

IN THE HIGH COURT OF UTTARAKHAND AT
NAINITAL

Writ Petition (S/B) No. 169 of 2015

Mohd. TauqirPetitioner

Versus

State of Uttarakhand & Ors.Respondents

Present: Mr. Rajendra Dobhal, Senior Advocate assisted by Mr. Devang Dobhal, Advocate for the petitioner.
Ms. Prabha Naithani, Brief Holder for the State of Uttarakhand

Coram:- **Hon'ble V.K. Bist, J.**
Hon'ble Sharad Kumar Sharma, J.

Per - Hon'ble Sharad Kumar Sharma, J.

According to the pleadings in the writ petition, the petitioner has contended that he was initially appointed as a trainee engineer in U.P. Cooperative Sugar Factory Federation, Luncknow, as back as on 8th September, 1980 and was posted in Nadehi Sugar Factory, which has now fallen within the territorial domain of district U.S. Nagar.

2. According to the petitioner, in pursuance of the letter of appointment dated 8th September, 1980, he joined his services on 17th September, 1980, in the said sugar mill. On creation of State of Uttarakhand, he had opted for State of Uttarakhand

under the Reorganization Act, the same was allocated to him and he was relieved from Cooperative Sugar Factory Federation to enable him to join in the State of Uttarakhand, in pursuance of which he joined his services. The result of the allocation was that the petitioner was relieved from the Kissan Sahkari Chini Mills Limited, Tilhar, Shahjahanpur, U.P. where he was working at the relevant time, to enable him to join at the opted place. In pursuance to which the petitioner joined the opted place on 21st June, 2001 in compliance of the order passed by Additional Secretary/Sugar Cane and Sugar Commissioner, Uttarakhand and continued to perform his duty as such upto July, 2009 in the said capacity as "Deputy Chief Engineer".

3. Petitioner's case is that on 31st July, 2009, the petitioner was transferred from Sahkari Sugar Mill Ltd. Bajpur to Sahkari Sugar Mill Ltd. Nadehi, District Udhampur, where he worked satisfactorily with unblemished records, but on account of ailment of his wife, and coupled with the fact that there was no one to take care of her and also that having served for more than 31 years in the department, he opted for a voluntary retirement from his services, by submitting an application to the said effect on 24th November,

2011. The application for voluntary retirement of the petitioner was processed, and the same was accepted by the Chief Executive Officer of Uttarakhand Cooperation Sugar Mills Federation Limited and the petitioner was permitted to take voluntary retirement from his services.

4. After being accorded voluntary retirement, and on account of the fact that the petitioner's entire post retirement dues were not being remitted in time, he moved a representation before the Chief Executive Officer on 27th August, 2012 praying for the payment of gratuity, leave encashment and group insurance etc. No action was taken on the said representation of the petitioner dated 27th August, 2012. Consequently, the petitioner submitted a reminder representation on 29th October, 2012. Even the Union of the said Sugar Mill, *vide* its correspondences dated 14th October, 2014 and 5th November, 2014 to respondents had been agitating the cause of the petitioner before the respondent authorities for payment of retrial dues. Ultimately, the petitioner, who was working as Deputy Chief Engineer in Kissan Sahkari Mills Ltd., submitted that after his voluntary retirement, his gratuity has been wrongly

withheld, and it was paid at a much belated stage.

5. Though, u/s 7(3) of the Payment of Gratuity Act, 1972 itself, the gratuity due ought to be paid to an employee within one month from the date of superannuation or when it fall due, and in the instant case, it was paid almost after 2½ years and that to the gratuity was paid, was with no interest on it.

6. The term “gratuity” under the Payment of Gratuity Act, 1972 is a recognition, which is given by the employer to the employee for the efficient services, which he has rendered to the department upto his superannuation. The entitlement of the gratuity accrues in accordance with Section 4 of the Act and in the instant case, since the petitioner has sought a voluntary retirement, it would be payable under clause (a)(b) under sub Section (1) of Section 4 of the Act. The Act itself contemplates the manner in which the determination of gratuity is to be made. Under sub Section (3) of Section 7 as substituted w.e.f. 1st October, 1987, it is mandatory that the employer should arrange for payment of gratuity within 30 days from the date, it becomes payable.

7. The consequential inaction of non-compliance of sub Section (3) of Section 7 of the Act by an employer it would have automatic bearing arising out of Section 7 of sub Section (3A), which entitles an employee to claim for a simple interest from the date when the gratuity became payable under Section 7, and interest under sub Section (3A) of the Payment of Gratuity Act, 1972.

8. When the same was not being paid, the petitioner represented to the respondents for redressal of his grievance by submitting a representation on 27th November, 2014, and a reminder also to the said effect on 19th December, 2014. When inaction persisted, the petitioner was constrained to file, the present writ petition for availing the benefit of interest on the gratuity, which was paid to him belatedly on 5th November, 2014, which according to the petitioner it was remitted to him after more than 2½ years from the date when the petitioner became entitled for the payment of gratuity.

9. Since the gratuity and the interest accruing on the gratuity for the unpaid period or

for the period during which the payment was curtailed, is a statutory right, the petitioner's claim for the grant of gratuity ought to have been determined by the respondents, but no decision was taken, consequently, petitioner filed the present writ petition for the following relief(s):-

- “(i) issue a writ, order or direction in the nature of mandamus directing to the respondents to pay the interest on the delayed payment of gratuity from the date it became due to the date of payment.”
- (ii) Pass any other writ, order or direction, which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.
- (iii) Award the cost of the writ to the petitioner.”

10. On account of the fact that the entitlement of gratuity is contemplated under sub Section (1) and (2) of Section 7 and interest is provided under sub Section (3A) of the Section 7 of the Payment of Gratuity Act 1972, it would be in all fitness of things that a mandamus is issued by way of a direction to respondent to consider the claim of the petitioner for interest on the gratuity under Section 7 of sub Section (3A) for period for which gratuity was withheld beyond period provided u/s 7(3), for which he has

claimed for in his representation. Accordingly, the writ petition is disposed of directing respondent no. 2 to take a concrete and expeditious decision on the representation of the petitioner dated 27th November, 2014 annexed as annexure No. 9 to the writ petition, under no stretch beyond the period of one month from the date of service of certified copy of the judgment.

11. Subject to above observation, writ petition stands disposed of. No order as to costs.

(Sharad Kumar Sharma, J.) **(V.K. Bist, J.)**
28.02.2018

Mahinder/