BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL BENCH AT NAINITAL

CLAIM PETITION NO. 122/NB/SB/2021

Sri Gauri Shankar Upadhyay, aged about 74 years, s/o Late Sri Shiv Dutt Upadhyay, r/o Village Bamanpuri, P.O. Dwarahat, District Almora

……Petitioner

vs.

1. State of Uttarakhand through Secretary, Department of Training and Technical Education, Government of Uttarakhand, Dehradun.
2. Director, Training and Employment, Uttarakhand, Haldwani, District Nainital.
3. Additional Director Treasuries and Pension Directorate, Haldwani, District Nainital.
4. Sub-Treasury Officer, Dwarahat, District Almora.

…….Respondents.

(virtually)

Present: Sri Bhagwat Mehra, Advocate, for the petitioner.
Sri Kishore Kumar, A.P.O., for Respondents.

JUDGMENT

DATED: SEPTEMBER 30, 2024.

Justice U.C.Dhyani (Oral)

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

"A. To set aside the impugned orders dated 04.12.2019 issued by the Respondent No.3 (Annexure No A-1).

B. To declare the action of the Respondents in revising the Pay Fixation and making the recovery from the retiral dues as well as pensionary benefits of the petitioner, as arbitrary and illegal.

C. To direct the Respondents to forthwith release the recovered amount from the pension of the petitioner, along with the interest at a rate to be specified by this Hon'ble Tribunal.

D. To direct the Respondents, particularly Respondent No. 2 to grant all consequential benefits to the petitioner.

E. To pass any other suitable order as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

F. To allow the claim petition with cost."

2. Petitioner was serving as Assistant Director (Training) in the Directorate Training and Employment , when he retired on 31.07.2008. He has challenged recovery of Rs. 4,73,943/- being illegally made by the respondents from his pension. He has also challenged pay re-fixation order dated 04.12.2019, issued by Respondent No.3.

2.1 Petitioner was initially appointed in Indian Army in the year 1969. He was having Diploma and Degree in Engineering, as such he was appointed as Assistant Engineer (Electronics) in the year 1986 in N.T.P.C. Subsequently he resigned from N.T.P.C. in 1989 and was appointed as lecturer (Electronics) in Government Polytechnic Dwarahat, District Almora in 1990, where he served up to 2002. Again, he resigned this job and was appointed as Principal in Govt. Industrial Training Institute (for short, I.T.I.) as Class-II Gazetted Officer in the respondent department.

2.2 When the petitioner was appointed as Principal, I.T.I. Pithoragarh, as many as 10 Principals of Govt. I.T.Is., including the petitioner, were charge-sheeted for certain lapses. Petitioner filed reply to the same. Petitioner could not be held liable for the charges levelled against him. He was posted as Assistant Director (Training) in the Directorate, Training and Employment, when he retired on 31.07.2008.

2.3 *Vide* order dated 18.08.2008, Respondent No.2 sanctioned benefit of leave encashment of 300 days to the petitioner. The punishment order was passed against all the Principals, except the petitioner. In other words, no punishment order was ever passed against him, before filing of writ petition before the Hon'ble High Court.

2.4 When retiral dues of the petitioner were not paid despite lapse of considerable long period, petitioner submitted representation, followed by reminder, for release of his final pension as well as retiral dues. Later on provisional pension was sanctioned, for every six months, to the petitioner. When the petition was filed, the petitioner was being paid fixed provisional pension of Rs. 8,536/-. No gratuity, final pension, leave encashment, benefit of 6th pay commission or 7th pay commission was given to the petitioner. The details of unpaid retiral dues have been given in Para 4.21 of the claim petition.

2.5 Hon'ble High Court, in writ petition filed by the petitioner, being WPSB No. 621/2018, *vide* order dated 11.02.2019, issued a direction to the respondent to compute the balance retiral benefits payable to the petitioner (the retiral benefits which he is entitled to, less the amount already paid to him in this regard); deduct from the retiral benefits the sum of Rs. 13,977.60, as directed *vide* proceedings dated 20.12.2018, and to pay the balance retiral dues to the petitioner with utmost expedition. Subsequently, the petitioner was released a sum of Rs.36,68,990/-.

2.6 Petitioner's pay was fixed by making recovery from his retiral dues as well as pensionary benefits. According to the petition, petitioner is entitled to get back the recovered amount along with interest.

2.7 Petition is supported by the affidavit of the petitioner. Relevant documents have been filed along with the petition.

3. Claim petition has been contested on behalf of the respondents. Separate Counter Affidavits have been filed on behalf of Respondents No. 2 ,

3 & 4. Relevant documents have been filed in support of Counter Affidavits. Rejoinder Affidavit has also been filed by the petitioner.

