BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL AT DEHRADUN

Present: Hon'ble Mr. Rajendra Singh

……..Acting Chairman

Hon'ble Mr. A.S. Rawat

……..Vice Chairman (A)

CLAIM PETITION NO. 149/SB/2025

Girish Chandra Kandwal, aged about 60 years, S/o late Sri C.L. Kandwal, R/o Ashutosh Nagar, Near Taniya Farm, Badowala, Dehradun, Uttarakhand.

……Petitioner

versus

1. State of Uttarakhand through Secretary (Watershed Management), Government of Uttarakhand, Secretariat, Subhash Road, Dehradun.
2. Managing Director, Department of Watershed, Indra Nagar, Forest Colony, Dehradun.
3. Chief Project Director, Directorate, Uttarakhand, Indra Nagar, Forest Colony, Dehradun.
4. Dy. Director, Uttarakhand Jalwayu, Anukul Barani Krishi Pariyojna, Uttarkashi Prabhag, ITBP Road, Matli, Uttarkashi.

…….. Respondents

Present: Sri L.K. Maithani & Sri R.C. Raturi, Advocates, for the Petitioner
Sri V.P. Devrani, A.P.O., for the Respondents

Judgement

Dated: 16th October, 2026

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

> "(i) To quash the impugned order dated 07.07.2025 and impugned pay refixation order dated 06.06.2025 of respondent no. 4 with its effect and operation.
>
> (ii) To issue an order or direction to the respondents to remit the amount of Rs. 1,98,640/- back to the petitioner, which has been deducted by way of recovery from the amount of gratuity of the petitioner along with interest as per rule.
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> (iii) To issue any other suitable order or direction which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.
>
> (iv) To award the cost of the case."

2. Brief facts, giving rise to present claim petition, are as follows:

2.1. Petitioner was initially appointed on the post of Class 4 (Peon) on 01.12.1985 in the erstwhile State of U.P., Watershed Management, Srinagar, Garhwal.

2.2. Vide letter dated 06.06.2025 of respondent no. 4, the pay of the petitioner was refixed and last basic pay was fixed at Rs. 44,100/- and the service book of petitioner was sent to Chief Finance Officer, Directorate Watershed Management, Uttarakhand, for inquiry. Petitioner retired on 30.06.2025 from the office of respondent no. 4.

2.3. After retirement of the petitioner, respondent no. 4 issued a recovery order dated 07.07.2025 by which the recovery of Rs. 1,98,640/- was made against the petitioner and ordered for the recovery of the same from the pension of the petitioner. Thereafter, the respondents paid the retiral dues and pension to the petitioner after recovery of Rs. 1,98,640/- from the amount of gratuity of the petitioner. Petitioner sent a legal notice dated 04.11.2025 to respondent no.4. The respondent no. 4 replied the notice vide his letter dated 14.11.2025. From the perusal of the reply, it is revealed that the respondent made recovery of excess payment paid to the

petitioner since 01.01.2006 to 31.05.2025. Thus, recovery was made from the benefits, which was given to the petitioner on 01.01.2006. Since January, 2006, till the date of retirement, already 19 years have lapsed. Hence, after 19 years of service, the recovery of Rs. 1,98,640/- from the pay of the petitioner is bad in the eyes of law.

2.4. The benefit of service was given to the petitioner as per G.O. and departmental orders and rules prevailing at that time and there was no fault, misrepresentation or wrong on the part of the petitioner in getting the above service benefits. Thus, amendment/ refixation in the pay of the petitioner just before the retirement in lower pay scale and recovery of Rs. 1,98,640/- is wrong and illegal. As per the judgment of Hon'ble Apex Court given in the case of State of Punjab vs. Rafiq Masih, the deduction and recovery of class IV employee after his retirement is not permissible in the eyes of law.

3. The claim petition has been contested on behalf of the respondents. C.A. has been filed by Sri Siddhartha Shankar Srivastava, Dy. Director, Uttarakhand Jalwayu Anukul Barani Krishi Pariyojana, Uttarkashi. Counter affidavit has been filed mainly stating that:

3.1. Petitioner was initially appointed on the Class-IV post known as orderly (Chaprasi) in the erstwhile State of U.P. in the Pay scale (305-390) revised Grade Pay of Rs. 1800/- presently level- I of pay matrix table. After the creation of the State of Uttarakhand under the Uttar Pradesh Reorganization Act, the petitioner was duly absorbed into the Directorate of Watershed Management, Uttarakhand on the same post, where he continued to discharge his duties uninterruptedly until the date of his superannuation. Due to an inadvertent administrative error, the department wrongly granted annual increment to the petitioner for the period from 01.01.2006 till May, 2025. When this fact came into knowledge of the respondent department, the correct pay fixation

order dated 06.06.2025 was issued by Respondent No. 4 (Deputy Director UCRRFP Uttarkashi), whereby it was determined that an amount of Rs. 1,98,640/-, paid in excess for the period from 01.01.2006 to 31.05.2025, was liable to be adjusted from the petitioner's retiral dues i.e. Gratuity as per rule being public taxpayers money.

