BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL AT DEHRADUN

Present: Hon'ble Mr. Rajendra Singh

……..Acting Chairman

Hon'ble Mr. Arun Singh Rawat

……..Vice Chairman (A)

CLAIM PETITION NO. 43/DB/2024

Gopal Singh Rawat, aged about 62 years, S/o late Sri Raje Singh Rawat Retd., Dy. Forest Circle Officer, Department of Forest, Uttarakhand, R/o House No. 202, Bhimgoada, Nai Basti, Vagdhya Khemnand Marg, District Haridwar, Uttarakhand.

……Petitioner

versus

1. State of Uttarakhand through Secretary, Forest, Government of Uttarakhand, Secretariat, Subhash Road, Dehradun.
2. Principal/ Chief Conservator of Forest, Uttarakhand, 85, Rajpur Road, Dehradun.
3. Divisional Forest Officer, Tehri Forest Division, New Tehri.

…….. Respondents

Present: Sri L.K. Maithani, Advocate, for the Petitioner
Sri V.P. Devrani, A.P.O., for the Respondents

Judgement

Dated: 28th October, 2026

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

"(i) To issue an order or direction to the respondents to pay the interest at the rate of 18 % per annum on the amount of every month pension since the first day of every month till the date of actual payment i.e. 20.02.2023 and on the amount of interest calculated upto the date 20.02.2023 the interest be paid to the petitioner till date of actual payment.

(ii) To issue an order or direction to the respondents to pay the interest at the rate of 18% per annum on the part amount of gratuity of Rs. 9,56,431/- since the date of retirement upto the date of payment i.e. 20.02.2023 and further on the amount of interest calculated upto the date of 20.20.2023 the interest be paid to the petitioner till the date of actual payment.

(iii) To issue an order or direction to the respondent to return the recovered amount of gratuity Rs. 1,09,205/- to the petitioner with interest at the rate of 18% per annum since the date of his retirement till the date of actual payment.

iv) To issue an order or direction to the respondent to release the increment of the year 2019 to the petitioner and accordingly refix and pay the difference of pension and other retrial dues to the petitioner with interest at the rate of 18% per annum.

v) To issue an order or direction to the respondents to pay the amount of bonus for the year 2017 and 2018 to the petitioner with interest at the rate of 18% per annum.

vi) To issue any other suitable order or direction which the Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

vii) To award the cost of the case."

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

2.1. Petitioner was retired from the post of Dy. Forest Range Officer on 30.11.2020 from the office of Divisional Forest Officer, Tehri Forest Range, New Tehri. After retirement, petitioner was eligible and entitled for getting pension and other retiral dues as per rules.

2.2. For the preparation of pension papers and sanction of pension, the State Government framed the rules, The Uttarakhand Pension Cases (Submission, Disposal and Avoidance of Delay) Rules 2003. The time schedule and responsible authority for preparation and completing the formalities of pension papers and sanctioning of pension are given in schedule of the said Rules. As

per schedule of the Rules of 2003, the formalities for pensionary benefits to the employee should be started eight months prior to the retirement and after completing all the formalities, the pension payment order should be issued on the eve of retirement. In the rule 4(2 & 3) of Rules of 2003, the provisions for departmental proceedings are made against the officer/authority who will be found responsible for delay in completing the formalities of pension of a person.

2.3. After retirement, the petitioner was entitled for the following retiral benefits:

(i) Pension

(ii) Gratuity

(iii) Amount of Commutation

(iv) Amount of Leave Encashment

(v) Amount of group insurance

(vi) Amount of GPF

2.4. As per rules of pension/retiral benefits, all the retrial dues should to be paid to the petitioner within one month from the date of his retirement. Petitioner retired from the service of the respondents on 30.11.2020. The petitioner made representation to the respondent No. 3 and prayed to release his pension. After retirement, amount of G.P.F. and leave encashment was paid to the petitioner respectively on 10.12.2020 and 28.12.2020, but the amount of pension, gratuity and G.I.C. were paid to the petitioner after lapse of more than two years. The amount of G.I.C. was paid to the petitioner vide order dated 03.03.2023 of respondent No. 3 and pension and gratuity was sanctioned to the petitioner vide pension payment order dated 20.02.2023. From the perusal of pension payment order dated 20.02.2023, it is revealed that

amount of gratuity of the petitioner was made Rs. 10,65,636/- but Rs. 1,09,205/- was recovered from the amount of gratuity and only Rs. 9,56,431/- has been paid to the petitioner as an amount of gratuity.