3.1 It has been stated in the C.A. filed on behalf of Respondent No.2 by Sri Vinod Giri Goswami, Director (Training), Training & Employment, Uttarakhand, Haldwani, District Nainital, that there was clerical mistake while mentioning the basic pay of the petitioner as Rs.28,890/- in place of Rs.23,490/-. The pay of the petitioner was, accordingly, corrected while proposing recovery of the excess amount/ erroneous payment, paid to the petitioner.

3.2 Ms. Ruchita Tiwari, Additional Director, Treasury, Pension & Entitlement, Camp Office, Haldwani, District Nainital, has filed C.A. on behalf of Respondent No.3. Apart from taking a plea of limitation, she has stated in her C.A. that pay order (PPO) was issued as per the papers submitted by the Director (Training), Training & Employment, Uttarakhand, Haldwani, Nainital.

3.3 Sri Praveen Singh Chauhan, Sub-Treasury Officer, Dwarahat, District Almora, has filed C.A. on behalf of Respondent No.4, to submit that the petition is devoid of merits and should be dismissed.

4. In the R.A., it has been stated that the Respondents have attempted to justify their illegal action by observing that at the time of calculation of retiral dues of the petitioner in the month of February, 2019, due to calculation mistake, the basic pay of the petitioner was wrongly calculated at Rs. 28,890/- while the same was, in fact, Rs. 23,490/-. This reason cited by the Respondents is totally incorrect and false, because admittedly as per own showing of the Respondent No. 2 itself, the basic pay of the petitioner on account of 6th Pay Revision was revised from Rs. 23,490/- to Rs. 28.890/-, *vide* order dated 26.11.2008. It is not the case of the Respondents herein that the said order is not in existence or the same was not passed on 26.11.2008. As such the impugned action of the Respondents is totally illegal, arbitrary and unsustainable in the eyes of law and moreover, the impugned action for recovery of amount is completely against the law of the land *i.e.* verdict passed by Hon'ble Supreme Court of India in the case of State of Punjab vs.

Rafiq Masih, rendered in the year 2014. The said judgment still holds good and has not been overruled by the Hon'ble Supreme Court till date.

5. The petitioner was given monetary benefit, which was in excess of his entitlement. The monetary benefits flowed to him consequent upon a mistake committed by the respondent department in determining the emoluments payable to him. The respondent department has admitted that it is a case of wrongful fixation of salary of the petitioner. The excess payment was made, for which petitioner was not entitled. Long and short of the matter is that the petitioner was in receipt of monetary benefit, beyond the due amount, on account of unintentional mistake committed by the respondent department.

6. Another essential factual component of this case is that the petitioner was not guilty of furnishing any incorrect information, which had led the respondent department to commit the mistake of making a higher payment to the petitioner. The payment of higher dues to the petitioner was not on account of any misrepresentation made by him, nor was it on account of any fraud committed by him. Any participation of the petitioner in the mistake committed by the employer, in extending the undeserved monetary benefit to the employee (petitioner), is totally ruled out. It would, therefore, not be incorrect to record, that the petitioner was as innocent as his employer, in the wrongful determination of his inflated emoluments. The issue which is required to be adjudicated is, whether petitioner, against whom recovery (of the excess amount) has been made, should be exempted in law, from the reimbursement of the same to the employer. Merely on account of the fact that release of such monetary benefit was based on a mistaken belief at the hand of the employer, and further, because the employee (petitioner) had no role in determination of the salary, could it be legally feasible for the employee (petitioner) to assert that he should be exempted from refunding the excess amount received by him?

7. In so far as the above issues are concerned, it is necessary to keep in mind that a reference, in a similar matter, was made by the Division Bench

of two Judges of Hon'ble Supreme Court in Rakesh Kumar vs. State of Haryana, (2014) 8 SCC 892, for consideration by larger Bench. The reference was found unnecessary and was sent back to the Division Bench of Hon'ble Apex Court for appropriate disposal, by the Bench of three Judges [State of Punjab vs. Rafiq Masih, (2014) 8SCC 883]. The reference, (which was made) for consideration by a larger Bench was made in view of an apparently different view expressed, on the one hand, in Shyam Babu vs. Union of India, (1994) 2SCC 521; Sahib Ram vs. State of Haryana, (1995) (Suppl) 1 SCC 18 and on the other hand, in Chandi Prasad Uniyal vs. State of Uttarakhand, (2012) 8 SCC 417, in which the following was observed:

