

**BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL
BENCH AT NAINITAL**

CLAIM PETITION NO. 06/NB/SB/2025

Har Kishan Ram, aged about 62 years, s/o late Sri Lalu Ram, r/o Sardka P.O.
Bedgaon, Tehsil Ranikhet, District Almora..

.....Petitioner.

vs.

1. State of Uttarakhand through Secretary, Agriculture and Farmers Development Department, Govt. of Uttarakhand, Dehradun.
2. Director, Horticulture and Food Processing, Uttarakhand, Chaubatia, Ranikhet, District, Almora.
3. Superintendent, Rajkiya Udhyan, Horticulture Department, Dunagiri, , District Almora.
4. Chief Treasury Officer, Almora.
5. Director, Lekha Evam Haqdari, Uttarakhand, 23- Laxmi Road, Dalanwala, Dehradun.

.....Respondents.

(virtually)
Present: Sri Bhagwat Mehra, Advocate, for the Petitioner.
Sri Kishore Kumar, A.P.O., for Respondents.

JUDGMENT

DATED: JUNE 06, 2025

Justice U.C.Dhyani (Oral)

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

“A. To set-aside the impugned pay re-fixation order dated 26-09-2024
passed by the Respondent No. 3 (Annexure No. 1 to Compilation-1).

B. To set-aside the Pension Payment Order dated 01-10-2024 issued by Respondent No. 4, in so far as it relates to withholding of an amount of Rs. 3,81,969/- from the Gratuity of the petitioner (Annexure No. 2 to the Compilation No. 1).

C. To declare the action of the Respondents in revising the Pay Fixation and making the recovery from the petitioner, as arbitrary and illegal.

D. To direct the Respondents to forthwith release the withheld/recovered amount of Rs. 3,81,969/- from the Gratuity of the petitioner, along with the interest at a rate to be specified by this Hon'ble Tribunal.

E. To direct the Respondents, particularly Respondent No. 2 to grant all consequential benefits to the petitioner.

F. To pass any other suitable order as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

G. To allow the claim petition with cost.”

2. Claim petition is supported by the affidavit of the petitioner. Relevant documents have been filed along with the petition.

3. Petition has been contested on behalf of respondents. Sri Naveen Chandra Papnoi, Superintendent Rajkiya Udhyan, Doonagiri, District Almora, has filed C.A. on behalf of Respondents No. 2 & 3. Relevant documents have been filed in support of Counter Affidavit.

4. Rejoinder Affidavit has been filed by the petitioner reiterating the facts contained in the claim petition.

5. Petitioner was appointed as ‘*Mali*’, a Class-IV employee in the respondent department, in the erstwhile State of Uttar Pradesh, on 04.09.1995. He was promoted as Supervisor, Group-III, on 08.04.2010. On the recommendation of duly constituted scrutiny committee, petitioner was given benefit of 2nd ACP by Respondent No.2. Petitioner was further promoted as *Udhyan Nirikshak*, Group-II, *vide* order dated 15.07.2017. He retired from the same post from the office of Respondent No.3, on attaining the age of superannuation on 31.05.2023.

6. The department processed all the pension papers of the petitioner and submitted the same to the Chief Treasury Officer, Almora, Respondent No.4, who raised certain objections in pay fixation, *vide* letter dated

20.05.2024. It was conveyed to the petitioner by Respondent No.3. According to the respondent department, there is excess payment of Rs.3,81,969/- to the petitioner and the pension papers can be submitted to the Treasury only after the aforesaid sum, *i.e.*, Rs.3,81,969/- is deposited by the petitioner.

7. Order dated 26.09.2024, issued by the Superintendent, Rajkiya Udhyan, Almora, (Annexure: A-1), among others, is under challenge in present claim petition.

8. Ld. A.P.O., on the strength of C.A. filed on behalf of Respondents, submitted that mistakenly the department had given an erroneous payment to the petitioner. The petitioner was asked by Respondent No.3, through Respondent No.4, to deposit the excess amount of Rs.3,81,969/-, erroneously paid to him, *vide* letter dated 20.05.2024. The petitioner requested Respondent No.3, to make the payment of pension as per the approved pension adjustment formats. Petitioner gave his undertaking for the same, and on his consent the documents for pension were approved *vide* letter dated 01.10.2024, by Respondent No.4. Ld. A.P.O. further submitted that instead of making a reasoned representation before the respondents for refixation of his pension, he has directly come to the Tribunal. Ld. A.P.O. also submitted that it is tax payers' money which is liable to be adjusted, inasmuch as it is over and above his actual entitlement.

