 01.01.1996 vide order dated 15.09.2016 but the same was revised to pay the second promotional time pay scale w.e.f.01.03.2000 instead of 01.01.1996 as per Annexure No. A-6 (colly).

(vi) to set aside the orders for constituting the inquiry committee vide office order dated 13.07.2018, 30.06.2017, 22.06.2016 and 16.11.2016 the said inquiry committee cannot be constituted after the date of the retirement, the same are liable to be quashed and set aside as per Annexure: A 7 (colly).

(vii) Any other relief which the Hon'ble Court may deem fit and proper in the circumstances of the case.

(viii) To award the cost of this petition to the petitioner."

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

Petitioner joined on the post of Junior Engineer in the Irrigation Department on 15.11.1966. He attained the age of superannuation on 30.04.2008. Pension, gratuity, commutation of pension and other retiral benefits were not paid to the petitioner. Petitioner filed a complaint before Hon'ble Lokayukta of Uttarakhand. Said complaint was decided on 23.04.2013. The then Executive Engineer committed unnecessary

delay in paying retiral benefits to the petitioner. Under the orders of Lokayukta, although the amount of gratuity was paid, but an amount of Rs.3,71,838/- was illegally withheld. No amount should be recovered from the petitioner without issuing any charge sheet. A sum of Rs.3,71,838/- is, therefore, refundable to the petitioner with interest, according to the petitioner. He claims that he should also be awarded interest on delayed payment of gratuity. Pension was credited in his account on 06.09.2013. The petitioner also claims interest on delayed payment of pension. Certain other sums were also credited to his account and, therefore, he claims that he should also be given interest on late payment of those retiral benefits. No departmental inquiry was initiated against the petitioner. After five years' of retirement, retiral benefits were paid. No recovery could be made from the petitioner's retiral benefits as per Article 351-A of U.P. Civil Service Regulations, which has been quoted in Para 4.8 of the claim petition. Petitioner has, therefore, filed present claim petition for the reliefs quoted above.

3. It has been held by Hon'ble Apex Court in *State of Kerala vs. Padmanabham Nair, (1985)1 SCC 429* that pension and gratuity are no longer any bounty to be distributed by the Government to its employees on the retirement but are valuable rights in their hands, and any culpable delay in disbursement thereof must be visited with the penalty. In the said decision, Hon'ble Court approved 6% interest p.a. on delayed payment of pension.
4. In Section 7(3-A) of the Payment of Gratuity Act, 1972, it is provided that if the amount of gratuity payable is not paid by the employer within the period specified in sub-section (3), the employer shall pay, from the date on which gratuity becomes payable to the date on which it is paid, simple interest at such rate, not exceeding the rate notified by the Central Government from time to time for repayment of long term deposits, as that Government may by notification specify.
5. In *Y.K. Singla vs. Punjab National Bank, (2013) 3SCC 472*, the Hon'ble Apex Court directed the payment of interest @ 8% p.a. to be paid on delayed payment of gratuity.

6. In *State of U.P. vs. Dhirendra Pal Singh*, (2017) 1 SCC 49, the Hon'ble Apex Court quoted with approval *Padmanabham's* decision and *Y.K. Singla's* decision, as follows:

“9. In *State of Kerala and others v. M. Padmanabhan Nair* this Court has held that pension and gratuity are no longer any bounty to be distributed by the Government to its employees on the retirement but are valuable rights in their hands, and any culpable delay in disbursement thereof must be visited with the penalty of payment of interest. In said case the Court approved 6% per annum interest on the amount of pension decreed by the trial court and affirmed by the High Court. As to the rate of interest on amount of gratuity Section 7(3-A) of Payment of Gratuity Act, 1972, it is provided that if the amount of gratuity payable is not paid by the employer within the period specified in sub-section (3), the employer shall pay, from the date on which gratuity becomes payable to the date on which it is paid, simple interest at such rate, not exceeding the rate notified by the Central Government from time to time for repayment of long term deposits, as that Government may by notification specify. It further provides that no such interest shall be payable if the delay in payment is due to the fault of the employee, and the employer has obtained permission in writing from the controlling authority for the delayed payment on this ground. In the present case, there is no plea before us that the appellants had sought any permission in writing from the controlling authority. As to the delay on the part of employee, it has come on the record that he made representations, whereafter he filed a suit in respect of withheld amount of gratuity and pension. In *Y.K. Singla v. Punjab National Bank and others*[2], this Court, after discussing the issue relating to interest payable on the amount of gratuity not paid within time, directed that interest at the rate of 8% per annum shall be paid on the amount of gratuity.

10. In the light of law laid down by this Court, as above, and further considering the facts and circumstances of the case, we modify the impugned order passed by the High Court in respect of interest directed to be paid on the amount of withheld gratuity and pension. We direct that the appellants shall pay interest at the rate of 6% per annum on the unpaid amount of pension from the date it had fallen due and interest at the rate of 8% per annum on the unpaid amount of gratuity from the date of retirement of the employee.”

7. This Tribunal does not think it necessary to reproduce Article 351-A of the U.P. Civil Service Regulations, for the sake of brevity, as the same has already been quoted in Para 4.8 of the claim petition.
8. Admittedly, no departmental inquiry was initiated against the petitioner for the misconduct, if any, nor any proceedings were drawn, as provided in Article 351-A of the U.P. Civil Service Regulations. The document, which is the basis of non-payment of retiral dues on time, is attributed to report dated 31.05.2017 of the review inquiry committee, constituted by Superintending Engineer, Dehradun, showing discrepancy in the stock. Such report has been filed along with supplementary C.A. filed on behalf of respondents. The petitioner retired on 30.04.2008. Discrepancy in the stock came to fore on 26.05.2017, i.e., after about

nine years' of retirement of the petitioner. Withholding of retiral dues, on the basis of such report, is not proper keeping in view Article 351-A of the U.P. Civil Service Regulations. This Tribunal, therefore, is of the opinion that the respondents should be directed to pay interest on delayed payment of terminal dues to the petitioner.

9. Taking a leaf out of the book of Hon'ble Supreme Court in *Dhirendra Pal Singh's* decision (*supra*), we direct that the respondents shall pay interest @ 6% per annum on the unpaid amount of pension from the date it had fallen due and interest @ of 8% per annum on the unpaid amount of gratuity from the date of retirement of the employee till the date of actual payment. Respondents are directed to pay the aforesaid interest on delayed payment of retiral dues to the petitioner within a period of 12 weeks from the date of presentation of certified copy of this order before the authorities concerned. Needless to say that an amount of Rs.3,71,838/-, which was deducted from gratuity of the petitioner, be refunded to him along with interest.
10. During the course of dictation, Ld. Counsel for the petitioner, on seeking instructions from his client, who is present in person before the Tribunal, seeks and is permitted to withdraw the Reliefs No. 8 (ix), (x), (xi), renumbered as 8(iv), (v), (vi), with liberty to avail these remedies, at an opportune moment, before the appropriate forum, in accordance with law, if he is so advised.
11. The claim petition is, accordingly, disposed of. No order as to costs.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: JULY 23, 2019
DEHRADUN

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