3.2. Accordingly, the correct pay fixation order was sent to the finance controller for issuing the pay verification order. Thereafter, Chief Finance Officer sent a letter dated 01.07.2025 to the Office of Deputy Director Uttarkashi after verification of the pay fixation orders granted to the petitioner in entire course of service period on the basis of which the pay of the petitioner was rectified and refixed in accordance with G.O. dated 30.08.2023 issued by the Finance Department, Government of Uttarakhand. The over & excess payment received by the Petitioner during the period of 01.01.2006 to May 2025 was not his legal entitlement under law, but was solely the result of erroneous pay fixation which was granted mistakenly due to wrong benefit of increment. Consequently, there was a conscious decision of adjustment for the over & excess payment as a policy matter has been taken by the State Govt. of U.K vide its letter dated 30.08.2023 after examination and scrutiny the erroneous pay fixations of Govt. employees done on account of recommendation implementation on the pay commissions report and also on account of wrong benefits granted like A.C.Ps by issuing different Govt. orders, so that the excess payment made if any can be recovered by refixing the payments already made to the Employees.

3.3. The reliance placed by the petitioner on the judgement of State of Punjab and others vs. Rafiq Masih, 2015 4 SCC 334 is wholly misplaced and inapplicable to the facts of the present case, inasmuch as the Petitioner had voluntarily executed an undertaking at the time of exercising his option under the revised pay structure, expressly agreeing to recovery/adjustment of any excess payment made to him. Furthermore, the Petitioner was fully aware and had

complete knowledge that he was receiving payments in excess of his lawful entitlement. In view of the undertaking and conscious acceptance of the revised pay structure, the Petitioner is estopped from questioning the recovery/adjustment, and no equitable relief can be claimed by him.

3.4. Moreover in the judgement of Rafiq Masih (Supra), it has been observed that:

> “But where the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or where the error is detected or corrected within a short time of wrong payment, courts will not grant relief against recovery."

3.5. Moreover, the Hon'ble Supreme Court in Madhukar Antu Patil & Another vs. State of Maharashtra & Another, Civil Appeal No. 1985 of 2022, has categorically held that it is a settled proposition of law that correct pay fixation can be carried out whenever the error comes to the knowledge of the Department, and consequential adjustment/recovery of erroneous payments is legally permissible.

3.6. Moreover, as per para 81(3) of the provision of the Financial Handbook volume 5 of part 1 clearly provides that the adjustment and recovery of the excess and over payment from the employee which has been erroneously extended to them & moreover the said provision had not been challenged in any law of the Court and not dealt out in the Judgment laid down in the State of Punjab V/s Rafiq Masih (Supra).

4. Rejoinder affidavit has been filed by learned Counsel for the petitioner reiterating the facts contained in the claim petition and denying the material averments contained in the counter affidavit.

5. We have heard the learned Counsel for the petitioner & learned A.P.O. and perused the documents placed before the Tribunal.

6. Learned counsel of the petitioner argued that the petitioner was appointed as Class IV employee. He was paid an additional increment w.e.f. 01/01/2006 and which continued till hir retirement on 31.05.2025.The petitioner did not have any knowledge of the excess payment he was getting. There is no fraud or misrepresentation of the facts the on the part of the petitioner to get this monetary benefit. It is the fault of the department to make him excess payment for a long time. The recovery of such huge amount from the petitioner will cause undue hardship to him. Thus, recovery of Rs. 1,98,640/- from the retiral dues of the petitioner is against the law settled by the Hon'ble Apex Court in the **State of Punjab vs. Rafiq Masih, (2015) 4 SCC 334** in view of the facts of the case. The impugned order dated 07.07.2025 is liable to be quashed and the claim petition is liable to be allowed.

7. Learned A.P.O. argued that petitioner has been wrongly given additional increment w.e.f. 01.01.2006, which was noticed at the time of his retirement. The respondents calculated this excess payment received by the petitioner which is not a legal entitlement under law and is result of erroneous pay fixation due to which the petitioner got benefit of one increment throughout his service period. This excess amount has been recovered from his gratuity. The recovery order dated 07.07.2025 against the petitioner is as per Rule 81, Financial Rules, Vol.-V Section Chapter XIII. Learned A.P.O. has further argued that the last pay of the petitioner has been refixed as per rules. So, the claim petition filed by the petitioner is liable to be dismissed.

8. Based on the arguments of the parties and the documents placed before the Tribunal, we find that the petitioner has been given benefit of wrong pay fixation w.e.f. 01.01.2006 till his retirement on 30.06.2025. The petitioner has not been alleged to have misrepresented the facts to get the benefits. The monetary benefits have been given wrongly by the respondent department. The excess payment paid to the petitioner cannot be recovered as per the law 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:*
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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.*
> *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]*

9. 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**. It was held that the recovery of the excess amount is restrained in equity while the Court exercises judicial discretion to relieve the employee from

hardship that will be caused if such a recovery is implemented and this view has been taken more particularly in respect of employees of lower rungs.

10. There is, however, no embargo on the respondents 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].

11. Hon'ble Supreme Court, in the decision 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 re-fixation of pay scale can be done for pension but there shall not be any recovery of the amount already paid to the retired employees.

12. In view of the above, the impugned order dated 07.07.2025 is liable to be quashed to the extent of recovery of Rs. 1,98,640/- and the petitioner is entitled to get the refund of Rs. 1,98,640/- recovered from the retiral dues of the petitioner. Hence, the claim petition is liable to be allowed.

ORDER

The claim petition is partly allowed to the extent of recovery. The impugned order dated 07/07/2025 is quashed. The respondents are ordered to refund the amount of Rs 1,98,640/- to the petitioner within two months of receipt of certified copy of this order. No order as to costs.

(RAJENDRA SINGH)
ACTING CHAIRMAN

(ARUN SINGH RAWAT)
VICE CHAIRMAN (A)

DATE: 16TH OCTOBER, 2026
DEHRADUN

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