BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL AT DEHRADUN

CLAIM PETITION NO. 64/SB/2025

Sri Harish Chand, aged about 60 years, s/o Late Sri Lal Singh, Retd. Electrician, Workshop, Rural Depot., Transport Nagar, Dehradun,, r/o 33/7 Block No.2, Arya Nagar, District Dehradun, Uttarakhand.

.....Petitioner

vs.

1. State of Uttarakhand through Secretary Transport, Govt. of Uttarakhand, Secretariat, Subhash Road, Dehradun.
2. Managing Director, Uttarakhand Transport Corporation, Office of the Transport Commissioner, Kulhan, Sahastradhara Road, Dehradun.
3. Divisional Manager (Operation), Uttarakhand Transport Corporation, Gandhi Road, Dehradun.
4. Assistant General Manager, Rural Depot., Uttarakhand Transport Corporation, ISBT, Dehradun.

.....Respondents

Present: Sri L.K.Maithani & Sri R.C.Raturi, Advocates,
for the petitioner (online)
Sri V.P.Devrani, A.P.O., for Respondent No.1.
Sri Vaibhav Jain (online) & Sri Ramdev Sharma, Advocates,
for Respondents No. 2, 3 & 4. (online)

JUDGMENT

DATED: JULY 10, 2025.

Justice U.C.Dhyani (Oral)

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

"i) To issue an order or direction to the respondents to return the recovery amount Rs. 2,24,912/- to the petitioner with interest as per

rules from the date of retirement of the petitioner up to the date of actual payment.

ii) To issue any other order or direction which this court may deem fit and proper in the circumstances of case in favour of the petitioner.

iii) To award the cost of petition. ”

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

3. Petitioner was initially appointed as Cleaner on 07.09.1989 in the respondent department, at Kotdwar Depot. Under the scheme of ACP, benefit of 1st, 2nd and 3rd ACP was given to the petitioner after recommendation of Screening Committee. Benefit of ACP was given to a large number of employees, including petitioner, but, on a complaint of someone, an Audit Committee was constituted by the respondent department to enquire into the matter. On the basis of the report of the Audit Committee, respondent No.3, *vide* office order dated 16.04.2025 refixed and amended the pay of the petitioner and took away the benefit of 3rd ACP grade pay Rs.4200/-. Petitioner made representation against such refixation.

4. Petitioner retired on 31.03.2025 as Electrician, from Workshop, Rural Depot., Transport Nagar, Dehradun. After retirement, Respondent No. 3, *vide* office order dated 16.04.2025 sanctioned the amount of leave encashment and gratuity to the petitioner but made recovery of Rs.2,24,912/- against the petitioner. Petitioner sent legal notice on 05.05.2025 to Respondent No.2, and prayed for return of recovered amount of Rs.2,24,912/- , but in vain. Hence, present claim petition.

5. In a nutshell, a sum of Rs. 2,24,912/- was deducted from the gratuity of the petitioner, after his retirement.

6. Claim petition has been contested on behalf of Respondent Corporation. Sri Vaibhav Jain, Advocate, has filed affidavit of Sri Suresh Singh Chauhan, Divisional Manager (operation), Uttarakhand Transport Corporation, Dehradun on behalf of Respondents No. 2, 3 & 4,(Uttarakhand Transport Corporation). Sri V.P.Devrani, Ld. A.P.O., submitted that

Respondent No.1, adopts the same affidavit, which has been filed on behalf of Uttarakhand Transport Corporation.

7. In the C.A. thus filed, it has been stated, among other things, that unlawful gains of an employee, can always be recovered. Ld. Counsel for the respondents submitted that nothing has been recovered from the petitioner, it is only adjustment against the excess payment wrongly received by the petitioner.