2.5. Respondents wrongly delayed the payment of pension and other dues of the petitioner. In respect of his pension and other dues, the petitioner made representation to the respondent no. 3. Thereafter, after 9 months of retirement of the petitioner, the respondent No. 3 vide his order dated 23.08.2021 directed the petitioner that in his pension matter, Treasury made objection that services of Shri Gopal Singh Rawat for the period 10.08.2017 to 12.10.2017 is not verified. It was mentioned in the order that “as per your service book you are relieved ex-parte from Tehri Dam Forest Range first, New Tehri on 09.08.2017 and has presented before the Range on dated 12.10.2017. The Prabhagiya Vanadhikari, Tehri Dam Range, First, New Tehri informed that during the above period you have not contacted or made information to the Range Officer/Office. Due to non verification of services of the above period, your pension matter has been pending. Therefore the regarding period from 10.08.2017 to 12.10.2017 clarify the position so that further action can be taken for the disposal of pension matter.”

2.6. Petitioner replied the letter dated 23.08.2021 of the respondent No. 3 vide his representation dated 18.09.2021 and informed that releasing order on transfer was belatedly received to him, as no one is nominated to give charge of my work. On 12.10.2017, the then Forest Range Officer, Range Office Surkanda Dam Forest Range Chamba, Tehri Garhwal served the transfer order to the petitioner and ordered him to give the charge of his area to Shri Vijay Singh Negi, Dy. Forest Range Officer, Surkanda Dam Forest Range Chamba and take the charge of transfer post. Thus since 10.08.2017 to 12.10.2017 he was working in his previous place of posting. In his representation the petitioner also

mentioned that there is 12 months' medical leave and more than 24 months earned leave remaining in his leave account. In respect of the said period 10.08.2017 to 12.10.2017, the petitioner already made representation on 01.06.2019 to the respondent No. 3 and prayed to pay the salary of the period as during this period he was working on his duty, but at that time no decision was taken on the matter of said period 10.08.2017 to 12.10.2017 and petitioner retired from his service on 30.11.2020. Due to the non-disposal of the service of 10.08.2017 period to the 12.10.2017, the petitioner was deprived from his retrial dues upto the year March 2023.

2.7. Due to the fault and negligence of the respondents, no decision was taken by the respondents in respect of the service period from 10.08.2017 to 12.10.2017 during the service of petitioner and till date the same is kept pending without any reasons. During the period from 10.08.2017 to 12.10.2017 the petitioner was not absent from his service and continuously working on his previous place, until the order of handover the charge to Shri Vijay Singh Negi, the Dy. Forest Range Officer. Thus this period was to be treated as duty of the petitioner and salary for that period was to be given to the petitioner. Therefore, non-verification of service of the petitioner for that period is wrong and illegal act of the respondents. There was sufficient leave in the account of the petitioner, thus services of that period can be regularized by sanctioning the leave to the petitioner, but due to the inertness and negligence of the respondents no decision was taken by the respondent which is wrong and illegal.

