

4. On 01.10.2024, Sri V.P.Devrani, Ld. A.P.O. filed an application for taking some documents on record. Copy of the application along with documents was supplied to Sri Shashank Pandey, Ld. Counsel for the petitioner. Whereas Sri Shashank Pandey, Ld. Counsel for the petitioner relied upon the land mark decision rendered by Hon'ble Supreme Court in State of Punjab vs. Rafiq Masih, (2015) 4 SCC 334, Ld. A.P.O. submitted that the said decision is not applicable to the petitioner.
5. Petitioner is retired officer, who was working in the respondent department till 31.01.2024. Recovery from his retiral dues was ordered on 31.07.2024. Office order dated 31.07.2024 (Annexure: 2), *inter alia*, is in the teeth of present claim petition. Prima facie, petitioner's case is covered by the Situation No. (ii) observed in decision rendered by Hon'ble Apex Court in State of Punjab vs. Rafiq Masih, (2015) 4 SCC 334, which was based on Syed Abdul Qadir vs. State of Bihar, (2009) 3 SCC 475 and hosts of other decisions, which were cited therein.
6. In the erstwhile State of Uttar Pradesh, WPSB No. 6250/1983 was filed by the Technical Assistants Association of the Directorate of Geology & Mining, U.P. and others (petitioners). An interim order was passed by the Hon'ble High Court of Judicature at Allahabad on 14.05.1986.
7. Ld. A.P.O. drew attention of the Bench towards order dated 24.10.1986, passed by the Hon'ble High Court of Judicature at Allahabad, which order reads as under:

“the operative order dated 14.05.1986 was to the effect that in case the State failed to file a Counter Affidavit or to show cause within 15 days, the State should be liable to pay the petitioners their salary in the scale of Rs.850-1720/- subject to the condition that in case it was ultimately found they were not entitled to that scale of pay, they would be liable to refund the amount which they might have drawn.....”
8. Ld. A.P.O. submitted that it was under the interim directions of the Hon'ble Allahabad High Court that recovery was not made from the petitioners. WPSB No. 6250/1983, Technical Assistants Association of the Directorate of Geology & Mining, U.P. and others vs. State of U.P. and

others was finally disposed of by the Hon'ble High Court *vide* order dated 14.07.1999, relevant portion of which reads as under:

“ Grievance of the petitioners, who happen to be Technical Assistants of the Directorate of Geology and Mining, U.P. and other employees of the said department, is that they have been discharging duties similar to the duties of Scientific Assistants, but they were not being paid their salaries in the pay scales admissible to the Scientific Assistants, as well as other similarly situated employees of the State Government. It has been stated that two pay commissions have submitted their reports and the anomaly committee has also submitted its report, on the basis of which petitioners are entitled to revision in their pay scales.

This Court, *vide* order dated 05.04.1999 directed Ld. Standing Counsel to place on record the report, if any of the anomaly committee, but till date said report has not been filed.

For decision of the controversy involved in the present case, several questions of fact will have to be seen. Said questions can more appropriately be dealt with and decided with the help of service record of the petitioners as well as Scientific Assistants and other employees of the State Govt. Therefore, in our opinion, it will meet the ends of justice, if we direct respondent no. 1 to look into the matter, taking into consideration the pay Commissions reports submitted during the pendency of the present petition, as well as the report of the anomaly committee, if any, as also the recommendations of the Programming Board, and other relevant rules and regulations, and to decide as to whether the petitioners were entitled to the pay scales at par with the pay scales of Scientific Assistants and other similarly situated employees of the State Govt., within a period of two months from the date a certified copy of this order is communicated to the respondent no. 1. Petitioners may also be afforded opportunity of hearing or to explain their case, before the final order is passed by the said respondent. It is ordered accordingly.”

9. State of Uttarakhand came into existence on 09.11.2000. The petitioner was working in Hill area of the erstwhile State of U.P. since 1996. Subsequently Uttarakhand Cadre was allocated to the petitioner. The Tribunal, in the absence of any document on record, is not aware whether any decision was taken by the State of U.P. before 09.11.2000 as per the direction of the Hon'ble High Court of Judicature at Allahabad or not. In the absence of any document on record, this Tribunal is not aware whether any decision was taken by the State of Uttarakhand after 09.11.2000, as per the direction dated 14.07.1999 of the Hon'ble Allahabad Court, or not. [W.s./C.A. is yet to be filed.]

