

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

Present: Hon'ble Mr. Justice U.C.Dhyani

----- Chairman

Hon'ble Mr. Rajeev Gupta

-----Vice Chairman (A)

CLAIM PETITION NO. 85/SB/2020

Smt. Pushpa Tyagi w/o Late Sri Kailash Chand, aged about 60 years, r/o 2/48,
Radhapuram Estate, NH-2, District Mathura, U.P.

.....Petitioner

vs.

1. State of Uttarakhand through Secretary, Public Works Department, Secretariat, Subhash Road, Dehradun.
2. The Engineer-in-Chief and HOD, Public Works Department, Yamuna Colony, Dehradun.
3. The Executive Engineer, PWD, Provincial Division, Uttarkashi.
4. The Director, Directorate of Pension, Treasury & Entitlement, 23 Laxmi Road, Dalanwala, Dehradun.
5. The Senior Treasury Officer, Uttarkashi, Uttarakhand.

.....Respondents

Present: Sri L.D.Dobhal & Sri Raj Kumar Galav, Advocates, for the Petitioner.
Sri V.P.Devrani, A.P.O., for the Respondents.

JUDGMENT

DATED: NOVEMBER 18, 2021

Per: Rajeev Gupta, Vice Chairman (A)

This claim petition has been filed by the petitioner, seeking the following reliefs:

- A. *The respondents be directed to refund the amount of Rs. 1, 90,000/- deducted on the pretext of Tax at source but wrongly adjusted the same towards the recovery of provisional pension.*

B. The respondents be directed not to deduct any amount in installments from the monthly family pension payable to petitioner.

C. In alternative, if the respondents are successful in deducting any amount in installments from the monthly family pension payable to petitioner, the same be directed to refund to the petitioner with interest.

D. Suitable direction be issued to the respondents to con-authorize the name of disabled son of petitioner in the pension papers.

E. Any other appropriate directions be issued to the respondents to the above effect.

F. Any other order or direction, which the Hon'ble Tribunal thinks fit, be also awarded.

G. Costs of the petition be also awarded.

2. Brief facts of the claim petition are, as below:

The petitioner's husband Late Sri Kailash Chand Tyagi was the employee of the Public Works Department, Uttarakhand and retired as an Assistant Engineer on 31.01.2018 on attaining superannuation. On retirement, petitioner's husband Late Sri Kailash Chand Tyagi was neither paid retiral benefits nor pension and in the meantime, he died on 20.02.2018. On account of non-payment of retiral benefits, arrears of salary and pension etc., the petitioner's husband had to move the Hon'ble Tribunal by filing the Claim Petition No. 23/SB/2019. The respondents in pursuance of judgment dated 16.07.2019 of the Tribunal, paid much of the amount except the interest on retiral benefits, arrears of salary and part payment of leave encashment etc. for which the execution application was filed and the compliance order was passed on 19.03.2020 by the Hon'ble Tribunal and still the said compliance is awaited as part payment is not made.

The respondent No. 4 issued the Pension Payment Order (PPO) no. UK/13/31012018/26431 dated 08.08.2019 to the petitioner according to which Rs. 39,82,965/- were paid to the petitioner after deducting Rs. 1,90,000/- as tax.

While making the above payment, the respondents did not adjust the amount of provisional family pension amounting to Rs. 6,67,299/- paid earlier. The tax amount of Rs. 1,90,000/- though deducted as amount of tax, was not deposited by Respondent no. 5 with the income tax authorities, which was an illegal act on his part. Respondent no. 5 did not inform the petitioner on this count.

The Respondent no. 5, by writing a letter to the Income Tax Officer (TDS), Haridwar informed him that the aforesaid amount of Rs. 1,90,000/- was not deducted as Income Tax for the year 2019-20 and therefore, it was not shown in 26AS (form). It was further mentioned in the letter that the above amount was adjusted towards the amount of provisional family pension, out of the pension payable to the petitioner for the year 2019-20. This act on the part of the respondents was illegal and they had no authority to adjust the amount, deducted on account of Income Tax towards the adjustment of provisional family pension. They either have to pay the above amount to the Income authorities or refund the same to petitioner.

It was the duty of the respondents to pay the retiral benefits and family pension to the petitioner after deducting the amount of provisional family pension paid earlier. The respondents wrongly did not do so. Thus, the excess amount of family pension of Rs. 6,67,299/- deposited in the account of petitioner by the respondents, was without the knowledge of petitioner and without her fault. The Respondent No. 5 by writing a letter viz letter no. 41/Kosh./Pension/ Rec./2020-21/dated 14.08.2020 have called upon the petitioner to refund the amount of provisional pension of Rs. 4,77,299/- till 15.09.2020 failing which recovery of same shall be made by making a deduction of Rs. 19, 890/- in 23 installments and of Rs. 19,829 in one installment starting from the month of September, 2020. Similarly, the Respondent No. 3 *vide* his letter No. 1999/2E/dated 13.08.2020 informed the Respondent no. 5 that a sum of Rs. 1,90,000/- has already been recovered from the pension amount of Rs. 9,11,145/- on account of provisional pension and the rest amount of Rs. 4,77,299/- be recovered from

the pension payable per month to the petitioner in 23 installments of Rs. 19,890/- and one installment of Rs. 19,829/-.