8. Hon'ble Courts in catena of decisions have held that the relief granted to the petitioners (of those cases) is not as a matter of right, but is equitable relief. The question, whether or not the recovery will outweigh the equitable relief to the petitioner, has been left to the discretion of the employer. The relief in those cases has been given only because the hardship of the petitioner after retirement was considered and the relief was granted, not as a matter of right, but on equity. When someone is not entitled to keep or retain the excess amount, how can he be given interest on such excess payment. Sri Vaibhav Jain, Advocate, also submitted that even if Hon'ble Tribunal is of the view that recovery from the gratuity of a retired Group- 'C' and Group –'D' employee should not be made, no interest should be awarded while directing the Respondent Corporation to refund the recovered/withheld amount.

9. The questions which arise for consideration of the Tribunal, are:

(i) Whether payments, mistakenly been made by the employer, in excess of the entitlement of employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service), may be recovered?

(ii) Whether the employee is entitled to interest during the period the recovered amount remained with the employer?

10. The issues are no longer *res integra*. Relevant paragraphs of the common decision rendered on 14.06.2022 in WPSS No. 1593 of 2021, Balam Singh Aswal vs. Managing Director and others and connected writ petitions,

which decision has direct bearing on the fate of present petition, are reproduced herein below for convenience:

> "Before proceeding to address these bunch of 27 Writ Petitions on their own merit, this Court feels it apt to initially deal with the interlocutory orders, which were passed in these bunch of Writ Petitions, which engage a consideration of issue to the following effect :-
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> "**As to whether, at all, a statutory Corporation created under an Act, which is a separate legal statutory entity, can at all exercise its powers for withholdment of the post retiral benefits payable to the retired employees, under the different heads, including the payment of gratuity, under the Payment of Gratuity Act, 1972**. "
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> 2. Invariably, all these Writ Petitions**, are similar based, on same legal issue**, but **there is a slight variation in determination of the factual aspects**, which has constituted as to be a foundation for the respective claims raised by the petitioners.
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> 30. The respondents filed their counter affidavit and took a stand that **withholdment of the retiral benefits has been resorted to as a consequence of the wrong fixation of the service benefits, which was extended to the respective petitioners at the time, when they were in service**, and since they have contended, that **it was a wrongful fixation of wages** made by the respondents/ Corporation themselves, and by the competent authority by granting them a revision of pay, as per the recommendations of the report of the Pay Commission, which was admittedly made enforceable with the respondents/Corporation.
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> 31. They had contended that since **the petitioners were paid higher wages, than what they would have been otherwise entitled to, that has been taken as to be a ground for non remittance of the retiral benefits, which has been sought to be enforced by filing a writ of mandamus, praying for the disbursement of the retiral benefits and the gratuity, which they would be entitled to receive** based upon its determination to be made on the basis of the last pay certificate issued in favour of the petitioners, in their respective date of retirement.
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> 32. This Court found, that **there was an apparent anomaly and the inaction in payment of retiral dues of the petitioners**, pervaded at the behest of the respondents, on account of **wrongful administrative decision, which was taken by their own official, and even if at all, it is presumed, that there was a wrongful fixation of the wages, then at least, the retired employees cannot be attributed in any manner of deriving a wrongful benefit of the pay fixed by the respondents themselves, and that too, when it is not the case of the respondents, that the petitioners were at all responsible or instrumental in playing fraud in the process of determination of the wages**, which was held to be payable to them, as a consequence of the revision of pay scale enforced on the basis of the recommendations of the Pay Commission report, made applicable to the Corporation.
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> 33. Hence, in order to satisfy their stand which had been taken by the respondents with regard to their contentions, that the petitioners would be disentitled to receive the retiral benefits, which in certain cases as apparently shown already stood sanctioned by the respondents, on the pretext, that there was a **wrongful fixation of the salary to the petitioners by their own officials**, based on their determination, this Court thought it to be apt, that an action was required to be taken against the official of the Uttarakhand Transport Corporation itself, and hence, the direction was issued to the Secretary, Transport to the State of Uttarakhand, to conduct an enquiry and submit its report about the conduct of the internal affairs of the Corporation, and as to the manner, in which, the officials of

the respondents Corporation were instrumental in the alleged act of wrongful fixing of the salary, in which, admittedly, the **petitioners of each of these Writ Petitions have no role to play at all in fixing of their own wages**, which the respondents contend, that **it was fixed on a higher side**, and hence, the retiral benefits as determined by the respondents was wrongfully determined, which would result into an automatic curtailment of their benefits, which was otherwise due to be paid to them on their attainment of their respective age of superannuation.

