

**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. 04/DB/2022**

Smt. Rameshwari Negi, w/o Sri Rajendra Singh Negi, r/o House No. 29-B  
Shatabdi Enclave, Nathanpur, Jogiwala, Dehradun.

.....Petitioner

**vs.**

1. Chief Medical Superintendent, Govt. District Hospital, Dehradun, District Dehradun.
2. Chief Medical Superintendent, Govt. District Hospital, Gopeshwar, District Chamoli.
3. Director General, Medical, Health and Family Welfare, Uttarakhand, Sahastradhara Road, I.T. Park, Dehradun.
4. State of Uttarakhand through Secretary, Medical, Health and Family Welfare, Govt. of Uttarakhand, Secretariat, Subhash Road, Dehradun.
5. Director, Directorate of Treasury, Pension and Entitlement, Uttarakhand, Laxmi Road, Dalanwala, Dehradun .

.....Respondents

Present: Sri B.S.Rawat, Advocate, for the Petitioner  
Sri V.P. Devrani, A.P.O. for the Respondents.

**JUDGMENT**

**DATED: JUNE 05, 2023.**

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

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

- “i). That the impugned proceedings and order of respondent no.-(1), dated 31-12-2020 may be quashed by which the excess salary payment towards the petitioner has been shown.
- ii) That the impugned proceedings and order of respondent no. (5), letter no.-6968 dated 26-03-2021 may be quashed, so far the deduction of gratuity amount Rs. 4,73,999/- is concerned. And respondent parties have to be directed to pay the deducted amount of gratuity Rs 4,73,999/- to the petitioner.
- iii). 12% Interest in the deducted amount Rs. 4,73,999/- w. e. f. 31-12-2020 to till the actual payment of deducted and unpaid gratuity amount will be paid to the petitioner.
- iv). Legal expenses of the petition as the hon. tribunal deems fit and proper, has to be given to petitioner from respondents.”

**PETITIONER’S VERSION**

2. Brief facts, giving rise to the present claim petition, are as follows:

2.1 The petitioner was a Staff Nurse in the respondent department. She served at various places before her retirement on 31.12.2020. During her service period, she was never issued any letter for payment of excess salary paid to her. As per the petition, her service period is unblemished.

2.2 When she retired, she was entitled to get Rs. 17,06,562/- as gratuity, but only a sum of Rs.12,32,563/- was released to her. In this way, a sum of Rs.4,73,999/- was deducted from her gratuity. No explanation was sought from her. As per the petition, no show cause notice was issued. The respondent department has deducted Rs.4,73,999/- apparently on the pretext of excess payment of salary made to her during her service period.

2.3 Aggrieved by such action of respondent department, petitioner sent notice to Respondents No. 1 and 3 through her Advocate on

02.08.2021(Annexure: A 5), which was replied to by the respondent department by rejecting her representation (Annexures: A-6 & A-7). Hence, present claim petition.

### **COUNTER VERSION**

3. Respondent department has contested the claim petition by filing W.S. Sri K.C. Pant, Principal Superintendent, Doon Hospital, Dehradun has filed C.A. on behalf of Respondents No. 1 to 4.

3.1 An effort has been made in the W.S., to justify, that the deduction made from the gratuity of the petitioner is as per correct calculation. In para 6 of the C.A., pay scale of the petitioner serving as Staff Nurse/ Sister and promotional pay scale on completion of 24 years of satisfactory service has been given. In para 6, it has also been indicated that as per G.O. of ACP, the benefit of increment in grade pay of Rs.5400/- was admissible to her after completion of six months' satisfactory service in grade pay Rs.5400, but the benefit has been granted on the same day *i.e.* 07.07.2007 (which, as per C.A., was erroneously done). On completion of 26 years of satisfactory service, she was granted 3<sup>rd</sup> ACP in the pay scale of Rs.15600-39100 grade pay Rs. 6600/- from 07.07.2009 (revised pay Rs.67700-208700, Level 11). Hence, in the entire service of 36 years, the petitioner has been granted actual promotion and benefit of promotional scale as per rule.

### **SUBMISSIONS ON BEHALF OF PETITIONER**

4. It is the submission of Ld. Counsel for the petitioner that no prior notice was given to the petitioner before (illegally) deducting (allegedly) excess salary from her. Deduction was made from her gratuity, which act of the respondents was not fair. Ld. Counsel for the petitioner also submitted that the act of the respondents is in contravention to the provisions of the Uttar Pradesh Pension Cases (Submission, Disposal And Avoidance of Delay) Rules, 1995, inasmuch as the respondents have not finalized the gratuity etc. of the petitioner in terms of time schedule prescribed under Rules 3(b) & 3 (k) of the Rules. The petitioner is entitled to interest on wrongful deduction, as well as delay in making payment of retiral dues.

