

**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. 64/SB/2019

Premjit Singh, age about 69 years, s/o Late Shri Kartar Singh, r/o 51/3, Haridwar Road, near Sanjana Pathology, District Dehradun..

.....Petitioner

vs.

1. State of Uttarakhand through Addl. Chief Secretary, Geology and Mining Unit, Govt. of Uttarakhand, Dehradun.
2. Director, Geology and Mining Unit, Directorate of Industries, Uttarakhand, Dehradun.

.....Respondents.

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

JUDGMENT

DATED: NOVEMBER 18. 2019

Justice U.C.Dhyani (Oral)

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

“(i) To issue an order or direction to the respondent to pay the entire amount of the gratuity with 18% interest from 01.07.2010 till the date of the payment.

(ii) To issue an order or direction to the respondents to pay the interest on the amount of the ACP paid to the petitioner on

16.02.2019. The 18% interest is payable from due date till the date of the payment.

(iii) To issue an order and direction to the respondents to pay the difference of leave encashment due to sanction of the ACP from the date till the date of payment.

(iv) To issue an order and direction to pay the interest on the leave encashment paid to the petitioner on 21.05.2013 from the due date i.e., 01.07.2010 till the date of the pension.

(v) To issue an order and direction to the respondents to pay the regular pension to the petitioner.

(vi) To issue an order and direction to the respondents to pay the 10% of the GPF which was withheld by the respondents.

(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 had joined the services with the respondents on the post of Assistant Geologist (Class II Gazetted), through regular selection, by the then UPPSC, on 11.10.1976. First promotion was given to him on the post of Geologist on 13.12.1990. He was further promoted to the post of Joint Director on 27.03.2004. ACP of the petitioner was due on 01.09.2008, but the same was delayed. Orders were issued *vide* letter dated 26.07.2018 and ACP was sanctioned to the petitioner *vide* letters dated 18.10.2018 and 22.12.2018. ACP for the period from 01.09.2008 to 30.06.2010 amounting to Rs. 1,83,372/- was paid to the petitioner on 16.02.2019 after deducting an amount of Rs. 1,55,360/- Net amount of Rs.9,672/- was paid to the petitioner on 16.02.2019. Leave encashment amount of Rs.7,22,230/-, which was due on 01.07.2010, was paid to the petitioner on 14.05.2013. The same was credited in the bank of the petitioner on 21.05.2013. An excess amount of Rs.1,55,360/- was paid to the petitioner, as intimated through letter dated 13.05.2016. The same was recovered from the ACP of the petitioner. Petitioner retired on 30.06.2010 from the post of Joint Director, Geology and Mining Unit, Derhadun. Retiral benefits, such as Gratuity, Regular Pension are not paid to him. Only the provisional pension is being paid and in spite of repeated reminders, regular pension is not given to the petitioner which

is his property right. Respondents did not settle the retiral benefits of the petitioner. Respondents also did not pay ACP to the petitioner in spite of repeated requests and reminders.

No departmental inquiry has been initiated against the petitioner either before or after his retirement. According to the petitioner, retiral benefits cannot be withheld without assigning any reason. No inquiry or recovery is pending against him. 'No Dues' certificate has already been submitted by the petitioner. The petitioner has made a reference of Rule 351-A, Civil Service Regulations in Para 4.14 of the claim petition. Petitioner has also referred to certain decisions of Hon'ble Apex Court and Tribunal, in Paras 4.15, 4.16 and 4.17 of the claim petition. The petitioner has also made a mention of G.O. to regulate interest on delayed payment of gratuity etc. in Para 4.18 of the claim petition and prayed for the reliefs, which have been mentioned in inaugural paragraph of this judgment.

