

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

CLAIM PETITION NO. 22/SB/2024

Rajveer Singh, aged 62 years, s/o Sri Ram Sharan, r/o Village Sherpur Khel Mau Narsan, Haridwar, Retired from the post of Assistant Teacher, Government Junior School Noorpur Pala, Basti Block Narsan, Haridwar.

.....Petitioner

vs.

1. The State of Uttarakhand through Secretary, School Education, Civil Secretariat, Dehradun.
2. Director General, School Education, Directorate of School Education, Nanoorkhera, Dehradun.
3. Director (Primary Education), Directorate of School Education, Nanoorkhera, Dehradun.
4. Chief Education Officer, Distt. Haridwar.
5. District Basic Education Officer, Distt. Haridwar.
6. Deputy Block Education Officer, Block Narsan, Distt. Haridwar.

.....Respondents

Present: Sri Ram Prasad (online), Sri Prateek Kannoja, &
Sri Ramandeep Singh, Advocates, for the petitioner.
Sri V.P. Devrani, A.P.O. for the State Respondents.

JUDGMENT

DATED: MARCH 15, 2024.

Justice U.C. Dhyani (Oral)

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

“i) Issue an order or direction, to quash the impugned order dated 28-04-2018 Annexure-04 issued by the Respondent No.3 to the petitioner.

ii) Issue an order or direction, in the nature of justice directing the respondent No. 1 to accept the recommendations of the Respondent No.3, the director Primary Education of Uttarakhand, submitted vide letter dated 11-07-2018 Annexure No.-05.

iii) Issue an order or direction, in the nature of justice directing the respondents to reimburse the amount so recovered from the petitioner in financial year 2022-2023 Annexure No.-06 along with 18% interest from its recovery to till the payment of the aforesaid amount so recovered.

iv) Issue an order or direction, in the nature of justice directing the respondents to revise the pension of petitioner to the pay scale of Rs.17,140/-.

v) Issue any other relief, which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case be passed in favor of the petitioner.

vi) Cost of the petition be awarded in favour of the petitioner.”

[Emphasis supplied]

2. At the very outset, Ld. Counsel for the petitioner submitted that the claim petition is squarely covered by the judgment rendered by this Tribunal on 07.03.2024 in Petition No. 184/SB/2022, Ravindra Kumar and others vs. State of Uttarakhand and others & connected petitions, and the claim petition should be decided in terms of the said judgment.

3. Ld. A.P.O., on seeking instructions from the respondent department, fairly conceded that the claim petition is squarely covered by the judgment rendered by this Tribunal in Petition No. 184/SB/2022, Ravindra Kumar and others vs. State of Uttarakhand & others and connected petitions on 07.03.2024 and present claim petition may be decided in terms of the similar decision of the Tribunal.

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

5. The Tribunal deems it appropriate to reproduce relevant part of the decision rendered in Ravindra Kumar's case (*supra*), hereinbelow for convenience:

“3. Order passed by Hon'ble Court in WPSS No. 3541 of 2018, on 17.10.2022, is as follows:

“.....

9. In the facts and circumstances of the case, till the Uttarakhand Public Services Tribunal takes cognizance of the present matter, the impugned order dated 28.04.2018 (Annexure No. 6 to the writ petition) is kept in abeyance.

10. The present Writ Petition (S/S No. 3541 of 2018) stands disposed of accordingly.”

[Emphasis supplied]

5. Two interim orders were passed by the Hon’ble High Court in the above noted petitions. *Vide* order dated 10.10.2018, Hon’ble Court passed the following order:

“...Having considered the submissions of Learned Counsel for the petitioner, it is directed that, no recovery shall be made from the petitioner pursuant to impugned order dated 28.04.2018 during the pendency of the present writ petition.....”

7. There is no quarrel about the fact that the petitioners are Class-III employees. Their case is covered by Situation (i) of decision rendered by Hon’ble Apex Court in State of Punjab vs. Rafiq Masih, (2015) 4 SCC 334. After hearing Ld. Counsel for the parties and in view of the decision rendered in Rafiq Masih’s decision (*supra*) this Tribunal, *prima facie*, is of the view that interim order dated 17.10.2022, passed by Hon’ble Court should be made absolute.

10. In Para 5 of such C.A., it has been mentioned that as per para 15 of the Govt. Order No. 395 dated 17.10.2008, the employee has to submit option in writing provided in the Form annexed as Annexure 3 to the Govt. Orders within 90 days from the date of the issuance of the Govt. Order for revision of pay scale w.e.f. 01.01.2006 and thereafter according to Para 3 of the Govt. Order No. 27 dated 13.02.2009, the option has been submitted for revision of pay scale on sanctioning promotional/ selection pay scale. Para 5 of the Govt. Order provides that the facility of submission of option for revision of pay scale is extended for further three months. The petitioners have not submitted any option, whereas the petitioners have received the arrears of salary of revision of pay scale *w.e.f.* 01.01.2006 according to provision of the Govt. Order No. 395. Since, according to Para 5 of the Govt. Order No. 161 dated 28.11.2017, the revision of pay scale has to be made as per the Fitment Table from the scale applicable in the 5th Pay Commission to the scale revised in 6th Pay Commission and the employee is to be granted the benefit of Fitment Table only once for the revision of pay scale. Therefore, the order dated 28.04.2018 has been issued.

