

**BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL
AT DEHRADUN**

CLAIM PETITION NO. 68/SB/2023

Yashwant Singh Chauhan, aged about 60 years, s/o Late Sri Nandan Singh Chauhan , r/o Nanda Sadan, Rajrajeshwari Colony, Vidya Vihar, Phase-II, Kargi road, Dehradun.

.....Petitioner

vs.

1. State of Uttarakhand, through its Secretary, Forest, Civil Secretariat, Dehradun.
2. Principal Chief Conservator of Forest (HoFF), Forest Department, Dehradun.
3. Divisional Forest Officer, Dehradun Forest Division, Dehradun.
4. Chief Treasury Officer, Dehradun

.....Respondents

Present: Sri M.C.Pant (online) & Sri Abhishek Chamoli, Advocates,
for the Petitioner.
Sri V.P. Devrani, A.P.O. for the Respondents.

JUDGMENT

DATED: JANUARY 15, 2024.

Justice U.C. Dhyani (Oral)

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

“(i) To declare the impugned orders dated 19.01.2023 and 10.10.2022 (Annexure Nos. A-1 and A-2) as arbitrary, illegal, unreasonable, unjust and contrary to the law and to quash the same along with its effect and operation after calling the entire record from the respondents to mould the

relief appropriately which this Hon'ble Court may deem fit and proper, keeping in view the facts highlighted in the body of petition.

(ii) To direct the respondents to forthwith release the withheld amount of Rs. 548237/- and to pay the same to the petitioner together with 18% interest thereon and also the same interest rate on the delayed payment of the retiral dues of the petitioner had the impugned orderd were never in existence or to mould the relief appropriately which this Hon'ble Court may deem fit and proper, keeping in view the facts highlighted in the body of petition.

(iii) To grant damages and the compensation for being subjected to illegal act by the respondents in tune of such amount which the Court may deem fit and proper in the circumstances of case in favour of the petitioner and same may be recovered from the arraying officers.

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

(v) To award the cost of the petition to the petitioner.”

2. During pendency of present claim petition, interim relief was pressed on behalf of petitioner. The Tribunal passed a detailed order on the same on 03.05.2023. It will be appropriate to reproduce the order dated 03.05.2023 hereinbelow for convenience:

“Interim relief is pressed by learned Counsel for the petitioner in the light of decision rendered by the Hon'ble Apex Court in *State of Punjab vs. Rafiq Masih*, (2015) 4 SCC 334.

Petitioner retired as Forester from the respondent department on 31.05.2022. It is the submission of learned Counsel for the petitioner that there should be stay on recovery of Rs. 5,48,237/- from the petitioner during the pendency of present claim petition. Objections have been filed by learned A.P.O., on behalf of the respondents, on the interim relief application.

Learned A.P.O. submitted that on completion of 18 years satisfactory service, the petitioner has been granted the benefit of 2nd A.C.P. in grade pay Rs. 2000/- *w.e.f.* 01.09.2008 and further, on completion of 26 years satisfactory service, he was granted the benefit of 3rd A.C.P. in the grade pay Rs. 2400/- hence the petitioner from the initial post of grade pay Rs. 1800/- has been given the benefit of three promotional scale i.e. Rs. 1900/-, 2000/- and 2400/- and one actual promotion on the post of forest guard on 24.06.2003. The petitioner was promoted from the post of forest guard to the post of Forester in the grade pay Rs. 2800/- on 13.07.2016. Due to wrong application of G.O. dated 06.11.2013, the petitioner has wrongly been given the benefit of 2nd and 3rd A.C.P. again *w.e.f.* 01.11.2013. When this fact came to the knowledge of the department, the service book of the petitioner was sent to finance controller of the department before his retirement date *i.e.* 31.05.2022.

Learned A.P.O further submitted that the main relief and the interim relief, as sought by the petitioner in the claim petition, are same and identical, therefore, interim relief cannot be granted.

Hon'ble Supreme Court in its decision in Rafiq Masih (*supra*) has laid down the following guidelines:

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.....”

