

**BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL
BENCH AT NAINITAL**

Present: Hon'ble Mr. Rajendra Singh

----- Vice Chairman (J)

Hon'ble Mr. A. S.Rawat

-----Vice Chairman (A)

CLAIM PETITION NO.55/NB/DB/2025

Khilanand Joshi (Male) S/o Late Sri Nathu Ram Joshi, R/o Geetakunj, Near Vashudev Law College, Jeetpur Nigaltiya, Lamachaur, Haldwani, District Nainital.

.....**Petitioner**

Vs.

1. State of Uttarakhand, through its Secretary, Rural Works Department, Government of Uttarakhand, Dehradun
2. Chief Engineer (Level-1)/Head of Department, Rural Works Department, Uttarakhand, Tapovan Marg, Dehradun.
3. Executive Engineer, Rural Works Department, Kotdwar Division, Kotdwar, District Pauri Garhwal.
4. Director, Lekha Evam Haqdari, Uttarakhand, 23-Laxmi Road, Dalanwala, Dehradun
5. Additional Director, Treasury, Pension and Entitlement, Uttarakhand, 23-Laxmi Road, Dalanwala, Dehradun, District Dehradun.

.....**Respondents**

Present: Sri Bhagwat Mehra, Advocate for the petitioner
Sri Kishore Kumar, A.P.O. for the Respondents

JUDGMENT

DATED: FEBRUARY 03, 2026

HON'BLE MR. A.S.RAWAT, VICE CHAIRMAN (A)

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

"A To declare the action of the Respondents in withholding the amount from the gratuity of the petitioner, as arbitrary and illegal.

B. To direct the Respondents, particularly Respondent No. 2 and 5 to forthwith release the withheld amount of Rs. 10,99,363/- to the petitioner, alongwith the interest at a rate to be specified by this Hon'ble Tribunal.

C. To direct the Respondents to pay interest on the delayed payment of pension amount as well as amount of gratuity (reduced) for a period of 09 months i.e. for the period February, 2019 to October, 2019, at a rate to be specified by this Hon'ble Court.

D. To direct the Respondents, to grant all consequential benefits to the petitioner.

E. To pass any other suitable order as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

F. To allow the claim petition with cost"

2. Relevant facts, which are necessary for adjudication of present claim petition, are as under:

2.1 The petitioner was initially appointed on regular and substantive basis in a Government Corporation namely Harijan Nirbal Corporation, w.e.f. 01-12-1983 (along with one Sri Ram Aashrey Sahu). After this, he was appointed on regular basis on the post of Junior Engineer in Rural Engineering Services Department (now renamed as Rural Works Department) on the recommendation of Public Service Commission w.e.f. 24-01-1987. He was given benefit of pay protection from 01-12-1983.

2.2 All the service benefits were granted to the petitioner after treating his substantive date of appointment in the department w.e.f. 01-12-1983. Vide order dated 20-06-2001, the petitioner was given benefit of promotional pay scale of Rs. 8000-13500/- w.e.f. 01-12-1997. Thereafter, vide order dated 21-06-2001 and 05-07-2001, the pay of the petitioner was re-fixed in the said Pay Scale. However, vide order dated 27-07-2001, the pay fixation orders were kept on suspension in view of some order passed by the concerned

Superintending Engineer. The above order was relating to the petitioner as well as Sri Ram Aashrey Sahu.

2.3 In the month of September, 2001, the petitioner was given benefit of Selection Grade on completion of 10 years service w.e.f. 01-12-1993. Similarly, Sri Ram Aashrey Sahu was also granted the same benefit vide order dated 18-09-2001. Thereafter, the Respondent No. 2 i.e. Head of Department granted benefit of Second Promotional Pay Scale to the petitioner on completion of 24 years continuous satisfactory service w.e.f. 01-12-2007. Thereafter, the petitioner as well as Sri Ram Aashrey Sahu granted benefit of 3rd ACP on completion of 26 years of service, in the month of September, 2011. The petitioner was given Grade Pay of Rs. 7600/- on account of third ACP w.e.f. 01-12-2009.

2.4 Thereafter, the petitioner as well as Sri Ram Aashrey Sahu were given officiating promotion on the post of Assistant Engineer (Civil) vide order dated 25-06-2016. Ultimately, the petitioner was regularly promoted to the post of Assistant Engineer vide order dated 09-06-2017 passed by the State Government on the recommendation of the Uttarakhand Public Service Commission. The petitioner after rendering about more than 35 years of continuous satisfactory service under the Government, retired from the post of Assistant Engineer, Rural Works Department, Division Kotdwar after attaining the age of superannuation, w.e.f. 31-01-2019, while the aforesaid Sri Ram Aashrey Sahu retired from the said post on account of superannuation w.e.f. the same date i.e. 31-01-2019.