> *"14. We are concerned with the excess payment of public money which is often described as "tax payers money" which belongs neither to the officers who have effected over-payment nor that of the recipients. We fail to see why the concept of fraud or misrepresentation is being brought in such situations. Question to be asked is whether excess money has been paid or not may be due to a bona fide mistake. Possibly, effecting excess payment of public money by Government officers, may be due to various reasons like negligence, carelessness, collusion, favouritism etc. because money in such situation does not belong to the payer or the payee. Situations may also arise where both the payer and the payee are at fault, then the mistake is mutual. Payments are being effected in many situations without any authority of law and payments have been received by the recipients also without any authority of law. Any amount paid/received without authority of law can always be recovered barring few exceptions of extreme hardships but not as a matter of right, in such situations law implies an obligation on the payee to repay the money, otherwise it would amount to unjust enrichment."*

It may be noted here that the petitioners Chandi Prasad Uniyal and others were serving as Teachers and they approached Hon'ble High Court and then Hon'ble Supreme Court against recovery of overpayment due to wrong fixation of 5th and 6th Pay Scales of Teachers/ Principals, based on the 5th Pay Commission Report.

8. In the context noted above, Hon'ble Apex Court in Paragraphs 6, 7 & 8 of the decision rendered in State of Punjab vs. Rafiq Masih, (2015) 4 SCC 334, has observed thus:

> ""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]

9. 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:

(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.
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> (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, decisions 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, in WPSS No. 1593 of 2021, Balam Singh Aswal vs. Managing Director and others and connected writ petitions on 14.06.2022 & in WPSS No. 363 of 2022 and connected petitions on 05.01.2024 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, in this regard.

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]. Relevant paragraphs of the judgment read as below:

> "5. The Division Bench has placed reliance upon a similar case decided by them earlier of one Smt. Omwati who had filed Writ - A No. 28420 of 2016 and the Court had observed that no recovery of excess payment can be made from the writ petitioner although the respondents may correct the pension that had been wrongly fixed for future disbursement to the widow. For this conclusion arrived at by this Court reliance was placed on the Supreme Court's decision in State of Punjab and others Vs. Rafiq Masih (White Washer) and Ors., (2015) 4 SCC 334. 6. It is undisputed that some excess payment has been made to the petitioner. If some correction has been done by the respondents, they are entitled to correct and refix

> the family pension as the Supreme Court has observed in several cases that administrative mistake regarding the pay fixation or family pension can be corrected by the authorities. However, in view of the law settled by the Supreme Court in Rafiq Masih (supra) no recovery of excess payment allegedly made to the petitioner already can be done from her.
> 7. This writ petition is disposed off with a direction to the respondents to pay the correctly fixed pension from December, 2018 onward to the petitioner and not to make recovery of alleged excess payment already made to the petitioner due to wrong pay fixation earlier."

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 ……

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. Learned Counsel for the petitioner submitted that a bunch of writ petitions has been decided by the Hon'ble High Court *vide* common Judgment dated 14.06.2022, in WPSS No. 1593 of 2021, Balam Singh Aswal vs. Managing Director and others and connected writ petitions, which decision has direct bearing on the fate of present petition, which was assailed by the Uttarakhand Transport Corporation, Dehradun and others in Intra-Court Appeal. Hon'ble High Court of Uttarakhand decided Special Appeal No. 245/2022, Managing Director, Uttarakhand Transport Corporation, Dehradun and others vs. Ashok Kumar Saxena and connected Special Appeals, *vide* order dated 04.04.2024, operative portion of which reads as under:

> ""4. These appeals are being dismissed. A direction is being given to the appellant to comply with the judgment dated 14.06.2022, within the next three months."

14. It will be apposite to reproduce the text of the judgment of the Division Bench of Hon'ble High Court herein below for convenience:

> "Learned counsel for the appellant has referred to the judgment of the Hon'ble Apex Court reported in 2012 (8) SCC 417, "Chandi Prasad Uniyal and others Vs. State of Uttarakhand and others" on the preposition that if excess salary is paid to an employee due to irregular/ wrong fixation of pay, recovery can be made from the employee.
> 2. Learned counsel for the appellant has referred to paragraphs 8, 13 and 14 of the judgment. The Hon'ble Supreme Court in this case was examining the case of the Teachers, whose pay-scale has been wrongly fixed on the basis of the 5th Central Pay Commission. They were all working, and on account of wrong fixation of pay a recovery was being effected from them, and in this backdrop the SLP was dismissed, and it was held that recovery can be made on account of wrong fixation of pay from the working employee, and in paragraph 7 of this judgment, it has been further observed that the appellants have given undertaking itself that if they received the pay on account of wrong fixation they will return the same.
> 3. The question whether the teachers had received this payment in the absence of any misrepresentation or fraud cannot be made basis for not making the recovery as they were all working employees, and they have given undertaking at the time of re-fixation of the pay as per the 5th Central Pay Commission. The ratio of this judgment cannot be applied in the present case, as in the present case, all the respondents have retired from the service, and post retirement, the mistake was found in grant of the ACP. In this backdrop, the judgment referred by the learned Single Judge in paragraph 44 of the judgment of the Hon'ble Supreme Court in the case of "State of Punjab and others Vs. Rafiq Masih (White Washer) and others" has been rightly applied in allowing the writ petition. Post retirement, the recovery cannot be made only on the ground that it is public revenue and it is tax payer money."
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> *[Emphasis supplied]*

