

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

**CONTEMPT PETITION NO. C-16 /SB/2025**

*(Arising out of judgment dated 25.09.2024,  
passed in Claim petition No. 62/SB/2024 & judgment  
dated 09.07.20254 passed in Execution Petition No.  
15/SB/2025)*

Smt. Meena Shah, w/o Sri Harish Mohan, age 62 years, Ex. Chief Administrative Officer (Grade-II), r/o Kalika Vihar, Bhawani Enclave, Kargi Grant, Dehradun.

**.....Petitioner/applicant**

**vs.**

1. Sri Ramesh Kumar Sudhanshu, IAS, Principal Secretary, Forest & Environment Department, State of Uttarakhand, Subhash Road, Dehradun.
2. Sri Samir Kumar Sinha, Chief Conservator of Forest, Uttarakhand, Dehradun.
3. Ms. Amita Joshi, Director, Pension & Entitlement, Govt. of Uttarakhand, 23 Laxmi Road, Dehradun, Uttarakhand.
4. Sri Manoj Kumar Pandey, Senior Treasury Officer, District Tehri Garhwal, New Tehri.
5. Smt. Sandeepa Sharma, Divisional Forest Officer, Tehri Dam Van Prabhag (First) New Tehri.

**.....Respondents/ O.Ps.**

*(virtually)*

Present: Sri Uttam Singh, Advocate, for the petitioner/applicant.  
Sri V.P. Devrani, A.P.O. in assistance of the Tribunal.

**JUDGMENT**

**DATED: NOVEMBER 11, 2025**

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

Present contempt petition has been filed by the petitioner/applicant for awarding suitable punishment to the respondents (alleged contemnors) for committing willful and deliberate contempt of judgment and order dated 25.09.2024 of the Tribunal passed in Claim Petition No. 62/SB/2024, Meena Shah vs. State of Uttarakhand and others.

3. When the respondents failed to comply with the order of the Tribunal, petitioner filed Execution Petition No. 15/SB/2025, which was disposed of on 09.07.2025.

4. To avoid the repetition of facts, it will be appropriate to reproduce relevant paragraphs of the decision dated 25.09.2024, passed in Claim Petition No. 62/SB/2024 Meena Shah vs. State of Uttarakhand and others, herein below for convenience:

“3. Petitioner was posted as Chief Administrative Officer in the respondent department before her retirement on 31.07.2022. *Vide* order dated 21.02.2022 (Annexure: 1), her pay was revised. Revised pension/ gratuity/ pension commutation/ family pension order was issued on 09.09.2022 (Annexure: 2). On 13.01.2021, the Finance Controller in the office of Principal Chief Conservator of Forest (HoFF) raised certain queries (Copy: Annexure-3) , which were to be replied by the Divisional Forest Officer, Tehri Dam Forest Division 1<sup>st</sup>, New Tehri.

3.1 It is the submission of Ld. Counsel for the petitioner that order dated 21.02.2022 was issued without giving any opportunity of hearing to the petitioner. *Vide* such order salary of the petitioner was reduced [without notice and on the dictation of the Finance Controller, without application of mind]. Sri Uttam Singh, Ld. Counsel for the petitioner also submitted that order/ letter dated 09.09.2022 is also liable to be set aside to the extent a sum of Rs.1,95,574/- was recovered from the gratuity of the petitioner.

4. The claim petition has been contested on behalf of respondents. Separate Counter Affidavits have been filed on behalf of the respondents. One Counter Affidavit has been filed by Sri Amit Kanwar, D.F.O., Tehri Dam Forest Division-1<sup>st</sup> , New Tehri, Uttarakhand, on behalf of Respondents No. 1, 2 and 5. Another C.A. has been filed by Sri Dinesh Chandra Lohani, Director, Treasury, Pension & Entitlement, Uttarakhand, Dehradun, on behalf of Respondents No. 3 & 4. Relevant documents have been filed along with the C.As.