10. The respondents are required to be given time to file C.A. They have already been directed to file C.A., when the claim petition was admitted on 03.09.2024. Ld. A.P.O. also submitted that the beneficiary of the interim stay of Hon'ble Allahabad High Court had to submit an affidavit before the Directorate that if final decision of the Hon'ble High Court against its interim stay order is taken, then the excess payment will be returned by the beneficiary, who was also required to deposit N.S.C. of Rs.5000/- as security with the Directorate.
11. Ld. A.P.O. further pointed out that Sri Vijay Kumar, Technical Assistant, Sri Anurag Kumar Srivastava, Assistant Geologist, Sri G.P. Singh, Assistant Geologist, and Sri Raghvendra Saxena, Geologist, deposited excess and over payment on the decision of the Govt. of U.P. *vide* adjustment orders passed in the year 2017.
12. It may be noted here that, if any decision was taken by the State of U.P. in the year 2017, that is not applicable to the State of Uttarakhand. If such decision was taken by the State of U.P. before 09.11.2000, the same would be binding on the petitioner, being member of Technical Assistant Association of the Directorate of Geology & Mining, petitioners of WPSB No. 6250/1983.
13. The Bench has already noted above that the Tribunal is not aware, in the absence of record, whether such decision was taken by the State of Uttarakhand after 09.11.2000 or not. Sri V.P.Devrani, Ld. A.P.O. further pointed out that the petitioner is not legally entitled to the relief other than his admissible pay scale inasmuch as he has taken undue financial benefit which proves false representation on his part, hence, a sum of Rs.34,00,618/- should be recovered from him. He also pointed out that Rafiq Masih decisions (*supra*) will not be applicable because the adjustment/ recovery order was passed in compliance of the Hon'ble Allahabad High Court's order passed in WPSB No. 6250/1983, Technical Assistants Association of the Directorate of Geology & Mining, U.P. and others vs. State of U.P. and others. This Tribunal is unable to subscribe to

such view of Ld. A.P.O., at this stage, in the absence of any document to show that the State of Uttarakhand has taken any decision as per the final decision dated 14.07.1999 of the Hon'ble Allahabad High Court or not.

14. Hon'ble Allahabad High Court, in its final order dated 14.07.1999 has nowhere directed that the excess payment be recovered from the members of the petitioners' Association. Interim order has merged in the final order. If recovery was made from Sri Vijay Kumar, Technical Assistant, Sri Anurag Kumar Srivastava, Assistant Geologist, Sri G.P. Singh, Assistant Geologist, and Sri Raghvendra Saxena, Geologist, that was as per the decision taken by the State of U.P., in compliance of Hon'ble High Court's order.
15. As has been mentioned above, any decision taken by the State of U.P. after 09.11.2000, cannot bind the successor State of Uttarakhand.
16. Petitioner might have been given monetary benefit, which was in excess of his entitlement. There was no mistake either of the petitioner or of the respondent department in extending such benefit. It was on account of an interim order passed by the Hon'ble High Court of Allahabad, which subsequently merged in the final order, in which a direction was given to the State Govt. to do something. The State of U.P. did the same, recovered excess payment from the employees, who were working in the State of U.P. in the year 2017, but there is no document on record, at this stage, to suggest that the State of Uttarakhand has taken such decision in compliance of the orders of the Hon'ble High Court of Judicature at Allahabad. No fraud is attributed to the petitioner. Excess payment made to him was not on account of any misrepresentation by him. He retired on 31.01.2024. Recovery order was, admittedly, issued on 31.07.2024.
17. Petitioner has an arguable case.
18. Petitioner is entitled for interim relief. Temporary relief against the recovery is granted, not because of any right of the employee, but in

equity, exercising judicial discretion to provide relief to the employees from the hardship that will be caused if the recovery is ordered after retirement.

19. Application of the petitioner, to the extent of seeking interim relief against recovery of Rs. 3400618/- is allowed. Objections thereon, are rejected subject to filing detailed Counter Affidavit, when the claim petition shall be heard finally, in due course.
20. Without prejudice to rival contentions, recovery of Rs.34,00,618/- from the petitioner is hereby stayed till further orders of the Tribunal.
21. Interim relief application and objections thereon are, accordingly, disposed of.
22. Counter Affidavit may be filed by the respondents on or before 28.11.2024.
23. It is made clear that there is no embargo on the respondent department against correct fixation of pay even after retirement, as per the decision rendered by Hon'ble 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 [Citation2018:AHC:204373] and decision rendered by the 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.

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: OCTOBER 04.2024
DEHRADUN

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