2.5 Even after retirement, when the petitioner's retiral dues were not paid, he submitted various representations in the matter. Ultimately, the Respondent No. 5 issued Pension Payment Order on 18-09-2019, whereby the pension to the petitioner was sanctioned and an amount of Rs. 10,99,363/- from the Gratuity amount of the petitioner has been withheld by showing it as a recovery.

2.6 The retiral dues of the petitioner were paid in the month of October, 2019. Regarding Sri Ram Aashrey Sahu, similar Pension Payment Order was issued on 02-09-2019, showing recovery of Rs. 10,53,874/- against Sri Ram Aashrey Sahu. Feeling aggrieved from the aforesaid arbitrary and illegal action of the official Respondents, the petitioner as well as Sri Ram Aashrey Sahu submitted various representations to the Respondents. Sri Ram Aashrey Sahu thereafter, approached this Hon'ble Court by filing Claim Petition No. 91/NB/DB/2020 (Ram Aashrey Sahu Vs. State of Uttarakhand and others). The said Claim Petition was ultimately allowed by this Hon'ble Court vide judgment dated 19-06-2023. Thereafter the said judgment was complied with by the Respondent Department in December, 2023, vide order dated 01-12-2023.

2.7 The petitioner also submitted a representation on 11.01.2023 to the Respondents requesting for refund of the aforesaid withheld amount. The petitioner again submitted a representation dated 15-02-2024 to the respondent No. 2 and also reminders to the respondents, but no decision has been taken on the representations. The petitioner was not given any opportunity before passing alleged order of recovery/pay re-fixation/pay reduction. It is also submitted that no copy of any pay re-fixation order was ever served upon the petitioner till date.

2.8. The action of the Respondents is totally against the law propounded by the Hon'ble Apex Court in the case of State of Punjab and others Vs. Rafiq Masih (White Washer) etc. dated 18.12.2014 reported in (2014) 2 U.D. 576 and also in (2015) 4 SCC 334, which clearly provides under what circumstances the recovery can be made. It is further submitted that this Tribunal has also decided the similar controversy in various cases and few of them are Claim Petition No. 38/NB/DB of 2015 (Jagdish Chandra Sanwal Vs. State and others) which was ultimately allowed by this Hon'ble Court vide Judgment dated 20.6.2018. The said Judgment has attained finality in the absence of any challenge and in fact has been complied with by the

State of Uttarakhand. Similar view has been taken by this Tribunal in the judgment dated 02-03-2017 passed in Claim Petition No. 05/SB/2014 (Niyamat Ali Khan Vs. Director Horticulture and others). Recently in Claim Petition No. 91/NB/DB/2020 (Ram Aasrey Sahu Vs. State of Uttarakhand and others), this Tribunal vide judgment dated 19-06-2023 has allowed the Claim Petition. Thereafter, the similar judgment was passed in the case of Raj Kumar Singh Vs. State of Uttarakhand in Claim Petition No. 58/NB/DB/2021 vide judgment dated 25-09-2023. The recent judgment on the point in judgment dated 08-08-2024 passed by this Tribunal narrating the entire law on the point, in Claim Petition No. 98/NB/SB/2022 (Smt. Archana Shukla Vs. State of Uttarakhand and others). All the aforesaid judgments have attained finality and have infact been complied with by the Respondents. The said judgment of Archana Shukla has further been followed by this Tribunal in the case of Sri Girish Chandra Joshi Vs. State as well as Sri Rafat Ali Khan Vs. State.

2.9 The Hon'ble Apex Court in the case of Jogeshwar Sahoo and others Vs. The District Judge, Cuttak and others, has again followed the earlier verdicts on the point including the judgment of Rafiq Masih (Supra), vide judgment dated 04-04-2025. This Tribunal followed the aforesaid judgments including that of Sri Jogeshwar Sahoo, in the judgment dated 17-05-2025 passed in Claim Petition No. 48/NB/DB/2024 (Prakash Chandra Tiwari Vs. State of Uttarakhand and others). The Claim Petition deserves to be allowed with cost and the impugned orders deserve to be set aside.

3. C.A./ W.S. has also been filed on behalf of the respondents defending the departmental action and has contended that the petitioner has given his consent that the recovery of the excess amount paid be made from the retiral dues as he was very well aware of the wrong fixation, as such, now he is debarred from claiming the same. It has further been submitted that while scrutinizing the matter of fixation of pension of the petitioner ambiguities were detected and

thus, the order of recovery was passed. There is no illegality in the impugned orders and the petition is liable to be dismissed.