4.1 It has been indicated in Para 18 of the C.A. filed on behalf of Respondents No. 1, 2 & 5, which has been highlighted by Ld. A.P.O., that on verification of the

service book , the finance controller detected excess and overpayment other than her actual entitlement erroneously as and when the up-gradation of G.O dated 16.01.2013 was made applicable by the department. Thereafter *vide* G.O dated 08.02.2013, the G.O dated 16.01.2013 was made applicable retrospectively *w.e.f* 01.01.2013 (The copies of the GO dated 16.01.2013 and the G.O dated 08.02.2013 have been filed as Annexure: C.A.-R-2) .

4.2 As per G.O dated 16.01.2013, the benefit of 3<sup>rd</sup> ACP in grade pay Rs. 4200/-, on completion of 26 years of satisfactory service of the petitioner, was upgraded to grade pay Rs 4600/- *w.e.f* 01.01.2013. Petitioner has wrongly taken the benefit of fitment table two times which is not legally permissible in law.

4.3 In view of the report of the finance controller, basic pay Rs 12040 + 4600/- was the actual entitlement of the petitioner, but mistakenly the same was given as Rs 12540 + 4600/- to the petitioner as such the correct pay fixation order dated 21.02.2022 was issued due to which the order dated 09.09.2022 of over and excess payment other than the actual entitlement of the petitioner amounting Rs 1,95,574/- was issued for adjustment/ recovery from the petitioner. These orders are under challenge in this claim petition.

4.6 Ld. A.P.O. submitted that the petitioner has, during the service tenure, given an unequivocal and unconditional undertaking to deposit excess over payment made to her due to erroneous pay fixation. Hence the adjustment of excess & overpayment of Rs. 1,95,574 /- is liable to be adjusted from the petitioner due to rectification of incorrect pay fixation.

4.7 Learned A.P.O. submitted that re-fixation is permissible, inasmuch as, the petitioner was paid excess amount, which she was not entitled during her service period. Learned A.P.O. also submitted that the petitioner is not entitled to interest inasmuch as the petitioner was not entitled to keep the money, which was deducted from her gratuity. In fact, the petitioner herself should pay interest to the Govt. on the excess money which she was not entitled to keep. Learned A.P.O. also submitted that excess payment of Rs. 1,95,574/- made to the petitioner was adjusted from the gratuity of the petitioner. Learned A.P.O. also submitted the 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, although the Hon'ble Supreme Court has observed that excess payment cannot be recovered from a Group-C or Group-D employee from his/her retiral dues after superannuation.

5. The petitioner was given monetary benefit, which was in excess of his entitlement. The monetary benefits flowed to her consequent upon a mistake committed by the respondent department in determining the emoluments payable to her. 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.

6. 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 her, nor was it on account of any fraud committed by her. 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 her employer, in the wrongful determination of her 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 for the employee (petitioner) to assert that she should be exempted from refunding the excess amount received by her?

8. In the context noted above, Hon'ble Apex Court in Paragraphs 6, 7 & 8 of the decision rendered in *State of Punjab vs. Rafiq Masih*, (2015) 4 SCC 334, has observed thus:

"6. In view of the conclusions extracted hereinabove, it will be our endeavour, to lay down the parameters of fact situations, wherein employees, who are beneficiaries of wrongful monetary gains at the hands of the employer, may not be compelled to refund the same. In our considered view, the instant benefit cannot extend to an employee merely on account of the fact, that he was not an accessory to the mistake committed by the employer; or merely because the employee did not furnish any factually incorrect information, on the basis whereof the employer committed the mistake of paying the employee more than what was rightfully due to him; or for that matter, merely because the excessive payment was made to the employee, in absence of any fraud or misrepresentation at the behest of the employee.

7. Having examined a number of judgments rendered by this Court, we are of the view, that orders passed by the employer seeking recovery of monetary benefits wrongly extended to the employees, can only be interfered with, in cases where such recovery would result in a hardship of a nature, which would far outweigh, the equitable balance of the employer's right to recover. In other words, interference would be called for, only in such cases where, it would be iniquitous to recover the payment made. In order to ascertain the parameters of the above consideration, and the test to be applied, reference needs to be made to situations when this Court exempted employees from such recovery, even in exercise of its jurisdiction under Article 142 of the Constitution of India. Repeated exercise of such power, "for doing complete justice in any cause" would establish that the recovery being effected was iniquitous, and therefore, arbitrary. And accordingly, the interference at the hands of this Court.