The respondents have no right to recover the said amount of excess payment made to petitioner under the law or any other Act or law in force. In the present circumstances, the law does not allow the respondents to recover the excess amount in question. The petitioner is an aged widow and has a large family to support including a disabled son and the family pension is the only source of income. Therefore, the earning through the family pension is needed to upkeep her family to meet the expenses of her illness and to meet the financial needs of her disabled son who is wholly dependent on her. Therefore, any recovery of the excess payment from the petitioner will cause undue hardship to her. The name of son of the petitioner, Sri Deepak Tyagi aged about 28 years, who is disabled since birth and is wholly dependent on her for his livelihood and other personal needs, is not included in the pension papers with disabled note issued by the Respondent no. 4. The said disabled son of petitioner is under law entitled to get family pension after the death of petitioner. Therefore, the name of Sri Deepak Tyagi, with disability clause, is to be included in the pension papers by way of co-authorization under the relevant rules relating to grant of family pension.

Hence, this claim petition.

3. From the Counter Affidavits filed by the respondents, the following position emerges:

In 2016, petitioner's husband was assigned the work acquisition of land for construction of Gramin Motor Marg. On the allegation of embezzlement of Govt. money amounting to Rs. 1,63,94,077/- levelled against him, vigilance enquiry was conducted against him. Charge sheet was issued to him on 11.08.2016. Ultimately, admitting the levelled charge, he submitted the papers of Rs. 1,41,15,996/- distributed as compensation money to the land owners on 26.12.2017 and remaining balance amount of Rs. 22,78,081/- was deposited by him in the Govt. Account on 28.01.2018. Hence, he was exonerated from the enquiry on 23.07.2018 on sympathetic

ground that there are no Govt. dues pending against him and he has expired in February 2018 and would have retired on 31.01.2018. Therefore, he was reinstated w.e.f. 31.01.2018 and the disciplinary departmental enquiry as conducted against him was closed by the Govt. Further, *vide* order dated 23.07.2018, it was ordered to pay the final post retiral dues of the petitioner.

Thereafter, payment of the retiral dues has been made on various dates. Provisional pension was sanctioned to the petitioner *vide* order dated 19.09.2018 and upto 02.07.2019, an amount of Rs. 6,67,299/- had been provided to her as provisional family pension. As per PPO dated 08.08.2019, final pension was to be paid to her after deducting the amount of the provisional family pension already paid. However, due to technical fault of the inter-net server, this amount could not be deducted from the amount of Rs. 41,72,965/-. Only Rs. 1,90,000/- was deducted which has been adjusted towards the excess payment of provisional family pension. Remaining amount of Rs. 4,77,299/- of the excess provisional family pension is now being recovered in monthly installments. Further arrears of 7th Pay Commission of Rs. 91,491/- and interest on pension amounting to Rs. 21,236 (total amount of Rs. 1, 12,727/-) has also been found due to the petitioner and the same has also been deducted in the amount being recovered from the petitioner.

4. An application dated 30.03.2021 was filed on behalf of the petitioner that on her representation dated 09.08.2020 (Annexure: 12 to the claim petition), sent to the respondent no. 2 according to which, the full amount of interest along with other dues amounting to Rs. 5,25,214/- were to be paid to her, the respondents have adjusted only Rs. 1,12,727/- leaving a balance amount of Rs. 4,12,687/-. This representation has not been decided as per the directions given by this Tribunal *vide* its judgment and order dated 16.07.2019 in Claim Petition No. 23/SB/2019. Respondent No. 1 passed the order treating the suspension period as duty in terms of Para 54B of the Fundamental Rules, but the respondents did not pay the salary/Encashment of Earned Leave of the period of 45 days amounting to Rs. 1,42,197/-. With this letter, the petitioner has filed a table as Annexure No. 15 showing the

amount of her pending claims and the payments made by the respondents against her claim and the balance amount, which she is entitled to receive. This table includes the Leave Encashment for 45 days amounting to Rs. 1,42,197/- and interest on various items.

5. Through Supplementary C.A. dated 18.07.2021, the respondents have stated that all the retiral dues admissible as per the rules have duly been paid. The objections to the Supplementary C.A. have again been filed on behalf of the petitioner on 27.08.2021.

