

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

**CLAIM PETITION NO. 108/SB/2022**

Sri Rakesh Jain Retd. Superintending Engineer, Public Works Department,  
Uttarakhand, Dehradun, r/o73/50 Malviya Road, Laxman Chowk, Dehradun.

.....Petitioner

**vs.**

1. State of Uttarakhand through Secretary, Public Works Department, Govt. of Uttarakhand, Secretariat, Subhash Road, Dehradun.
2. Engineer-in-Chief and Head of Department, Public Works Department, Yamuna Colony, Dehradun.
3. Director, Treasury, Pension and Entitlement, Uttarakhand, 23 Laxmi Road, Dalanwala, Dehradun.

.....Respondents.

Present: Sri L.K.Maithani. Advocate, for the Petitioner. (online),  
Sri V.P.Devrani, A.P.O., for the Respondents.

**JUDGMENT**

**DATED: NOVEMBER 28, 2023**

**Justice U.C.Dhyani (Oral)**

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

- a) To quash the impugned order dated 30.03.2022 (Annexure No. A-1) and impugned order dated 06.04.2022 (Annexure No. A-2) of respondent No. 3 with its effects and operation.

- b) To issue an order or direction to the respondents to return the recovered amount of gratuity of Rs. 1,15,707/- to the petitioner with interest as per G.P.F. rate since the date 31.12.2021 till the date of actual payment.
- c) To issue an order or direction to the respondents to pay the interest on the delayed payment of amount of gratuity as per G.P.F. rate since the date of retirement i.e. 31.12.2021 till the date (12.05.2022, the date when the amount of gratuity was paid to the petitioner.
- d) To issue any other suitable order or direction which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.
- e) To award the cost of the petition to the petitioner.”

2. Petitioner is a retired Superintending Engineer. He was serving in Public Works Department, Uttarakhand. He retired on 31.12.2021. His retiral dues were although paid, but there was delay in releasing the same. Also, due to miscalculation on the part of the respondent department, an amount of Rs. 1,15,707/- was deducted from his gratuity. It is the submission of Ld. Counsel for the petitioner that after retirement of the petitioner, excess payment from the gratuity was recovered, which requires to be refunded to him along with interest as per prevalent GPF rate, since 01.01.2022 till the date of actual payment. Relevant documents have been filed in support of the claim petition.

3. The claim petition has been contested by the Respondents. C.A. has been filed by Sri Prem Singh Nabiyal, Senior Staff Officer, Engineer-in-Chief Office, P.W.D., Uttarakhand, on behalf of Respondents No. 1 & 2. C.A. has also been filed by Sri Pankaj Tiwari, Director, Treasuries, Pension & Entitlement, Uttarakhand, Dehradun, Respondent No.3.

4. The material facts of the claim petition have been denied in the Counter Affidavit. Relevant documents have been filed with the C.A.

5. It has been mentioned in the C.A., as has been pointed out by Ld. A.P.O., that before petitioner's retirement, his service book was sent to Finance Controller, H.O.D. Office, for verification. As per the report of Finance Controller, the petitioner was getting excess payment as on 31.12.2015. He was getting Rs.38,690/- as basic pay, whereas the admissible basic pay, as on the date was Rs.37,810/-. Thus, total excess payment, to the petitioner, was Rs.1,15,707/-. Correct fixation was made on 30.03.2022 and

excess payment was adjusted from the gratuity of the petitioner *vide* order dated 06.04.2022.

6. Annexure: A-1 is the fixation done by the respondent department after removing the objections raised by Respondent No.3. Annexure: A-1 is under challenge in present claim petition.

7. Annexure: A-2 is the recovery of excess payment of Rs.1,15,707/- from the gratuity of the petitioner. The same is also under challenge in present claim petition.

8. Hon'ble Apex Court in the decision rendered in State of Punjab vs. Rafiq Masih, (2015) 4 SCC 334, has settled the dust while observing, as under:

“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, summarize 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.”

*[Emphasis supplied]*

This fact is undisputed that the petitioner is a retired officer of P.W.D. The recovery from the retiral dues of a Govt. servant cannot be made as per the above noted decision of the Hon'ble Supreme Court. His matter is covered by situation no. (ii).

9. A sum of Rs.1,15,707/-, which has been recovered from the gratuity of the petitioner, should, therefore, be refunded to the petitioner along with admissible interest, as per law.
10. Ld. A.P.O. submitted that, out of the admissible gratuity, Rs.1,15,707/- was deducted as excess payment, and the balance was paid to the petitioner. Ld. Counsel for the petitioner submitted that the petitioner is entitled to interest on Rs.1,15,707/- from 01.01.2022 till the date of actual payment.
11. There is, however, no embargo on the respondent department against correct fixation of pay even after retirement, as per the decision rendered by Hon'ble High Court of Judicature at Allahabad on 17.12.2018 in Writ -A No. 26639/2018, Smt. Hasina Begum vs. Purvanchal Vidyut Vitran Nigam Ltd, Prayagraj and 02 others [Citation- 2018:AHC:204373]
12. It is clear from the documents brought on record that the petitioner retired on 31.12.2021, but lesser amount of gratuity was paid to him with delay.
13. Annexure: A-1 and Annexure:A-2 are, therefore, set aside to the extent of recovery of excess payment from the retiral dues of the petitioner.
14. Although the petitioner has prayed for interest *w.e.f.* 31.12.2021 till 12.05.2022, but, Ld. A.P.O. pointed out that gratuity was released to him on 11.04.2022, therefore, he will be entitled to interest only *w.e.f.* 01.01.2022 till 10.04.2022.
15. There is no other contentious issue in this claim petition.
16. The respondents are, accordingly, directed to refund Rs.1,15,707/- to the petitioner along with interest at the prevalent GPF rate *w.e.f.* 01.01.2022 till the date of actual payment.
17. The petitioner is also entitled to interest as per prevalent GPF rate on delayed payment of gratuity *w.e.f.* 01.01.2022 to 10.04.2022.
18. This is as per Govt. Order dated 10.08.2004 of the Government of Uttarakhand.

19. To sum up, the petitioner is entitled to the following:
- (i) Refund of Rs.1,15,707/- along with interest, as per the prevalent GPF rate, on delayed payment of gratuity *w.e.f.* 01.01.2022 till the date of actual payment.
  - (ii) Interest, as per prevalent GPF rate, on delayed payment of gratuity from 01.01.2022 to 10.04.2022.
20. Ld. Counsel for the petitioner submitted that such an order can be passed by the Single Bench of the Tribunal.
21. Order accordingly.
22. The claim petition thus stands disposed of . No order as to costs.

**(JUSTICE U.C.DHYANI)**  
CHAIRMAN

*DATE: NOVEMBER 28, 2023.*  
*DEHRADUN*

*VM*