9. Ld. A.P.O. further submitted that para 81(3) of Financial Hand Book, Part 5, provides that adjustment and recovery of the excess and over payment from the employee, which has been erroneously extended to him, is permissible. Ld. A.P.O., relying upon the decision rendered by the Hon'ble Supreme Court, in Civil Appeal No.1985 of 2022, the State of Maharashtra and another vs. Madhukar Antu Patil and another, on 21.03.2022, submitted that correct pay fixation order can be issued when it comes to the knowledge of the department that erroneous excess payment has been made.

10. In reply, Ld. Counsel for the petitioner submitted that petitioner is working as Class 'C' employee and adjustment/recovery made from him would

be iniquitous or harsh to such an extent that it would far outweigh the equitable balance of employer's right to recover.

11. Ld. Counsel for the petitioner relied upon the decisions rendered by Hon'ble Apex Court in *Shyam Babu vs. Union of India*, (1994) 2SCC 521; *Sahib Ram vs. State of Haryana*, (1995) (Suppl) 1 SCC 18; *Syed Abdul Qadir vs. State of Bihar*, (2009) 3 SCC 475, 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, decisions 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*, in WPSS No. 1593 of 2021, *Balam Singh Aswal vs. Managing Director and others* and connected writ petitions on 14.06.2022 & in WPSS No. 363 of 2022 and connected petitions on 05.01.2024 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.

12. Ld. Counsel for the petitioner also submitted that in the decision rendered on 08.08.2024, in Claim Petition No.98/NB/SB/2022, *Smt. Archana Shukla vs. State of Uttarakhand and others*, the Tribunal has followed same view, which was taken by the Hon'ble Supreme Court in *Jogeshwar Sahoo and others vs. the District Judge, Cuttack & others, in civil appeal, arising out of SLP (C) No. 5918/2024*, while following Rafiq Masih' case.

13. Similar situation, which is confronted by the petitioner in present petition, has been dealt with by the Hon'ble Apex Court in Jogeshwar Sahoo's decision (*supra*). Relevant extracts of the said decision are reproduced herein below for convenience:

"3. At the relevant time, the appellants were working as Stenographer Grade-I and Personal Assistant in the establishment of District Judiciary, Cuttack, Orissa. They were granted financial benefit for a sum of Rs 26,034/-, Rs.40713/-, Rs. 26539/-, Rs. 24683/- and Rs. 21,485/- by way of credit to their account vide Office Order No. 63 dated 10.05.2017 passed by the District Judge, Cuttack granting promotion/appointment

retrospectively w.e.f 01.04.2003 consequent upon upgradation of the Stenographers in three grades such as Stenographer Grade-I, Stenographer Grade-II and Stenographer Grade-III by relying upon the recommendations of the respondent no. 1 in compliance towards the implementation of the report of the Shetty Commission.

4. After grant of such financial benefit, in the year 2017, the appellants have superannuated from their respective posts sometimes in the year 2020. After three years of their retirement and six years of granting the financial benefit, respondent no. 1 ordered for recovery of the said amount on the ground that extension of benefit of Shetty Commission's recommendations to the appellants were on an erroneous interpretation of such recommendations, therefore, the financial benefit granted to them is liable to be recovered and under orders dated 12.09.2023 and 08.09.2023, the appellants were directed to deposit the excess drawn arrears. Since the orders were passed without affording any opportunity of hearing to the appellants, they preferred a writ petition before the High Court which came to be dismissed under the impugned judgment and order.

5. Learned counsel appearing for the appellants argued that the appellants were granted financial benefit without there being any fraud or misrepresentation by them, therefore, recovery of the amount after three years of their retirement is illegal and arbitrary. It is argued that the High Court has failed to consider the settled legal position in catena of decisions of this Court wherein such recovery from a low paid employee after retirement have been held bad in law.

6. *Per contra*, learned counsel appearing for the respondents would support the impugned judgment on submission that the appellants were not entitled to the financial benefit extended to them and the order passed by the District Judge, Cuttack was affirmed by the High Court of Orissa in exercise of an administrative power, therefore, the recovery is justified. It is also argued that such financial benefit upon retrospective promotion was granted with the condition that excess amount, if any, paid shall be refunded by the appellants and the appellants have furnished their respective undertakings to the said effect, therefore, they are estopped from challenging the recovery.

7. The issue falling for our consideration is not about the legality of the retrospective promotion and the financial benefit granted to the appellants on 10.05.2017. The issue for consideration is whether recovery of the amount extended to the appellants while they were in service is justified

after their retirement and that too without affording any opportunity of hearing.

