BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL AT DEHRADUN

CLAIM PETITION NO. 02/SB/2025

Sri Man Singh, aged about 65 years, s/o Late Sri Ruhala Singh, Retd. Balck Smith, Haridwar Workshop, Haridwar, Uttarakhand Transport Corporation, r/o Village Jamalkot, Post Jwalapur, District Haridwar, Uttarakhand.

.....Petitioner

vs.

1. State of Uttarakhand through Secretary Transport, Govt. of Uttarakhand, Secretariat, Subhash Road, Dehradun.
2. Managing Director, Uttarakhand Transport Corporation, Office of the Transport Commissioner, Kulhan, Sahastradhara Road, Dehradun.
3. Divisional Manager (Operation), Uttarakhand Transport Corporation, Gandhi Road, Dehradun.
4. Assistant General Manager, Haridwar Depot., Uttarakhand Transport Corporation, Transport Nagar, Dehradun.

.....Respondents

WITH

CLAIM PETITION NO. 03/SB/2025

Sri Sanjay Dobhal, aged about 60 years, s/o Late Sri Manglanand, Retd. Mechanic, Depot Workshop, Rural, Uttarakhand Transport Corporation, Transport Nagar, Dehradun, r/o Aamwala, Sondhowala, Dehradun, Uttarakhand.

.....Petitioner

vs.

1. State of Uttarakhand through Secretary Transport, Govt. of Uttarakhand, Secretariat, Subhash Road, Dehradun.
2. Managing Director, Uttarakhand Transport Corporation, Office of the Transport Commissioner, Kulhan, Sahastradhara Road, Dehradun.
3. Divisional Manager (Operation), Uttarakhand Transport Corporation, Gandhi Road, Dehradun.
4. Assistant General Manager, Rural Depot, Uttarakhand Transport Corporation, ISBT, Dehradun.

…….Respondents

WITH

CLAIM PETITION NO. 12/SB/2025

Sri Amar Singh aged about 65 years, s/o Late Sri Dharam Singh, Retd. Senior Clerk, Rural Depot, Uttarakhand Transport Corporation, Dehradun, r/o 172 Rochipura, Niranjanpur, Dehradun.

……Petitioner

vs.

1. State of Uttarakhand through Secretary Transport, Govt. of Uttarakhand, Secretariat, Subhash Road, Dehradun.
2. Managing Director, Uttarakhand Transport Corporation, Office of the Transport Commissioner, Kulhan, Sahastradhara Road, Dehradun.
3. Divisional Manager (Operation), Uttarakhand Transport Corporation, Gandhi Road, Dehradun.
4. Assistant General Manager, Uttarakhand Transport Corporation, ISBT, Dehradun.

…….Respondents

WITH

CLAIM PETITION NO. 13/SB/2025

Smt. Harjeet Kaur aged about 56 years, w/o Late Sri Jitendra Singh (Fitter, Rural Depot), r/o 95, Mitralok Colony, Gate No. 41, Ballupur, Dehradun.

……Petitioner

vs.

1. State of Uttarakhand through Secretary Transport, Govt. of Uttarakhand, Secretariat, Subhash Road, Dehradun.
2. Managing Director, Uttarakhand Transport Corporation, Office of the Transport Commissioner, Kulhan, Sahastradhara Road, Dehradun.
3. Divisional Manager (Operation), Uttarakhand Transport Corporation, Gandhi Road, Dehradun.
4. Assistant General Manager, Uttarakhand Transport Corporation, ISBT, Dehradun.

…….Respondents

WITH

CLAIM PETITION NO. 15/SB/2025

Sri Harsh Suresh Singh, aged about 61 years, s/o Late Sri Mahavir Prasad, Retd. Senior Clerk, Haridwar Depot., Uttarakhand Transport Corporation, Dehradun, r/o Shiv Mandir Road, Pal Mohalla, Bahadarabad, Haridwar, Uttarakhand.

.....Petitioner

vs.

1. State of Uttarakhand through Secretary Transport, Govt. of Uttarakhand, Secretariat, Subhash Road, Dehradun.
2. Managing Director, Uttarakhand Transport Corporation, Office of the Transport Commissioner, Kulhan, Sahastradhara Road, Dehradun.
3. Divisional Manager (Operation), Uttarakhand Transport Corporation, Gandhi Road, Dehradun.
4. Assistant General Manager, Uttarakhand Transport Corporation, Haridwar.

.....Respondents

WITH

CLAIM PETITION NO. 19/SB/2025

Sri Hukum Singh aged about 68 years, s/o Late Sri Khilpat Singh Rawat, Retd. Driver Instructor, Hill Depot., Uttarakhand Transport Corporation, Dehradun. r/o Meriwell Estate, Barloganj Mussoorie, District, Dehradun, Uttarakhand.