2.8. Petitioner sent a legal notice dated 10.10.2022 to the respondents, but instead to release the pension of the petitioner, the respondent No. 3 vide his reply dated 25.11.2022 blamed the petitioner for non-corporation. Vide reply dated 25.11.2022 of respondent No. 3, the allegation of non-corporation for disposal of the service period 10.08.2017 to the 12.10.2017 against petitioner is wrong and illegal. Since November, 2017 the petitioner several

times orally and by way of representation placed all the factual position and circumstances under which he could not join the transfer placed and was continuously working on the previous place and prayed to pay the salary of that period or sanction leave of that period to the petitioner, thus in respect on non-disposal/verification of the service there was no fault or wrong of the petitioner. Thus withholding of the pension and gratuity of the petitioner by the respondents is wrong and illegal. Under the pension rules all the formalities for pensionary benefits should to be started prior to the eight months of the retirement of the petitioner and within a month of retirement the pension should be sanctioned to the petitioner, but in utter disregards of the Rules of 2003 the pension papers of the petitioner was prepared and completed by the respondent's authority after his retirement in the month December 2020 and pension and gratuity has been sanctioned and released timely by the respondents to the petitioner after a lapse of more than two years, which is clear violation of the provisions of the Rules of 2003. Bonus for the year 2017 and 2018 and increments of the year July 2017 was also not paid to the petitioner.

2.9. After retirement, the respondent made a recovery of Rs. 1,09,205/- from the retrial dues of the petitioner as excess payment of the pay without any notice and without any opportunity of hearing to the petitioner. In view of the law laid down by the Apex Court in the case of State of Punjab and others vs. Rafiqu Masih the recovery of amount Rs. 1.09,205/- from the retrial dues of petitioner is wrong and illegal. It is not in the knowledge of petitioner that against which dues the recovery is made against the petitioner. During the service all the salary and allowances sanctioned to the petitioner were not based on fraud or misrepresentation of the petitioner and it is sanctioned to the petitioner as per law and petitioner also paid income tax against her salary, thus on this count the recovery is bad in the eyes of law and respondents is liable to return the recovered amount Rs. 1.09,205/- with interest to the petitioner.

2.10. Delay in sanctioning the pensionary dues to the petitioner is due to the wrong, negligent, arbitrary and malafide action of the authorities/officers of the respondents, therefore the interest on the amount of pension and other retrial dues along with damage should to be given to the petitioner, but the respondents sanctioned the pension and other retrial dues without interest and damages to the petitioner which is wrong and against the rule/law and principles of natural justice.

3. The claim petition has been contested on behalf of the respondents. C.A. has been filed by Janmjay Chand Ramola, Sub Divisional Officer, Tehri Forest Division, New Tehri, denying the material averments contained in the claim petition. Relevant documents have been filed by the respondents. Counter affidavit has been filed mainly stating that the petitioner was initially appointed on the post of Forest Guard in the pay scale of Rs. 330-495/- with grade pay Rs. 2000 (level-3) on 17.12.1983 in the Forest Department of erstwhile State of U.P. Thereafter, during the tenure of 4th pay commission w.e.f. 01.01.1996, the pay scale of Rs. 825-1200 was revised into pay scale of Rs. 2750-4400/-

3.1. On completion of 14 years satisfactory/ continuous service on 17.12.1997, petitioner was granted benefit of 1st promotional pay scale Rs. 3050-4590 under the time scale scheme of 5th pay commission. That by virtue of the G.O no. 1173 dated 04.08.2004 the pay scale of Forester and Deputy Ranger was upgraded and accordingly the petitioner's has been granted the benefit of the amended pay scale of 4000-6000/- w.e.f. from 06.11.2003 by the department.

3.2. On implementation of the 6th pay commission report, the pay scale Rs. 4000-6000/- was revised into the pay scale of Rs. 5200-20,200 with grade pay Rs. 2400/-w.e.f 01.01.2006. Thereafter on completion of the 24 years of continuous and satisfactory services under the Time Scale Scheme the petitioner was granted

the benefit of the 2nd promotional pay scale Rs. 9300-34,800 with grade pay Rs. 4200 w.e.f. 16.12.2007 by the department. During the tenure of 6th pay scale under the ACP scheme vide G.O. dated 08.03.2011 on completion of 26 years of continuous and satisfactory services the petitioner was granted the benefit of 3rd ACP in the pay scale Rs. 9300-34800 with grade pay Rs. 4600/- w.e.f. 17.12.2009 by the department.