8. The law in this regard has been settled by this Court in catena of judgments rendered time and again; Sahib Ram vs. State of Haryana, Shyam Babu Verma vs. Union of India, Union of India vs. M. Bhaskar and V. Gangaram vs. Regional Jt. Director and in a recent decision in the matter of Thomas Daniel vs. State of Kerala & Ors..

9. This Court has consistently taken the view that if the excess amount was not paid on account of any misrepresentation or fraud on the part of the employee or if such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order, which is subsequently found to be erroneous, such excess payments of emoluments or allowances are not recoverable. It is held that such relief against the recovery is not because of any right of the employee but in equity, exercising judicial discretion to provide relief to the employee from the hardship that will be caused if the recovery is ordered.

10. In Thomas Daniel (supra), this Court has held thus in paras 10, 11, 12 and 13:

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11. In the case at hand, the appellants were working on the post of Stenographers when the subject illegal payment was made to them. It is not reflected in the record that such payment was made to the appellants on account of any fraud or misrepresentation by them. It seems, when the financial benefit was extended to the appellants by the District Judge, Cuttack, the same was subsequently not approved by the High Court which resulted in the subsequent order of recovery. It is also not in dispute that the payment was made in the year 2017 whereas the recovery was directed in the year 2023. However, in the meanwhile, the appellants have retired in the year 2020. It is also an admitted position that the appellants were not afforded any opportunity of hearing before issuing the order of recovery. The appellants having superannuated on a ministerial post of Stenographer were admittedly not holding any gazetted post as such applying the principle enunciated by this Court in the above quoted judgment, the recovery is found unsustainable.

12. For the aforesaid, we are of the considered view that the appeal deserves to be allowed. Accordingly, we allow the appeal and set aside the

order of the High Court and in consequence the orders dated 12.09.2023 and 08.09.2023 by which the appellants were directed to deposit the excess drawn arrears are set aside.”

[Emphasis supplied]

14. Refixation after giving opportunity of hearing (after notice) is, however, permissible in view of the decision rendered by Hon’ble Supreme Court, in Civil Appeal No.1985 of 2022, the State of Maharashtra and another vs. Madhukar Antu Patil and another, on 21.03.2022 and 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].

15. Hon’ble Supreme Court, in the Madhukar Antu Patil (supra) has observed as below:

5., we are of the opinion that there shall not be any recovery on re-fixation of the pay scale. However, the respondent shall be entitled to the pension on the basis of the re-fixation of the pay scale

[Emphasis supplied]

16. Relevant paragraphs of the judgment rendered by Hon’ble High Court of Judicature at Allahabad in the decision of Smt. Hasina Begum (supra), read as under:

“5. The Division Bench has placed reliance upon a similar case decided by them earlier of one Smt. Omwati who had filed Writ - A No. 28420 of 2016 and the Court had observed that no recovery of excess payment can be made from the writ petitioner although the respondents may correct the pension that had been wrongly fixed for future disbursement to the widow. For this conclusion arrived at by this Court reliance was placed on the Supreme Court's decision in State of Punjab and others Vs. Rafiq Masih (White Washer) and Ors., (2015) 4 SCC 334.

6. It is undisputed that some excess payment has been made to the petitioner. If some correction has been done by the respondents, they are entitled to correct and refix the family pension as the Supreme Court has observed in several cases that administrative mistake regarding the pay fixation or family pension can be corrected by the authorities. However, in view of the law settled by the Supreme Court in Rafiq Masih (supra) no recovery of excess payment allegedly made to the petitioner already can be done from her.

7. This writ petition is disposed off with a direction to the respondents to pay the correctly fixed pension from December, 2018 onward to the petitioner and not

to make recovery of alleged excess payment already made to the petitioner due to wrong pay fixation earlier.”

[Emphasis supplied]

17. The Tribunal, therefore observes that the petitioner is entitled to a refund of a sum Rs. 3,81,969/-, which was recovered from the gratuity of the petitioner, but it is afraid, he will not be entitled to any interest on the same. It has been observed in several decisions that the relief is to be granted on the basis of equity and not as a matter of right. It is not his entitlement. When an employee is not entitled to keep the money, as of right, then he is not entitled to interest. After all, it is public money/ tax payers’ money, which was received by the recipient without any authority of law.

18. Order accordingly. Respondents are directed to refund the money to the petitioner as expeditiously as possible and without unreasonable delay.

18. The claim petition thus stands disposed of. No order as to costs.

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: JUNE 06, 2025
DEHRADUN

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