.....Petitioner

vs.

1. State of Uttarakhand through Secretary Transport, Govt. of Uttarakhand, Secretariat, Subhash Road, Dehradun.
2. Managing Director, Uttarakhand Transport Corporation, Office of the Transport Commissioner, Kulhan, Sahastradhara Road, Dehradun.
3. Divisional Manager (Operation), Uttarakhand Transport Corporation, Gandhi Road, Dehradun.
4. Assistant General Manager, Hill Depot., Uttarakhand Transport Corporation, Transport Nagar, Dehradun.

.....Respondents

Present: Sri L.K.Maithani & Sri R.C.Raturi, Advocates,
for the petitioners.
Sri V.P.Devrani, A.P.O., for Respondent-State
Sri Vaibhav Jain, Advocate, for Uttarakhand Transport Corporation.

JUDGMENT

DATED: FEBRUARY 28, 2025.

Justice U.C.Dhyani (Oral)

Since common questions of law and facts are involved in these claim petitions, hence, they are heard together and are being decided by a common judgment and order. However, for the sake of brevity, facts of Claim Petition No. 02/SB/2025 alone are being reproduced. Law and facts, which are common to all, are being considered and discussed together.

2. In Claim Petition No. 02/SB/2025, Man Singh vs. State of Uttarakhand and others, petitioner seeks the following reliefs:

> " i) To issue an order or direction to the respondents to return the recovery amount Rs. 98,228/- to the petitioner with interest as per rules from the date of retirement of the petitioner up to the date of actual payment,
>
> ii) To issue any other order or direction which this court may deem fit and proper in the circumstances of case in favour of the petitioner.
>
> iii) To award the cost of petition."
>
> *[Emphasis supplied]*

3. Petitioner of claim petition No. 02/SB/2025, Man Singh was appointed as Black Smith, Regional Workshop, Dehradun on 14.07.1987. During service he was given benefits of ACP. His pay was fixed accordingly. Petitioner retired on 31.08.2019. After retirement, entire retiral dues were not paid to him and some amount of gratuity and leave encashment was withheld by the respondents. Benefits of ACPs were given to a large number of employees of the respondent department.

3.1 On complaint of audit department, a committee was constituted. On the basis of report of such committee, respondents refixed the pay of the petitioner and other employees of the department. The respondents made recovery from their retiral dues. Petitioner's grade pay of Rs.4200/- was reduced.

3.2 Petitioner made representation against such refixation, but to no avail. He retired on 31.08.2019. Respondents made recovery of Rs.98,228/- from his gratuity *vide* order dated 26.11.2021 (Annexure: 1). Order dated 26.11.2021 is under challenge in this petition.

3.2 Petitioner sent legal notice dated 01.12.2024 to Respondent No.2 (Annexure: 2), but his grievance was not redressed. Hence present petition.

3.3 Various grounds have been taken in the claim petition, but the Tribunal does not feel it necessary to reproduce them, for these are already part of record.

4. The petitioners of other claim petitions also seek similar reliefs. Amount of recovery from the retiral dues of the petitioners varies from case to case. The Tribunal does not feel it necessary to reproduce the reliefs claimed by each and every petitioner separately. No useful purpose would be served by doing the same, inasmuch as the common question of law involved in present petitions has already been decided by the Hon'ble Supreme Court and Hon'ble High Court of Uttarakhand, in catena of decisions.

5. The above noted claim petitions have been contested by the respondents. Ld. A.P.O. submitted that Respondent State is a formal party, real contestant is the Respondent Corporation.

5.1. C.A. has been filed by Sri Suresh Chand Chauhan, Divisional Manager (operation), Uttarakhand Transport Corporation, Dehradun on behalf of Respondents No. 2, 3 & 4,(Uttarakhand Transport Corporation).

5.2. It has been pointed out that in the C.As./W.Ss. filed on behalf of the Respondent Corporation, general averments contained in the claim petitions have been denied, although the material facts have been admitted. Sri Vaibhav Jain, Ld. counsel for Respondents No. 2, 3 & 4 submitted that excess payments made to the petitioners have been adjusted by issuing impugned office order(s) and there is no illegality in such order(s).

6. Material facts in the above noted claim petitions are almost the same. Common questions of law which arise for consideration of the Tribunal are-

(i) Whether post retiral benefits payable to the retired employees, under different heads, including payment of gratuity etc. may be withheld by the employer?

(ii) Whether payments, mistakenly been made by the employer, in excess of the entitlement of employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service), may be recovered?

(iii) Whether the employer can recover the excess amount paid on re-fixation of the pay scale?

