

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

CONTEMPT PETITION NO. C-01 /DB/2025

*(Arising out of judgment dated 26.04.2024,
passed in Claim petition No. 31/SB/2024 & judgment
dated 17.09.2024 passed in Execution Petition No.
25/SB/2024)*

Sri Ramesh Dutt Dobhal, aged about 65 years s/o Late Sri Barfeshwar Prasad Dobhal, r/o Girdhar Vihar, Harrawala, Dehradun, Uttarakhand.

.....Petitioner/applicant

vs.

1. State of Uttarakhand through Secretary, Secondary Education, Secretariat, Dehradun.
2. Finance & Accounts Officer (Secondary), Office of District Education Officer, Narendra Nagar, District Tehri Garhwal, Uttarakhand.

.....Respondents

Present: Sri Ramesh Dutt Dobhal, petitioner/applicant, along with
Sri Ajay Uniyal, Advocate, for the petitioner.
Sri V.P. Devrani, A.P.O. in assistance of the Tribunal.

JUDGMENT

DATED: JANUARY 17, 2025

Justice U.C.Dhyani (Oral)

Present contempt petition has been filed by the petitioner/applicant for initiating contempt action under the Contempt

of Court Act, against the erring officials for not complying with the orders of the Tribunal.

2. Claim Petition No. 31/SB/2024, Ramesh Dutt Dobhal vs. State of Uttarakhand and others was disposed of by the Tribunal on 26.04.2024, operative portion of which reads as under:

“Ld. Counsel for the petitioner has also prayed for refund of deduction thus made, along with admissible interest in view of Government Order No.979/XXVII(3)Pay/2004 dated 10.08.2004, for which he has made representation to Respondent No.1, which requires to be decided by the said respondent, as per law.

The claim petition is disposed of, at the admission stage, with the consent of Ld. counsel for the parties, by directing Respondent No.1 to decide the representation of the petitioner, by a reasoned and speaking order, as per law, without unreasonable delay, preferably within 12 weeks of presentation of certified copy of this order along with representation, enclosing the documents in support thereof. No order as to costs.”

3. When the order dated 26.04.2024 was not complied with, the petitioner filed execution petition No. 25/SB/2024, which too was disposed of by the Tribunal vide order dated 17.09.2024. Relevant paragraphs of order dated 17.09.2025 are as follows:

“4. It is the submission of the petitioner/ applicant, who is present in person before the Tribunal, that petitioner’s representation has not been decided so far, despite copies of the order dated 26.04.2024 having been served upon the respondents on time.

5. Petitioner prays that a reminder be given to the respondents to comply with the order of the Tribunal dated 26.04.2024, as expeditiously as possible, in accordance with law. Ld. A.P.O. has no objection to such innocuous prayer.

6. The execution application is disposed of, at the admission stage, by directing Respondent No.1, to decide the representation of the petitioner, by a reasoned and speaking order, as per law, without further loss of reasonable time.

7. If the order is not complied with within reasonable time, the respondent(s) may be liable to face suitable action under the law, governing the field.”

4. When the order was not complied with, the petitioner has been compelled to file the contempt petition. Petitioner/ applicant, who is present in person, submitted that he retired on 31.10.2019. After his retirement a sum

of Rs. 1,94,661-00/- was recovered from his gratuity, which is impermissible in law. He prays for that the amount thus recovered from his retiral dues be refunded to him. He also submitted that one increment was not added in his pay scale. He prays for correct fixation of pay.

5. It may be noted here that Hon'ble Supreme Court in the case of State of Punjab v. Rafiq Masih, (2015) 4 SCC 334 has categorized cases in which recovery of excess payment, made to a retired employee, would be impermissible. 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.

(.....”

[Emphasis supplied]

6. It may also be noted here 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 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 re-fix 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.”

7. In Civil Appeal No.1985 of 2022, the State of Maharashtra and another vs. Madhukar Antu Patil and another, on 21.03.2022, Hon’ble Apex Court has observed as below:

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.

8. Ld. A.P.O., who is assisting the Bench, had interaction with Sri S.P. Semwal, Chief Education Officer, Tehri Garhwal. He was also *virtually* connected to the petitioner and the petitioner was assured by the CEO that he should come to his office on 20.01.2025 at around 11:00 A.M., he will be heard and his grievance will be redressed, as per law. The CEO also promised the Court that the grievance of the petitioner shall be settled as per law.

9. Rule 50 of the Uttar Pradesh Public Services (Tribunal) Rules, 1992, reads as below:

“50. Initiation of proceedings.—(1) Any petition, information or motion for action being taken under the Contempt shall, in the first instance, be placed before the Chairman.

(2) The Chairman or the Vice-Chairman or such other Members as may be designated by him of this purpose, shall determine the expediency or propriety of taking action under the Contempt Act.”

[Emphasis supplied]

10. In the circumstances, as have been narrated above, the Tribunal does not feel it proper or expedient to take action against the alleged contemnors/ opposite parties under the Contempt of Court Act, at this stage.

11. Contempt petition is, accordingly, closed.

12. Petitioner is free to take recourse to law, if cause of action still survives to him.

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: JANUARY 17, 2025
DEHRADUN

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