Whether the impugned office letter dated 19.01.2023 issued by DFO, Dehradun, Forest Division, should be quashed or not, shall be decided at the time of final hearing of the claim petition. At present, it appears to be a fit case for interim stay on recovery against the retired Forester (class-III employee) during the pendency of present claim petition.

A direction is, therefore, given that there shall be interim stay on recovery against the petitioner, during the pendency of present claim petition.

List on 17.06.2023 for filing C.A.-W.S/ further orders.”

3. The Tribunal granted interim stay on recovery. W.S./C.A. has been filed on behalf of respondents by Ld. A.P.O. today. Such C.A. is on the same lines which was argued by Ld. A.P.O. while opposing the interim relief to the petitioner. Pleadings are complete. Heard Ld. Counsel for the parties and perused the documents on record.

4. Petitioner retired as Forester (Class-III employee) from the respondent department on 31.05.2022. It is the submission of Ld. Counsel for the petitioner that the amount, which has been recovered from the petitioner, should not have been recovered in view of decision rendered by Hon'ble Apex Court in *State of Punjab vs. Rafiq Masih, (2015) 4 SCC 334*. In reply Ld. A.P.O. submitted that it was not recovery but (it) was adjustment, on account of overpayment to the petitioner. According to Ld. A.P.O., overpayment made to the petitioner, was adjusted *vide* impugned order dated 19.01.2023, passed by the respondent department. Ld. A.P.O. also submitted that correct fixation of salary is permissible to the Govt. department in view of 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* and in the decision rendered by Hon'ble Supreme Court in *Civil Appeal No. 1985 of 2022, the State of Maharashtra and another vs. Madhukar Antu Patil and another, on 21.03.2022*.

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. ‘Recovery’ is not the outcome of disciplinary proceedings against the petitioner. Nothing disabled him to earn retiral benefits, to which a Govt. servant is entitled in view of the decisions rendered by Hon’ble Apex Court in *State of Kerala and others vs. M.Padmanabhan Nair, 1985 (1) SLR 750; S.K. Dua vs. State of Haryana and Another, (2008)1 Supreme Court Cases (L&S) 563; & D.D. Tiwari (D) vs. Uttar Haryana Bijli Vitran Nigam Ltd. & Others, 2014 (5) SLR 721*. Petitioner’s case is squarely covered by situations no. (i) & (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 retired on 31.05.2022. The deductions were made from his gratuity on 19.01.2023. Whereas the petitioner calls the same as ‘deduction’ or ‘recovery’, Ld. A.P.O. would call the same as ‘adjustment’ of excess payment made to the petitioner over and above his entitlement. ‘Adjustment’ was done *vide* impugned order dated 19.01.2023 and ‘correct refixation’ of salary was done *vide* order dated 10.10.2022. As per law, ‘deductions’ made or ‘recovery’

done (by whatever name they are called) from the gratuity of the petitioner, after his retirement, 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 till deducted amount of gratuity is actually refunded to petitioner.

10. The 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., which is unequivocal on the point.

11. Respondents are, therefore, directed to pay the amount of gratuity to the petitioner, which has been deducted after his retirement, along with admissible interest, as per G.O. dated 10.08.2004, till the date of actual payment. The rate of interest would, therefore, be simple rate of interest payable on General Provident Fund till the date of actual payment.

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12. 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].

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 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, re-fixing 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]

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

15. In view of the decisions rendered by Hon'ble Apex Court, the impugned order dated 19.01.2023 (Annexure-1 to the petition) is hereby set aside. The respondents are directed to pay amount of gratuity to the petitioner along with interest as per prevalent GPF rate, from the date deduction was made (from his gratuity) till the date of actual payment (to him). Respondents are also directed to release all the retiral dues to the petitioner along with admissible interest. The petitioner shall be entitled to pension on the basis of refixation of pay after his retirement. Order dated 10.10.2022 (Annexure: A-2 to the petition) be read accordingly. There shall, however, be no recovery on refixation of the pay scale.

16. Ld. Counsel for the parties submitted that such an order can be passed by the Single Bench of the Tribunal.
17. Order accordingly.
18. The claim petition thus stands disposed of. No order as to costs.

(JUSTICE U.C.DHYANI)
HAIRMAN

DATE: JANUARY 15.2024
DEHRADUN

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