7. The issues are no longer *res integra*. In identical matters, Hon'ble High Court of Uttarakhand, while deciding WPSS No. 1593 of 2021, Balam Singh Aswal vs. Managing Director and others and connected writ petitions, has directed as under:

> '50. A writ of mandamus is issued to the respondents and the respondents are directed to pay the entire retiral benefits with its arrears, as sought for by the petitioners in each of the respective Writ Petition, as expeditiously, as possible but not later than three months from the date of production of certified copy of this order.
>
> 51. Subject to aforesaid, the Writ Petitions are allowed with the respective cost of Rs.5,000/- each to be paid to the petitioners of each of the Writ Petition, in order to enable them to meet the litigation expenses of forced litigation upon them.
>
> 52. This order has been rendered on merit, and not on the basis of the consensus given by the respondents Counsel.
>
> 53. In case, if any deduction has been made from retiral benefits or the gratuity of the petitioners, the same would too be remitted back to them within the aforesaid period as directed above.'
>
> *[Emphasis supplied]*

8. Relevant paragraphs of the common decision rendered on 14.06.2022 in WPSS No. 1593 of 2021, Balam Singh Aswal vs. Managing Director and others and connect writ petitions, which decision has direct bearing on the fate of present petitions, are as under:

> "Before proceeding to address these bunch of 27 Writ Petitions on their own merit, this Court feels it apt to initially deal with the interlocutory orders, which were passed in these bunch of Writ Petitions, which engage a consideration of issue to the following effect :-

"**As to whether, at all, a statutory Corporation created under an Act, which is a separate legal statutory entity, can at all exercise its powers for withholdment of the post retiral benefits payable to the retired employees, under the different heads, including the payment of gratuity, under the Payment of Gratuity Act, 1972**. "

2. Invariably, all these Writ Petitions**, are similar based, on same legal issue**, but **there is a slight variation in determination of the factual aspects**, which has constituted as to be a foundation for the respective claims raised by the petitioners.

…….
…….
…….

30. The respondents filed their counter affidavit and took a stand that **withholdment of the retiral benefits has been resorted to as a consequence of the wrong fixation of the service benefits, which was extended to the respective petitioners at the time, when they were in service**, and since they have contended, that **it was a wrongful fixation of wages** made by the respondents/ Corporation themselves, and by the competent authority by granting them a revision of pay, as per the recommendations of the report of the Pay Commission, which was admittedly made enforceable with the respondents/Corporation.

31. They had contended that since **the petitioners were paid higher wages, than what they would have been otherwise entitled to, that has been taken as to be a ground for non remittance of the retiral benefits, which has been sought to be enforced by filing a writ of mandamus, praying for the disbursement of the retiral benefits and the gratuity, which they would be entitled to receive** based upon its determination to be made on the basis of the last pay certificate issued in favour of the petitioners, in their respective date of retirement.

32. This Court found, that **there was an apparent anomaly and the inaction in payment of retiral dues of the petitioners**, pervaded at the behest of the respondents, on account of **wrongful administrative decision, which was taken by their own official, and even if at all, it is presumed, that there was a wrongful fixation of the wages, then at least, the retired employees cannot be attributed in any manner of deriving a wrongful benefit of the pay fixed by the respondents themselves, and that too, when it is not the case of the respondents, that the petitioners were at all responsible or instrumental in playing fraud in the process of determination of the wages**, which was held to be payable to them, as a consequence of the revision of pay scale enforced on the basis of the recommendations of the Pay Commission report, made applicable to the Corporation.

33. Hence, in order to satisfy their stand which had been taken by the respondents with regard to their contentions, that the petitioners would be disentitled to receive the retiral benefits, which in certain cases as apparently shown already stood sanctioned by the respondents, on the pretext, that there was a **wrongful fixation of the salary to the petitioners by their own officials**, based on their determination, this Court thought it to be apt, that an action was required to be taken against the official of the Uttarakhand Transport Corporation itself, and hence, the direction was issued to the Secretary, Transport to the State of Uttarakhand, to conduct an enquiry and submit its report about the conduct of the internal affairs of the Corporation, and as to the manner, in which, the officials of the respondents Corporation were instrumental in the alleged act of wrongful fixing of the salary, in which, admittedly, the **petitioners of each of these Writ Petitions have no role to play at all in fixing of their own wages**, which the respondents contend, that **it was fixed on a higher side**, and hence, the retiral benefits as determined by the respondents was wrongfully determined, which would result into an automatic curtailment of their benefits, which was otherwise due to be paid to them on their attainment of their respective age of superannuation.

