

**BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL
BENCH AT NAINITAL**

Present: Hon'ble Mr. Rajendra Singh

-----Vice Chairman (J)

Hon'ble Mr. A.S.Rawat

----- Vice Chairman (A)

CLAIM PETITION NO. 12/NB/DB/2021

Deewan Singh Negi, aged about 61 years, s/o Late Sri Dol Singh, r/o
Neelkanth Colony, Himmatpur Malla, Haldwani, District Nainital.

.....Petitioner

vs.

1. State of Uttarakhand through Secretary, Medical Health and Family Welfare Department, Govt. of Uttarakhand, Dehradun.
2. Director General, Medical Health and Family Welfare, Uttarakhand, Dehradun.
3. Principal Medical Superintendent, District Male Hospital, Almora.
4. Director, Lekha Evam Haqdari, Uttarakhand, Dehradun.
5. Chief Treasury Officer, Almora.

.....Respondents

Present: Sri N.K.Papnoi, Advocate, for the petitioner
Sri Kishore Kumar, A.P.O., for the respondents

JUDGMENT

DATED: MAY 07, 2025

Present claim petition has been filed for the following reliefs:

"A. To set-aside the impugned order dated 26-10-2020 issued by the Respondent No. 5 (Annexure No. 1 to Compilation-1) in so far as it relates to recovery of Rs. 1,55,592/- towards Gratuity of the petitioner.

B. To declare the action of the Respondents in revising the Pay Fixation, if any, and making the recovery from the Gratuity of the petitioner, as arbitrary and illegal.

C. To direct the Respondents to forthwith release the recovered amount of Rs. 1,55,592/- from the Gratuity of the petitioner, alongwith the interest at a rate to be specified by this Hon'ble Tribunal.

D. To direct the Respondents, particularly Respondent No. 2 to grant all consequential benefits to the petitioner.

E. To pass any other suitable order as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

F. To allow the claim petition with cost.”

2. Brief facts of the case are as follows:

2.1 The petitioner was initially appointed on the post of Junior Clerk/Lower Division Clerk w.e.f. 02-03-1982 in the Medical Health and Family Welfare Department in the erstwhile State of U.P. He was promoted to the next higher post of Senior Clerk/Senior Assistant in the department. He was further promoted to the post of Administrative Officer, which is a Class III post carrying the Grade Pay of Rs. 4600.

2.2 In the year 2015, the petitioner was serving as Administrative Officer in B.D. Pandey District Male Hospital, Nainital, a disciplinary proceeding was initiated against him, which was ultimately concluded by passing the punishment order dated 07-01-2019, whereby a censure was awarded to the petitioner for the year 2014-15 and two annual increments for future have been withheld for a period of 02 years. The said punishment order has been already challenged by the petitioner before this Hon'ble Tribunal by means of Claim Petition No. 09 of 2021 which is pending for adjudication.

2.3 The petitioner retired from service on 29-02-2020 after attaining the age of superannuation from the office of Respondent No. 3.

2.4 The Respondent No. 3 vide letter dated 21.11.2019 forwarded the service book of the petitioner to the respondent no. 2 for verification purpose in view of impending retirement of the petitioner. The Respondent No. 2 vide letter dated 29-04-2020 verified the same

and directed the Respondent No. 3 to sanction the pension and other retiral dues to the petitioner.

2.5 Thereafter, the respondent No. 3 after preparing all the pension papers of the petitioner, forwarded the same for sanctioning to the Respondent No. 5. However, the Respondent No. 5 vide letter dated 09-07-2020 raised two objections in the same, firstly (1) Annex the copy of the order dated 14-12-2006 whereby, the pay was fixed giving the benefit of Rule-22(B) commonly known as same benefit as the junior is receiving and (2) the pay fixation done on 01.01.2012 appears to be incorrect and examining the same and if some extra amount has been paid, then position of recovery be cleared. A copy of the aforesaid letter dated 09-07-2020 was also sent to the petitioner, as such he immediately after receiving the same, submitted a representation on 27.07.2020 to the respondent No. 5 through respondent No. 3, annexing the relevant documents. Thereafter on 23-08-2020, the petitioner submitted another representation to respondent No. 5 through respondent No. 3 in the matter.

2.6 Ultimately, the respondents No. 4 and 5 issued pension payment order in respect of the petitioner on 26.10.2020 whereby, apart from the sanctioning pension and Commutation, an amount of Rs. 10,65,636/- was sanctioned to the petitioner towards Gratuity, however, an amount of Rs. 1,55,592/- was illegally withheld from the said amount on account of alleged recovery.

