

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

CLAIM PETITION NO. 124/SB/2025

Sri Subhash Chandra Puri, aged about 60 years, s/o Sri Somnath Puri, Retd. Senior Clerk, Roorkee Depot, Uttarakhand Transport Corporation, Haridwar, r/o A-26/2, Subhashnagar, Roorkee, Haridwar, 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 General Manager (Operation), Uttarakhand Transport Corporation, Gandhi Road, Dehradun.
4. Assistant General Manager, Roorkee Depot, Uttarakhand Transport Corporation, Haridwar.

.....Respondents

WITH

CLAIM PETITION NO. 125/SB/2025

Sri Vinod Prasad Uniyal, aged about 60 years, s/o Sri G.P.Uniyal, Retd. Traffic Inspector, Hill Depot, Uttarakhand Transport Corporation, Dehradun, r/o 30, Doon Ghati Avas Samiti, MDDA Colony, P.O. Defence Colony, 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 General Manager (Operation), Uttarakhand Transport Corporation, Gandhi Road, Dehradun.
4. Assistant General Manager (Hills), Uttarakhand Transport Corporation, Transport Nagar, Dehradun.

.....Respondents

WITH
CLAIM PETITION NO. 126/SB/2025

Sri Harsh Mohan Jakhmola, aged about 60 years, s/o Late Sri Khushiram Jakhmola, Retd. Senior Clerk, Hill Depot., Uttarakhand Transport Corporation, Dehradun, r/o 53 Old Rajpur, 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 General Manager (Operation), Uttarakhand Transport Corporation, Gandhi Road, Dehradun.
- 4. Assistant General Manager, (Hill), Uttarakhand Transport Corporation, Transport Nagar, Dehradun.

.....Respondents

WITH
CLAIM PETITION NO. 127/SB/2025

Sri Brahmpal Singh, aged about 60 years, s/o Late Sri Sant Ram, Retd. Junior Station In-Charge, Hill Depot., Uttarakhand Transport Corporation, Dehradun, r/o Govt. Inter College, Near Hospital, Mehuwala Mafi, 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 General Manager (Operation), Uttarakhand Transport Corporation, Gandhi Road, Dehradun.
- 4. Assistant General Manager, (Hill), Uttarakhand Transport Corporation, Transport Nagar, Dehradun.

.....Respondents

WITH

CLAIM PETITION NO. 128/SB/2025

Sri Mange Ram, aged about 60 years, s/o Late Sri Ram Sahay, Retd. Junior Clerk, Hill Depot., Uttarakhand Transport Corporation, Dehradun, r/o Radhaswami Colony, Sarsawa, District Saharanpur, U.P..

.....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 General Manager (Operation), Uttarakhand Transport Corporation, Gandhi Road, Dehradun.
- 4. Assistant General Manager, (Hill), Uttarakhand Transport Corporation, ISBT, Dehradun.

.....Respondents

WITH

CLAIM PETITION NO. 129/SB/2025

Sri Gyan Singh, aged about 60 years, s/o Late Sri Sadhu Singh, Retd. Wolknizer, Divisional Workshop, Uttarakhand Transport Corporation, Dehradun, r/o Jatia Mohalla, 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 General Manager (Technical), Uttarakhand Transport Corporation, Transport Nagar, Dehradun.

.....Respondents

WITH

CLAIM PETITION NO. 130/SB/2025

Sri Mam Chand, aged about 67 years, s/o Late Sri Rati Ram, Retd. Assistant Electrician, Depot. Workshop, Uttarakhand Transport Corporation, Haridwar, r/o Village Jamalpaur, P.O. Jwalapur, District Haridwar, 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, (Depot. Workshop), Uttarakhand Transport Corporation, Haridwar.

.....Respondents

Present: Sri L.K.Maithani & Sri R.C.Raturi, Advocates,
for the petitioners. (online)
Sri V.P.Devrani, A.P.O., for Respondent-State
Sri Vaibhav Jain & Sri Ramdev Sharma, Advocates,
for Uttarakhand Transport Corporation. (online)

JUDGMENT

DATED: OCTOBER 22, 2025.

Justice U.C.Dhyani (Oral)

Since common questions of law and facts are involved in the above noted claim petitions, hence, they are heard together and are being decided by a common judgment and order. Law and facts, which are common to all, are being considered and discussed together.