4.1. Ld. Counsel for the petitioner also submitted that petitioner is not responsible for miscalculation on the part of respondent department. No fraud or misrepresentation is attributed to her. She is entitled to the reliefs claimed in view of the decision rendered by Hon'ble Apex Court in the State of Punjab and others vs. Rafiq Masih (Whitewasher), (2015) 4 SCC 334.

#### **SUBMISSIONS OF LD. A.P.O.**

5. Ld. A.P.O. defended the departmental action with vehemence. He submitted that when the service record of the petitioner was scrutinized by the Finance Controller of the department, soon before her retirement, it was found that she has wrongly been given double benefit of the increment on 07.07.2007. The respondent employer has right to adjust the amount erroneously made to the petitioner, from her retiral dues. Ld. A.P.O. further submitted that respondent department is justified in deducting the excess salary paid to the petitioner. Such excess payment has been deducted from her retiral dues. Ld. A.P.O. further argued that non-adjustment of the excess payment thus made to the petitioner would cause loss to the State exchequer and will tantamount to unjust enrichment of the petitioner. Excess payment of Rs.4,73,999/- was liable to be adjusted from the gratuity of the petitioner. According to Ld. A.P.O., there is no illegality or irregularity in adjusting such excess payment.

5.1 Defending departmental action, Ld. A.P.O. also submitted that the only grievance of the petitioner is that the opportunity of hearing was not given to her. The same is not tenable, as it would not have made any difference to her. Rather, it would have caused delay in making payment of retiral dues to her. According to Ld. A.P.O., show cause notice was mandatory, if the amount was being recovered as penalty. Here, it was an adjustment of erroneous payment made to her. The same has been adjusted in a natural course and has not been recovered from her by way of punishment. Ld. A.P.O. has placed reliance upon a decision rendered by Hon'ble Court in Chandi Prasad Uniyal vs. State of Uttarakhand, (2012) 8 SCC 417.

## DISCUSSION

6. Petitioner retired as Group-C employee from the respondent department. No notice was given to her before making deduction from her gratuity. Such deduction was made on the pretext of excess payment of salary made to her during service period. Respondents' version is that the benefit of increment in grade pay of Rs.5400/- was admissible to her after completion of six months' satisfactory service in grade pay Rs.5400/-, but the benefit has been granted on the same date i.e. on 07.07.2007, which, as per C.A., was erroneously given to her. In a nutshell, it is the case of the respondents that petitioner has wrongly been given double benefit of the increment on 07.07.2007 and employer has right to adjust the amount erroneously paid to the petitioner from her retiral dues. The Tribunal is unable to accept the contention of Ld. A.P.O. that respondent department is justified in adjusting excess payment made to the petitioner by deducting the same from her gratuity, after her retirement, for the reasons mentioned in the following paragraphs of this judgment.

7. The petitioner was given monetary benefit, which was in excess of her entitlement. The monetary benefits flowed to her consequent upon a mistake committed by the respondent department in determining the emoluments payable to her. The respondent department has admitted that it is a case of wrongful fixation of salary of the petitioner. The excess payment was made, for which petitioner was not entitled. Long and short of the matter is that the petitioner was in receipt of monetary benefit, beyond the due amount, on account of unintentional mistake committed by the respondent department.

8. Another essential factual component of this case that the petitioner was not guilty of furnishing any incorrect information, which had led the respondent department to commit the mistake of making a higher payment to the petitioner. The payment of higher dues to the petitioner was not on account of any misrepresentation made by her, nor was it on account of any fraud committed by her. Any participation of the petitioner in the mistake committed by the employer, in extending the undeserved monetary benefit to the employee (petitioner), is totally ruled out. It would, therefore, not be incorrect to record, that the petitioner was as innocent as her

employer, in the wrongful determination of her inflated emoluments. The issue which is required to be adjudicated is, whether petitioner, against whom recovery ( of the excess amount) has been made, should be exempted in law, from the reimbursement of the same to the employer. Merely on account of the fact that release of such monetary benefit was based on a mistaken belief at the hand of the employer, and further, because the employee (petitioner) had no role in determination of the salary, could it be legally feasible to the employee (petitioner) to assert that she should be exempted from refunding the excess amount received by her ?