3. C.A./W.S. has been filed on behalf of respondents, vehemently opposing the claim petition. R.A. thereto has also been filed by the petitioner reiterating the facts of claim petition. Thereafter, supplementary C.A./W.S. has been filed on behalf of respondents to underline the facts contained in C.A./W.S.
4. The petitioner has retired on 30.06.2010. He is getting provisional pension. 90% GPF was released after nine years (of superannuation). No payment of gratuity has been made. Leave encashment has been given. ACP was paid to him on 17.02.2019.
5. Ld. A.P.O. submitted that 'no dues certificate' has not been submitted by the petitioner. In respect to a query as to why no dues certificate was not given to the petitioner, Ld. A.P.O. replied that the petitioner has not deposited three Topo Sheets so far. According to Ld. A.P.O., the petitioner has cleared temporary advance of Rs.16,63,000/- only on 10.03.2016. Ld. Counsel for the petitioner, in reply, submitted that he has cleared the matter relating to temporary advance on 31.05.2007. According to the petitioner, statement of Topo Sheets In-Charge envisages that he is not in possession of Topo Sheets.

6. According to Ld. A.P.O., inquiry relating to Topo Sheets is going on. But it is admitted that it is not a departmental inquiry. It is also admitted to the respondents that the petitioner has not been indicted in any departmental inquiry. Thus, it is clear that neither the petitioner has been indicted in any departmental inquiry nor any departmental proceeding is pending against him. Yet, retiral dues have not been released in his favour.
7. 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.
8. 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.
9. 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.
10. In *State of U.P. vs. Dharendra 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.”

11. In para 7 of the decision rendered by Hon’ble Supreme Court in *State of Jharkhand and others vs. Jitendra Kumar Srivastava and another*, 2013 0 AIR (SC) 3383, the following was observed:

“7. It is an accepted position that gratuity and pension are not the bounties. An employee earns these benefits by dint of his long, continuous, faithful and un-blemished service. Conceptually it is so lucidly described in *D.S. Nakara and Ors. Vs. Union of India*; (1983) 1 SCC 305 by Justice D.A. Desai, who spoke for the Bench, in his inimitable style, in the following words:

“The approach of the respondents raises a vital and none too easy of answer, question as to why pension is paid. And why was it required to be liberalised? Is the employer, which expression will include even the State, bound to pay pension? Is there any obligation on the employer to provide for the erstwhile employee even after the contract of employment has come to an end and the employee has ceased to render service?

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What is a pension? What are the goals of pension? What public interest or purpose, if any, it seeks to serve? If it does seek to serve some public purpose, is it thwarted by such artificial division of retirement pre and post a certain date? We need seek answer to these and incidental questions so as to render just justice between parties to this petition.

The antiquated notion of pension being a bounty a gratuitous payment depending upon the sweet will or grace of the employer not claimable as a right and, therefore, no right to pension can be enforced through Court has been swept under the carpet by the decision of the Constitution Bench in *Deoki Nandan Prasad v. State of Bihar and Ors.*[1971] Su. S.C.R. 634 wherein this Court authoritatively ruled that pension is a right and the payment of it does not depend upon the discretion of the Government but is governed by the rules and a Government servant coming within those rules is entitled to claim pension. It was further held that the grant of pension does not depend upon any one’s discretion. It is only for the purpose of quantifying the amount

having regard to service and other allied matters that it may be necessary for the authority to pass an order to that effect but the right to receive pension flows to the officer not because of any such order but by virtue of the rules. This view was reaffirmed in State of Punjab and Anr. V. Iqbal Singh (1976) 111 LLJ 377 SC”.

8. It is thus hard earned benefit which accrues to an employee and is in the nature of “property”. This right to property cannot be taken away without the due process of law as per the provisions of Article 300 A of the Constitution of India.”

12. Article 351-A of the U.P. Civil Service Regulations reads as under

“351-A. The Governor reserves to himself the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government, if the pensioner is found in departmental or judicial proceedings to have been guilty of grave misconduct, or to have caused pecuniary loss to Government by misconduct or negligence, during his service, including service rendered on re-employment after retirement.

Provided that:

- (a) such departmental proceedings, if not instituted while the officer was on duty either before retirement or during re-employment –
 - (i) shall not be instituted with the sanction of the Governor,
 - (ii) shall be in respect of event which took place not more than four years before the institution of such proceedings, and
 - (iii) shall be conducted by such authority and in such place or places as the Governor may direct and in accordance with the procedure applicable to proceedings on which an order of dismissal from service may be made.
- (b) Judicial proceedings, if not instituted while the officer was on duty either before retirement or during re-employment, shall have been instituted in accordance with sub-clause (ii) of clause (a), and
- (c) the Public Service Commission, U.P., shall be consulted before final orders are passed.

