IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

WRIT PETITION (S/B) No. 664 OF 2022

Kamal Nayan Nautiyal. …Petitioner

Versus

State of Uttarakhand & others. …Respondents

With

WRIT PETITION (S/B) No. 667 OF 2022
WRIT PETITION (S/S) No. 1814 OF 2022
WRIT PETITION (S/S) No. 1966 OF 2022
WRIT PETITION (S/S) No. 2016 OF 2022
WRIT PETITION (S/S) No. 2020 OF 2022
WRIT PETITION (S/S) No. 2175 OF 2022
WRIT PETITION (S/S) No. 2176 OF 2022
WRIT PETITION (S/S) No. 2177 OF 2022
WRIT PETITION (S/S) No. 2178 OF 2022
WRIT PETITION (S/S) No. 2255 OF 2022
WRIT PETITION (S/S) No. 2256 OF 2022
WRIT PETITION (S/B) No. 342 OF 2023
WRIT PETITION (S/B) No. 403 OF 2023
WRIT PETITION (S/B) No. 404 OF 2023
WRIT PETITION (S/B) No. 405 OF 2023
WRIT PETITION (S/B) No. 406 OF 2023
WRIT PETITION (S/B) No. 407 OF 2023
WRIT PETITION (S/B) No. 408 OF 2023
WRIT PETITION (S/B) No. 409 OF 2023
WRIT PETITION (S/B) No. 410 OF 2023
WRIT PETITION (S/B) No. 454 OF 2023
WRIT PETITION (S/S) No. 1266 OF 2023
WRIT PETITION (S/S) No. 1599 OF 2023
WRIT PETITION (S/S) No. 1600 OF 2023
WRIT PETITION (S/S) No. 1601 OF 2023
WRIT PETITION (S/S) No. 1602 OF 2023
WRIT PETITION (S/S) No. 1603 OF 2023
WRIT PETITION (S/S) No. 1605 OF 2023
WRIT PETITION (S/S) No. 1606 OF 2023
WRIT PETITION (S/S) No. 1609 OF 2023
WRIT PETITION (S/S) No. 1610 OF 2023
WRIT PETITION (S/S) No. 1611 OF 2023
WRIT PETITION (S/S) No. 1615 OF 2023
WRIT PETITION (S/S) No. 1620 OF 2023
WRIT PETITION (S/S) No. 1621 OF 2023
WRIT PETITION (S/S) No. 1917 OF 2023
WRIT PETITION (S/S) No. 1919 OF 2023
WRIT PETITION (S/S) No. 1920 OF 2023

WRIT PETITION (S/S) No. 1921 OF 2023
WRIT PETITION (S/S) No. 1922 OF 2023
WRIT PETITION (S/S) No. 1927 OF 2023

Presence:

Mrs. Pushpa Joshi, learned Senior Counsel assisted by Ms. Chetna Latwal, learned counsel and Ms. Nipushmola Joshi, learned counsel for the petitioners in WPSS No. 1814 of 2022, WPSS No. 2016 of 2022 and WPSS No. 2020 of 2022

Mr. Mahendra Singh Rawat, learned counsel for the petitioners.

Mr. Devendra Singh Bora, learned Standing Counsel for the State of Uttarakhand/respondent no. 1.

Mr. Sandeep Kothari, learned counsel for respondent nos. 2 & 3/Garhwal Mandal Vikas Nigam Limited.

Coram: Hon'ble Manoj Kumar Tiwari, J.
Hon'ble Pankaj Purohit, J.

Hon'ble Manoj Kumar Tiwari, J. (Oral)

Since common questions of law and fact are involved in these writ petitions, therefore, they are being heard and decided together by this common order. However, for the sake of brevity, facts of Writ Petition (S/B) No. 664 of 2022 alone are being considered.