15. It will also 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:

> "(9) This Court in a catena of decisions has consistently held that if the excess amount was not paid on account of any misrepresentation or fraud of the employee or if such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order which is subsequently found to be erroneous, such excess payment of emoluments or allowances are not recoverable. This relief against the recovery is granted not because of any right of the employees but in equity, exercising judicial discretion to provide relief to the employees from the hardship that will be caused if the recovery is ordered. This Court has further held that if in a given case, it is proved that an employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, the courts may on the facts and circumstances of any particular case order for recovery of amount paid in excess."
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> *[Emphasis supplied]*

16. Reliance may also be placed on the detailed observations of the Hon'ble High Court of Uttarakhand, made in the decision rendered in WPSS No. 363 of 2022 and connected petitions on 05.01.2024, as follows:

> "7. Amended memo …….
>
> 8. Since common questions of law and fact are involved in these writ petitions, therefore they are being heard together and are being decided by a common judgment. However, for the sake of brevity, facts of Writ Petition (S/S) No. 363 of 2022 alone are being considered and discussed.
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> 9. Petitioners are Group-C & Group-D employees of Uttarakhand Transport Corporation. Most of them have retired from service; however, some of them are still serving. While serving the Corporation, petitioners were given benefit of Assured Career Progression Scheme under which next higher pay band/ grade pay is admissible to an employee, after putting in continuous satisfactory service for certain number of years. However, the Audit Team constituted by Finance Controller of Uttarakhand Transport Corporation, in its report dated 11.11.2020 flagged the issue of excess payment as ACP to Group-C & Group-D employees. Based on the said report, the record of all the employees was scrutinized, and it was found that excess payment has been made to large number of Group-C & Group-D employees, including the petitioners. Consequently, order for recovery of excess amount paid to such employees were passed.
>
> 10. Since the amount paid as ACP to petitioners has been ordered to be recovered by the Competent Authority in Uttarakhand Transport Corporation, therefore, they have approached this Court by filing these writ petitions.
>
> 11. Learned counsel for petitioners submit that petitioners are low paid employees of a statutory Corporation, who neither misrepresented any fact

for claiming benefit of ACP nor practiced any fraud for getting the monetary benefits, which are now sought to be recovered from them, therefore, the order of recovery passed against petitioners is unsustainable. Reliance has been placed upon the law declared by Hon'ble Supreme Court in the case of State of Punjab v. Rafiq Masih, (2015) 4 SCC 334.

12. Per contra, learned counsels for Uttarakhand Transport Corporation contend that this is a case of correction of mistake, and excess payment was noticed only when the Audit Team flagged the issue of excess payment to the employees of Corporation.

13. Mr. M.C. Pant, learned counsel for petitioners in some of the writ petitions, however, submits that report of the Audit Team has been negated by coordinate Bench of this Court in WPSS No. 1593 of 2021.

14. Hon'ble Supreme Court in the case of State of Punjab v. Rafiq Masih, (2015) 4 SCC 334 has categorised cases in which recovery of excess payment, made to an employee, would be impermissible. Para no. 18 of the said judgment is reproduced below:-

…….

15. Hon'ble Supreme Court in the case of Thomas Daniel v. State of Kerala, 2022 SCC On Line SC 536 has held that held that if the excess amount was not paid on account of any misrepresentation or fraud of the employee or if such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order which is subsequently found to be erroneous, such excess payment of emoluments or allowances are not recoverable.

16. The guidelines issued by Hon'ble Supreme Court in the case of State of Punjab v. Rafiq Masih (supra) are law of the land. As per those guidelines, excess amount, if paid to Group-C & Group-D employees cannot be recovered, especially, when such employee are not at fault for such excess payment. Moreover, few petitioners are still serving and majority of the petitioners have retired, therefore, their case is also covered by Clause (ii) of the aforesaid judgment.

