UTTARAKHAND PUBLIC SERVICES TRIBUNAL, DEHRADUN

Present: Sri V.K. Maheshwari

------ Vice Chairman (J)

&

Sri D.K. Kotia

------- Vice Chairman (A)

CLAIM PETITION NO. 79/2012

Smt. Urmila Tomar (Principal, Retd.), W/o Sri Chamel Singh Tomar, R/o Barwala, P.O. Ashok Ashram, Vikas Nagar, District Dehradun.

………Petitioner

VERSUS

1. State of Uttarkhand through Secretary, Education, Basic Shiksha Vibhag, Uttarakhand, Dehradun,
2. Addl. District Education Officer, Dehradun,
3. Director, Lekha & Haqdari, Uttarakhand, 23, Laxmi Road, Dehradun,
4. Finance and Accounts Officer, Basic Siksha, Dehradun.

…..…Respondents

Present: Sri V.D.Joshi, Counsel for the petitioner

Sri Umesh Dhaundiyal, A.P.O. for the respondents

JUDGMENT

DATE: SEPTEMBER 18,2015

DELIVERED BY SRI V.K.MAHESHWARI, VICE CHAIRMAN (J)

1. Petitioner has sought the refund the amount of Rs. 16,547/- allegedly paid to her in excess by mistake and was later on recovered from the petitioner.

2. The facts in brief are that the petitioner had retired on attaining the age of supernuation from the post of Principal, Primary School, Sainj (Kalsi), Village Barwala, Ashok Ashram, Vikas Nagar, Dehradun on 31.07.2006. During the process of fixation of her pension, it was detected that a mistake occurred by the department in granting the scale in the year 1988, consequently, the petitioner's pay was wrongly fixed in the year 1996 i.e. at the time of implementation of the 5th pay commission. This anomaly was revealed after the retirement of the petitioner and a direction was issued to the petitioner to deposit the amount in the Government Account paid to her because of wrong fixation of pay in the year 1988 and in 1996 otherwise the pension will not be fixed. Under compulsion, the petitioner had to deposit the aforesaid amount in the Govt. Account. Thereafter, the pension of the petitioner was fixed.

3. The petitioner had made several representations to the authorities concerned for refund of the aforesaid amount but all the efforts made by the petitioner went in vain. Hence this petition.

4. The petitioner has challenged the factum of recovery of Rs. 16,547/- on the ground that the petitioner was not at

fault. The mistake if any was committed by the department and the petitioner cannot be punished for that after a period of more than 10 years and the amount could not have recovered. As the amount has already been recovered, the petitioner has claimed the refund of the amount as aforesaid.

5. The petition has been opposed on behalf of the respondents on the ground that petitioner was granted selection grade on 15.12.1987 which was not due to her, consequently her pay was wrongly fixed on 01.01.1988. This mistake was pointed out by the Directorate, Accounts and Entitlement while fixing pension of the petitioner after her retirement. Because of objections of the Director, Accounts and Entitlement, the petitioner was directed to deposit the aforesaid amount, which she had deposited. It is further stated that petitioner had retired on 31.07.2006 and all the retiral benefits have been paid to her. The petition has been filed in 2012, which is barred by time.

6. The petitioner had also mentioned in the petition that the amount of group insurance has not been paid to her and this fact was also denied on behalf of the respondents, but the petitioner has not sought any relief regarding the amount of group insurance.

7. A supplementary rejoinder affidavit has also been filed on behalf of the petitioner and two supplementary counter affidavits have been filed on behalf of the respondents. The facts narrated in the main petition and counter affidavit have been reiterated in the rejoinder affidavit filed on behalf of the petitioner and supplementary

counter affidavit filed on behalf of the respondents respectively. In the supplementary counter affidavit, it has been again clarified that the annual increment of the petitioner was due on 01.12.1988, but because of the mistake, it was granted 11 months prior i.e. on 01.01.1988. Therefore, there is no mistake in the order of the recovery as there was mistake in the fixation of pay.

8. In another counter affidavit sworn by Bhagwati Bangiyal, Director Accounts, it is stated that the proceedings have been taken by the Directorate, Accounts and Entitlement in the matter, and copy of the Govt. Order dated 28.02.2015 has also been enclosed.

9. We have heard both the parties at length and perused the evidence on record.

10. It has been vehemently contended on behalf of the petitioner that the respondents were not entitled to recover the impugned amount of Rs. 16547/- from the petitioner as there was no malafide, mistake, fault or misrepresentation on the part of the petitioner. In case any amount in excess has been paid because of any mistake or error on the part of the respondents, it cannot be recovered from the petitioner after her retirement and after a period of more than 16 years. It is also stated that the petitioner was class-III employee. So the recovery made from the petitioner is totally illegal and can not sustained in the eye of law. The petitioner relies upon the judgment of Hon'ble Supreme Court in **State of Punjab and others Vs. Rafiq Masih, (2015(8) SRL SC, 234)**. We have carefully gone through the principles laid

down by the Hon’ble Apex Court in the aforesaid case. The Hon’ble Supreme Court as laid down as follows:

> *“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:*
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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."