3.3. As per the clarificatory ACP G.O dated 06.11.2013 the petitioner 3rd ACP in the grade pay 4600/- was amended into the grade pay 4800/- equivalent to the post of Ranger w.e.f. 01.11.2013 by the department. The petitioner was actually promoted to the post of Forester on 18.11.2010 and thereafter on the post of Deputy Forest Ranger on 13.02.2020 and thereafter on attaining the age of superannuation i.e. 60 years he got retired from the same on 30.11.2020. Hence, in the entire service the petitioner has got the benefit of two actual promotion and three promotional pay scale from the direct recruitment post i.e. Forest Guard. In year 2018 when it came into the knowledge of the department that due to the implementation of the clarificatory ACP G.O. dated 06.11.2013 w.e.f. 01.11.2013 mistakenly some pay fixation orders were made incorrect. Moreover, the petitioner has willfully executed the indemnity bond in the presence of two witnesses in which it has been clearly mentioned that the department has liberty to adjust excess and overpayment which caused the financial loss to the State Govt. On verification it was found that the petitioner was given the benefit of basic pay Rs. 13,350 in place of basic pay Rs 12,480 in grade pay Rs 4800/- to the petitioner mistakenly which was duly corrected vide letter no. 1973 dated 19.03.2018 by the department during the service tenure of the petitioner not after retirement.

3.4. The copy of the correct fixation letter no. 1973 dated 19.03.2018 was duly communicated to the petitioner as such it is clear that this fact was throughout in the knowledge of the petitioner that he has withdrawn excess and overpayment other than his

actual entitlement and admissibility therefore this excess / overpayment should be deposited by the petitioner in the Govt. Head being a public tax payer money but the petitioner deliberately kept silence and intentionally got the undue/ financial benefit upto 20.02.2023. As per the provision of G.O. dated 17.04.2015 the service book of the petitioner was sent to the Finance Controller of the department for proper verification of pay fixations orders granted to the petitioner time to time during the entire period of service.

3.5. On the verification of the service book by the Finance Controller vide its letter no.440 dated 25.11.2020 directed the department to correct the erroneous pay fixation if any given to the petitioner. On the basis of correct pay fixation order dated 17.03.2018 the chart of due, drawn and difference was issued pursuant to the direction of Finance controller dated 25.11.2020 and accordingly over and excess payment amounting to Rs. 1,09,205/- was adjusted from the gratuity payable to the petitioner.

3.6. So far as the question of the delay payment of G.I.S amount Rs 87,470/- is concerned, in this context it is made clear the petitioner was transferred from Tehri dam forest division to Forest Division Uttarkashi vide order dated 10.07.2017 of C.F of Muni ki reti. Petitioner pursuant to the said transfer order didn't join Forest Division, Uttarkashi and his transfer order was amended vide order dated 26.09.2017 for posting in Tehri Van Prabhag New Tehri and he joined the service on posting place on 13.10.2017. Petitioner remained unauthorisedly absent from Govt. duty w.e.f. 10.08.2017 to 12.10.2017 approx. 64 days and this absence period was not verified in the service book of the petitioner therefore this period was break in service further it is stated that neither any satisfactory explanation was presented nor any medical certificate for regularizing this absence period was never submitted by the petitioner during his service period. As such the letter no. 584 dated 23.08.2021 and 27.03.2021 and letter dated 03.03.2023,

18.02.2021 18.03.2021 was issued to the petitioner for disposal/verification of the said absence period.

3.7. In response of the above mentioned letter the petitioner finally on 08.12.2022 has given application to adjust his absence period by sanctioning Earned leave available in his leave account. Due to the fault of the petitioner if delay any has been occurred in disbursement of the post retiral dues i.e. pension, gratuity, commutation of pension etc0 as admissible to the petitioner for which the respondent department has no liability and responsibility as such the petitioner is not liable to get the benefit on the interest of delay payment if any to disbursement of the post retiral dues. Hence, the claim petition has no legal force and same being devoid of any legal merit same is liable to be dismissed with extemporary cost at very on set.