4. R.A. has also been filed on behalf of the petitioner reiterating the averments made in the claim petition.

5. We have heard learned Counsel for the parties and perused the record carefully.

6. Learned Counsel for the petitioner argued that the petitioner retired from this post on 31.01.2019 after attaining the age of superannuation. The Respondent No. 5 issued Pension Payment Order on 18-09-2019, whereby the pension to the petitioner was sanctioned and an amount of Rs. 10,99,363/- from the Gratuity amount of the petitioner has been withheld by showing it as a recovery. The retiral dues of the petitioner were paid in the month of October, 2019. Regarding Sri Ram Aashrey Sahu, similar Pension Payment Order was issued on 02-09-2019, showing recovery of Rs. 10,53,874/- against Sri Ram Aashrey Sahu. The petitioner as well as Sri Ram Aashrey Sahu submitted various representations to the Respondents. Sri Ram Aashrey Sahu thereafter, approached this Hon'ble Court by filing Claim Petition No. 91/NB/DB/2020 (Ram Aashrey Sahu Vs. State of Uttarakhand and others). The said Claim Petition was allowed by this Hon'ble Court vide judgment dated 19-06-2023. Thereafter the said judgment was complied with by the Respondent Department in December, 2023, vide order dated 01-12-2023. The petitioner also submitted representations but no decision has been taken on the representations. He was not given any opportunity before passing alleged order of recovery/pay re-fixation/pay reduction and no copy of pay re-fixation order was ever served upon the petitioner till date. Learned Counsel for the petitioner argued that the petitioner is entitled to get the amount, which is stopped/ withheld from his gratuity with interest thereon, for which, he has also given references of the judgments passed by this Tribunal in many claim petitions, in which, the respondents were directed to pay the gratuity and other arrears

stopped/ recovered by them. He has requested that present claim petition may also be decided in terms of the said judgments.

7. Learned counsel for respondents vehemently opposed the submissions of the learned counsel for petitioner and submitted that the petitioner has given his consent that the recovery of the excess amount paid be made from the retiral dues as he was very well aware of the wrong fixation, as such, now he is debarred from claiming the same. It has further been submitted that while scrutinizing the matter of fixation of pension of the petitioner ambiguities were detected and thus, the order of recovery was passed. There is no illegality in the impugned orders and the petition is liable to be dismissed.

8. Based on the arguments of the Learned Counsels for the parties and perusal of the record, we find that the petitioner was given monetary benefit, which was in excess of his entitlement. The monetary benefits given was consequent upon mistakes committed by the respondent department in determining the emoluments payable to him.

9. The payment of excess amount to the petitioner was not on account of any misrepresentation made by the petitioner nor was on account of any fraud committed by him. Any participation of the petitioner in the mistake committed by the employer, in extending the inadmissible monetary benefits to him, is totally ruled out. The petitioner was as innocent as his employer, in the wrongful determination of his inflated emoluments.

10. The issue was settled by the Hon'ble Apex Court in *State of Punjab vs. Rafiq Masih*, (2015) 4 SCC 334. 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."*

11. In this regard, reference may also be had to the decisions rendered by the Hon'ble Apex Court on 02.05.2022 in Civil Appeal No. 7115 of 2010, *Thomas Daniel vs. State of Kerala & others, & in Civil Appeal No. 13407/2014* with Civil Appeal No. 13409 of 2015, *B.Radhakrishnan vs. State of Tamil Nadu* on 17.11.2015; decision rendered by Hon'ble Uttarakhand High Court on 12.04.2018 in WPSS No. 1346 of 2016, *Smt. Sara Vincent vs. State of Uttarakhand and others*, and decision rendered by Hon'ble Madras High Court on 019.06.2019 in WP(MD) No. 23541/2015 and M.P. (MD) No. 1 of 2015, *M. Janki vs. The District Treasury Officer and another*.

12. There is, however, no embargo on the respondent department against correct fixation of pay 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].

13. Hon'ble Supreme Court, in the decision rendered in Civil Appeal No.1985 of 2022, the State of Maharashtra and another vs. Madhukar Antu Patil and another, on 21.03.2022, has observed that, on re-fixation of pay scale and pension, there shall not be any recovery of the amount already paid to the retired employees.

14. 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.”*

15. In view of the facts and the judgements of the Hon'ble Courts, it is clear that the petitioner is a retired employees and recovery made from him would be iniquitous or harsh to such an extent that it would far outweigh the equitable balance of employers' right to recover. This case is covered under the guidelines laid down by the judgement of

Hon'ble Apex Court in *State of Punjab vs. Rafiq Masih, (2015)*. The petitioner is liable to be refunded the amount of Rs. 10,99,363/- *withheld* from his gratuity amount.

ORDER

The claim petition is hereby allowed. The respondents are directed to refund the amount of Rs. 10,99,363/- to the petitioner, which was withheld from the gratuity of the petitioner within three months of presenting the certified copy of the judgement. No order as to costs.

(RAJENDRA SINGH)
VICE CHAIRMAN (J)

(A.S.RAWAT)
VICE CHAIRMAN (A)

DATE: FEBRUARY 03, 2026
DEHRADUN.
KNP