

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

CLAIM PETITION NO.159/SB/2024

Sukhveer Singh, aged about 62 years, s/o Sri Mathbar Singh, r/o 78/83, Shivlok Colony, MDDA Road, (Defence Colony) District Dehradun, Uttarakhand.

.....Petitioner

vs.

1. State of Uttarakhand through Secretary, Home, Police Department, Govt. of Uttarakhand, Dehradun.
2. Director General of Police, Uttarakhand, Dehradun.
3. Inspector General of Police (Personnel), Police Headquarter Dehradun, District Dehradun, Uttarakhand.
4. Senior Superintendent of Police, District Dehradun, Uttarakhand.

.....Respondents

Present: Sri M.C.Upadhyay, Advocate, for the Petitioner. *(online)*
Sri V.P. Devrani, A.P.O. for the State Respondents.

JUDGMENT

DATED: JUNE 16, 2025.

Justice U.C. Dhyani (Oral)

Petitioner was Head Constable in Uttarakhand Police, who retired on 28.02.2022 and is aggrieved by recovery of a sum of Rs.4,98,605/-, which was deducted from his gratuity by the Treasury Officer, Dehradun, post retirement. He has prayed for the following reliefs:

“i. Issue a writ, order or direction in the nature of certiorari, for quashing the impugned order dated 18.04.2022 issued by Senior Treasury Office District Dehradun (respondent no. 5) through which a P.P.O. Letter no. 4500 UK1328022 /48289 was issued in favor of Sukhveer Singh Head Constable 400014794 (retired on 28.02.2022) by which a recovery of amount of Rs. 4,98,605/- was made which was deducted from the amount of gratuity by the Treasury Officer, Dehradun. (ANNEXURE No. 1)

ii. Issue a writ, order or direction in the nature of mandamus, commanding or directing the respondents to release the recovered amount of gratuity of Rs. 4,98,605/- along with interest in favor of petitioner without any deduction.

iii. Issue a writ, order or direction to decide this claim petition in the light of judgment passed by Hon'ble Apex Court in Rafiq Mashi's Case & Hon'ble High Court of Uttarakhand in Bunch of SPA No. 245 / 2022 and provide 18% interest from its recovery to till the payment of aforesaid arrear.

iv. Issue any other relief, which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case, be passed in favour of the petitioner.

v. Award the Cost of the claim petition in favor of 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 also filed supplementary affidavit to bring order dated 08.02.2024 passed by SSP, Dehradun, on record.

4. Sri M.C. Upadhyay, Ld. Counsel for the petitioner submitted that present petition may be decided in terms of decision rendered by Hon'ble Apex Court in State of Punjab vs. Rafiq Masih, (2015) 4 SCC 334 and judgment rendered by Hon'ble High Court of Uttarakhand on 04.04.2024 in Special Appeal No. 245/ 2022, Managing Director, Uttarakhand Transport Corporation, Dehradun and others vs. Ashok Kumar Saxena and connected Special Appeals.

5. Ld. A.P.O. submitted that although he has received narrative and has sent the Counter Affidavit for verification and signatures of the authority concerned, but since the subject matter of the present claim petition is covered by the decision rendered by Hon'ble Apex Court in State of Punjab vs. Rafiq Masih, (2015) 4 SCC 334 and judgment rendered by Hon'ble High

Court of Uttarakhand on 04.04.2024 in Special Appeal No. 245/ 2022, Managing Director, Uttarakhand Transport Corporation, Dehradun and others vs. Ashok Kumar Saxena and connected Special Appeals, therefore, present claim petition may be disposed of in terms of the aforesaid decisions of Hon'ble Supreme Court and Hon'ble High Court.

6. Hon'ble Apex Court in Paragraphs 12 of the decision rendered in State of Punjab vs. Rafiq Masih, (2015) 4 SCC 334, has observed thus:

12. 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."

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.

7. Hon'ble High Court of Uttarakhand, while deciding WPSS No. 1593 of 2021, Balam Singh Aswal vs. Managing Director and others and connected writ petitions, has directed as under:

'50. A writ of mandamus is issued to the respondents and the respondents are directed to pay the entire retiral benefits with its arrears, as sought for by the petitioners in each of the respective Writ Petition, as expeditiously, as possible but not later than three months from the date of production of certified copy of this order.

51. Subject to aforesaid, the Writ Petitions are allowed with the respective cost of Rs.5,000/- each to be paid to the petitioners of each of the Writ Petition, in order to enable them to meet the litigation expenses of forced litigation upon them.

52. This order has been rendered on merit, and not on the basis of the consensus given by the respondents Counsel.

53. In case, if any deduction has been made from retiral benefits or the gratuity of the petitioners, the same would too be remitted back to them within the aforesaid period as directed above.'

[Emphasis supplied]

8. Judgment dated 14.06.2022 was assailed by the Uttarakhand Transport Corporation, Dehradun and others in *Intra-Court* Appeal. Hon'ble High Court of Uttarakhand decided Special Appeal No. 245/ 2022, Managing Director, Uttarakhand Transport Corporation, Dehradun and others vs. Ashok Kumar Saxena and connected Special Appeals, *vide* order dated 04.04.2024, operative portion of which reads as below:

"4. These appeals are being dismissed. A direction is being given to the appellant to comply with the judgment dated 14.06.2022, within the next three months."

9. Following observations were made by the Hon'ble Supreme Court while deciding the case of *Jogeshwar Sahoo and others vs. the District Judge, Cuttack & others, in civil appeal, arising out of SLP (C) No. 5918/2024*:

".....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.

.....

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.

.....

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.”

10. Ld. A.P.O. submitted that petitioner is not entitled to interest inasmuch as the petitioner was not entitled to keep the money, which was deducted from his gratuity. It was not recovery, but adjustment of excess payment. In fact, the petitioner himself should pay interest to the Govt. on the excess amount which he was not entitled to keep.

11. Hon’ble High Court, while deciding the bunch of writ petitions in WPSS No. 1593 of 2021, Balam Singh Aswal vs. Managing Director and others, nowhere directed the Respondent Corporation to pay interest while directing refund of recovered amount from employee’s retiral dues. Decision of Balam Singh Aswal was assailed by the Respondent Corporation in Intra Court appeal. The Division Bench did not interfere with the decision of Hon’ble Single Judge.

12. Hence the petitioner, in the instant case, is not entitled to interest for the period which was taken by the Respondent department in refunding petitioner’s recovered dues as per the direction of the Court/Tribunal.

13. Correct fixation of pay is permissible, after notice, 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.

14. 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]

15. 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 re-fix 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]

16. The claim petition is disposed of in the light of the decision rendered by Hon'ble Supreme Court in State of Punjab vs. Rafiq Masih, (2015) 4 SCC 334 and judgment rendered by Hon'ble High Court of Uttarakhand on 04.04.2024 in Special Appeal No. 245/ 2022, Managing Director, Uttarakhand Transport Corporation, Dehradun and others vs. Ashok Kumar Saxena and connected Special Appeals, by directing that the petitioner is entitled to a refund of a sum Rs. 4,98,605/-, which was recovered

from the gratuity of the petitioner, post retirement, but 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.

17. 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 16, 2025
DEHRADUN

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