9. In so far as the above issue is concerned, it is necessary to keep in mind that a reference, in a similar matter, was made by the Division Bench of two Judges of Hon'ble Supreme Court in *Rakesh Kumar vs. State of Haryana*, (2014) 8 SCC 892 for consideration by larger Bench. The reference was found unnecessary and was sent back to the Division Bench of Hon'ble Apex Court for appropriate disposal, by the Bench of three Judges [*State of Punjab vs. Rafiq Masih*, (2014) 8SCC 883]. The reference, (which was made) for consideration by a larger Bench was made in view of an apparently different view expressed, on the one hand, in *Shyam Babu vs. Union of India*, (1994) 2SCC 521; *Sahib Ram vs. State of Haryana*, (1995) (Suppl) 1 SCC 18 and on the other hand in *Chandi Prasad Uniyal vs. State of Uttarakhand*, (2012) 8 SCC 417, a reference of which has been given by Ld. A.P.O. in one of the foregoing paragraphs of this judgment and in which the following was observed:

“14. We are concerned with the excess payment of public money which is often described as “tax payers money” which belongs neither to the officers who have effected over-payment nor that of the recipients. We fail to see why the concept of fraud or misrepresentation is being brought in such situations. 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 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 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.”

It may be noted here that the petitioners Chandi Prasad Uniyal and others were serving as Teachers and they approached Hon'ble High Court and then Hon'ble Supreme Court against recovery of overpayment due to wrong fixation of 5<sup>th</sup> and 6<sup>th</sup> Pay Scales of Teachers/ Principals, based on the 5<sup>th</sup> Pay Commission Report. Here, the petitioner is retired Group 'C' employee.

10. In the context noted above, Hon'ble Apex Court in Paragraphs 6, 7 & 8 of the decision rendered in *State of Punjab vs. Rafiq Masih*, (2015) 4 SCC 334, has observed thus:

"6. In view of the conclusions extracted hereinabove, it will be our endeavour, to lay down the parameters of fact situations, wherein employees, who are beneficiaries of wrongful monetary gains at the hands of the employer, may not be compelled to refund the same. In our considered view, the instant benefit cannot extend to an employee merely on account of the fact, that he was not an accessory to the mistake committed by the employer; or merely because the employee did not furnish any factually incorrect information, on the basis whereof the employer committed the mistake of paying the employee more than what was rightfully due to him; or for that matter, merely because the excessive payment was made to the employee, in absence of any fraud or misrepresentation at the behest of the employee.

7. Having examined a number of judgments rendered by this Court, we are of the view, that orders passed by the employer seeking recovery of monetary benefits wrongly extended to the employees, can only be interfered with, in cases where such recovery would result in a hardship of a nature, which would far outweigh, the equitable balance of the employer's right to recover. In other words, interference would be called for, only in such cases where, it would be iniquitous to recover the payment made. In order to ascertain the parameters of the above consideration, and the test to be applied, reference needs to be made to situations when this Court exempted employees from such recovery, even in exercise of its jurisdiction under Article 142 of the Constitution of India. Repeated exercise of such power, "for doing complete justice in any cause" would establish that the recovery being effected was iniquitous, and therefore, arbitrary. And accordingly, the interference at the hands of this Court.

8. 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 would be in consonance with the concept of justice, which is assured to the citizens of India, even in the Preamble of the Constitution of India. The right to recover being pursued by the 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 employer to recover."

*[Emphasis supplied]*

11. Based on the decision, rendered by Hon'ble Apex Court in Syed Abdul Qadir vs. State of Bihar, (2009) 3 SCC 475 and hosts of other decisions, which were cited therein including B.J. Akkara vs. Union of India, (2006) 11 SCC 709, the Hon'ble Apex Court concluded 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."

12. The parties are not in conflict on facts. Petitioner's case is squarely covered by the aforesaid decision of Hon'ble Supreme Court. Petitioner is a retired Group 'C' employee and recovery made from her would be iniquitous or harsh to such an extent that it would far outweigh the equitable balance of employees' right to recover.

13. Reference may also be had to the decisions rendered by the Hon'ble Apex Court on 02.05.2022 in Civil Appeal No. 7115 of 2010, Thomas Daniel vs. State of Kerala & others, & in Civil Appeal No. 13407/2014 with Civil Appeal No. 13409 of 2015, B.Radhakrishnan vs. State of Tamil Nadu on 17.11.2015, decision rendered by Hon'ble Uttarakhand High Court on 12.04.2018 in WPSS No. 1346 of 2016, Smt. Sara Vincent

vs. State of Uttarakhand and others and decision rendered by Hon'ble Madras High Court on 019.06.2019 in WP(MD) No. 23541/ 2015 and M.P. (MD) No. 1 of 2015, M.Janki vs. The District Treasury Officer and another, in this regard.

14. Interference is called for in the impugned orders/ letters dated 31.12.2020 (Annexure: A 1) and 26.03.2021 (Annexure: A 3), in the peculiar facts of the case. The same are, accordingly, set aside/ modified, to the extent as is necessary. Respondents are directed to refund Rs.4,73,999-00/- to the petitioner, which has been recovered from her post-retirement, without unreasonable delay.

15. The claim petition is disposed of. No order as to costs.

**(RAJEEV GUPTA)**  
VICE CHAIRMAN (A)

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

*DATE: JUNE 05, 2023*  
*DEHRADUN*

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