2.7 The action of the Respondents is totally against the law propounded by the Hon'ble Apex Court since from 1994 till date. The latest pronouncement on the same by the Hon'ble Apex Court is in the case of State of Punjab and others Vs. Rafiq Masih (White Washer) etc. dated 18.12.2014 reported in (2014) 2 U.D. 576 and also in (2015) 4 SCC 334 which clearly provides that under which and what circumstances the recovery can be made. The action of the Respondents in the matter is totally arbitrary and illegal which cannot

be justified at all in the eyes of law. The petitioner had made several representations to the authorities concerned for refund of the aforesaid amount but all the efforts made by the petitioner went in vain.

3. याचिकाकर्ता से उनकी सेवानिवृत्ति लाभों से रु0 1,55,592/ (रु० एक लाख पचपन हजार पाँच सौ बयानब्बे) मात्र की वसूली की गयी थी। उक्त धनराशि की वसूली विपक्षी / उत्तरदाता सं० 05 के पत्रांक 443/छः-6/सिविल पेन्शन अल्मोड़ा दिनांक 09/07/2020 के क्रम में की गयी। याचिकाकर्ता ने उक्त वसूली के परिपेक्ष्य में अपने प्रत्यावेदन प्रस्तुत किये लेकिन विपक्षी/उत्तरदाता सं० 05 के पत्र दिनांक 09/07/2020 के बिन्दु सं० 02 में लगायी गयी आपत्ति यथावत रही। याचिका कर्ता की सेवानिवृत्ति लाभों Retiral Dues ग्रेच्युटी से रु0 1,55,592 (रु० एक लाख पचपन हजार पाच सौ बयानब्बे) मात्र की वसूली इसलिए की गयी क्योंकि याचिकाकर्ता का बी०डी० पाण्डे पुरुष चिकित्सालय नैनीताल से गलत वेतन निर्धारण हुआ था. याचिकाकर्ता को वित्तीय स्तरान्तरण के तहत पदोन्नति पद का लाभ प्राप्त हो चुका था। बी०डी० पाण्डे पु० चिकित्सालय, नैनीताल के स्तर से याचिकाकर्ता को पदोन्नति होने पर पुनः वेतनवृद्धि अनुमन्य करदी गयी। जबकि याचिकाकर्ता को इस का लाभ पूर्व में ही ए०सी०पी० के तहत प्राप्त हो चुका था। शासनादेश 672/XXVII (7) न०प्रति/2011 दिनांक 08/03/2011 के प्रस्तर 04 में उल्लेख किया गया है कि वित्तीय स्तरान्तरण अनुमन्य होने पर वेतन निर्धारण संलग्न-02 में उल्लेखित व्यवस्था के अनुसार किया जायेगा। तदोपरान्त कर्मचारी की उसी ग्रेड वेतन जो वित्तीय स्तरान्तरण के रूप में अनुमन्य हुआ है में नियमित पदोन्नति होने पर कोई वेतन निर्धारण नहीं किया जायेगा परन्तु यदि पदोन्नति के पद का ग्रेड वेतन वित्तीय स्तरान्तरण के रूप में प्राप्त ग्रेड वेतन से उच्च है तो वेतन बैण्ड अपरिवर्तित रहेगा और सम्बन्धित कार्मिक को पदोन्नति के पद का ग्रेड वेतन देय होगा।

4. R.A. has been filed on behalf of the petitioner denying the contentions of the C.A./W.S. and has reiterated the averments made in the claim petition.

5. We have heard learned counsel for the petitioner as well as learned A.P.O. and perused the record.

6. Learned counsel for the petitioner has argued that vide impugned orders, the recovery of an amount of Rs. 1,55,592/- from the gratuity amount of the petitioner has been made on the ground that the same had wrongly been paid to the petitioner due to wrong

fixation by the respondents. Learned Counsel appearing for the petitioner has vehemently submitted that the said order is contrary to the law laid down by **Hon'ble the Apex Court in the case of State of Punjab and others Vs. Rafiq Masih (White Washer) reported at (2015) 4 SCC 334** wherein it has held that no recovery can be made from the retiral dues of the petitioner, even if the excess amount is paid without any fault on the part of the employee. Learned counsel submits that the petitioner was superannuated on 29-02-2020.

