BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL AT DEHRADUN

CLAIM PETITION NO. 89/SB/2023

Teeka Ram Joshi, aged about 67 years, s/o Sri Narottam Prasad, r/o Village Hadiyana Talla, P.O. Kohli (Hindav) District Tehri Garhwal.

……Petitioner

vs.

1. The State of Uttarakhand through Secretary, School Education, Uttarakhand, Dehradun.
2. Director, School Education, Uttarakhand, Dehradun.
3. School Education Officer (Primary Education),Tehri Garhwal.
4. Deputy Education Officer (Primary Education), Tehri Garhwal.
5. Treasury Officer, Ghansali, Tehri Garhwal, Uttarakhand.

...…….Respondents

Present: Sri Anil Anthwal, Advocate, for the Petitioner (online)
Sri V.P. Devrani, A.P.O. for the Respondents.

JUDGMENT

DATED: JANUARY 05, 2024.

Justice U.C. Dhyani (Oral)

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

"(i) To quash and set aside the impugned deduction of pension amounting Rs. 25,000/- per month started deducting by the respondents since December, 2022 from the pension of the petitioner (Annexure No. 1).

(ii) To direct the concerned respondents to pay the entire pension of the petitioner continuously as and when the same fell due and also pay the

entire amount of arrears of pension with applicable interest thereon which has wrongly been deducted since December, 2022 onwards from the pension of the petitioner till final payment of arrear of deducted pension.

(iii) To pass any other 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 petition in favour of the petitioner."

2. Petitioner, who is a retired Assistant Teacher, has *inter alia*, prayed for setting aside the impugned order for deduction of pension of Rs. 25,000/- per month and direction to pay pension to the petitioner along with arrears of pension with applicable interest till final payment of arrears of deducted pension.

3. During pendency of claim petition, interim relief was pressed on behalf of the petitioner. The Tribunal passed a speaking order on the same. It will be apposite to reproduce the order dated 13.06.2023 hereinbelow for convenience, to shorten the length of the judgment:

"Ld. Counsel for the petitioner pressed interim relief, which is vehemently opposed by Ld. A.P.O., primarily on the ground that the petitioner has given consent on 22.02.2022 for adjusting the excess payment made to him from his monthly pension. At present a sum of Rs. 25,000/- is being deducted from his monthly pension. Ld. A.P.O. has also pointed out that the petitioner has given undertaking that he will deposit the entire excess payment when he is able to manage such huge sum. Ld. A.P.O. further pointed out that the excess payment made to the petitioner came to the notice when the Audit Team inspected the office of the District Education Officer, Tehri Garhwal. In audit para, a direction was given by the Audit Team to remove the objection raised by it.

Assuming, for the sake of arguments, that excess payment was made to the petitioner when he was in service, the fact remains that the same was consequent upon a mistake committed by the respondent department in determining the emoluments payable to the petitioner.

Again assuming for a moment, the petitioner was in receipt of monetary benefit beyond the due amount, on account of unintentional mistake committed by the respondent department, as argued by Ld. A.P.O., the fact remains that the petitioner is retired Assistant Teacher, a Group 'C' employee, who retired on 31.03.2016.

Hon'ble Apex Court in the decision rendered in State of Punjab vs. Rafiq Masih, (2015) 4 SCC 334, has observed thus:

"……

…….

……."

> Ld. A.P.O. objected that the benefit of Rafiq Masih decision (*supra*) cannot be given to the petitioner because the petitioner has given consent for deduction of excess payment from his pensionary benefits.
>
> Petitioner's case is *prima facie* covered by the decision rendered by Hon'ble Apex Court in State of Punjab vs. Rafiq Masih, (2015) 4 SCC 334. Therefore, there should be stay on further recovery of excess payment from the pension of the petitioner during the pendency of the claim petition.
>
> The effect of petitioner's giving consent to deduct such amount would be considered at the time of final hearing of the claim petition.
>
> Further recovery from petitioner's retiral dues appears iniquitous or harsh to such an extent that it would far outweigh the equitable balance of employees' right to recover.
>
> Prayer for interim relief is disposed of by directing that there shall be no further recovery of excess amount from the pensionary benefits of the petitioner during the pendency of present claim petition."

4. Today also, Ld. A.P.O. submitted that the petitioner had given consent on 22.02.2022 for adjusting the excess payment made to him from his monthly pension. Letter written by the petitioner to Sub-Treasury Officer, Ghansali, has been filed by Ld. A.P.O. with the C.A. as Annexure: CA-2. It appears that the said letter was written by the petitioner to Sub-Treasury Officer under compelling circumstances. At least, the language of Annexure: CA-2 suggests the same. Even if it be conceded for the sake of arguments that the letter dated 22.02.2022 (Annexure: CA-2) was given by the petitioner on his own volition, the fact remains that he is a retired person. Nothing has emerged, on perusal of the documents brought on record, that excess payment was made to him in his connivance with the officials of the respondent department. The same was consequent upon a mistake committed by the respondent department in determining the emoluments payable to him. The petitioner does not appear to be hand-in-glove with the officials of his department in receipt of monetary benefits beyond the due amount (more than what was rightfully due to him).

