

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

EXECUTION PETITION NO. 17/SB/2023

*(Arising out of judgment dated 20.09.2023,
passed in Claim petition No. 104/DB/2023)*

Sri Kumiya.

.....Petitioner-executioner

vs.

State of Uttarakhand through Secretary, Forest Department, Government of Uttarakhand, Secretariat, Subhash Road, Dehradun and others.

.....Respondents.

Present: Sri Abhishek Chamoli, Advocate, for the petitioner-executioner.
Sri V.P.Devrani, A.P.O., in assistance of the Tribunal.

JUDGMENT

DATED: NOVEMBER 10, 2023

Justice U.C.Dhyani (Oral)

By means of present execution application, petitioner-executioner seeks to enforce order dated 20.09.2023, passed by this Tribunal in Claim Petition No. 104/DB/2023, Smt. Kumiya vs. State & others.

2. The execution application is supported by the affidavit of Sri Kumiya.

3. The decision rendered by this Tribunal on 20.09.2023, is reproduced herein below for convenience.

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

I. To issue and order or direction quashing the Impugned order dated 23.01.2023 along with its effect and operation and declaring the same as arbitrary and illegal, by which the Respondent No. 3 rejected the representation of the petitioners for payment of retrial dues.(Gratuity and pension etc.), and initiated the recovery amounting to Rs 7,85,567, against the petitioner even after the retirement, after calling the entire record from the respondent.

II. To issue and order or direction to respondents to pay Interests on the delay payment of the Pension and Gratuity and other retrial dues of the petitioner.

III. Issue any other and further order or direction which this Hon'ble Tribunal may deem fit and proper under the facts and circumstances of the case.

IV. Award costs of the petition to the petitioner.”

2. Application for interim relief was filed by the petitioner. The same was decided on 30.06.2023 as follows:

“Interim relief has been sought by the petitioner as follows:

“In view of the facts and circumstances mentioned above, it is expedient and in the interest of justice that this Hon'ble Tribunal may graciously be pleased to stay the effect and operation of the recovery amounting to Rs.7,85,567/- from the retiral dues *i.e.* gratuity payable to the petitioner.”

Objections have been filed by Ld. A.P.O. against the interim relief.

Ld. A.P.O. submitted that the petitioner was initially engaged as a part time seasonal employee with a periodical breakage on 13.02.1987 in the Forest department of erstwhile of state of U.P. On completion of three years services as seasonal employee, the petitioner was appointed in the pay scale of Rs 305-390/-. This service was purely on the contract basis which is not substantive nature service. He joined the service on 13.02.1987 as Bungalow Chowkidar. Thereafter, the petitioner was promoted on post of the Forest Guard in the pay scale Rs 825-1200 (revised grade pay of Rs. 1800/-) on 17.01.1996, therefore, the petitioner is not entitled to get the benefit of ACP as he had been given the benefit of 1st promotion from the direct recruitment post. On completion of 18 years satisfactory service, the petitioner was granted the benefit of 2nd ACP w.e.f. 01.09.2008 as per ACP G.O. dated 08.03.2011 in the pay scale Rs 5200-20200/- with grade pay 2400/ by the department, further the petitioner was actually promoted on the post of Forester in the pay scale Rs 5200-20200/- with grade pay Rs 2800/- on 09.09.2014.

Ld. A.P.O. further submitted that on completion of 26 years services on 13.02.2013 the petitioner was entitled to get the benefit of 3rd ACP in the pay scale of RS 5200-20200 with grade pay Rs 2800/ ,but wrongly this benefit was given to the petitioner in the pay scale Rs 9300-34800/- with grade pay Rs 4200/ on 15.02.2013 and due to this wrong/ incorrect ACP benefit, the petitioner has been made excess payment of Rs 7,85,567/- till the date of his retirement Le. 31.10.2022 and this fact came into the knowledge of the department, when the service book of the petitioner was sent on 04.05.2022 for inquiry/ verification of pay fixation order to the Finance Controller of the Forest Department. After examination of the service book of the petitioner, the Finance Controller/office of the Principal Chief conservator of Forest (HoFF) of the Forest Department sent it back to the office of Divisional Forest office, Chakrata with

objections on dated 26.07.2022 for rectification. The respondent department has amended/revised the pay fixation of the petitioner in the view of the objection raised by the Finance Controller, Forest Department, vide order dated 26.07.2022. Again the matter was sent to the Finance Controller, /office of the Principal Chief conservator of forest (HoFF), As per the rules, the same was again examined and amended the service book of the petitioner and it was found that an excessive amount of Rupees 7,85,567/- has been paid to the petitioner mistakenly, which is liable to be adjusted.