2. Kamal Nayan Nautiyal (petitioner) has filed this writ petition seeking the following reliefs:-

> *"(i) To issue a writ order or direction in the nature of Mandamus commanding the Respondents to forthwith release the outstanding retiral benefits i.e. Leave Encashment, arrears of 6th pay Commission and arrears of 7th Pay Commission in favour of the petitioner.*
>
> *(ii) to issue a writ order or direction in the nature of mandamus commanding the Respondents to forthwith release the interest on the delayed payment of Gratuity as per section 7 (3A) of Gratuity Act, 1972 from the date on which the gratuity becomes payable to the date on which it is paid."*

3. Petitioner was an employee of a Government Company, namely Garhwal Mandal Vikas Nigam Limited (hereinafter referred to as 'GMVN'). He retired from the post of Assistant General Manager (Tourism) on 31.05.2021. According to petitioner, he has not been paid the amount of leave encashment, arrears of 6th & 7th Pay Commission and interest on delayed payment of gratuity therefore, he has sought a direction to the authorities to forthwith release the outstanding dues.

4. An affidavit has been filed by Mr. Satpal Singh Gandhi, Accounts Officer, GMVN on 29.02.2024, in which it is stated that petitioners in all the writ petitions, except four writ petitions mentioned therein, have been paid the admitted retiral dues. Paragraph no. 4 of the said affidavit is extracted below:-

> *"4. That a perusal of the aforesaid tables so prepared makes it absolutely clear that except in writ petition No. WPSB/408/2023, WPSB/454/2023, WPSS/1600/2023 & WPSS/1919/2023, all other petitioners have been paid the admitted retiral dues are liable to be paid and which has been paid to all other similarly situated employees to the Grahwal Mandal Vikas Nigam Ltd."*

5. Relevant information regarding retiral dues, which have been paid and also the dues, which remain to be paid to some of the petitioners is given in tabular form in Annexure-1 to the aforesaid affidavit filed by Accounts Officer. Perusal of the said affidavit reveals that leave encashment and arrears of leave encashment is yet to be paid to Mr. Susheel Chandra

(petitioner in WPSS No. 408 of 2023); arrear of ACP is yet to be paid to Mr. Jitendra Singh Negi (Petitioner in WPSB No. 454 of 2023); arrear of gratuity is sanctioned to Mr. Vikram Singh Panwar (petitioner in WPSS No. 1600 of 2023) and payment is under process and leave encashment is also yet to be paid to him. Similarly, Mr. Kuldeep Singh Rauthan (petitioner in WPSS No. 1602 of 2023) and Mr. Vijendra Pal Singh (petitioner in WPSS No. 1620 of 2023) have been sanctioned leave encashment and arrears of leave encashment and payment thereof is under process; Smt. Sushila Chauhan (petitioner in WPSS No. 1919 of 2023) is yet to be paid arrear of ACP; Ms. Saroj Kukreti (petitioner in WPSS No. 1920 of 2023) has been sanctioned leave encashment & arrears of leave encashment and payment thereof is under process, and the pending dues of all other petitioners have been cleared.

6. Petitioners have staked claim for arrears of salary, which accrued to them on account of 6th & 7th pay revision. According to them, benefit of 6th pay revision, with arrears, was given to State employees w.e.f. 01.01.2006, therefore, they are also entitled to same benefit w.e.f. 01.01.2006. Petitioners have also claimed benefit of 7th pay revision w.e.f. 01.01.2016 at par with State employees, which was given to them w.e.f. 01.01.2017.

7. It is contended on behalf of the petitioners that benefit of 6th pay revision was given to officers/employees of GMVN, only w.e.f. 01.08.2009, similarly, benefit of 7th pay revision was given to them w.e.f. 01.01.2017, which is arbitrary & unjust, therefore, a direction be issued to GMVN to give benefit of 6th & 7th pay revision to petitioners w.e.f. the date it was given to State employees i.e., 01.01.2006 and 01.01.2016. Thus, petitioners have claimed the differential amount of salary for the corresponding period, which allegedly accrued on account of pay revision.