5. The effect of unintentional mistake committed by the respondent department has been discussed, among other things, by Hon'ble Supreme Court, in Paragraphs 6, 7 & 8 of the decision rendered in State of Punjab vs. Rafiq Masih, (2015) 4 SCC 334, as below:

> "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]

6. 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 the decision *of 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]*

7. The parties are not in conflict on facts. There is no dispute as regards the facts of the case. Petitioner's case is squarely covered by situation no. (ii) of the aforesaid decision of Hon'ble Supreme Court. Petitioner is a retired Group 'C' employee and recovery made from him would be iniquitous or harsh to such an extent that it would far outweigh the equitable balance of employees' right to recover.

8. Petitioner is, therefore, entitled to pension and interest on the amount of arrears of pension, till the date of actual payment. There should be no deduction from his pension. Deductions made from his pension after his retirement (on 31.03.2016) should be refunded to him with admissible interest.

9. The next question which arises for consideration of this Tribunal is, what should be the interest payable on delayed payment of such pension.

10. In this connection, it will be useful to reproduce the relevant part of the judgment rendered by this Tribunal in ***Ramnarayan Singh vs. State of Uttarakhand, 2019(1) UD 698***, herein below for convenience:

> "22. In the backdrop of the above noted facts, the only other question, which is left for determination of this Tribunal now is— how much interest should be awarded to the petitioner for delayed payment of gratuity etc.?
>
> 23. In the decision of *D.D.Tiwari (D) Thr. Lrs. vs. Uttar Haryana Bijli Vitran Nigam Ltd. and Others, 2014 (5) SLR 721 (S.C.),* it was held by

> Hon'ble Supreme Court that retiral benefit is a valuable right of employee and culpable delay in settlement/ disbursement must be dealt with penalty of payment of interest. Regard may also be had to the decision of Hon'ble Apex Court in *S.K.Dua vs. State of Haryana and Another, (2008) 1 Supreme Court Cases (L&S) 563*, in this context.
>
> 24. The aforesaid decisions have been followed by this Tribunal in claim petition *No.30/DB/2013 Dwarika Prasad Bhatt vs. State and others, decided on 22.09.2016*.. The direction given in claim petition No. 30/DB/2013 has also been carried out.
>
> 25. It is pointed out that Government Order No.979/XXVII(3)Pay/2004 dated 10.08.2004 has been issued by Government of Uttarakhand to regulate interest on delayed payment of gratuity etc. Respondents are, therefore, directed to pay the difference of gratuity, as admissible, and the amount of gratuity which has already been paid, to the petitioner, as per G.O. dated 10.08.2004. The rate of interest of gratuity shall be simple rate of interest payable on General Provident Fund till the date of actual payment.
>
> 26. Respondents are directed to pay the difference in the amount of gratuity along with admissible interest, as per G.O. dated 10.08.2004, on or before 30.06.2019."
>
> [*Emphasis supplied*]

The rate of interest should, therefore, be simple rate of interest payable on General Provident Fund till the date of actual payment.

* * *

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].

12. 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 as below:

> *"2. That respondent no.1 herein was initially appointed on 11.05.1982 as a Technical Assistant on work charge basis and continued on the said post till absorption. By G.R. dated 26.09.1989, 25 posts of Civil Engineering Assistants were created and respondent no.1 herein was absorbed on one of the said posts. Respondent no.1 was granted the benefit of first Time Bound Promotion (for short, 'TBP') considering his initial period of appointment of 1982 on completion of twelve years of service and thereafter he was also granted the benefit of second TBP on completion of twenty four years of*

service. Respondent No.1 retired from service on 31.05.2013. After his retirement, pension proposal was forwarded to the Office of the Accountant General for grant of pension on the basis of the last pay drawn at the time of retirement.

2.1 The Office of the Accountant General raised an objection for grant of benefit of first TBP to respondent no.1 considering his date of initial appointment dated 11.05.1982, on the basis of the letter issued by Water Resources Department, Government of Maharashtra on 19.05.2004. It was found that respondent no.1 was wrongly granted the first TBP considering his initial period of appointment of 1982 and it was found that he was entitled to the benefit from the date of his absorption in the year 1989 only. Vide orders dated 06.10.2015 and 21.11.2015, his pay scale was down-graded and consequently his pension was also re-fixed.