34. In compliance of the order passed by this Court on 21st February, 2022, and coupled with the reasonings, which has been assigned by this Court in its order of 28th December, 2021, the Secretary, Transport Department of the State of

Uttarakhand, has submitted his report of 1st April, 2022, and as per the observations, which had been made therein, apparently, **it has been observed, that it was rather the Corporation, and its officials, who were instrumental in wrongful fixation of salary of the petitioners, and hence, the voluntary act of the respondents unilaterally taken of curtailment of the retiral benefits on the pretext of a wrongful fixation of the salary was ultimately held to be bad in the eyes of law** in view of the findings which had been recorded in the report of 1st April, 2022.

……

……

38. In fact**, if the entire controversy could be summarised at this juncture itself, invariably, in all the cases, the pivot of the controversy remains the same, i.e. an act of curtailment of retiral benefits, without passing any rational and reasoned order, after providing an opportunity of hearing to the petitioners, and secondly, as to whether the retiral benefits could at all be curtailed whimsically by the respondents/ Cooperation, without even providing any opportunity of hearing to the petitioners because any curtailment of retiral benefits, which otherwise under the concept of payment of gratuity or under the concept of payment of retiral benefits, which is based upon the principles, that it is only reckoning of the services rendered by the employees with the Corporation, in order to provide them a financial assistance for their survival in their old age by extension of retiral benefits and pension so that they may be able to sustain themselves at the fag end of their life after their retirement, in their old age, when they physically become crippled to do any other work, for themselves and for the survival of their families**.

39. The State and the Corporations which has been created by the State, under the Act, they owe an onerous responsibility to ensure a timely remittance of retiral benefits, so that the retired aged employees and their dependents may not have to knock the doors of the Court for the payment of their statutory benefits, which they are otherwise entitled to under the law.

40. It needs no reference that the deductions or curtailment of the **retiral benefits**, which they are otherwise entitled to be paid, to the retired employees has been consistently held by the Constitutional Court as to be **not a bounty rather a right of an employee**, who has retired from the services. No curtailment as such could be made of it subject to the condition, that if at all curtailment of retiral benefits was to be justified, it could have been only after providing an opportunity of hearing to the respective employees, against whom, any action, if at all, is said to have been contemplated to be taken or pending consideration. But, this could not be the case at hand, because invariably, in all the Writ Petitions, **the petitioners, who have retired from the respective posts are shown to have been sanctioned with some of the retiral benefits under different heads, for example, leave encashment, payment of gratuity and consortium, etc. Hence, their entitlement is not an issue of debate**.

41. In that eventuality, when the respondents by their own decision making process have already sanctioned the aforesaid amount which was made to be payable to the retired employees, this Court does not find any justification in the stand taken by the respondents, and which stands fortified too by the report submitted by the Secretary on 1st April, 2022, to curtail the retiral benefits payable to them because any curtailment since **it entails a civil consequences**, the curtailment would be barred by the ratio laid down by the Hon'ble Apex Court in the judgement reported in **AIR 1990 SC 1402, Km. Neelima Misra vs. Dr. Harinder Kaur Paintal and others**, where there has been consistent view, which had been taken by the Courts, that the **employer cannot take the advantage of curtailing the retiral benefits of the employees by carving out an exception according to their own whims and fancies**, and that too, when it is not foundation on any rational basis and the reasons, which ought to have been assigned by the respondents and in the absence of the same, their action would be bad and arbitrary in the eyes of law. Para 23 of the said judgment is extracted hereunder :-

"23. The shift now is to a broader notion of "**fairness**" of "**fair procedure**" in the administrative action. As far as the administrative officers are concerned, the duty is not so much to act judicially as to act fairly (See: Keshva Mills Co. Ltd. v: Union of

India, [1973] 3 SCR 22 at 30; Mohinder Singh Gill v. Chief Election Commissioner, [1978] 1 SCC 405 at 434; Swadeshi Cotton Mills v. Union of India, [1981] 1 SCC 664 and Management of M/s M.S. Nally Bharat Engineering Co. Ltd. v. The State of Bihar & Ors., Civil Appeal No. 1102 of 1990 decided on February 9, 1990). For this concept of fairness, adjudicative settings are not necessary, not it is necessary to have lis inter parties. There need not be any struggle between two opposing parties giving rise to a 'lis'. There need not be resolution of lis inter parties. The duty to act judicially or to act fairly may arise in widely differing circumstances. It may arise expressly or impliedly depending upon the context and considerations. All these types of non-adjudicative administrative decision making are now covered under the general rubric of fairness in the administration. But then even such an administrative decision unless it affects one's personal rights or one's property rights, or the loss of or prejudicially affects something which would juridically be called atleast a privilege does not involve the duty to act fairly consistently with the rules of natural justice. We cannot discover any principle contrary to this concept."

