

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

ORDER ON INTERIM RELIEF

[In Claim Petition No. 155/SB/2024]

Trilok Singh Chauhan & others vs. State of Uttarakhand and others

Present: Sri M.C.Pant(online) & Sri Abhishek Pant, Advocates, for the petitioners.
Sri V.P.Devrani, A.P.O., for the Respondents.

DATED: NOVEMBER 20, 2024

Justice U.C.Dhyani (Oral)

Petitioners have filed present claim petition against orders dated 14.07.2023 and 22.05.2024 of recovery of excess payment against them along with effect and operation. Petitioners have also prayed for refund of the amount which has been deducted, by way of recovery, from their salary, along with interest.

Interim relief has been pressed by Ld. Counsel for the petitioners. Notices were issued to the respondents for filing objections against the interim relief in terms of Section 5 (5-A) (b) of the U.P. Public Services (Tribunal) Act, 1976. Registry has made an endorsement that the steps for service of notices were taken and registered notices were sent on 04.11.2024.

Ld. A.P.O. seeks some more time to file written objections against the interim relief.

Considering the fact that the notices were received by the respondent department on 16.11.2024, as stated by the departmental *Pairokar*, who is assisting Ld. A.P.O., four weeks' further time is granted to the respondents to file written objections against the interim relief.

Sri Abhishek Pant, Ld. Counsel for the petitioners pressed interim relief on the grounds, *inter alia*, that –(i) the petitioners are Class IV employees of the Watershed Management Department; (ii) they have no role to play if the department released excess payment to them; (iii) if excess payment was made, the same is the sole responsibility of the respondent department; (iv) it will be very difficult for the petitioners to sustain their families, they being Class IV employees, if excess amount is recovered from them; and (v) their case is squarely covered by the decision rendered by the Hon'ble Apex Court in *State of Punjab vs. Rafiq Masih, (2015) 4 SCC 334*.

Ld. A.P.O. vehemently opposed the interim relief on the grounds, *inter alia*, that- (i) the petitioners are still working in the department; (ii) they had given an undertaking that if excess payment is made to them, the same may be recovered from their salary; (iii) recovery is by way of adjustment of excess payment thus made to the petitioners other than their entitlement; and (iv) their case is not covered by the decision of Rafiq Masih (*supra*). They are not retired employees. Ld. A.P.O., however, submits that written objections will be filed within four weeks from now, which time has been granted by the Hon'ble Tribunal to the respondents.

As between two parties, if a determination is rendered in favour of the party, which is the weaker of the two, without any serious detriment to the other (which is truly a welfare State), the issue resolved should be in consonance with the concept of justice, which is assured to the citizens of India. The right to recover being pursued by the State as employer, will have to be compared, with the effect of the recovery on the employee concerned. If the effect of the recovery from the employee concerned would be, more unfair, more wrongful, more improper, and more unwarranted, than the corresponding right of the employer to recover the amount, then it would be iniquitous and arbitrary, to effect the recovery. In such a situation, the employee's right would outbalance, and therefore eclipse, the right of the State as employer to recover.

Prima facie, the petitioners were not guilty of furnishing any incorrect information, which had led the competent authority concerned, to

commit the mistake of making higher payment to the employees. The payment of excess dues to the petitioners was, *prima facie* not on account of any representation made by them, nor was on account of any fraud committed by them. Any participation of the petitioners, in the mistake committed by the employer, in extending undeserved monetary benefits to them is, *prima facie*, ruled out. It would not be incorrect to suggest, at this stage, that the petitioners were as innocent as their employer, in the wrongful determination of their inflated emoluments.

Therefore, there shall be interim stay on recovery of the excess payment from the petitioners, which is the subject matter of impugned orders dated 14.07.2023 and 22.05.2024, till further orders.

List on 20.12.2024 for filing written objections on interim relief by the respondents/ further orders.

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: NOVEMBER 20.2024
DEHRADUN

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