17. Mr. Ashish Joshi, learned counsel for respondent-corporation does not dispute that it is not a case where the employees were given excess amount as remuneration due to fraud or misrepresentation by them. Thus, it can be safely inferred that it was a mistake on the part of the Corporation as employer, therefore, petitioners, who are Group-C & Group-D employees cannot be made liable to repay the amount, which was paid to them due to mistake on the part of employer.

18. Accordingly, writ petitions are allowed and the respondent-corporation is restrained from recovering any amount, which was allegedly paid in excess to petitioners than what they were entitled to. The retiral dues, including gratuity of petitioners, if withheld for recovery of the excess payment, shall be released forthwith. ……..”

[Emphasis supplied]

17. Much emphasis has been laid by Ld. A.P.O. on the undertaking given by the petitioner by arguing that the petitioner himself undertook that if there is excess payment, same can be adjusted by the department in future.

18. In reply, Ld. Counsel for the petitioner argued that, assuming that the petitioner has submitted the said letters (dated 23.04.2020 & 28.04.2020), even then it was only to the effect that if pay fixation has wrongly been done, in that case the excess amount may be recovered from his retiral dues. This was natural for a retired employee. This does not give license to the official respondents to make illegal pay revision or illegal recovery, which is not permissible in law. There cannot be any estoppel against the statutory provision or a right which is governed by statutory Rules or policy decisions.

19. Learned A.P.O. submitted that refixation is permissible, inasmuch as, the petitioner was paid excess amount, which he was not entitled during his service period. Learned A.P.O. also submitted that the petitioner is not entitled to interest inasmuch as the petitioner was not entitled to keep the money, which was deducted from his gratuity. In fact, the petitioner himself should pay interest to the Govt. on the excess money which he was not entitled to keep. Learned A.P.O. also submitted that excess payment of Rs. 4,73,943/- made to the petitioner was adjusted from the pension of the petitioner. Learned A.P.O. also submitted the Hon'ble Supreme Court has nowhere observed in any of the decisions, much less in Civil Appeal No.1985 of 2022, the State of Maharashtra and another vs. Madhukar Antu Patil and another, decided on 21.03.2022, that the petitioner is entitled to interest on excess payment, although the Hon'ble Supreme Court has observed that excess payment cannot be recovered from a Group-C or Group-D employee from his/her retiral dues after superannuation

20. Petitioner retired on 31.07.2008. It may be noted here that the respondent department did not do anything substantial to recover excess amount from the salary of the petitioner when he was in service. Deduction from the pension was done only after petitioner's retirement.

21. In similar case, in claim petition No. 89/SB/2023, Teeka Ram Joshi vs. State of Uttarakhand and others, this Tribunal in its judgment/ order dated 05.01.2024, has observed as under:

> "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).
>
> . 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:
>
> "……
> ……."

22. Moreover, when the law laid down by Hon'ble Apex Court provides that there should not be any deduction from employee's retiral dues, consent or undertaking given by an employee, to the contrary, fades into oblivion.

23. Hon'ble Supreme Court has, in a catena of decisions consistently held that "if the excess amount was not paid on account of any misrepresentation or fraud of the employee or if such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order which is subsequently found to be erroneous, such excess payment of emoluments or allowances are not recoverable. This relief against the recovery is granted not because of any right of the employees but in equity, exercising judicial discretion to provide relief to the employees from the hardship that will be caused if the recovery is ordered. This Court has further held that if in a given case, it is proved that an employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where error is detected or corrected within a short time of wrong

payment, the matter being in the realm of judicial discretion, the courts may on the facts and circumstances of any particular case order for recovery of amount paid in excess."

24. The parties are not in conflict on facts. Petitioner's case is squarely covered by the aforesaid decisions of Hon'ble Supreme Court. Petitioner is a retired 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.

25. Considering the factual and legal position discussed above, the petitioner is entitled to a refund of Rs, 4,73,943/- which was recovered from his retiral dues.

23. At this stage, learned A.P.O. fairly submitted that the controversy in present case is squarely covered by the decision rendered by Hon'ble Apex Court in Rafiq Masih's decision (*supra*) and hosts of other decisions.

24. The claim petition is disposed of by directing the respondent department to refund a sum of Rs. 4,73,943/-, which was recovered from the petitioner under the pretext of 'adjustment of excess payment' from his retiral dues, as expeditiously as possible, without unreasonable delay, but he will not be entitled to interest, in the peculiar facts which have been narrated above. No order as to costs.

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: SEPTEMBER 30, 2024
DEHRADUN

VM