

**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. 98/DB/2021

Gyan Singh Rawat, aged about 61 years, s/o Late Sri Buddhi Singh Rawat,
r/o Indira Nagar Forest Colony, Dehradun, Uttarakhand.

.....Petitioner

vs.

1. State of Uttarakhand through Secretary, Forest & Environment, Govt. of Uttarakhand, Dehradun.
2. Chief Project Director, Watershed Management Directorate, Uttarakhand, Dehradun.
3. Project Director (Administration), Uttarakhand, Dehradun.
4. Chief Treasury Officer, Treasury, Dehradun, Uttarakhand.

.....Respondents

Present: Sri M.C.Pant & Sri Abhishek Chamoli, Advocates,
for the Petitioner
Sri V.P. Devrani, A.P.O. for the Respondents.

JUDGMENT

DATED: MAY 15, 2023.

Justice U.C. Dhyani (Oral)

RELIEFS

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

“i. To quash the impugned order dated 09-03-2021, Order 23/08/2021 along with 12-08/2021 and order dated 22-09-2021 along with its effect and operation after calling the entire record from the respondents, as the impugned order was never in existence declaring the same as arbitrary, malafide, void and a nullity keeping in view the facts highlighted in the body of the petition.

II. To issue an order or direction to the respondents to remit the amount of Rs. 1,16,432 back to the petitioner which has been deducted by way of recovery, had the impugned orders never been in existence, and also pay Interest of 18% to petitioner on the deducted amount as well as on delayed payment of dues till date keeping in view the facts highlighted in the body of the petition.

III. To issue order or direction for grant of the damages and the compensation, such amount as the court may deem fit and proper in the circumstances of case in favour of the petitioner.

IV. To award the cost of petition.”

PETITIONER’S VERSION

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

2.1 The petitioner worked as Attendant in Watershed Management Directorate till his superannuation on 31.01.2021. According to the petition, he had unblemished service. During service, he came to know that one of his colleagues, Sri Dhan Singh Rawat, who retired on 31.12.2017, was paid excess salary by the respondent department. It was on account of miscalculation by the department. The excess amount was recovered from him (Sri D.S.Rawat) after his retirement. Petitioner, along with his colleagues, gave a representation on 03.08.2018 to Respondent No.3 for correct pay fixation of all the Class IV employees (Copy of representation: Annexure- A 6). The Uttarakhand Watershed Class IV State Employees Federation also sent a representation to Respondent No.3 (Copy of representation: Annexure- A 7). No decision was taken on such representations. A sum of Rs. 30128/- was deducted from the gratuity of the

petitioner after his retirement in consequence of order dated 09-03-2021 of Respondent No.3.

COUNTER VERSION

3. W.S. has been filed on behalf of the respondents. Sri Man Singh, Project Director (Admin), Watershed Management Directorate, has filed Counter Affidavit on behalf of Respondents No. 2 & 3. Each and every material averment in the claim petition has been denied, save and except as specifically admitted. R.A. thereto has also been filed.

4. It has been mentioned in the W.S. that the salary of the petitioner was re-fixed on 12-08-2021 w.e.f. 01-01-2016. On re-fixation, it was found that excess payment of Rs.72210/- has been made to the petitioner. The salary of the petitioner was re-fixed *vide* order dated 12-08-2021. The overpaid amount was assessed as Rs.1,16,378/- [Rs.30,128/- +72,210/- +14,040/- (leave encashment)], therefore, a sum of Rs. 1,16,378/- has been adjusted from the final payment made to the petitioner.

SUBMISSIONS ON BEHALF OF PETITIONER

5. It is the submission of Sri M.C.Pant, Ld. Counsel for the petitioner that recovery from the gratuity after re-fixation is per se illegal. 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 and pension of petitioner in terms of time schedule prescribed under Rules 3(b) & 3 (k) of the Rules(Copy of Rules: Annexure- A 9). The petitioner is entitled to interest on wrongful deduction, as well as delay in making payment of retiral dues.

6. 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 him. He 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.