11. It has also been mentioned in para 8 of the C.A. that the petitioners have been granted the arrears of revision of pay scale *w.e.f.* 01.01.2006 according to the provisions of the Govt. Order No. 395 dated 17.10.2008. The promotions of the petitioners have been made in the year 2008. The petitioners have been granted the benefit of Fitment Table in the revised pay scale. According to Para 15 of the Govt. Order No. 395, those Teachers who have submitted option for determination of salary according to revision of pay scale *w.e.f.* 01.01.2006 before the competent authority, their salary has to be determined as per provisions of Govt. Order No. 395 dated 17.10.2008, Govt. Order No. 74 dated 01.03.2009 and Govt. Order No. 693 dated 21.01.2010. Similarly, those Teachers who have been sanctioned the selection pay scale prior to 01.01.2006 in the Pay Scale of Rs. 5000-150-8000/-, their salary according to Govt. Order No. 74 dated 01.03.2009 read with Govt. Order No. 693. dated 21.10.2021 has been fixed minimum to Rs. 17140/- according to the Fitment Table *w.e.f.* 01.01.2006.

12. In para 10 of the C.A. it has clearly been mentioned that the petitioners have not submitted any option before the competent authority. Office order dated 04.08.2022 has been filed along with C.A.

15. In para 17 of the G.O. dated 17.10.2008 (Annexure: 2), it has been mentioned that if option (in writing) of the employee is not received, then it will be presumed that the employee has opted for amended pay scale and he will be given pay as per the amended pay structure w.e.f. 01.01.2006. Various representations were given to the respondents, including the last one on 26.06.2018 by the petitioners, but the same have not been decided so far. This has been mentioned in para 'd' of the prayer clause of the petition.

16. **A letter has been written by Director, Primary Education, Uttarakhand to the Secretary, Primary Education, Govt, of Uttarakhand, Dehradun, on 11.07.2018 (Annexure: 8), recommending the case of the petitioners. It is pointed out by Ld. Counsel for the petitioners that no action has been taken on such recommendation. Finance Controller, School Education, Uttarakhand, has written letters to: (a) The Chief Education Officers, Uttarakhand and (b) Finance Officers, (Primary/ Secondary Education), Uttarakhand, on 06.02.2023 (Annexure: S.A.-8 to the supplementary affidavit). Mode of pay fixation has been appended to such directions. Such instructions issued by the Finance Controller are in accordance with the case of the petitioners. Detailed instructions given by the Finance Controller justify the case of the petitioners, which they have taken in present petition.**

17. Since no decision has been taken by Respondent No.1 on such recommendation, therefore, the Tribunal is of the view that the directions should be given to Respondent No.1 to take reasoned decision on such recommendations viz: (i) letter written by Director, Primary Education, Uttarakhand to the Secretary, Primary Education, Govt, of Uttarakhand, Dehradun, on 11.07.2018 and (ii) Instructions issued by the Finance Controller, School Education, Uttarakhand, in letters written to: (a) The Chief Education Officers, Uttarakhand and (b) Finance Officers, (Primary/ Secondary Education), Uttarakhand, on 06.02.2023.

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18. So far as recovery of excess and overpayment is concerned, Hon'ble Apex Court, in a number of decisions, has discussed this issue. Hon'ble Supreme Court in Paragraphs 6, 7 & 8 of the decision rendered in *State of Punjab vs. Rafiq Masih, (2015) 4 SCC 334*, has observed 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]

19. 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]

20. It will be pertinent to quote relevant observation of Hon'ble Apex Court made in the decision rendered in *Civil Appeal No. 7115/2010, Thomas Daniel vs. State of Kerala & others*, herein below for convenience:

.....

21. It will also be pertinent to reproduce relevant observations of 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, herein below for convenience:

.....

24. Present case is squarely covered by situations no. (i) & (ii) of the decision rendered by Hon'ble Supreme Court in Rafiq Masih's case (*supra*) . Those employees, who are about to retire within one year, their case is covered by situation no. (ii) of the aforesaid decision.

25. This Tribunal has already observed above that the interim orders passed by the Hon'ble High Court should be made absolute in terms of Rafiq Masih's case (*supra*) and hosts of other decisions.

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* * *

27. Petitions are disposed of by directing Respondent No.1 to take informed decision on the recommendations of - (i) Director, Primary Education, Uttarakhand to the Secretary, Primary Education, Govt. of Uttarakhand, Dehradun, on 11.07.2018 (Annexure: 8) and (ii) Instructions issued by the Finance Controller, School Education, Uttarakhand, in letters written to: (a) The Chief Education Officers, Uttarakhand and (b) Finance Officers, (Primary/ Secondary Education), Uttarakhand, on 06.02.2023, at an early date and without unreasonable delay.

Interim order dated 17.10.2022 passed by the Hon'ble High Court, is made absolute.

No order as to costs.”

6. The claim petition is, accordingly, disposed of, at the admission stage, with the consent of Ld. Counsel for the parties, in terms of the judgment rendered by this Tribunal on 07.03.2024 in Petition No. 184/SB/2022, Ravindra Kumar and others vs. State of Uttarakhand and others & connected petitions.

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: MARCH 15, 2024
DEHRADUN

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