6. In the hearing on 21.10.2021, the petitioner has produced a detailed chart showing how the various amounts are still due to her which needs examination by the respondent department. Arguments, of both the sides have also been heard on this date, wherein, learned A.P.O. has stated that the Earned Leave for 45 days had already been applied by the petitioner's husband during suspension period as he had failed to mark attendance in the office where he was attached. Subsequently, when the Earned Leave for this 45 days was sanctioned, the same was reduced from the Earned Leave due to the petitioner and thus could not be encashed under the Rules. Interest on various retiral dues as admissible under the Rules, have already been paid. Regarding the inclusion of name of the petitioner's son in the pension papers with disability note, the respondent department has taken action and the same is under process.

7. Learned Counsel for the petitioner has stressed in the arguments that dues amounting to Rs. 4,12,687 are still payable to the petitioner as per Annexure No. 15 and that recovery from pension cannot be made in view of the various rulings of Hon'ble Courts. He has filed judgment of (i) Hon'ble Madras High Court in W.P. No. 41076 of 2016 and WMP Nos. 35064 & 35065 of 2016, M/s Rukmani Ramanujam vs. The Secretary to Govt. of India, Ministry of Personnel, Public Grievances & Pensions, Department of Personnel and Training, New Delhi and others, decided on 20.06.2018 (ii) judgment of Hon'ble U.P. High Court in Smt. Hasina Begum vs. Purvanchal Vidyut Vitran Nigam Ltd., Prayagraj and 2 others (iii) judgment of Hon'ble

Bombay High Court in WP No. 4610 of 2016, Babruwan vs. State of Maharashtra and others and (iv) judgment of Hon'ble Bombay High Court in LD-VC-CW 665 of 2020, Shri Naini Gopal vs. Union of India & others, decided on 20.08.2020.

8. The judgment of Hon'ble Madras High Court rendered in W.P. No. 41076 of 2016 and WMP Nos. 35064 & 35065 of 2016, M/s Rukmani Ramanujam (*supra*), states the judgment of Hon'ble Supreme Court in the case of State of Punjab vs. Rafiq Masih (2015) 4 SCC 334. Para 18 of the Hon'ble Supreme Court's judgment is reproduced as below:

"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 hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:-

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

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

(iii) Recovery from the 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."

9. The above judgment of Hon'ble Madras High Court also mentions the judgment of Hon'ble Supreme Court rendered in Chandi Prasad Uniyal and others vs. State of Uttarakhand and others, reported in (2012)8SCC 417. The relevant portion of this judgment is extracted as below:

“14. We are concerned with the excess payment of public money which is often described as taxpayers' money which belongs neither to the officers who have effected overpayment nor to the recipients. We fail to see why the concept of fraud or misrepresentation is being brought in such situations. The question to be asked is whether excess money has been paid or not, may be due to a bona fide mistake. Possibly, effecting excess payment of public money by the government officers may be due to various reasons like negligence, carelessness, collusion, favouritism, etc. because money in such situation does not belong to the payer or the payee. Situations may also arise where both the payer and the payee are at fault, then the mistake is mutual. Payments are being effected in many situations without any authority of law and payments have been received by the recipients also without any authority of law. Any amount paid/received without the authority of law can always be recovered barring few exceptions of extreme hardships but not as a matter of right, in such situations law implies an obligation on the payee to repay the money, otherwise it would amount to unjust enrichment.”

10. In the above case before the Hon'ble Madras High Court, the writ petitioner was a family pensioner and at the time of filing of the writ petition, she was aged about 92 years and she was not aware of the details of the fixation or re-fixation of the pension done by the respondent. Further, there was no misrepresentation or otherwise, on the part of Writ Petitioner in respect of the fixation of the family pension. The respondent issued the impugned order for recovery on the ground that excess family pension has been disbursed in favour of the Writ Petitioner from the year 2006 onwards. The recovery was imposed after the lapse of about 10 years and more specifically, without issuing any show cause notice and without any opportunity. Keeping in view the facts and circumstances of that case, the Hon'ble High Court of Madras quashed the order of recovery and allowed the writ petition.

11. In the petitioner's case, we observe that there was no wrong or higher fixation of pension/family pension and that due to technical mistake, the earlier paid provisional family pension was not adjusted in the payment made to the petitioner. The petitioner herself says that it is the mistake of the respondents. The letter No. 1289/2E dated 16.06.2020 written by the Executive Engineer, PWD, Provincial Division, Uttarkashi, respondent no. 3 to

