

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

CLAIM PETITION NO.198/SB/2024

Pushkar Lal, s/o Sri Fagnu Lal, aged 61 years, Retired Driver, r/o 1172, Seema Dwar, Dehradun.

.....Petitioner

vs.

1. The Secretary , Industrial Development (Mining), Govt of Uttarakhand Subhash Road, Dehradun.
2. The Director General, Geology & Mining, Bhopalpani, Rajpur, Dehradun.
3. The Director, Geology & Mining, Bhopalpani, Rajpur Thano Road, Dehradun, Uttarakhand.
4. The Director Pension & Entitlement, 23 Laxmi Road, Uttarakhand, Dehradun.
5. The Chief Treasury Officer, Cyber Treasury, 23 Laxmi Road, Dehradun.

.....Respondents

Present: Sri Uttam Singh, Advocate, for the Petitioner.
Sri V.P. Devrani, A.P.O. for the State Respondents.

JUDGMENT

DATED: JUNE 03, 2025.

Justice U.C. Dhyan (Oral)

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

- “(i) To set aside the Letter No 4769/Estt-1(63)PF/MZ Dte/2023-24 dated 4-11-2024 and PPO No 3423/UK/13/30042024/66185 dated 21-11-2024 to the extent vide which the respondent has recovered a sum of Rs 5,13,856/- from the Gratuity. (Annexure No A-1 (Colly.
- (ii) To direct the respondent to refund a sum of Rs 5,13,856/-.

(iii) To direct the respondent to pay the interest on the delayed payment of retiral benefits @ 12% pa.

(iv) To pass any other suitable order, which the Hon'ble Tribunal may deem fit and proper on the basis of facts and circumstances of the case.

v) Award the cost of the petition to the petitioner."

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. Separate Counter Affidavits have been filed on behalf of Respondents. Sri Rajpal Legha, Director, Directorate of Geology and Mining Department, Govt. of Uttarakhand, Dehradun, has filed C.A. on behalf of Respondents No. 1, 2 & 3. Sri Dinesh Chandra Lohani, Director, Treasury, Pension and Entitlement, Govt. of Uttarakhand has filed C.A. on behalf of Respondents No. 4 & 5. Relevant documents have been filed in support of Counter Affidavits.

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

5. Petitioner was a Driver in the respondent department. He retired on 30.04.2024. According to Ld. Counsel for the petitioner, there is delay of 111 days in payment of his retiral dues.

6. Ld. A.P.O. submitted that GPF, GIS and leave encashment were paid to the petitioner on time. Ld. A.P.O. further submitted that delay in payment of pension, gratuity and commutation of pension has been caused because petitioner's service book was sent to the Finance Controller of the respondent department, who found anomaly in granting benefit of increment, inasmuch as the benefit of increment was given to the petitioner twice. The Finance Controller, therefore, instructed the department to correct the pay fixation of the petitioner. Ld. A.P.O. also submitted that correct fixation of pay is permissible in view of 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 and 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.

7. Ld. Counsel for the petitioner submitted that pension is not a bounty and is property right within Article 300 A of the Constitution of India. Ld. Counsel for the petitioner in support of his submission has referred to the decisions rendered by Hon'ble Apex Court in *S.K.Dua vs. State of Haryana and Another*, (2008) 1 Supreme Court Cases (L&S) 563 and *D.D.Tiwari (D) Thr. Lrs. vs. Uttar Haryana Bijli Vitran Nigam Ltd. and Others*, 2014 (5) SLR 721 (SC), in which Hon'ble Supreme Court has observed that retiral benefit is a valuable right of employee and culpable delay in settlement/ disbursement must be dealt with penalty of payment of interest.

8. This fact is under no dispute that there was delay of 111 days in payment of pension, gratuity and commutation of pension to the petitioner. Other retiral dues were paid on time.

9. Government of Uttarakhand has framed Rules known as Uttarakhand Pension Cases (Submission, Disposal and Avoidance of Delay) Rules, 2003. The Govt. of Uttarakhand has itself issued a Govt. Order No.979/XXVII(3)Pay/2004 dated 10.08.2004, that normally, the interest should be given on delayed payment of retiral dues, which shall be as per prevalent GPF rates.

10. The Tribunal finds that there is delay (whatever may be the cause) in payment of gratuity, pension and commutation of pension to the petitioner, hence, he is entitled to interest on delayed payment of such retiral dues as per G.O. dated 10.08.2004.

11. Petitioner retired as Class 'C' employee. Deduction of Rs.5,13,856/- was made from gratuity after his retirement. In this context, 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]

12. 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."

[Emphasis supplied]

13. Petitioner's case is squarely covered by the decision of Hon'ble Apex Court. Recovery made from him is iniquitous or harsh to such an extent that it would far outweigh the equitable balance of employer's right to recover.

14. Petitioner is entitled to refund of the amount which has been deducted from his gratuity.

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, 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.

16. The amount which was recovered from the gratuity of the petitioner post retirement, should, therefore, be restored to him.

17. The next question, which arises for consideration of the Tribunal is, whether the petitioner is entitled to interest or not?

18. Since the employee was not entitled to keep such amount, therefore, he is not entitled to interest, while giving a direction to the respondent department to restore the recovered amount to the employee. Hon'ble Supreme Court has nowhere observed in any of the decisions, much less in Civil Appeal No.1985 of 2022, the State of Maharashtra and another vs. Madhukar Antu Patil and another, decided on 21.03.2022, that the petitioner is entitled to interest on excess payment. 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. It was received by the recipient without any authority of law. In Balam Singh Aswal (*supra*) also Hon'ble High Court of Uttarakhand has nowhere directed the respondent department to pay interest to the petitioners on the recovered amount while directing the respondents to return the amount recovered from the retiral dues of the employees.

19. The claim petition is, therefore, disposed of by directing the respondent department-

(i) To pay the interest on delayed payment of Gratuity, Pension and Commutation of Pension, as per the prevalent GPF rate, till the date of actual payment.

(ii) Refund the amount of gratuity Rs. 5,13,856, to the petitioner which was recovered from his gratuity post retirement. Petitioner is not entitled to any interest during the period such amount remained with the respondent department.

(iii) Correct pay fixation is permissible in view of 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 and 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.

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

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: JUNE 03, 2025
DEHRADUN

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