Explanation – For the purposes of this article –

- (a) departmental proceedings shall be deemed to have been instituted when the charges framed against the pensioner are issued to him, or, if the officer has been placed under suspension from an earlier date, on such date; and
- (b) judicial proceedings shall be deemed to have been instituted:
 - (i) in the case of criminal proceedings, on the date on which complaint is made, or a charge-sheet is submitted, to a criminal court; and
 - (ii) in the case of civil proceedings, on the date on which the plaint is presented or, as the case may be, an application is made to a civil court.”

13. Admittedly, neither any departmental inquiry was initiated against the petitioner for any misconduct, nor any proceeding was drawn under Article 351-A of the U.P. Civil Service Regulations. Such fact clinches the issue in favour of the petitioner.

14. In State of Kerala vs. M. Padmanabham Nair, (1985) 1 SCC 429, Hon'ble Apex Court has held, a reference of which came earlier, as below:

“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 [(2013) 3 SCC 472], 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”.

15. As far as inquiry relating to non-availability of three Topo Sheets is concerned, the same is, admittedly, not a departmental inquiry. Withholding of retiral dues, on the basis of non-submission of ‘no dues certificate’ for accounting for three Topo Sheets, is not proper, in the instant case, keeping in view Article 351-A of the U.P. Public Service Regulations. This Tribunal, therefore, is of the opinion that respondents should be directed to release retiral dues and also to pay interest on delayed payment of terminal dues to the petitioner.

16. 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 arrears of pension from the dates they 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.

17. Needless to say that in view of the above observations, the respondents shall henceforth pay regular pension to the petitioner and also release his gratuity and 10% of his GPF, which have been withheld so far. He is also entitled to be paid interest on these amounts. The amount of ACP has been paid to the petitioner only on 16.02.2019 and he is entitled to be paid interest on this amount from the due date till the date of payment. The leave encashment was paid to the petitioner on 21.05.2013 and he is entitled to get interest on the same from the due date up to 21.05.2013. The amount of leave encashment will also increase after sanction of the ACP and the additional amount of leave encashment along with interest thereon, should also be paid to the petitioner. It is also to be noted here that in the leave encashment paid to the petitioner on 21.05.2013, an excess amount of Rs. 1,55,360/- was paid to the petitioner, which was recovered from payment of the ACP amount, paid to the petitioner on 16.02.2019. Interest on this excess payment for this period can be adjusted against the other interest payable to the petitioner.
18. Respondents have issued 'No Dues' for amount of Rs. 16,63,000/- for Minor Mineral Survey on 13.05.2016, in favour of the petitioner. This is on the basis of the petitioner's letter dated 10.03.2016, which reads as follows:

"Subject: Rectification in the Adjustment Account of the Minor Mineral Survey after removing/correcting the objections/observations raised by the DDO.

Sir,

This is to bring to your kind notice that after holding several meetings with the DDO and examining the Adjustment Account of Minor Mineral Survey, 2002-2007, it has been fully rectified. It is, therefore, requested that DDO may kindly be instructed to issue the 'No Dues'."

19. From the perusal of the above, it is clear that the process of adjustment of the Account was going on between the petitioner and the respondent department. The latter alone cannot be held responsible for the delay in settlement of the account. The retiral dues of the petitioner have been delayed, mainly because of delay in adjustment of these dues as well as projected issue of Topo sheets. Therefore, only normal rates of interest need to be levied on the delayed payments. For the main retiral dues of pension and gratuity, we have already observed that the respondents shall pay interest @ 6% per annum and 8% per annum respectively on the unpaid amounts from the dates they fell due, till the date of actual payment. For GPF, ACP, Leave Encashment and excess payment, it will be in the fitness of things that interest on the respective amounts be calculated @ 6% per annum.
20. Respondents are directed to pay the aforesaid amounts and interests on delayed payments to the petitioner at the earliest possible.
21. Order accordingly.
22. The claim petition is allowed. No order as to costs.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: NOVEMBER 18, 2019
DEHRADUN

KNP/VM