

**BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL
BENCH AT NAINITAL**

Present: Hon'ble Mr. Rajendra Singh
.....Vice Chairman (J)

Hon'ble Mr. A.S.Rawat
.....Vice Chairman(A)

CLAIM PETITION NO. 119/NB/DB/2023

Shoorvir Singh, aged about 43 years, s/o Sri G.S.Chauhan, presently posted as Junior Assistant, Office of the Advocate General, State of Uttarakhand, Nainital, District Nainital.

.....**Petitioner**

With

CLAIM PETITION NO. 120/NB/DB/2023

Subhash Chandra, aged about 48 years, s/o Sri Jagdish Singh, presently posted as Junior Assistant, Office of the Advocate General, State of Uttarakhand, Nainital, District Nainital.

.....**Petitioner**

With

CLAIM PETITION NO. 129/NB/DB/2023

Pankaj Kumar Yadav, aged about 39 years, S/o Sri Panna Lal Yadav, presently posted as Junior Assistant, Office of the Advocate General, State of Uttarakhand, Nainital, District Nainital.

.....**Petitioner**

Vs.

1. State of Uttarakhand through Principal Secretary, Law & Justice/Legal Remembrancer, Govt. of Uttarakhand, Dehradun.
2. Office of Advocate General, State of Uttarakhand, Nainital.

.....**Respondents**

Present: Sri Vinay Kumar, Advocate for the petitioners
Sri Kishore Kumar, A.P.O., for the respondents

JUDGMENT**DATED: MARCH 12, 2025****Hon'ble Sri A.S.Rawat, Vice Chairman (A)**

Since the common question of law and facts involved in all these 3 Claim Petitions are the same, so these are being taken together and disposed of by this common judgment.

2. Common reliefs have been sought by the petitioners in all the claim petitions, which are as follows:

"i. To issue order or direction calling for the record and to quash the impugned Office Order No. 38(1) dated 10.07.2023 passed by the Appointing Authority/Respondent No.2 (Annexure No.1 to the Claim Petition), whereby the recovery has been directed to be made from the Petitioners for the period when the Petitioners was promoted on adhoc basis as Assistant Review Officer, which is contrary to the law laid down by the Hon'ble Apex Court passed in SLP (C) No. 11684 of 2012, "State of Punjab & Ors. Vs. Rafiq Masih vide judgment and order dated 18th December, 2014 and the subsequent judgments."

3. Facts, in brief, of the claim petitions are as follows:

3.1 The petitioner in claim petition no. 119/NB/DB/2023 was appointed on the post of Peon (Group 'D') in the Pay Scale of Rs. 2550-3200 vide office Memorandum dated 26.06.2002 in the office of the Advocate General.

3.2. The petitioner in claim petition no. 120/NB/DB/2023 was appointed on the post of Peon (Group 'D') in the Pay Scale of Rs. 2550-3200 vide office Memorandum dated 01.05.2003 in the office of the Advocate General.

3.3 The petitioner in claim petition No. 129/NB/DB/2023 was appointed on the post of Peon (Group 'D') in the Pay Scale of Rs. 2550-3200 vide office Memorandum dated 01.08.2003 in the office of the Advocate General.

3.4 All the petitioners along with 10 other persons were appointed against the sanctioned vacant post of Group 'D' employees

in the Office of the Advocate General. The Appointing Authority/Learned Advocate General issued the Office Order dated 25.09.2014, whereby the petitioner in claim petition No. 119/NB/DB/2023, vide Office Order dated 04.03.2015, the petitioners in claim petitions No. 120/NB/DB/2023 & 129/NB/DB/2023 who were posted as Group 'D' employees have been granted promotions on the post of Junior Assistant in the Pay Scale of Rs. 5200-20200 with Grade Pay of Rs.1900.

3.5 The appointment and promotion of the employees in the Office of the learned Advocate General is governed by the statutory provisions contained in the Uttarakhand Office of Advocate General Establishment (Services of the Employees) Rules, 2013.

3.6 On 13.08.2018, the Appointing Authority issued another Office Orders, whereby the petitioners and other Junior Assistants were promoted on the post of Assistant Review Officer. The promotion order mentions that against 07 vacancies on the post of Review Officers to be supplied by direct recruitment through Commission, 07 Assistant Review Officers have been promoted subject to the condition that on availability of the regularly selected candidates, the adhoc promotion would come to an end and they would be reverted to the original post.

3.7 The Office Order dated 10.09.2018 issued by the Appointing Authority specifically mentioned that the adhoc promotion of the petitioners will come to an end on the appointment of the regular incumbent. It has been further mentioned in Clause 4 of the Office Order that in future if it is found that excess payment has been made to the petitioners against the provisions made in the Service Rules of 2013 and financial rules, then the steps would be taken for recovery of excess amount from the salary of the Petitioners in view of the provisions contained in the Paragraph No. 81(3) of the Financial Handbook Volume 5, Part-1. The promotion order was to be effective with immediate effect.

3.8 The salary of the petitioners was fixed in the Pay Scale of Rs. 44,900-1,42,400. Which they continued to draw for almost three years. During the period the Appointing Authority never raised any objection on the payments made to the petitioners.

3.9 On 02.09.2021, the Appointing Authority issued an Office Order, and cancelled the adhoc promotion on the posts of Review Officer, Assistant Review Officer and Junior Assistant. The Office Order mentioned that the application submitted by the employees who were granted adhoc promotion, for regularizing their adhoc promotion is rejected and the adhoc promotion granted to them on the post of Assistant Review Officer is also cancelled. If in future any directions are received for recovery of the salary and allowance paid to the Petitioners, in the light of the provisions contained in the Govt. Order dated 27.04.2018, a separate order would be issued to that effect.