2.2 Feeling aggrieved and dissatisfied with orders dated 06.10.2015 and 21.11.2015 down-grading his pay scale and pension, respondent no.1 approached the Tribunal by way of Original Application No. 238/2016. By judgment and order dated 25.06.2019, the Tribunal allowed the said original application and set aside orders dated 06.10.2015 and 21.11.2015 and directed the appellants herein to release the pension of respondent no.1 as per his pay scale on the date of his retirement. While passing the aforesaid order, the Tribunal observed and held that respondent no.1 was granted the first TBP considering his initial period of appointment of 1982 pursuant to the approval granted by the Government vide order dated 18.03.1998 and the subsequent approval of the Finance Department, and therefore, it cannot be said that the benefit of the first TBP was granted mistakenly. The Tribunal also observed that the services rendered by respondent no.1 on the post of Technical Assistant (for the period 11.05.1982 to 26.09.1989) cannot be wiped out from consideration while granting the benefit of first TBP.

2.3 Feeling aggrieved and dissatisfied with the judgment and order passed by the Tribunal, quashing and setting aside orders dated 06.10.2015 and 21.11.2015, refixing the pay scale and pension of respondent no.1, the appellants herein preferred writ petition before the High Court. By the impugned judgment and order, the High Court has dismissed the said writ petition. Hence, the present appeal.

3. ……..

3.1 At the outset, it is required to be noted and it is not in dispute that respondent no.1 was initially appointed on 11.05.1982 as a Technical Assistant on work charge basis. It is also not in dispute that thereafter he was absorbed in the year 1989 on the newly created post of Civil Engineering Assistant, which carried a different pay scale. Therefore, when the contesting respondent was absorbed in the year 1989 on the newly created post of Civil Engineering Assistant which carried a different pay scale, he shall be entitled to the first TBP on completion of twelve years of service from the date of his absorption in the post of Civil Engineering Assistant. The services rendered by the contesting respondent as Technical Assistant on work charge basis from 11.05.1982 could not have been considered for the grant of benefit of first TBP. If the contesting respondent would have been absorbed on the same post of Technical Assistant on which he was serving on work charge basis, the position may have been different. The benefit of TBP scheme shall be applicable when an employee has worked for twelve years in the same post and in the same pay scale.

4. In the present case, as observed hereinabove, his initial appointment in the year 1982 was in the post of Technical Assistant on work charge basis, which was altogether a different post than the newly created post of Civil Engineering Assistant in which he was absorbed in the year 1989, which

carried a different pay scale. Therefore, the department was right in holding that the contesting respondent was entitled to the first TBP on completion of twelve years from the date of his absorption in the year 1989 in the post of Civil Engineering Assistant. Therefore both, the High Court as well as the Tribunal have erred in observing that as the first TBP was granted on the approval of the Government and the Finance Department, subsequently the same cannot be modified and/or withdrawn. Merely because the benefit of the first TBP was granted after the approval of the Department cannot be a ground to continue the same, if ultimately it is found that the contesting respondent was entitled to the first TBP on completion of twelve years of service only from the year 1989. Therefore both, the High Court as well as the Tribunal have committed a grave error in quashing and setting aside the revision of pay scale and the revision in pension, which were on re-fixing the date of grant of first TBP from the date of his absorption in the year 1989 as Civil Engineering Assistant.

5. However, at the same time, as the grant of first TBP considering his initial period of appointment of 1982 was not due to any misrepresentation by the contesting respondent and on the contrary, the same was granted on the approval of the Government and the Finance Department and since the downward revision of the pay scale was after the retirement of the respondent, we are of the opinion that there shall not be any recovery on re-fixation of the pay scale. However, the respondent shall be entitled to the pension on the basis of the re-fixation of the pay scale on grant of first TBP from the year 1989, i.e., from the date of his absorption as Civil Engineering Assistant.

6. In view of the above and for the reasons stated above, the present appeal succeeds in part. The impugned judgment and order passed by the High Court as well as that of the Tribunal quashing and setting aside orders dated 6.10.2015 and 21.11.2015 downgrading the pay scale and pension of the contesting respondent are hereby quashed and set aside. It is observed and held that the contesting respondent shall be entitled to the first TBP on completion of twelve years from the year 1989, i.e., from the date on which he was absorbed on the post of Civil Engineering Assistant and his pay scale and pension are to be revised accordingly. However, it is observed and directed that on re-fixation of his pay scale and pension, as observed hereinabove, there shall not be any recovery of the amount already paid to the contesting respondent, while granting the first TBP considering his initial appointment from the year 1982."

[Emphasis supplied]

* * *

13. There is no other contentious issue in this claim petition.

14. In view of the decisions rendered by Hon'ble Apex Court, the impugned order (Annexure-1 to the Petition), to the extent pension of the petitioner was deducted by the respondent department after his retirement, is liable to be set aside and is hereby set aside. The respondents are directed to pay pension to the petitioner and interest on the amount of arrears of pension,

as per prevalent GPF rate, from the date deduction was made from the pension of the petitioner till the date of actual payment. The petitioner shall be entitled to the pension on the basis of refixation of pay after his retirement. There shall be no recovery on refixation of the pay scale.

15. Ld. Counsel for the parties submitted that such an order can be passed by the Single Bench of the Tribunal.

16. Order accordingly.

17. The claim petition thus stands disposed of. No order as to costs.

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: JANUARY 05.2024
DEHRADUN

VM