7. Ld. A.P.O., on the basis of C.A. filed on behalf of respondents, has made an endeavour to defend the departmental action, with vehemence. Ld. A.P.O. submitted that when the petitioner retired from service, his pension proposal was sent to the Chief Treasury Officer, Dehradun, who informed that the calculation of pension, gratuity and leave encashment was wrong. The salary of the petitioner was refixed on 12-08-2021 w.e.f. 01-01-2016. On refixation, it was found that excess payment of Rs.72210/- has been made to the petitioner. The salary of the petitioner was refixed *vide* order dated 12-08-2021. The overpaid amount was assessed as Rs.1,16,378/- [Rs.30,128/- +72,210/- +14,040/- (leave encashment)]. Ld. A.P.O., therefore, submitted that a sum of Rs. 1,16,378/- has been adjusted from the final payment made to the petitioner. In response to a query of the Bench, as to why the petitioner is not entitled to the decision rendered by Hon'ble Apex Court in Rafiq Masih (*supra*), Ld. A.P.O. submitted that there is difference between recovery and adjustment. He submitted that there is no recovery from the petitioner, but it is only an adjustment of excess payment made to him from the exchequer. Ld. A.P.O. further submitted that Rafiq Masih (*supra*) was on financial hardship which a retired Govt. servant may face due to recovery. Here, excess payment has been adjusted from the retiral dues paid to him. Ld. A.P.O. further submitted that in the decision of Chandi Prasad Uniyal vs. State of Uttarakhand, (2012) 8 SCC 417, Hon'ble Supreme Court has held that tax payers' money neither belongs to the officers who had effected overpayment nor to the recipient and therefore, excess payment made due to wrong pay fixation could always be recovered, for, otherwise it will lead to unjust enrichment. The petitioner was aware that he was given wrongful benefit, which is liable to be returned to the Government.

DISCUSSION

8. The petitioner retired as Attendant on 31-01-2021 from the respondent department. Petitioner, a Class IV employee, while noticing the fact that a sum of Rs.8500/- was recovered from one of his colleagues Sri Dhan Singh Rawat, who retired from service on 31-12-2017, moved representation, followed by the representation of the Uttarakhand

Watershed Class IV State Employees Federation to Respondent No.3, which (representations) were not decided till the petitioner retired from respondent department on 31.01.2021. After his retirement, the Project Director (Admin), Watershed Management Directorate, wrote a letter to the Chief Treasury Officer, Dehradun on 23.08.2021 (Annexure: A 1) that a sum of Rs.86,250.00/- be recovered from the petitioner, informing that a sum of Rs.30,128/- has already been recovered from him. An office-order was issued on 12.08.2021 after petitioner's retirement, for refixation of his salary. *Vide* letter dated 09-03-2021 (Annexure: A 2), the Project Director (Admin), Watershed Management Directorate, wrote to the Chief Treasury Officer, Dehradun for adjusting a sum of Rs.30,128/- from the gratuity of the petitioner for the excess payment made to him between 01-01-2006 to 01-01-2021.

9. The petitioner was given monetary benefit, which was in excess of his entitlement. The monetary benefits flowed to him consequent upon a mistake committed by the respondent department in determining the emoluments payable to him. 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.

10. Another essential factual component of this case is 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 him, nor was it on account of any fraud committed by him. 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 his employer, in the wrongful determination of his 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 he should be exempted from refunding the excess amount received by him ?

11. 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 paragraph 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 5th and 6th Pay Scales of Teachers/ Principals, based on

the 5th Pay Commission Report. Here, the petitioner is a retired Group 'D' employee.

12. 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]

13. 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."

14. 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 'D' employee and recovery made from him would be iniquitous or harsh to such an extent that it would far outweigh the equitable balance of employees' right to recover.

15. 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.

16. Interference is called for in the impugned communications/orders dated 23-08-2021 (Annexure: A 1), 12-08-2021 (Annexure: A 1 *colly*), 09-03-2021 (Annexure: A 2) and 22-09-2021 (Annexure: A 3 *colly*), in the peculiar facts of the case. The same are, accordingly, set aside/modified, to the extent as are necessary. Respondents are directed to refund Rs.1,16,432-00/- to the petitioner, which have been recovered from him post-retirement, without unreasonable delay.

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

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: MAY 15, 2023
DEHRADUN

VM