2. In Claim Petition No. 124/SB/2025, Subhash Chandra Puri vs. State of Uttarakhand and others, petitioner seeks the following reliefs:

- “ i) To issue an order or direction to the respondents to return the recovered amount Rs. 85,394/- 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.”

[Emphasis supplied]

2.1 Petitioner was initially appointed as Conductor in August, 1989, in the Meerut Depot, Meerut. In the year 2015 petitioner was entitled to the benefit of 3rd ACP, grade pay Rs.4200/-, but the respondents sanctioned benefit of grade pay Rs. 2800/- in the year 2014 and accordingly fixed his pay.

2.2 The benefit of ACP was given to a large number of employees, but subsequently on a complaint of someone, an audit committee was constituted by the respondent department. On the basis of the report of audit committee, Respondent No.4 in the year 2021 refixed the pay of the petitioner. The salary of the petitioner was reduced.

2.3 Petitioner retired as Senior Clerk on 31.05.2025 from the Roorkee Depot, Haridwar.

2.4 After retirement the Respondent Corporation made a recovery of Rs.85,394/- from the retiral dues of the petitioner, which is per se illegal.

2.5 Petitioner made representation along legal notice, but in vain.

2.6 Petitioner has, therefore, made a prayer for refund of recovered amount worth Rs. 85,394/- with interest as per GPF rate from the date of retirement till the date of actual payment.

3. In Claim Petition No. 125/SB/2025, Vinod Prasad Uniyal vs. State of Uttarakhand and others, petitioner seeks the following reliefs:

- “ i) To issue an order or direction to the respondents to return the recovered amount Rs. 4,28,960/- 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.”

[Emphasis supplied]

3.1 Petitioner was initially appointed as Conductor in Respondent Corporation on 01.05.1989 at Rishikesh Depot, Dehradun. Benefit of 3rd ACP grade pay Rs. 4200/- was given to the petitioner in the year 2016, and his pay was accordingly fixed.

3.2 The benefit of ACP was given to a large number of employees, but on a complaint of someone, an audit committee was constituted by the Respondent Corporation for enquiry. On the basis of the report of audit committee, Respondent No.4 refixed the pay of the petitioner in the year 2021, in which payment of grade pay Rs. 4200/- was shown as wrong. Petitioner's pay was reduced. Petitioner retired on 30.04.2025 as Traffic Inspector from the Hill Depot, Dehradun.

3.3 After retirement, a sum of Rs. 4,28,960/- was recovered from his retiral dues, which is illegal.

3.4 Petitioner made representation against the refixation and recovery and also served a legal notice, but nothing has been done by the respondent department. Hence, present petition.

3.5 According to the petition, petitioner is entitled to recovery of Rs. 4,28,960/- with interest as per GPF rate from the date of retirement till the date of actual payment.

4. In Claim Petition No. 126/SB/2025, Harsh Mohan Jakhmola vs. State of Uttarakhand and others, petitioner seeks the following reliefs:

“ i) To issue an order or direction to the respondents to return the recovered amount Rs. 2,43,144/- 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.”

[Emphasis supplied]

4.1 Petitioner was initially appointed as Conductor on 01.05.1989 at City Bus Seva, Dehradun. During service, benefit of 3rd ACP grade pay Rs.4200/- was given to the petitioner in the year 2016 and his pay was accordingly fixed.

4.2 The benefit of ACP was given to a large number of employees, but on a complaint of someone, an audit committee was constituted by the respondent department for enquiry. On the basis of the report of audit committee, Respondent No. 4, in the year 2021 refixed the pay of the petitioner, showing that the 3rd ACP grade pay Rs.4200 was wrong and cancelled the same. Petitioner retired on 31.03.2025 as Senior Clerk from the Hill Depot, Dehradun.

4.3 After retirement, Respondent Corporation made recovery of Rs.2,43,144/- from the retiral dues of the petitioner, which is per se illegal. Petitioner made representation and also served legal notice, but to no avail.

4.4 According to the petition, petitioner is entitled to the recovered amount of Rs. 2,43,144/- with interest as per GPF rate from the date of retirement till the date of actual payment.

5. In Claim Petition No. 127/SB/2025, Brahmpal Singh vs. State of Uttarakhand and others, petitioner seeks the following reliefs:

- “ i) To issue an order or direction to the respondents to return the recovered amount Rs. 7,14,544/- 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.”