42. The aforesaid principles as laid down by the Hon'ble Courts referred to in the authorities as considered above in this judgment, has been rather reiterated by the Hon'ble Apex Court in the latest judgement reported in **(2022) 4 SCC 363, Punjab State Cooperative Agricultural Development Bank Ltd. vs. Registrar, Cooperative Societies and others**, wherein, the Hon'ble Apex Court has laid down that **entitlement of pension to a retired employee is a vested accrued right of a retired employee, which has had to be remitted irrespective of any impediment**, if at all, it is prevailing, **including the pendency of any disciplinary proceedings against an employee**, and that too particularly when, its effect of curtailment has not been taken into consideration, while taking an action isolatedly according to their own whims and fancies without passing any order, **after opportunity of hearing for curtailing the retiral benefits**, and that has what has been laid down by the Hon'ble Apex Court in the aforesaid judgement, which finds reference from para 44 to 59 which is extracted hereunder:-

> " 44. The question that emerges for consideration is as to what is the concept of vested or accrued rights of an employee and at the given time whether such vested or accrued rights can be divested with retrospective effect by the Rule making authority.
>
> 45. The concept of vested/accrued right in the service jurisprudence and particularly in respect of pension has been examined by the Constitution Bench of this Court in Chairman, Railway Board and Ors. as follows:
>
> .....
>
> Two questions arise in the present case, viz., (i) what is the concept of vested or accrued rights so far as the government servant is concerned, and (ii) whether vested or accrued rights can be taken away with retrospective effect by Rules made under the proviso to Article 309 or by an Act made under that article, and which of them and to what extent.
>
> We find that the Constitution Bench decisions in Roshan Lal Tandon v. Union of India (1968) 1 SCR 185; B.S. Vadera v. Union of India (1968) 3 SCR 575 and State of Gujarat v. Raman Lal Keshav Lal Soni (1983) 2 SCC 33 have been sought to be explained by two three-Judge Bench decisions in K.C. Arora v. State of Haryana (1984) 3 SCC 281 and K. Nagaraj v. State of A.P. (1985) 1 SCC 523 in addition to the two-Judge Bench decisions in P.D. Aggarwal v. State of U.P. (1987) 3 SCC 622 and K. Narayanan v. State of Karnataka 1994 Supp (1) SCC 44. Prima facie, these explanations go counter to the ratio of the said Constitution Bench decisions. It is not possible for us sitting as a three-Judge Bench to resolve the said conflict. It has, therefore, become necessary to refer the matter to a larger Bench. We accordingly refer these appeals to a Bench of five learned Judges.
>
> .....
>
> 47. Later, in U.P. Raghavendra Acharya and Ors., the question which arose for consideration was that whether the Appellants who were given the benefit of revised pay scale with effect from 1st January, 1996 could have been deprived of their retiral benefits calculated with effect therefrom for the purpose of calculation of pension. In that context, while examining the scheme of the Rules

and relying on the Constitution Bench Judgment in Chairman, Railway Board and Ors. (supra), this Court observed as follows:

22. The State while implementing the new scheme for payment of grant of pensionary benefits to its employees, may deny the same to a class of retired employees who were governed by a different set of rules. The extension of the benefits can also be denied to a class of employees if the same is permissible in law. The case of the Appellants, however, stands absolutely on a different footing. They had been enjoying the benefit of the revised scales of pay. Recommendations have been made by the Central Government as also the University Grant Commission to the State of Karnataka to extend the benefits of the Pay Revision Committee in their favour. The pay in their case had been revised in 1986 whereas the pay of the employees of the State of Karnataka was revised in 1993. The benefits of the recommendations of the Pay Revision Committee w.e.f. 1-1-1996, thus, could not have been denied to the Appellants.

30. In Chairman, Rly. Board v. C.R. Rangadhamaiah (1997) 6 SCC 623, a Constitution Bench of this Court opined:

33. Apart from being violative of the rights then available Under Articles 31(1) and 19(1)(f), the impugned amendments, insofar as they have been given retrospective operation, are also violative of the rights guaranteed Under Articles 14 and 16 of the Constitution on the ground that they are unreasonable and arbitrary since the said amendments in Rule 2544 have the effect of reducing the amount of pension that had become payable to employees who had already retired from service on the date of issuance of the impugned notifications, as per the provisions contained in Rule 2544 that were in force at the time of their retirement.

…….

49. The exposition of the legal principles culled out is that an amendment having retrospective operation which has the effect of taking away the benefit already available to the employee under the existing Rule indeed would divest the employee from his vested or accrued rights and that being so, it would be held to be violative of the rights guaranteed Under Articles 14 and 16 of the Constitution.