34. In compliance of the order passed by this Court on 21st February, 2022, and coupled with the reasonings, which has been assigned by this Court in its order of 28th December, 2021, the Secretary, Transport Department of the State of Uttarakhand, has submitted his report of 1st April, 2022, and as per the observations, which had been made therein, apparently, **it has been observed, that it was rather the Corporation, and its officials, who were instrumental in wrongful fixation of salary of the petitioners, and hence, the voluntary act of the respondents unilaterally taken of curtailment of the retiral benefits on the pretext of a wrongful fixation of the salary was ultimately held to be bad in the eyes of law** in view of the findings which had been recorded in the report of 1st April, 2022.

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38. In fact**, if the entire controversy could be summarised at this juncture itself, invariably, in all the cases, the pivot of the controversy remains the same, i.e. an act of curtailment of retiral benefits, without passing any rational and reasoned order, after providing an opportunity of hearing to the petitioners, and secondly, as to whether the retiral benefits could at all be curtailed whimsically by the respondents/ Cooperation, without even providing any opportunity of hearing to the petitioners because any curtailment of retiral benefits, which otherwise under the concept of payment of gratuity or under the concept of payment of retiral benefits, which is based upon the principles, that it is only reckoning of the services rendered by the employees with the Corporation, in order to provide them a financial assistance for their survival in their old age by extension of retiral benefits and pension so that they may be able to sustain themselves at the fag end of their life after their retirement, in their old age, when they physically become crippled to do any other work, for themselves and for the survival of their families**.

39. The State and the Corporations which has been created by the State, under the Act, they owe an onerous responsibility to ensure a timely remittance of retiral benefits, so that the retired aged employees and their dependents may not have to knock the doors of the Court for the payment of their statutory benefits, which they are otherwise entitled to under the law.

40. It needs no reference that the deductions or curtailment of the **retiral benefits**, which they are otherwise entitled to be paid, to the retired employees has been consistently held by the Constitutional Court as to be **not a bounty rather a right of an employee**, who has retired from the services. No curtailment as such could be made of it subject to the condition, that if at all curtailment of retiral benefits was to be justified, it could have been only after providing an opportunity of hearing to the respective employees, against whom, any action, if at all, is said to have been contemplated to be taken or pending consideration. But, this could not be the case at hand, because invariably, in all the Writ Petitions, **the petitioners, who have retired from the respective posts are shown to have been sanctioned with some of the retiral benefits under different heads, for example, leave encashment, payment of gratuity and consortium, etc. Hence, their entitlement is not an issue of debate**.

41. In that eventuality, when the respondents by their own decision making process have already sanctioned the aforesaid amount which was made to be payable to the retired employees, this Court does not find any justification in the stand taken by the respondents, and which stands fortified too by the report submitted by the Secretary on 1st April, 2022, to curtail the retiral benefits payable to them because any curtailment since **it entails a civil consequences**, the curtailment would be barred by the ratio laid down by the Hon'ble Apex Court in the judgement reported in **AIR 1990 SC 1402, Km. Neelima Misra vs. Dr. Harinder Kaur Paintal and others**,

where there has been consistent view, which had been taken by the Courts, that the **employer cannot take the advantage of curtailing the retiral benefits of the employees by carving out an exception according to their own whims and fancies**, and that too, when it is not foundation on any rational basis and the reasons, which ought to have been assigned by the respondents and in the absence of the same, their action would be bad and arbitrary in the eyes of law. Para 23 of the said judgment is extracted hereunder :-