8. Learned counsel for respondents, however has produced in Court the decision taken by Board of Directors of GMVN in its 130th meeting, held on 23.01.2023. In the said meeting, issue of payment of arrears of 6th & 7th Pay Commission and arrears of ACP was considered, and a decision was taken that keeping in view the precarious financial position of GMVN, it is not possible at present to pay arrears of 6th & 7th Pay Commission to its officers/employees. In the same meeting, General Manager (Finance) apprised the Board of Directors that arrears of ACP has been paid to all the officers/employees of GMVN.

9. Learned counsel for petitioners have placed reliance upon a judgment rendered by coordinate Bench of this Court in SPA No. 77 of 2015 in support of petitioners claim for

arrears of 6th & 7th pay revision. The said case, however, is distinguishable on facts. In that case monetary benefits were withheld due to an audit objection, and coordinate Bench held that *"the recommendations of 6th pay Commission cannot be denied merely on the basis of audit paras"*.

10. In the present case, the Board of Directors has taken a decision not to grant arrears of 6th & 7th pay Commission to the employees of GMVN and the said decision has not been challenged by the petitioners.

11. Learned counsel for petitioners submit that pay scales of all State employees were revised w.e.f. 01.01.2006, even though recommendations made by 6th Pay Commission were accepted at a subsequent date, therefore, denial of benefit of pay revision to petitioners, who are employees of a Government Company from due date, i.e. 01.01.2006, is unjust and illegal. Similar contention was raised in respect of 7th pay revision, which was made effective by GMVN in respect of its employees, w.e.f. 01.01.2017; while, State employees were given the said benefit w.e.f. 01.01.2016.

12. Petitioners are employees of a Government Company, thus, their status is different from that of a State employee. The decision taken by State Government in respect of State employees is not *ipso facto* applicable to employees of Government Companies and Statutory Corporations. The

Board of Directors of a Government Company is the highest decision making body, which decides the service conditions and pay scales payable to its employees. The Board of Directors has taken a decision not to grant arrears of 6th and 7th pay revision to the employees of GMVN. The decision taken by Board of Directors is not challenged in these writ petitions. So long as the decision taken by Board of Directors stands, no direction can be issued to GMVN to pay arrears of 6th & 7th Pay Commission to petitioners. The Board of Directors, however has taken said decision in view of present financial condition, therefore, the Board of Directors may revisit its decision, if financial condition of GMVN improves. Petitioners shall be at liberty to approach the Competent Authority for having a relook in the matter, as and when GMVN has surplus funds.

13. Learned Counsel for respondent nos. 2 & 3 submits that due to precarious financial condition of GMVN, difficulty is being faced in timely payment of dues of the employees, and it was decided that employees, who have retired earlier in point of time, will have preference in payment of retiral dues. He submits that petitioner in WPSB No. 408 of 2023 retired on 31.07.2022; while as many as 33 persons retired earlier to him, therefore, payment will be made to him, once dues of other employees who retired earlier are cleared. He, however,

assures the Court that outstanding dues of all the petitioners will be cleared, positively, within six months.

14. From the affidavit filed by the Accounts Officer, it is revealed that pending dues of majority of the petitioners have been cleared. Learned counsel appearing for GMVN has assured that pending dues of other petitioners would also be cleared within six months. We take the statement made by learned counsel for GMVN on record. In view of decision taken by Board of Directors, no direction can be issued to pay the arrears of 6th & 7th Pay Commission to petitioners. As regards the claim of petitioners for interest on delayed payment of gratuity, petitioners shall be at liberty to make separate representation and if such representation is made by them, Competent Authority shall take decision thereupon, within eight weeks from the date of receipt of such representation.

15. With the aforesaid observations, writ petitions stand disposed of. Pending Application(s), if any, also stand disposed of.

16. Let a copy of this judgment be kept in concerned writ petitions.

(Pankaj Purohit, J.) **(Manoj Kumar Tiwari, J.)**

12.03.2024

PN/-