[Emphasis supplied]

5.1 Petitioner was initially appointed as Conductor on 01.05.1989 at Hill Depot, Dehradun. During service, benefit of 2nd ACP grade pay Rs.2800/- was given to the petitioner in the year 2016 and his pay was accordingly fixed.

5.2 Such benefit of ACP was given to a large number of employees, but on a complaint of someone, an audit committee was constituted by the

Respondent Corporation. On the basis of the report of audit committee, Respondent No.4 refixed the pay of the petitioner in the year 2021, showing that 2nd ACP grade pay Rs.2800/- as wrong and cancelled the same, due to which the pay of the petitioner was reduced. Petitioner retired on 31.07.2025 as Junior Station In-Charge from the Hill Depot, Dehradun.

5.3 After retirement the Respondent Corporation made recovery of Rs.7,14,544/- from the retiral dues of the petitioner, which is per se illegal. Petitioner made representation and also served legal notice, but in vain.

5.4 According to the petition, petitioner is entitled to the recovered amount of Rs.7,14,544/- with interest as per GPF rate from the date of retirement till the date of actual payment.

6. In Claim Petition No. 128/SB/2025, Mange Ram vs. State of Uttarakhand and others, petitioner seeks the following reliefs:

- “ i) To issue an order or direction to the respondents to return the recovered amount Rs. 1,07,457/- 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.”

[Emphasis supplied]

6.1 Petitioner was initially appointed as Conductor on 01.09.1992 at Hill Depot, Dehradun. During service, benefit of 2nd ACP grade pay Rs.2800/- was given to the petitioner from 02.09.2013, and his pay was accordingly fixed.

6.2 Benefit of ACP was given to a large number of employees, but on a complaint of someone, an audit committee was constituted by the Respondent Corporation. On the basis of the report of audit committee, Respondent No.4 refixed petitioner's pay in the year 2021. Petitioner made representation against the same. Respondent No.4 vide office order dated January, 2023, revised the pay of the petitioner, showing 10 years' pay scale and 2nd ACP grade pay Rs.2800/- as wrong and cancelled the same.

Petitioner's salary was reduced. Petitioner retired on 31.03.2025 as Junior Clerk from the Hill Depot, Dehradun.

6.3 After retirement the Respondent Corporation made recovery of Rs.1,07,457/- from the retiral dues of the petitioner, which is per se illegal. Petitioner made representation and also served legal notice, but in vain.

6.4 According to the petition, petitioner is entitled to the recovered amount of Rs.1,07,457/- with interest as per GPF rate from the date of retirement till the date of actual payment.

7. In Claim Petition No. 129/SB/2025, Gyan Singh vs. State of Uttarakhand and others, petitioner seeks the following reliefs:

- “ i) To issue an order or direction to the respondents to return the recovered amount Rs. 4,92,251/- 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.”

[Emphasis supplied]

7.1 Petitioner was initially appointed as *Mazdoor* (labour) in the Respondent Corporation at Depot. Workshop Rural, Dehradun, on 04.06.1987. In the year 2015, benefit of grade pay Rs.4200/- was given to the petitioner and his pay was accordingly fixed.

7.2 The benefit of ACP was given to a large number of employees including petitioner. When someone raised objection, an audit committee was constituted by the respondent department, which committee submitted its report. On the basis of the report of audit committee, Respondent No.3, in the year 2021 refixed the pay of the petitioner, and cancelled and modified the grade pay Rs.4200/- into grade pay Rs.2800/-, due to which pay of the petitioner was reduced. Petitioner retired on 30.06.2025 as Wolknizer from the Divisional workshop, Dehradun.

7.3 After retirement the Respondent Corporation made recovery of Rs.4,92,251/- from the retiral dues of the petitioner, which is illegal, therefore

petitioner made representation with legal notice, without yielding any result. Petitioner had, therefore, no option but to file present claim petition.

7.5 According to the petition, petitioner is entitled to the recovered amount of Rs.4,92,251/- with interest as per GPF rate from the date of retirement till the date of actual payment.

8. In Claim Petition No. 130/SB/2025, Mam Chand vs. State of Uttarakhand and others, petitioner seeks the following reliefs:

- “ i) To issue an order or direction to the respondents to refund the recovered amount Rs. 2,00,000/- 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.”

