

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

**CLAIM PETITION NO.181/SB/2024**

Yogesh Istwal, s/o Late Sri Chandi Prasad Istwal, aged about 60 years,  
Surveyor (Retired), r/o Green Avenue Colony, Gas Godam Road, Near Tirupati  
Enclave, Mehuwala Maafi, Anna Hazare Chowk, Dehradun.

.....Petitioner

**vs.**

1. The Secretary , Forest, Environment Protection and Climate Change, State of Uttarakhand Subhash Road, Dehradun.
2. The Head of Forest Force (HoFF), Uttarakhand Government, 85 Rajpur Road, Uttarakhand, Dehradun.
3. The Additional Principal Conservator of Forest & Nodal Officer, Land Survey Directorate, Indra Nagar Forest Colony, Uttarakhand, Dehradun.
4. The Senior Treasury Officer, District Dehradun, Uttarakhand.

.....Respondents

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

**JUDGMENT**

**DATED: July 01, 2025.**

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

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

“I) To set aside the Order/Letter No. 6121/UK/13/30042024/64549 dated 24.08.2024 to the extent vide which the respondent has recovered a sum of Rs.3,61,375/- from the gratuity. (Annexure No A-1, *colly*).

II) To direct the respondent to refund a sum of Rs. 3,61,375/- .

II) To direct the respondent to pay the interest on the delayed payment of pensionary benefits @ 12% per annum.

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. Petitioner was initially appointed as Surveyor on 16.04.1985 in the respondent department. He was given time scale of pay, revised pay scale, ACP and MACP in accordance with the existing service rules. He was also given benefit of 6<sup>th</sup> Pay Commission, annual increment, 2<sup>nd</sup> and 3<sup>rd</sup> Financial Upgradation, benefit of 7<sup>th</sup> Pay Commission etc. from time to time. Petitioner has retired from service on 30.04.2024 in the same capacity as Surveyor, from the respondent department.

3. *Vide* letter dated 24.08.2024, a sum of Rs.3,61,375/- was directed to be recovered from the gratuity of the petitioner. Petitioner has, therefore, prayed for directing the respondents to refund the recovered amount of Rs.3,61,375/-, along with interest, to him.

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

5. Claim petition has been contested on behalf of respondents. Separate Counter Affidavits have been filed on behalf of Respondents No. 1, 2 & 3 and Respondent No.4. C.A. has been filed by Sri Ranjan Kumar Mishra, Principal Chief Conservator of Forest & Nodal Officer, Land Survey Directorate, Uttarakhand, Dehradun, on behalf of Respondents No. 1, 2 & 3. Ms. Neetu Bhandari, Chief Treasury Officer, Dehradun, has filed C.A. on behalf of Respondent No.4. Relevant documents have been filed in support of Counter Affidavits.

6. In both the Counter Affidavits, an attempt has been made to demolish the case of the petitioner by stating, among other things, that excess payment can always be recovered from an employee.

7. Ld. A.P.O., on the strength of C.As. filed on behalf of respondents submitted that department had mistakenly given an erroneous payment to

the petitioner. Order for recovery was issued for adjustment of over and excess payment. It is tax payers' money which is liable to be adjusted, inasmuch as it is over and above his actual entitlement.

8. Ld. A.P.O. further submitted that para 81(3) of Financial Hand Book, 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. In reply, Ld. Counsel for the petitioner submitted that petitioner has retired as Group 'C' employee and 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.

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 is given by Ld. A.P.O. for favouring respondents 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.”

12. 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 a retired Group-‘C’ employee’.

13. 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 is a retired Group ‘C’ employee. The recovery from the retiral dues of a Govt. servant cannot be made as per the above noted decision of the Hon’ble Supreme Court. His matter is covered by situation no. (i) & (ii).

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. 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.

\*

\*

\*

15. 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 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.

\*

\*

\*

16. There is, however, no embargo on the respondent department against correct fixation of pay even after retirement, as per 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 [Citation- 2018:AHC:204373]. Relevant paragraphs of the judgment read as below:

“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.”

17. Hon’ble Supreme Court, in the decision rendered in Civil Appeal No.1985 of 2022, the State of Maharashtra and another vs. Madhukar Antu Patil and another, on 21.03.2022, has observed as below:

“ ..... However, it is observed and directed that on re-fixation of his pay scale and pension, as observed hereinabove, there shall not be any recovery of the amount already paid to the contesting respondent, while granting the first TBP considering his initial appointment from the year 1982.”

*[Emphasis supplied]*

\*

\*

\*

18. 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*, has observed as under:

“.....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."

19. Interference is called for in the impugned order dated 24.08.2024 (Annexure: 1 *colly*) on the basis of above discussion. The same is, accordingly, set aside/ modified, to the extent as is found necessary.

20. Respondents are directed to refund a sum of Rs.3,61,375-00/- to the petitioner, which has been recovered from him post-retirement, without unreasonable delay.

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

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

*DATE: JULY 01, 2025*  
*DEHRADUN*

VM