"23. The shift now is to a broader notion of "**fairness**" of "**fair procedure**" in the administrative action. As far as the administrative officers are concerned, the duty is not so much to act judicially as to act fairly (See: Keshva Mills Co. Ltd. v: Union of India, [1973] 3 SCR 22 at 30; Mohinder Singh Gill v. Chief Election Commissioner, [1978] 1 SCC 405 at 434; Swadeshi Cotton Mills v. Union of India, [1981] 1 SCC 664 and Management of M/s M.S. Nally Bharat Engineering Co. Ltd. v. The State of Bihar & Ors., Civil Appeal No. 1102 of 1990 decided on February 9, 1990). For this concept of fairness, adjudicative settings are not necessary, not it is necessary to have lis inter parties. There need not be any struggle between two opposing parties giving rise to a 'lis'. There need not be resolution of lis inter parties. The duty to act judicially or to act fairly may arise in widely differing circumstances. It may arise expressly or impliedly depending upon the context and considerations. All these types of non-adjudicative administrative decision making are now covered under the general rubric of fairness in the administration. But then even such an administrative decision unless it affects one's personal rights or one's property rights, or the loss of or prejudicially affects something which would juridically be called atleast a privilege does not involve the duty to act fairly consistently with the rules of natural justice. We cannot discover any principle contrary to this concept."

42. The aforesaid principles as laid down by the Hon'ble Courts referred to in the authorities as considered above in this judgment, has been rather reiterated by the Hon'ble Apex Court in the latest judgement reported in **(2022) 4 SCC 363, Punjab State Cooperative Agricultural Development Bank Ltd. vs. Registrar, Cooperative Societies and others**, wherein, the Hon'ble Apex Court has laid down that **entitlement of pension to a retired employee is a vested accrued right of a retired employee, which has had to be remitted irrespective of any impediment**, if at all, it is prevailing, **including the pendency of any disciplinary proceedings against an employee**, and that too particularly when, its effect of curtailment has not been taken into consideration, while taking an action isolatedly according to their own whims and fancies without passing any order, **after opportunity of hearing for curtailing the retiral benefits**, and that has what has been laid down by the Hon'ble Apex Court in the aforesaid judgement, which finds reference from para 44 to 59 which is extracted hereunder:-

> " 44. The question that emerges for consideration is as to what is the concept of vested or accrued rights of an employee and at the given time whether such vested or accrued rights can be divested with retrospective effect by the Rule making authority.
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> 45. The concept of vested/accrued right in the service jurisprudence and particularly in respect of pension has been examined by the Constitution Bench of this Court in Chairman, Railway Board and Ors. as follows:
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> …..
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> Two questions arise in the present case, viz., (i) what is the concept of vested or accrued rights so far as the government servant is concerned, and (ii) whether vested or accrued rights can be taken away with retrospective effect by Rules made under the proviso to Article 309 or by an Act made under that article, and which of them and to what extent.
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> We find that the Constitution Bench decisions in Roshan Lal Tandon v. Union of India (1968) 1 SCR 185; B.S. Vadera v. Union of India (1968) 3 SCR 575 and State of Gujarat v. Raman Lal Keshav Lal Soni (1983) 2 SCC 33 have been sought to be explained by two three-Judge Bench decisions in K.C. Arora v. State of Haryana (1984) 3 SCC 281 and K. Nagaraj v. State of A.P. (1985) 1 SCC 523 in addition to the two-Judge Bench decisions in P.D. Aggarwal v. State of U.P. (1987) 3 SCC 622 and K. Narayanan v. State of Karnataka 1994 Supp (1) SCC 44. Prima facie,

these explanations go counter to the ratio of the said Constitution Bench decisions. It is not possible for us sitting as a three-Judge Bench to resolve the said conflict. It has, therefore, become necessary to refer the matter to a larger Bench. We accordingly refer these appeals to a Bench of five learned Judges.