[Emphasis supplied]

8.1 Petitioner was initially appointed as Cleaner in the Respondent Corporation at Depot Workshop, Haridwar. During service, benefit of ACP grade pay Rs. 4200/- was given to the petitioner, and his pay was accordingly fixed. Petitioner retired on 30.06.2018 as Assistant Electrician from Depot. Workshop, Haridwar. After retirement all retiral dues have not been paid to the petitioner.

8.2 The benefit of ACP was given to a large number of employees, but on a complaint of someone, an audit committee was constituted by the Respondent Corporation for enquiry. On the basis of the report of audit committee, Respondent No.4 refixed the pay of the petitioner showing 3rd ACP grade pay Rs. 4200/- as wrong and cancelled the same. Petitioner's pay was reduced.

8.3 After retirement, a sum of Rs. 2,00,000/- was recovered from his retiral dues, which is illegal.

8.4 Petitioner made representation against the refixation and recovery and also served a legal notice, but nothing has been done by the respondent department. Hence, present petition.

8.5 According to the petition, petitioner is entitled to recovery of Rs. 2,00,000/- with interest as per GPF rate from the date of retirement till the date of actual payment.

9. C.A. has been filed by Sri Suresh Singh Chauhan, Divisional Manager (operation), Uttarakhand Transport Corporation, Dehradun on behalf of Respondent Corporation.

9.1. Ld. Counsel for the Respondent Corporation submitted that unlawful gains of an employee, can always be recovered. Ld. Counsel for the respondents submitted that nothing has been recovered from the petitioners, it is only adjustment against the excess payment wrongly received by the petitioners.

9.2. Sri Vaibhav Jain, Ld. Counsel for Respondent Corporation submitted that the petitioners of these claim petitions are not entitled to interest, inasmuch as the same was excess payment made to the them. He further submitted that the amount, which was released to the petitioners, was not their entitlement, therefore, the excess payments made to the petitioners have been adjusted by issuing impugned office orders and there is no illegality in such orders.

9.3 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.

10. Material facts in the above noted claim petitions are almost the same. Common questions of law 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?

11. 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 petitions, 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 :-

"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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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.

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.

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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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 :-

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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:-

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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:

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

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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 future. In a sense, it governs the future right of seniority, promotion or age of retirement of those who are already in service.

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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.

.....

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.....

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.”

12. 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.”

13. 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.

14. 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."

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

15. Petitioners are entitled to refund of the amount which has been deducted from their retiral dues.

16. The reply to the question No.1, posed in para 10 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*).

17. 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 petitioners on the basis of above discussion.

18. 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.

19. Hon'ble Supreme Court in the decision rendered in *Jogeshwar Sahoo and others vs. the District Judge, Cuttack & others, in civil appeal, arising out of SLP (C) No. 5918/2024*, observed as follows:

“.....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.”

20. The above noted petitions are, 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.

21. Respondents are directed to refund the amount recovered/ withheld, from the retiral dues of the petitioners, without unreasonable delay, as specified herein below:

- (i) A sum of Rs. 85,394-00/- to Sri Subhash Chandra Puri, petitioner of claim Petition No. 124/SB/2025.
- (ii) A sum of Rs. 4,28,960-00/- to Sri Vinod Prasad Uniyal, petitioner of claim Petition No. 125/SB/2025.
- (iii) A sum of Rs.2,43,144-00/- to Sri Harsh Mohan Jakhmola, petitioner of claim Petition No. 126/SB/2025.
- (iv) A sum of Rs.7,14,544-00/- to Sri Brahmpal Singh, petitioner of claim Petition No. 127/SB/2025.

- (v) A sum of Rs.1,07,457-00/- to Sri Mange Ram, petitioner of claim Petition No. 128/SB/2025.
- (vi) A sum of Rs.4,92,251-00/- to Sri Gyan Singh, petitioner of claim Petition No. 129/SB/2025.
- (vii) A sum of Rs.2,00,000-00/- to Sri Mam Chand, petitioner of claim Petition No. 130/SB/2025.

22. Let copies of this judgment be placed on the files of Claim Petitions 125/SB/2025 Sri Vinod Prasad Uniyal , 126/SB/2025 Sri Harsh Mohan Jakhmola, 127/SB/2025 Sri Brahmpal Singh, 128/SB/2025 Sri Mange Ram, 129/SB/2025 Sri Gyan Singh & 130/SB/2025 Sri Mam Chand vs. State and others.

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: OCTOBER 22 , 2025.
DEHRADUN

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