……

51. It may also be noticed that there is a distinction between the legitimate expectation and a vested/accrued right in favour of the employees. The Rule which classifies such employee for promotional, seniority, age of retirement purposes undoubtedly operates on those who entered service before framing of the Rules but it operates in futuro. In a sense, it governs the future right of seniority, promotion or age of retirement of those who are already in service.

52. For the sake of illustration, if a person while entering into service, has a legitimate expectation that as per the then existing scheme of rules, he may be considered for promotion after certain years of qualifying service or with the age of retirement which is being prescribed under the scheme of Rules but at a later stage, if there is any amendment made either in the scheme of promotion or the age of superannuation, it may alter other conditions of service such scheme of Rules operates in futuro. But at the same time, if the employee who had already been promoted or fixed in a particular pay scale, if that is being taken away by the impugned scheme of Rules retrospectively, that certainly will take away the vested/accrued right of the incumbent which may not be permissible and may be violative of Article 14 and 16 of the Constitution.

57. In our view, non-availability of financial resources would not be a defence available to the Appellant Bank in taking away the vested rights accrued to the employees that too when it is for their socio-economic security. It is an assurance that in their old age, their periodical payment towards pension shall remain assured. The pension which is being paid to them is not a bounty and it is for the Appellant to divert the resources from where the funds can be made available to fulfil the rights of the employees in protecting the vested rights accrued in their favour.

43. In fact, the Hon'ble Apex Court has observed, that entitlement of a pension and locus standi of the employee, who has served with the statutory Corporation of the State, under the scheme of pension as applicable to the respective Department, they would be entitled to be paid with the retiral benefits in view of the principle of legitimate expectation because of the accruing of the vested rights in favour of an employee, hence, the Rules governing the service condition has had to be rationally applied, and it cannot be applied in a manner detrimental to the service benefit, which was extendable to the petitioner for the purposes of determining the retiral benefits, as it has been observed in para 37 and 38 of the said judgement, which is extracted hereunder :-

……
……

44. In yet another judgement rendered by the Hon'ble Apex Court in Civil Appeal 7115 of 2010, Thomas Daniel vs. State of Kerala and others, the Hon'ble Apex Court in its judgement of 2nd May, 2022, while making reference to the judgement of the Hon'ble Apex Court as rendered earlier in a judgement reported in 2009 (3) SCC 475, Syed Abdul Qadir and others vs. State of Bihar and others, where as per the service conditions, which were applicable therein under the circumstances of those cases, the benefit of retired employees was directed to be curtailed on account of excess payment having been made to an employee. **Almost akin principle was raised before the Hon'ble Apex Court in a judgement reported in 2015 (4) SCC 334, State of Punjab and others Vs. Rafiq Masih (White Washer) and others, wherein, in wider principles, it has been laid down, that even if a faulty monetary benefit has been extended to an employee on account of a wrongful determination made by the employer according to their own wisdom and the benefit has already been derived by an employee, the same cannot be culled out to be taken a reason to deprive the benefit of retiral dues of the employee, which accrues to him as a consequence of his attainment of age of superannuation nor the same could be deducted from the salary, if an employee is in the service and the logic behind it is, that once it has been held and established by documents that the employee was not at all instrumental in the wrongful fixation of the service benefits, he cannot be placed in a situation detriment to his interest and to the interest of the dependent of his, because in the absence of their being any fraud being played by the employee, the deduction, the curtailment of the retiral benefits could not at all be left at the liberty of the employer to be applied against the employee, who has already attained the age of superannuation**.

45. Rather in the matter of Rafiq Masih (Supra), which was considered by the Division Bench of this Court also in a bunch of Writ Petition, of which, I was also one of the Member, and later on, it was referred to a larger Bench by the Hon'ble Apex Court in a matter of State of U.P. vs. Prem Singh, in which the principles laid down in the judgement of Rafiq Masih (Supra) was affirmed, and thereafter, it has been laid down that :

i. If a financial benefit has accrued to an employee on account of the voluntary decision taken by the respondents, in which, it has not been established that at all the employees was at all responsible in wrongful fixation of the service benefits and no fraud is said to have been attributed to him, no deduction as such could be made from the service benefits and consequential the retiral benefit too.

ii. The second logic is that once a monetary benefit has been extended on account of the enforceability of the recommendations of the Pay Commission and the financial benefit, which has already been enjoyed by an employee, that cannot be made subjected to recovery at a later stage, when he attains the age of superannuation, and that too, when the benefit, which has been derived by him was on the dictates or the directions issued by the employee, has already been availed and enjoyed by him, and his family, on retirement and he cannot be burdened with financial liability on attaining the age of retirement, where source of earning closes.