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47. Later, in U.P. Raghavendra Acharya and Ors., the question which arose for consideration was that whether the Appellants who were given the benefit of revised pay scale with effect from 1st January, 1996 could have been deprived of their retiral benefits calculated with effect therefrom for the purpose of calculation of pension. In that context, while examining the scheme of the Rules and relying on the Constitution Bench Judgment in Chairman, Railway Board and Ors. (supra), this Court observed as follows:

22. The State while implementing the new scheme for payment of grant of pensionary benefits to its employees, may deny the same to a class of retired employees who were governed by a different set of rules. The extension of the benefits can also be denied to a class of employees if the same is permissible in law. The case of the Appellants, however, stands absolutely on a different footing. They had been enjoying the benefit of the revised scales of pay. Recommendations have been made by the Central Government as also the University Grant Commission to the State of Karnataka to extend the benefits of the Pay Revision Committee in their favour. The pay in their case had been revised in 1986 whereas the pay of the employees of the State of Karnataka was revised in 1993. The benefits of the recommendations of the Pay Revision Committee w.e.f. 1-1-1996, thus, could not have been denied to the Appellants.

30. In Chairman, Rly. Board v. C.R. Rangadhamaiah (1997) 6 SCC 623, a Constitution Bench of this Court opined:

33. Apart from being violative of the rights then available Under Articles 31(1) and 19(1)(f), the impugned amendments, insofar as they have been given retrospective operation, are also violative of the rights guaranteed Under Articles 14 and 16 of the Constitution on the ground that they are unreasonable and arbitrary since the said amendments in Rule 2544 have the effect of reducing the amount of pension that had become payable to employees who had already retired from service on the date of issuance of the impugned notifications, as per the provisions contained in Rule 2544 that were in force at the time of their retirement.

…….

49. The exposition of the legal principles culled out is that an amendment having retrospective operation which has the effect of taking away the benefit already available to the employee under the existing Rule indeed would divest the employee from his vested or accrued rights and that being so, it would be held to be violative of the rights guaranteed Under Articles 14 and 16 of the Constitution.

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51. It may also be noticed that there is a distinction between the legitimate expectation and a vested/accrued right in favour of the employees. The Rule which classifies such employee for promotional, seniority, age of retirement purposes undoubtedly operates on those who entered service before framing of the Rules but it operates in futuro. In a sense, it governs the future right of seniority, promotion or age of retirement of those who are already in service.

52. For the sake of illustration, if a person while entering into service, has a legitimate expectation that as per the then existing scheme of rules, he may be considered for promotion after certain years of qualifying service or with the age of retirement which is being prescribed under the scheme of Rules but at a later stage, if there is any amendment made either in the scheme of promotion or the age of superannuation, it may alter other conditions of service such scheme of Rules operates in futuro. But at the same time, if the employee who had already been promoted or fixed in a particular pay scale, if that is being taken away by the impugned scheme of Rules retrospectively, that certainly will

take away the vested/accrued right of the incumbent which may not be permissible and may be violative of Article 14 and 16 of the Constitution.

57. In our view, non-availability of financial resources would not be a defence available to the Appellant Bank in taking away the vested rights accrued to the employees that too when it is for their socio-economic security. It is an assurance that in their old age, their periodical payment towards pension shall remain assured. The pension which is being paid to them is not a bounty and it is for the Appellant to divert the resources from where the funds can be made available to fulfil the rights of the employees in protecting the vested rights accrued in their favour.

