

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

EXECUTION PETITION NO. 01/SB/2025

*(Arising out of judgment dated 08.07.2024,
passed in Claim petition No. 159/SB/2023)*

Sri Uttam Singh Chauhan, aged about 61 years, s/o Sri Sunder Singh Chauhan,
r/o H.No. 77, lane No. 10 Tea Estate, Banjarwala, Near Govt. Primary School
Banjarwala Mafi, Dehradun, Uttarakhand.

.....Petitioner /applicant

vs.

1. State of Uttarakhand through Secretary, (Health) Uttarakhand, Dehradun.
2. Director General, Medical Health and Family Welfare, Uttarakhand, Dehradun.
3. Chief Medical Officer, Dehradun, Uttarakhand.
4. Deputy Treasury Officer, Treasury Pension and Haqdari, Dehradun, Uttarakhand.
5. Director, Treasury Pension and Haqdari, Dehradun, Uttarakhand.

.....Respondents

Present: Sri Amish Tiwari, Advocate, for the Petitioner (*virtually*)
Sri V.P. Devrani, A.P.O. for the State Respondents.

JUDGEMENT

DATED: JANUARY 07, 2025

Justice U.C.Dhyani (Oral)

Present execution application has been filed by the
petitioner/applicant for enforcing order dated 08.07.2024 passed by
the Tribunal in Claim Petition No. 159/SB/2023, Uttam Singh Chauhan

vs State of Uttarakhand & others. Execution application is supported by the affidavit of the petitioner/ applicant. Relevant portion of the judgment dated 08.07.2024 is reproduced herein below for convenience:

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

I. Issue a writ, order or direction in the nature of certiorari to quash the impugned recovery order dated 15.07.2023 i.e. Annexure No.4 issued by the respondent no. 3 i.e. Chief Medical Officer, Dehradun, Uttarakhand whereby the amount of Rs. 13,22,903/= (Thirteen lac twenty two thousand nine hundred three only) had to be recovered from the petitioner.

II. Issue a writ, order or direction in the nature of mandamus to direct the respondents to grant the pension along with all retirement dues to the petitioner without any delay.

III. Issue any other writ, order or direction, which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

IV. To award the cost of the petition to the petitioner.”

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DISCUSSION

9. 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.

10. 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 to the employee (petitioner) to assert that he should be exempted from refunding the excess amount received by him ?

11. In so far as the above issue is 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) 8 SCC 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) 2 SCC 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, a reference of which is given by Ld. A.P.O. for favouring respondents in which the following was observed:

"14. 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."

.....

12. 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.

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.

8. 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]

13. 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.

(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.”

14. The parties are not in conflict on facts. Petitioner’s case is squarely covered by the aforesaid decision of Hon’ble Supreme Court. Petitioner is although a retired Group ‘A’ employee, yet 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.

15. 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.

16. Much emphasis has been laid by Ld. A.P.O. on the undertaking given by the petitioner on 15.01.2017 (Annexure: CA-R1), arguing that the petitioner himself undertook that if there is excess payment, same can be adjusted by the department in future. Petitioner retired on 31.01.2023. 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 gratuity was done only after petitioner’s retirement.

17. 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).

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:

“.....
.....”

[Emphasis supplied]

18. Facts of the instant case are almost identical to the facts of above noted case. The petitioner of this case is entitled to the same relief which was given to *Sri Teeka Ram Joshi (supra)*, in law.

19. 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. In a nutshell, recovery from petitioner's retiral dues would be iniquitous or harsh to such an extent that it would far outweigh the equitable balance of employee's right to recover.

19.1 Unethical though it may appear to be, on the part of the petitioner, but the fact remains that a person making an exit from public service is heavily equipped with equity and thus financial immunity from such undertaking, in law. Petitioner, in the instant case, allured the C.M.O. to take a lenient view, C.M.O. helped him and after retirement, petitioner backtracked and filed present claim petition for restraining the respondent department from doing recovery from his retiral dues. The Tribunal has to decide the case as per law. It cannot help the respondent department in the backdrop of above noted facts and circumstances.

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20. 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:

"....."

21. 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:

"....."

[Emphasis supplied]

22. Ld. counsel for the parties submitted that present claim petition may be decided by Single Bench of the Tribunal.

23. Interim order dated 26.09.2023 is made absolute. There shall be no recovery from the petitioner, as prayed. There shall, however, be no embargo on computation of his pay/ salary for the purpose of pension on the basis of actual entitlement. In other words, re-fixation of the pay is permissible on the basis of actual entitlement (*i.e.* what the petitioner is actually entitled to).

....."

2. Sri Amish Tiwari, Ld. Counsel for the petitioner submitted that respondent department is not complying with the aforesaid order. It is the submission of Ld. Counsel for the petitioner that strict reminder be served on the respondents to comply with the order of the Tribunal dated 08.07.2024. They have not done anything so far for securing the compliance of the order of the Tribunal. Ld. A.P.O. has no objection to such innocuous prayer.

3. The execution application is disposed of, at the admission stage, by directing the authority(ies) concerned, to comply with the order of the Tribunal dated 08.07.2024, passed in Claim Petition No. 159/SB/2023, Uttam Singh Chauhan vs. State of Uttarakhand and others, if the same has not been complied with so far, without further loss of time and in any case within 12 weeks of presentation of certified copy of this order, failing which the concerned authorities may be liable to face appropriate action under the law governing the field.

4. The execution application thus stands disposed of, at the admission stage, with the directions as above.

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: JANUARY 07, 2025.
DEHRADUN

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