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 for the petitioner argued that the petitioner was retired from the post of Dy. Forest Range Officer on 30.11.2020 from the office of Divisional Forest Officer, Tehri Forest Range, New Tehri. The petitioner made representation to the respondent No. 3 and prayed to release his pension. After retirement, amount of G.P.F. and leave encashment were paid to the petitioner respectively on 10.12.2020 and 28.12.2020, but the pension, gratuity and G.I.C. were paid to the petitioner after lapse of more than two years. The amount of G.I.C. was paid to the petitioner vide order dated 03.03.2023 of respondent No. 3 and pension and gratuity was sanctioned to the petitioner vide pension payment order dated 20.02.2023. From the perusal of pension payment

order dated 20.02.2023, it is found that an amount of Rs. 1,09,205/- was recovered from the payable amount of gratuity of Rs. 10,65,636/-. The respondent No. 3 vide his order dated 23.08.2021 directed the petitioner that in his pension matter, Treasury made objection that service of Shri Gopal Singh Rawat for the period 10.08.2017 to 12.10.2017 is not verified. No decision was taken by the respondents in respect of the service period from 10.08.2017 to 12.10.2017 during the service of petitioner. During the period from 10.08.2017 to 12.10.2017 the petitioner was not absent from his service and continuously working on his previous place, until the order of handover of the charge to Shri Vijay Singh Negi, the Dy. Forest Range Officer. The respondent made a recovery of Rs. 1,09,205/- from the retrial dues of the petitioner as excess payment after his retirement . The recovery of amount Rs. 1.09,205/- from the retrial dues of petitioner is wrong and illegal in view of the law laid down by the Apex Court in the case of State of Punjab and others vs. Rafiq Masih. The petitioner did not have the knowledge that against which dues the recovery is made against the petitioner. The petitioner did not commit any fraud or made misrepresentation to get the monetary benefit. The recovery made by the respondents is illegal, the recovered amount of Rs. 1.09,205/- is liable to be returned with interest to the petitioner. The respondents sanctioned the pension and other retrial dues after more than two years without interest which is wrong and against the rule/law and principles of natural justice. In view of the above the impugned order dated is liable not be quashed and the claim petition is liable to be allowed.

7. Learned A.P.O. argued that the petitioner on completion of 14 years satisfactory/ continuous service on 17.12.1997 was granted benefit of 1st promotional pay scale Rs. 3050-4590 under the time scale scheme of 5th pay commission. By virtue of the G.O. no. 1173 dated 04.08.2004 the pay scale of Forester and Deputy Ranger was upgraded and accordingly the petitioner has been granted the benefit of the amended pay scale of 4000-6000/- w.e.f

from 06.11.2003 by the department. On implementation of the 6th pay commission report, the pay scale Rs. 4000-6000/- was revised into the pay scale of Rs 5200-20,200 with grade pay Rs. 2400/- w.e.f. 01.01.2006. Thereafter, on completion of the 24 years of continuous and satisfactory services under the Time Scale Scheme the petitioner was granted the benefit of the 2nd promotional pay scale Rs. 9300-34,800 with grade pay Rs. 4200 w.e.f. 16.12.2007 by the department. On completion of 26 years of continuous and satisfactory services the petitioner was granted the benefit of 3rd ACP in the pay scale Rs. 9300-34800 with grade pay Rs. 4600/- w.e.f. 17.12.2009 by the department.