43. In fact, the Hon'ble Apex Court has observed, that entitlement of a pension and locus standi of the employee, who has served with the statutory Corporation of the State, under the scheme of pension as applicable to the respective Department, they would be entitled to be paid with the retiral benefits in view of the principle of legitimate expectation because of the accruing of the vested rights in favour of an employee, hence, the Rules governing the service condition has had to be rationally applied, and it cannot be applied in a manner detrimental to the service benefit, which was extendable to the petitioner for the purposes of determining the retiral benefits, as it has been observed in para 37 and 38 of the said judgement, which is extracted hereunder :-

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44. In yet another judgement rendered by the Hon'ble Apex Court in Civil Appeal 7115 of 2010, Thomas Daniel vs. State of Kerala and others, the Hon'ble Apex Court in its judgement of 2nd May, 2022, while making reference to the judgement of the Hon'ble Apex Court as rendered earlier in a judgement reported in 2009 (3) SCC 475, Syed Abdul Qadir and others vs. State of Bihar and others, where as per the service conditions, which were applicable therein under the circumstances of those cases, the benefit of retired employees was directed to be curtailed on account of excess payment having been made to an employee. **Almost akin principle was raised before the Hon'ble Apex Court in a judgement reported in 2015 (4) SCC 334, State of Punjab and others Vs. Rafiq Masih (White Washer) and others, wherein, in wider principles, it has been laid down, that even if a faulty monetary benefit has been extended to an employee on account of a wrongful determination made by the employer according to their own wisdom and the benefit has already been derived by an employee, the same cannot be culled out to be taken a reason to deprive the benefit of retiral dues of the employee, which accrues to him as a consequence of his attainment of age of superannuation nor the same could be deducted from the salary, if an employee is in the service and the logic behind it is, that once it has been held and established by documents that the employee was not at all instrumental in the wrongful fixation of the service benefits, he cannot be placed in a situation detriment to his interest and to the interest of the dependent of his, because in the absence of their being any fraud being played by the employee, the deduction, the curtailment of the retiral benefits could not at all be left at the liberty of the employer to be applied against the employee, who has already attained the age of superannuation**.

45. Rather in the matter of Rafiq Masih (Supra), which was considered by the Division Bench of this Court also in a bunch of Writ Petition, of which, I was also one of the Member, and later on, it was referred to a larger Bench by the Hon'ble Apex Court in a matter of State of U.P. vs. Prem Singh, in which the principles laid down in the judgement of Rafiq Masih (Supra) was affirmed, and thereafter, it has been laid down that :

i. If a financial benefit has accrued to an employee on account of the voluntary decision taken by the respondents, in which, it has not been established that at all the employees was at all responsible in wrongful fixation of the service benefits and no fraud is said to have been attributed to him, no deduction as such could be made from the service benefits and consequential the retiral benefit too.

ii. The second logic is that once a monetary benefit has been extended on account of the enforceability of the recommendations of the Pay Commission

and the financial benefit, which has already been enjoyed by an employee, that cannot be made subjected to recovery at a later stage, when he attains the age of superannuation, and that too, when the benefit, which has been derived by him was on the dictates or the directions issued by the employee, has already been availed and enjoyed by him, and his family, on retirement and he cannot be burdened with financial liability on attaining the age of retirement, where source of earning closes.

46. Furthermore, when the entire action of curtailment of the retiral benefit in the present case, were under the pretext raised by the respondents in the Writ Petitions, that it was on account of wrongful fixation of the salary, it was a unilateral decision, which was resorted to and taken by the respondents themselves without due process of law and without providing any opportunity of hearing to the petitioners, the action of the respondents would be barred by provisions contained under Article 14 to be read with Article 311 (2) of the Constitution of India, and since the country being a welfare State, the arbitrary action having an effect or the civil consequences, cannot be imposed upon a retired employee on the basis of enjoyment of dominant position by the employer, by withholding of retiral benefits, which otherwise is not disputed by the employer owing to the facts, which has been brought on record in some of the Writ Petitions, where the respondents despite of being conscious of any artificial impediment, which has been observed in the argument extended by the respondents Counsel, and still, they have proceeded to sanction the retiral benefits, I see no justification for them to curtail the retiral benefit …….