It is further submitted by Ld. A.P.O. that the excess and over payment made to the petitioner is liable to be adjusted from the gratuity payable to the petitioner as per the provision laid down in rule 82(1)B of Financial Handbook Part 5.

Ld. A.P.O. also submitted that yet no recovery order has been issued by the respondent department, only the correct pay fixation order dated 29.11.2022 has been issued; hence no cause of action arises in favour of the petitioner for seeking the interim relief at this stage.

In reply, Ld. Counsel for the petitioner submitted that petitioner is a retired Government employee and sole breadwinner of the family. He does not have any other source of income other than his retiral benefits. and as per the decision rendered by Hon'ble Apex Court in the decision rendered in State of Punjab vs. Rafiq Masih, (2015) 4 SCC 334, has observed thus:

"18. 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."

Petitioner's case is covered by situation no. (ii).

There shall be interim stay on recovery, if any, from the retiral dues of the petitioner, on the basis of wrong fixation of his salary, during pendency of the claim petition.

Prayer for interim relief is disposed of with the above directions.

Ld. A.P.O. seeks and is granted time to file C.A./W.S. on behalf of Respondents.

List on 18.08.2023 for further orders."

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4. Counter Affidavit has been filed on behalf of Respondents No. 1, 2 & 3.....

5. It is the submission of Ld. A.P.O. that due to wrong fixation of 3rd ACP, petitioner was made over payment of Rs.7,85,567/- which amount has been adjusted *vide* order dated 29.11.2022. Correct pay fixation order has been issued on 29.11.2022 on the advise of Finance Controller of the department. Ld. A.P.O. also submitted that petitioner has been paid GPF, GIS and leave encashment and so far as the payment of gratuity and pension is concerned, order for provisional pension has been issued *vide* Office Order dated 18.09.2023. Ld. A.P.O. also submitted that when provisional pension will be given to the petitioner, Gratuity will automatically be given to him.
6. The Tribunal records the aforesaid statement of Ld. A.P.O., which (statement) has been given by him on the basis of the note appended to Office Order No. 1197/ 29-3 Chakrata, dated 18.09.2023 issued by DFO, Chakrata Forest Division, Chakrata. The said office-order is made part of the record.
7. Petitioner is satisfied with the same.
8. Respondents are directed to pay the admissible interest on delayed payment of gratuity.
9. When the very purpose of filing the claim petition is fulfilled, there is no use in keeping the claim petition pending. The claim petition is, accordingly, closed, with the consent of Ld. Counsel for the parties. No order as to costs."

4. It is the submission of Ld. Counsel for the petitioner that petitioner supplied the copy of judgment dated 20.09.2023 to the respondent department on 03.10.2023 (Annexure: 2), but, till date order dated 20.09.2023 has not been complied with by the authority concerned. It is also the submission of Ld. Counsel for the petitioner/ executioner that casual approach on the part of opposite party(s)/respondent(s) should not be tolerated and strict direction should be given to them to ensure compliance of such order. [Ld. counsel for the petitioner/executioner submitted that such direction can be given by the Single Bench of the Tribunal. Ld. A.P.O. agrees with such legal proposition].

5. Considering the facts of the case, this Tribunal directs the authority concerned to comply with the order dated 20.09.2023, passed by this Tribunal in Claim Petition No. 104/DB/2023, Sri Kumiya vs. State & others, if the same has not been complied with so far, without further loss of time, failing which the concerned respondent(s) may be liable to face appropriate action under the relevant law governing the field.

6. Petitioner/ executioner is directed to place a copy of this order before the authority concerned to remind that a duty is cast upon said authority to do something, which has not been done.

7. Execution application is, accordingly, disposed of at the admission stage, with the consent of Ld. Counsel for the parties.

8. Let copies of this order be supplied to Ld. Counsel for the petitioner/executioner and Ld. A.P.O., as per Rules.

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: NOVEMBER 10, 2023.
DEHRADUN

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