8. As between two parties, if a determination is rendered in favour of the party, which is the weaker of the two, without any serious detriment to the other (which is truly a welfare State), the issue resolved would be in consonance with the concept of justice, which is assured to the citizens of India, even in the Preamble of the Constitution of India. The right to recover being pursued by the employer, will have to be compared, with the effect of the recovery on the employee concerned. If the effect of the recovery from the employee concerned would be, more unfair, more wrongful, more improper, and more unwarranted, than the corresponding right of the employer to recover the amount, then it would be iniquitous and arbitrary, to effect the recovery. In such a situation, the employee's right would outbalance, and therefore eclipse, the right of the employer to recover."

*[Emphasis supplied]*

9. Based on the decision, rendered by Hon'ble Apex Court in Syed Abdul Qadir vs. State of Bihar, (2009) 3 SCC 475 and hosts of other decisions, which were cited therein including B.J. Akkara vs. Union of India, (2006) 11 SCC 709, the Hon'ble Apex Court concluded thus:

“18. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.”

*[Emphasis supplied]*

11. 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 refix 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. Much emphasis has been laid by Ld. A.P.O. on the undertaking given by the petitioner by arguing that the petitioner herself undertook that if there is excess payment, same can be adjusted by the department in future. Petitioner retired on 31.07.2022. It may be noted here that the respondent department did not do anything substantial to recover excess amount from the salary of the petitioner when she was in service. Deduction from the gratuity was done only after petitioner's retirement.

20. Hon'ble Supreme Court has, in a catena of decisions consistently held that "if the excess amount was not paid on account of any misrepresentation or fraud 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 payment of emoluments or allowances are not recoverable. This relief against the recovery is granted not because of any right of the employees but in equity, exercising judicial discretion to provide relief to the employees from the hardship that will be caused if the recovery is ordered. This Court has further held that if in a given case, it is proved that an employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, the courts may on the facts and circumstances of any particular case order for recovery of amount paid in excess."

21. The parties are not in conflict on facts. Petitioner's case is squarely covered by the aforesaid decisions of Hon'ble Supreme Court. Petitioner is a retired Group 'C' employee and recovery made from her would be iniquitous or harsh to such an extent that it would far outweigh the equitable balance of employees' right to recover.

22. Considering the factual and legal position discussed above, the petitioner is entitled to refund of Rs. 1,95,574/- which was recovered from the gratuity of the petitioner.

23. The claim petition is disposed of by directing the respondent department to refund a sum of Rs. 1,95,574/-, which was recovered from the petitioner under the pretext of 'adjustment of excess payment' from her gratuity after retirement, as expeditiously, as possible, without unreasonable delay, but she will not be entitled to interest on the same, being 'undeserved monetary benefit'. No order as to costs."

5. Rule 50 of the Uttar Pradesh Public Services (Tribunal) Rules, 1992, reads as under:

**"50. Initiation of proceedings.**—(1) Any petition, information or motion for action being taken under the Contempt shall, in the first instance, be placed before the Chairman.

(2) The Chairman or the Vice-Chairman or such other Members as may be designated by him of this purpose, shall determine the expediency or propriety of taking action under the Contempt Act."

*[Emphasis supplied]*

6. Instead of initiating action under the Contempt Act, against the alleged contemnors, at this stage, the Tribunal deems it appropriate, in view of peculiar facts of the case, to remind the respondents that a duty was cast upon them to do something, which has not been done. A direction was given to the respondents *vide* order dated 25.09.2024, to refund a sum of Rs. 1,95,574/-, which was recovered from the petitioner

under the pretext of 'adjustment of excess payment' from her gratuity after retirement, followed by order dated 09.07.2025 passed in execution petition, but still the order of the Tribunal has not been complied with.

7. This order is being given to the respondents, as a sort of last reminder, to comply with the order of the Tribunal, within a reasonable time, failing which the Tribunal shall be compelled to initiate coercive measures against the respondent department to secure the compliance of it's order.

8. Petitioner is directed to serve a copy of this order in the office of Respondent No.2, by registered post acknowledgement due, within a fortnight.

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

*DATE: NOVEMBER 11, 2025*  
*DEHRADUN*

VM