47. In these eventualities, before this could have proceeded to take any action against the respondents /Cooperation, based on the observations made in the report of the Secretary to the Transport Department of the State of Uttarakhand, this Court feels it to be fit that apart for the reasons already discussed above, that when invariably in all the cases following facts are admitted:-

i. That the petitioners had been the employee of the Corporation.

ii. That they have attained the respective age of superannuation.

iii. When there is no controversy pertaining to their entitlement to be paid with the retiral benefits and the pensionary benefits based upon the last salary drawn by them.

iv. When there is no material on record as such relied by the respondents, to substantiate the stand taken by the respondents, that there had been any valid reason to curtail the retiral benefits.

v. Particularly, even if, for a moment, if there was any impediment in remittance of the retiral benefits of an employee for any valid and justified reason, which has been artificially created by the respondents in their stand taken in their counter affidavits filed in the Writ Petitions, under the normal service jurisprudence, it was expected that the respondents ought to have provided an opportunity of hearing and should have conducted an enquiry before curtailing the retiral benefits, which was payable to the retired employees, and hence, in the absence of there being any such enquiry ever conducted before taking the impugned action of curtailment of the retiral benefits, the entire action of the respondents would be bad, and that too, lastly particularly, when the extension of service benefit was as a consequence of the decision-making process taken by their own competent authorities, who had fixed the wages, out of which, the benefits has been consistently extended by the respondents and derived by the petitioners and fraud is not an aspect, which has been attributed, argued and established by document on record, against the petitioners, of wrongful extension of ACP benefits to them.

48. In these eventualities, this Court is of the view that the petitioners, who are the retired employees had been rather, owing to the inaction and arbitrary aptitude adopted by the State Corporation have been rather forced upon with the litigation to file a Writ Petition for the enforcement of the genuine rights of payment of retiral benefits, which according to respondents, in some of the cases, they are already entitled to owing to the partial sanctions already accorded by the respondents.

> 49. In that eventuality, and for the reasons assigned above, at this stage, this Court is deliberately not addressing itself on the report submitted by the Secretary, Transport Department dated 1st April, 2022, and is refraining to make any observation owing to the stand taken by the respondents counsel, that they would be remitting the retiral benefits, which the petitioners are otherwise entitled to in accordance with the law, based upon the last salary drawn by them.
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> **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.**
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> **51. Subject to aforesaid, the Writ Petitions are allowed…..**
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> **52. This order has been rendered on merit, and not on the basis of the consensus given by the respondents Counsel.**
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> **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**."
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> *[Emphasis supplied]*

11. 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."

12. 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, 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, 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.

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:
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> (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.
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> (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 the gratuity of the petitioner 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. The reply to the question No.1, posed in para 9 of the judgment, on the basis of above discussion, is-

The excess payment made to Group 'C' and Group 'D' employees, should not be recovered by the employer in view of Situations (i) & (ii) of the decision rendered in Rafiq Masih's case *(supra).*

16. It is the submission of Ld. Counsel for the petitioner that the controversy in hand is squarely covered by the decision rendered by Hon'ble High Court of Uttarakhand in WPSS No. 1593/2021, Balam Singh Aswal vs. Managing Director and others and connected writ petitions, which has been affirmed by the Division Bench of Hon'ble High Court in Special Appeal No. 245/ 2022, Managing Director, Uttarakhand Transport Corporation, Dehradun and others vs. Ashok Kumar Saxena and connected Special Appeals and present petitions may be disposed of in terms of the aforesaid decisions.

The Tribunal has no hesitation in accepting such prayer of Ld. Counsel for the petitioner on the basis of above discussion.

17. So far as the second issue is concerned, 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 Court 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 employee.

18. The claim petition is, accordingly, decided in terms of judgment dated 14.06.2022 passed by the Hon'ble High Court of Uttarakhand in WPSS No. 1593/2021, Balam Singh Aswal vs. Managing Director and others and connected writ petitions, which has been affirmed by the Division Bench of Hon'ble High Court 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.

19. Respondents are directed to refund a sum of Rs. 2,24,912/- to the petitioner which was recovered from his gratuity post retirement, without unreasonable delay.

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: JULY 10, 2025.
DEHRADUN

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