As per the clarificatory ACP G.O dated 06.11.2013, 3rd ACP in the grade pay 4600/- was amended into the grade pay 4800/- equivalent to the post of Ranger w.e.f. 01.11.2013 by the department. The petitioner was promoted to the post of Forester on 18.11.2010 and thereafter on the post of Deputy Forest Ranger on 13.02.2020 and thereafter on attaining the age of superannuation i.e. 60 years he got from the same on 30.11.2020. Hence, in the entire service the petitioner has got the benefit of two actual promotions and three promotional pay scales from the direct recruitment post i.e. Forest Guard. In 2018, when it came into the knowledge of the department that due to the implementation of the clarificatory ACP G.O. dated 06.11.2013 w.e.f. 01.11.2013 mistakenly some pay fixation orders were made. Moreover, the petitioner has willfully executed the indemnity bond in the presence of two witnesses in which it has been clearly mentioned that the department has liberty to adjust excess and overpayment which caused the financial loss to the State Govt. On verification it was found that the petitioner was given the benefit of basic pay Rs. 13,350 in place of basic pay Rs. 12,480 in grade pay Rs. 4800/- to the petitioner mistakenly which was duly corrected vide letter no. 1973 dated 19.03.2018 by the department during the service tenure of the petitioner not after retirement.

The copy of the correct fixation letter no. 1973 dated 19.03.2018 was duly communicated to the petitioner as such it is clear that this fact was throughout in the knowledge of the petitioner that he has withdrawn excess and overpayment. The petitioner deliberately kept silence and intentionally got the undue/ financial benefit upto 20.02.2023. The service book of the petitioner was verified by the Finance Controller vide its letter no.440 dated 25.11.2020 directed the department to correct the erroneous pay fixation if any given to the petitioner. On the basis of the direction of Finance controller dated 25.11.2020 correct pay fixation of the petitioner was done and the and excess payment amount of Rs. 1,09,205/- was adjusted from the gratuity payable to the petitioner.

Learned A.P.O. further argued that so far as the question of the delay payment of G.I.S amount Rs. 87,470/- is concerned, in this context it is made clear the petitioner was transferred from Tehri dam forest division to Forest Division Uttarkashi vide order dated 10.07.2017 of C.F of Muni ki reti. Petitioner remained unauthorizedly absent from Govt. duty w.e.f. 10.08.2017 to 12.10.2017 approx. 64 days and this absence period was not verified in the service book of the petitioner therefore this period was break in service . The above period was regularized on the requested of the petitioner by grating him Earned Leave. There was delay in disbursement of pension, gratuity and the GIS because of non- submission of timely request by the petitioner to regularize the period of absence from 10.08.2017 to 12.10.2017 hence there is no liability of the respondent department to pay interest on the retiral dues to the petitioner.

8. Based on the arguments of the parties and the documents placed before the tribunal we find that the petitioner was transferred from Tehri Dam Division-1 to Uttarkashi Forest Division but he did not join. His transfer order was modified and he was again transferred to the Tehri Forest Division, where he joined on 13/10/2017. His period of absence from 10.08.2017 to 12.10.2017

could not be regularized. On request of the petitioner, earned leave was granted to the petitioner for the period of absence from 10.08.2017 to 12.10.2017. After regularizing the period of the absence pension, gratuity and the GIS amount were released to the petitioner.

9. Regarding the recovery of the amount of Rs. 1,09,205/- from the retirement dues of the petitioner cannot be done 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."*
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> *[Emphasis supplied]*

10. 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.

11. 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].

12. 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.

13. It was the fault of the petitioner that he did not try to get the period of the absence regularized during his service period. So, he is not entitled to the interest on delayed payment of gratuity and pension. The respondents released the retiral dues after the period of absence was regularized. So the claim petition is liable to be allowed partly. The order dated 20/02/2023 is liable to be quashed to the extent of recovery of the amount of Rs. 1,09,205/- from gratuity (Annexure-2).

ORDER

The claim petition is partly allowed to the extent of recovery of Rs. 1,09,205/- from gratuity vide order dated 20/02/2023 is quashed. The respondents are directed to refund the recovered amount of Rs. 1,09,205/- to the petitioner within two months of presentation of the certified copy of the judgement. No order as to costs.

(RAJENDRA SINGH)
ACTING CHAIRMAN

(ARUN SINGH RAWAT)
VICE CHAIRMAN (A)

DATE: 28TH OCTOBER, 2026
DEHRADUN

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