the petitioner is annexed as Annexure No. CA2 to the Counter Affidavit filed on 22.12.2020. This letter states that *vide* letter No. 2576/2E dated 08.07.2019, pension matter of the Late Sri Kailash Chand Tyagi (petitioner's husband) was sent for sanction to Director/Additional Director, Account and Entitlement in which it was clearly written that the petitioner has been paid provisional pension of Rs. 6,67,299/- from March 2018 to April 2019. While generating pension papers, no option was appearing to subtract the provisional pension and this amount could not be adjusted. Therefore, for deduction of the above provisional pension, letter was sent to the Director/Additional Director, Data Centre whose copy was also endorsed to the petitioner. Thereafter, Director, Treasury *vide* his letter dated 08.08.2019 gave approval of the pension, gratuity and Leave Encashment in which the above provisional pension amount was not recovered, after which *vide* letter no. 3135/2E dated 13.08.2019, the petitioner was asked to be present in the office of Senior Treasury Officer, Uttarkashi. In this letter, Senior Treasury Officer, Uttarkashi, was asked to adjust the amount of provisional pension paid from March 2018 to April 2019 but at the time of payment of final pension, the Treasury Officer could not adjust the above amount. Against the total due pension of Rs. 9,11,145/- the petitioner was to be paid net amount of Rs. 2, 43,846/- after adjustment of Rs. 6,67,299/, while the entire amount of Rs. 9, 11,145 has been paid to her. The petitioner was again requested *vide* the above letter dated 16.06.2020 to deposit the amount of Rs. 6,67,29/- paid to her as provisional pension through Challan in the corresponding Accounts Head at an early date. This letter shows that the petitioner was aware that the amount of provisional pension paid to her had to be deducted from the payment of final pension to be made to her and she was informed immediately when the wrong payment was made to her. Despite request of the department, she did not deposit this amount in the corresponding Accounts Head and thereafter, recovery proceedings have been started against her.

12. We observe that the petitioner's husband before retirement was an Assistant Engineer who is a Class-II officer. It is not a case of wrong or

higher fixation of the pension/family pension or recovery of old dues but a case of wrong disbursement of extra amount on account of non-adjustment of the provisional pension paid earlier due to technical error. The petitioner was immediately informed about the same but she did not return this extra amount which she could have easily done without facing any financial hardship. It would have been only tantamount to receipt of the actual amount which was due to her on the basis of the fixation of pension/family pension. She is not entitled to the shelter of non-recovery from the pension as her case does not fall in the circumstances mentioned in the judgment of Hon'ble Supreme Court in State of Punjab vs. Rafiq Masih, cited above. On the other hand, non-recovery from the petitioner would amount to her unjust enrichment at the cost of public money. Petitioner's case is also not covered under the other rulings cited by learned Counsel for the petitioner.

13. In view of the above, we hold that the petitioner should have immediately returned the excess payment made to her by depositing the same through Challan under the relevant Accounts head, which would have caused no hardship to her and on her not doing the same, the respondents are entitled to recover the same in monthly installments from her family pension. She is still gaining some extra income by way of interest generated on the extra amount paid to her.

14. As far as the petitioner's claim for interest on delayed payments is concerned, Annexure: CAR3 to the Counter Affidavit dated 22.12.2020 is the Office Order dated 17.12.2020 of the Respondent no. 3 which states in its point no. 3 that the petitioner produced her documents in April 2018 and the interest on gratuity has been paid from April 2018 to August 2019 on 09.12.2019 and her demand for interest of additional five months is on wrong facts and baseless. But this office order does not explain how the facts are wrong and baseless. Similarly this order does not properly explain the delay in other payments and non-entitlement of the Encashment of Earned Leave of 45 days. This order also states that for recording the name of the petitioner's son Sri Deepak Tyagi in the pension papers, the Respondent no. 2 has sent letter dated 28.08.2020 to the Director/Additional Director of

Directorates of Treasury, Pension, Accounts and Entitlement and respondent no. 3 has also written to them *vide* his letter dated 19.11.2020.

15. We observe that there are Govt. Orders, which specify time schedule for preparation of various papers for retiral benefits. We also observe that the disciplinary proceedings against the petitioner's husband for embezzlement of Govt. money were going on which were concluded on 23.07.2018 after his retirement and death which would have delayed finalization of his retiral dues. The minute examination of the record is required to ascertain the exact amount of delay, over and above the normal procedural time taken in processing of the retiral benefits, on which interest is payable to the petitioner. Respondents have already paid some interest to the petitioner. It will be in the fitness of things that Respondent no. 2 may examine the issue of delay in various payments thoroughly and also examine the demand for encashment of 45 days Earned Leave after giving opportunity of personal hearing to the petitioner and pass reasoned and speaking orders at an early date accepting/partly accepting/rejecting her demands of payment of interest on various delayed payments and encashment of Earned Leave of 45 days. If any amount is found payable to the petitioner, the same may be accounted for in the recovery proceedings. The respondents may also ensure that the name of the petitioner's son with disability clause is included in the pension papers by way of co-authorization under the relevant rules, relating to grant of family pension.

16. Order as above.

17. The claim petition is, accordingly, disposed of. No order as to costs.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: NOVEMBER 18, 2021
DEHRADUN.
KNP