11. The petitioner also relies upon the judgment of the Hon'ble Allahabad High Court in **Rajendra Singh Negi Vs. U.P.S.R.T.C. and others passed on 28.01.2015 in writ petition- No. 20066 of 2010**. The Hon'ble Allahabad High Court has also followed the Rafiq Masih's case (Supra). On the basis of the aforesaid principles, it is contented that the respondents were not entitled to recover the amount from the petitioner. This contention of the petitioner has been rebutted by the petitioner on the ground that State has a right to recover any amount paid to any employee in excess because of any mistake or error and for which there was no entitlement of the employee. Therefore, there is no illegality or irregularity in the process of recovering the amount from the petitioner. From the facts stated above, it becomes crystal clear that the amount was paid to the petitioner by the respondents. The petitioner was not responsible from any angle in process of payment. There was no malafide, misrepresentation or fraud on the part of the petitioner. It is also true that the petitioner was a Class-III employee. It is also revealed from the facts that the aforesaid amount is said to have paid to the petitioner in the year 1988 and in the year 1996 whereas the recovery of the amount is bieng made after about a period of 18 years. Apart this,the amount was recoveredd at the time of

retirement of the petitioner. The Hon'ble Apex Court has very clearly laid down that recovery cannot be made from the Class-III or Class-IV employees. Furthermore, no recovery can be made after a period of 5 years. The Hon'ble Apex Court has also laid down that the recovery cannot be made at the time of retirement. All these facts are applicable in the present case of the petitioner. Therefore, the impugned order of recovery after the retirement of the petitioner cannot be held justified.

12. The next point is as to whether a direction can be issued to the respondents by the Tribunal to refund the aforesaid amount to the petitioner. In this context, it has been argued on behalf of the respondents that had the amount not been recovered, the Tribunal was competent to restrain the respondents from making any recovery from the petitioner, but in the present case, the petitioner herself had deposited the amount in dispute, therefore, the Tribunal has no authority to issue direction to the respondents to refund the amount to the petitioner. In response to this contention, it has been argued on behalf of the petitioner that the amount was deposited under compulsion by the petitioner. It appears to be reliable that the amount in question was recovered from the petitioner under the threat that unless the amount is deposited, the pension will not be fixed. Morever,the amount has been recovered from the petitioner without any right or authority, therefore, the petitioner is entitled to get the refund of the aforesaid amount and the Tribunal is vested with such powers to order the refund of the aforesaid amount. There is no specific bar on the rights

of the Tribunal. On giving thoughtful consideration on rival contentions of the parties, we are of the considered and definite view that once we reach to the conclusion that the amount has been recovered unlawfully and without authority , therefore, petitioner is entitled to get back the aforesaid amount and there is no limitation or bar on the right of the Tribunal to pass the order accordingly or to issue appropriate direction to the respondents in this regard. So, we do not find any force in the contention of the respondents.

13. It has further been contended on behalf of the respondents that the petition is barred by time as the amount was recovered in the year 2007 and the petition has been filed in the year 2012, which is beyond a period of one year. It is further stated that according to the provisions of the Uttarakhand Public Services Tribunal Act, 1976, any claim petition can only be filed within a period of one year from the date of accrual of cause of action, but we do not find any force in this contention because an application for condonation of delay was moved on behalf of the petitioner at the time of presentation of this claim petition. After hearing both the parties, the application was allowed and delay was condoned vide order dated 04.06.2013. Therefore, now there is no point for re-examining the question of limitation.

14. No other point was raised or argued. On the basis of the above discussion, we reach to the conclusion that order for recovery dated 07.09.2007 is liable to be quashed and

petitioner is entitled for the refund of the impugned amount of Rs. 16,547/- and thus, petition deserves to be allowed.

ORDER

The petition is allowed. The impugned order of recovery dated 07.09.2007 is hereby set aside. The respondents are directed to refund the amount of Rs. 16,547/- to the petitioner within a period of three months from today. In case, the amount is not refunded within a period of three months, the petitioner shall be entitled the simple interest @ 6% per annum from the date of this order. No order as to costs.

D.K.KOTIA
VICE CHAIRMAN (A)

V.K.MAHESHWARI
VICE CHAIRMAN (J)

DATE: SEPTEMBER 18, 2015
DEHRADUN

KNP