46. Furthermore, when the entire action of curtailment of the retiral benefit in the present case, were under the pretext raised by the respondents in the Writ Petitions, that it was on account of wrongful fixation of the salary, it was a unilateral

decision, which was resorted to and taken by the respondents themselves without due process of law and without providing any opportunity of hearing to the petitioners, the action of the respondents would be barred by provisions contained under Article 14 to be read with Article 311 (2) of the Constitution of India, and since the country being a welfare State, the arbitrary action having an effect or the civil consequences, cannot be imposed upon a retired employee on the basis of enjoyment of dominant position by the employer, by withholding of retiral benefits, which otherwise is not disputed by the employer owing to the facts, which has been brought on record in some of the Writ Petitions, where the respondents despite of being conscious of any artificial impediment, which has been observed in the argument extended by the respondents Counsel, and still, they have proceeded to sanction the retiral benefits, I see no justification for them to curtail the retiral benefit …….

47. In these eventualities, before this could have proceeded to take any action against the respondents /Cooperation, based on the observations made in the report of the Secretary to the Transport Department of the State of Uttarakhand, this Court feels it to be fit that apart for the reasons already discussed above, that when invariably in all the cases following facts are admitted:-

i. That the petitioners had been the employee of the Corporation.

ii. That they have attained the respective age of superannuation.

iii. When there is no controversy pertaining to their entitlement to be paid with the retiral benefits and the pensionary benefits based upon the last salary drawn by them.

iv. When there is no material on record as such relied by the respondents, to substantiate the stand taken by the respondents, that there had been any valid reason to curtail the retiral benefits.

v. Particularly, even if, for a moment, if there was any impediment in remittance of the retiral benefits of an employee for any valid and justified reason, which has been artificially created by the respondents in their stand taken in their counter affidavits filed in the Writ Petitions, under the normal service jurisprudence, it was expected that the respondents ought to have provided an opportunity of hearing and should have conducted an enquiry before curtailing the retiral benefits, which was payable to the retired employees, and hence, in the absence of there being any such enquiry ever conducted before taking the impugned action of curtailment of the retiral benefits, the entire action of the respondents would be bad, and that too, lastly particularly, when the extension of service benefit was as a consequence of the decision-making process taken by their own competent authorities, who had fixed the wages, out of which, the benefits has been consistently extended by the respondents and derived by the petitioners and fraud is not an aspect, which has been attributed, argued and established by document on record, against the petitioners, of wrongful extension of ACP benefits to them.

48. In these eventualities, this Court is of the view that the petitioners, who are the retired employees had been rather, owing to the inaction and arbitrary aptitude adopted by the State Corporation have been rather forced upon with the litigation to file a Writ Petition for the enforcement of the genuine rights of payment of retiral benefits, which according to respondents, in some of the cases, they are already entitled to owing to the partial sanctions already accorded by the respondents.

49. In that eventuality, and for the reasons assigned above, at this stage, this Court is deliberately not addressing itself on the report submitted by the Secretary, Transport Department dated 1st April, 2022, and is refraining to make any observation owing to the stand taken by the respondents counsel, that they would be remitting the retiral benefits, which the petitioners are otherwise entitled to in accordance with the law, based upon the last salary drawn by them.

50. A writ of mandamus is issued to the respondents and the respondents are directed to pay the entire retiral benefits with its arrears, as sought for by the petitioners in each of the respective Writ Petition, as expeditiously, as possible but

not later than three months from the date of production of certified copy of this order.

51. Subject to aforesaid, the Writ Petitions are allowed…..

52. This order has been rendered on merit, and not on the basis of the consensus given by the respondents Counsel.

53. In case, if any deduction has been made from retiral benefits or the gratuity of the petitioners, the same would too be remitted back to them within the aforesaid period as directed above."

[Emphasis supplied]

9. Judgment dated 14.06.2022 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 below:

"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."

10. It will be apposite to reproduce the text of 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."

[Emphasis supplied]

11. This Tribunal has also observed in a large number of decisions, including the one decided on 07.03.2024 in WPSS No. 3541/2022, reclassified and renumbered as Claim Petition No. 184/SB/2022, Ravindra Kumar and others vs. State of Uttarakhand and others and connected petitions, that:

> "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:

"(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."

[Emphasis supplied]

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:

"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.

……..
……..
……
……..

[Emphasis supplied]

22. 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.

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]*
>
> 23. Hon'ble High Court of Uttarakhand has also followed Rafiq Masih's case *(supra)* in the decision rendered on 15.05.2017 in WPSB No. 229/ 2014, Rishi Dev Mishra vs. State of Uttarakhand."