7. Learned A.P.O. on behalf of the respondents has argued that the recovery of the excess amount paid has been made from the retiral dues as he was very well aware of the wrong fixation, as such, now he is debarred from claiming the same. It has further been submitted that while scrutinizing the matter of fixation of pension of the petitioner ambiguities were detected and thus, the order of recovery was passed. The respondents issued pension payment order in respect of the petitioner on 26.10.2020 whereby, apart from the sanctioning amount of pension and Commutation, an amount of Rs. 10,65,636/- was sanctioned to the petitioner towards Gratuity, however, an amount of Rs. 1,55,592/- was withheld from the said amount on account of recovery. Learned A.P.O. submits that there is no illegality in the impugned order and the petition is liable to be dismissed.

8. We have heard learned Counsel for the parties and perused the record carefully.

9. From the above, it is clear that the question involved for determination in the present petition is that whether the payment made on account of wrong fixation of pay can be recovered from retiral dues of the petitioner or not, that too after his retirement from service and whether the order impugned in the present claim petition has correctly been passed considering the judgment of the Hon'ble Apex Court in case of Rafiq Masih (supra).

10. The Hon'ble Apex Court in the judgment of Rafiq Masih (supra) after considering the matter in detail has been pleased to observe in para 10 that this Court under Article 142 of the Constitution of India, will disclose the parameters of the realm of an action of recovery (of an excess amount paid to an employee) which would breach the obligation of the State. The para 10 of the said judgment, reads as under:

“10. In view of the afore-stated constitutional mandate, equity and good conscience, in the matter of livelihood of the people of this country, has to be the basis of all governmental actions. An action of the State, ordering a recovery from an employee, would be in order, so long as it is not rendered iniquitous to the extent, that the action of recovery would be more unfair, more wrongful, more improper, and more unwarranted, than the corresponding right of the employer, to recover the amount. Or in other words, till such time as the recovery would have a harsh and arbitrary effect on the employee, it would be permissible in law. Orders passed in given situations repeatedly, even in exercise of the power vested in this Court under Article 142 of the Constitution of India, will disclose the parameters of the realm of an action of recovery (of an excess amount paid to an employee) which would breach the obligations of the State, to citizens of this country, and render the action arbitrary, and therefore, violative of the mandate contained in Article 14 of the Constitution of India.”

11. The Hon'ble Apex Court after considering various judgments of the Apex Court in regard to recovery of the excess amount paid to the employee held that recovery of excess payments made from employees who have retired from service, or are close to their retirement, would entail extremely harsh consequences outweighing the monetary gains by the employer with the following emphasis:

"Premised on the legal proposition considered above, namely, whether on the touchstone of equity and arbitrariness, the extract of the judgment reproduced above, culls out yet another consideration, which would make the process of recovery iniquitous and arbitrary. It is apparent from the conclusions drawn in Syed Abdul Qadir's case (supra), that recovery of excess payments, made from

employees who have retired from service, or are close to their retirement, would entail extremely harsh consequences outweighing the monetary gains by the employer. It cannot be forgotten, that a retired employee or an employee about to retire, is a class apart from those who have sufficient service to their credit, before their retirement. Needless to mention, that at retirement, an employee is past his youth, his needs are far in excess of what they were when he was younger. Despite that, his earnings have substantially dwindled (or would substantially be reduced on his retirement). Keeping the aforesaid circumstances in mind, we are satisfied that recovery would be iniquitous and arbitrary, if it is sought to be made after the date of retirement, or soon before retirement. A period within one year from the date of superannuation, in our considered view, should be accepted as the period during which the recovery should be treated as iniquitous. Therefore, it would be justified to treat an order of recovery, on account of wrongful payment made to an employee, as arbitrary, if the recovery is sought to be made after the employee's retirement, or within one year of the date of his retirement on superannuation."

The Hon'ble Apex Court summarizes the few situations wherein recovery by the employer were emphasized in para-12 of the judgment, which is reproduced as below:

"12. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."

12. The above situations described in paragraphs no. 10 & 12 of the judgment of the Hon'ble Apex court are binding as they have been issued under Article 142 of the Constitution of India and in view thereof the recovery from retired employees or employees who are due to retire within one year, order of recovery is impermissible in law and accordingly, the same cannot be made.

13. In view of the above, we are of the considered opinion that the recovery of Rs. 1,55,592/- made from the gratuity of the petitioner is not impermissible under law as held by the Hon'ble Apex Court in case of Rafiq Masih (supra).

14. Accordingly, the claim petition is allowed and the impugned order dated 26.10.2020 passed by Respondent no. 5 is hereby quashed and the respondents are directed to refund the recovered amount to the petitioner within a period of two month from the date of receipt of a certified copy of this order. No order as to costs.

(A.S.RAWAT)
VICE CHAIRMAN (A)

(RAJENDRA SINGH)
VICE CHAIRMAN (J)

DATE: MAY 07, 2025
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KNP