12 The petitioners were given monetary benefit, which was in excess of their entitlement. The monetary benefits flowed to them consequent upon a mistake committed by the respondent department in determining the emoluments payable to them. It is a case of wrongful fixation of salary of the petitioners. The excess payment was made, for which petitioners were not entitled. Long and short of the matter is that the petitioners were in receipt of monetary benefit, beyond the due amount, on account of unintentional mistake committed by the respondent department.

13. Another essential factual component of these cases is that the petitioners were not guilty of furnishing any incorrect information, which had led the respondent department to commit the mistake of making a higher payment to the petitioners. The payment of higher dues to the petitioners was not on account of any misrepresentation made by them, nor was it on account of any fraud committed by them. Any participation of the petitioners in the mistake committed by the employer, in extending the undeserved monetary benefits to the employees (petitioners), is totally ruled out. It would, therefore, not be incorrect to record, that the petitioners were as innocent as their employer, in the wrongful determination of their inflated emoluments. The issue which is required to be adjudicated is, whether petitioners, 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

employees (petitioners) had no role in determination of the salary, could it be legally feasible for the employees (petitioners) to assert that they should be exempted from refunding the excess amount received by them?

14. 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. Here the petitioners are retired employees.

15. 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]*

16. 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.

17. 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 and 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, it has been observed by the Hon'ble Courts that there is, however, no embargo on the respondent department against correct fixation of pay even after retirement.

18. If any undertaking was given by any of the petitioners, that if there is excess payment, the same can be adjusted by the department in future, the same appears to be natural for a retiring/ retired employee. That does not give any right to the official respondents to make an illegal pay revision or illegal recovery, which is not permissible in law.

19. Sri Vaibhav Jain, Ld. Counsel for Uttarakhand Transport Corporation submitted that refixation is permissible, inasmuch as, the petitioners are not entitled to keep the money which was deducted from their retiral dues. In fact, the petitioners themselves should pay interest to the Respondent Corporation. on the excess amount which they were not entitled to keep. 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. Sri Vaibhav Jain, Advocate has although fairly submitted that the Hon'ble Supreme Court has observed that excess payment should not be recovered

from a Group-C or Group-D employee from his/her retiral dues after superannuation.

20. The replies to the questions posed in para 6 of the judgment, on the basis of above discussion, are-

(i) Post retiral benefits payable to the retired employees, under different heads, including payment of gratuity etc. should not be withheld by the employer in view of decision rendered by Hon'ble Apex Court in State of Punjab vs. Rafiq Masih, (2015) 4 SCC 334 and hosts of other decisions.

(ii) The excess payment made to Group 'C' and Group 'D' employees, should not be recovered by the employer in view of Situations (i) & (ii) of the decision rendered in Rafiq Masih's case *(supra).*

(iii) Refixation of the pay-scale is permissible, in view of decision rendered by Hon'ble Supreme Court on 21.03.2022 in Civil Appeal No.1985 of 2022, State of Maharashtra and another vs. Madhukar Antu Patil and another, but on re-fixation of pay scale and pension, there shall not be recovery of any amount already paid to the employees.

21. It is the submission of Ld. Counsel for the petitioners that the controversy in hand is squarely covered by the decision rendered by Hon'ble High Court of Uttarakhand in WPSS No. 1593/2021, Balam Singh Aswal vs. Managing Director and others and connected writ petitions, which has been affirmed by the Division Bench of Hon'ble High Court in Special Appeal No. 245/ 2022, Managing Director, Uttarakhand Transport Corporation, Dehradun and others vs. Ashok Kumar Saxena and connected Special Appeals and present petitions may be disposed of in terms of the aforesaid decisions.

The Tribunal has no hesitation in accepting such prayer of Ld. Counsel for the petitioners on the basis of above discussion.

22. The above noted petitions are, accordingly, decided in terms of judgment dated 14.06.2022 passed by the Hon'ble High Court of Uttarakhand in WPSS No. 1593/2021, Balam Singh Aswal vs. Managing Director and others and connected writ petitions, which has been affirmed by the Division Bench

of Hon'ble High Court on 04.04.2024 in Special Appeal No. 245/ 2022, Managing Director, Uttarakhand Transport Corporation, Dehradun and others vs. Ashok Kumar Saxena and connected Special Appeals.

23. Let copies of this judgment be placed on the files of Claim Petitions No. 03/SB/2025 Sanjay Dohbal, 12/SB/2025 Amar Singh, 13/SB/2025 Harjeet Kaur, 15/SB/2025 Harsh Suresh Singh and 19/SB/2025 Hukum Singh Rawat vs. State and others.

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: FEBRUARY 28, 2025.
DEHRADUN

VM