3.10 After issuance of the Office Order dated 02.09.2021, the salary of the petitioners was re-fixed on the post of Junior Assistant in the Pay Scale of Rs. 5200-20200 with Grade Pay of Rs. 1900/- (revised Pay Scale Rs. 19900-63200).

3.11 After lapse of more than 1½ years since the date of issuance of the Office Order dated 02.09.2021, the Appointing Authority issued the Office Order, whereby the petitioners and similarly promoted adhoc promotee Assistant Review Officers were issued a show cause notice/ Office Order dated 24.04.2023 to submit their version within a period of three days as to whether they are ready to volunteer for recovery/deduction of the salary and allowance which were paid to the petitioners while working as Assistant Review Officer on the basis of adhoc promotion.

3.12 The petitioners submitted their replies on 26.04.2023 pointing out that they were granted promotion on the post of Assistant Review Officer on adhoc basis and have discharged the duties of the post on which they were granted adhoc promotion. Since the petitioners have

been sanctioned adhoc promotion on the post of Assistant Review Officer in the Pay Scale of the said post, therefore, the salary of the petitioners was accordingly fixed in the pay scale attached to the promoted post. Petitioners further pointed out that during the period they have worked on the promoted post of Assistant Review Officer, they have not been paid any amount excess to the salary and allowance attached to the post of Assistant Review Officer. Petitioners further pointed out that the provisions of the Govt. Order dated 27.04.2018 are not applicable in the facts and circumstances of the petitioners.

3.13 Again on 28.04.2023, the Appointing Authority issued an Office Order to the petitioners that their contentions that the Govt. Order dated 27.04.2018 is not applicable in the facts of the case, is not correct inasmuch as the Law Department in its communication dated 26.08.2021 has specifically stated that the adhoc promotions were made after issuance of the Govt. Order dated 27.04.2018. The adhoc promotions be cancelled and the steps be taken for making regular appointment. It was further stated that in terms of the Govt. Order dated 27.04.2018 the steps may be taken for supplying the vacancies on the post to be filled by direct recruitment by sending requisition to the Commission.

3.14 The Office Order dated 28.04.2023 further mentioned that Clause 8 of the Govt. Order dated 27.04.2018 specifically mentioned that the persons who have been appointed on adhoc basis are not eligible for the benefit of equal pay for equal work. Clause 12(6) of the said Govt. Order specifically mentions that any payment/ appointment made against the permission granted by the Government, the same would be recovered from the concerned Officer/ Drawing and Disbursing Officer. The Petitioners was required to submit his reply within 24 hours from the receipt of the said order.

3.15 On 29.04.2023, the Petitioners submitted their replies to the Appointing Authority, contending that Clause 8 and Clause 12(6)

of the Govt. Order dated 27.04.2018 is not applicable in the facts and circumstances of the case.

3.16 On 06.06.2023, the petitioners submitted an application to the Appointing Authority requesting to sanction the 2nd ACP to them inasmuch as the petitioners have already completed more than 20 years of service in the Department. On their representations, the petitioners were informed vide Office Order dated 08.06.2023 that against issuance of Show Cause Notice for making recovery of excess payment, the Appointing Authority vide order dated 18.05.2023 has constituted a Three Member High Power Committee to give the report as to whether the salary and allowances paid to the petitioners during their adhoc promotion can be recovered or not.

3.17 Vide Office Order dated 27.06.2023 issued by the Appointing Authority, the application of the petitioners for grant of the benefit of 2nd Financial Up-gradation under the ACP Scheme was rejected by relying on Point No. 26 of the Govt Order dated 17.02.2017. The said Office Order though mentions that a Committee was constituted to give its report and till then the representation of the petitioners dated 06.06.2023 cannot be considered, but the said Office Order does not mention about the report of the High Power Committee constituted by the Appointing Authority.

3.18 Without waiting for the report of the Three Member High Power Committee, the Appointing Authority issued the impugned Office Order and directed to recover the amount paid to the petitioners as salary and allowance for the post of Assistant Review Officer by relying on the Govt. Order dated 27.04.2018 and the communication dated 26.08.2021 issued by the Law Department of the State.

3.19 Perusal of the Govt. Order dated 27.04.2018 clearly shows that the same has been issued by laying down the guidelines in respect of the persons who are posted in different departments in the capacity of daily wager, contract and outsourced. Thus, it is

apparent that the Govt. Order dated 27.04.2018 does not deal with the adhoc promotion granted by the Appointing Authority by following the procedure for promotion.

3.20 The petitioners filed the Writ Petition No. 1270 (S/S) of 2023 & WPSS No. 1280 of 2023 before the Hon'ble High Court of Uttarakhand challenging the impugned Office Order dated 10th July 2023. The Hon'ble High Court dismissed the writ petition, granting liberty to the petitioners to approach this Tribunal for redressal of their grievances. However, the Hon'ble High Court recorded the statement of the State Counsel that the recovery will not be made against the petitioners pursuant to the interim order dated 10.07.2023 for four days.

3.21 Rule 5(8) of the Uttarakhand Advocate Office Establishment (Employees Services) Rules, 2013 provides the source of recruitment for the post of Assistant Review Officer and provide that 50% of the vacancies on the post of will be filled by direct recruitment and 50% of the vacancies will be filled by promotion from the typist/ Junior Assistant of the office who have rendered 5 years of service in the said capacity on 1st day of the recruitment year, on the basis of Seniority subject to rejection of unfit.

3.22 The impugned Office Order dated 10th July 2023 passed by the Appointing Authority is based on the Government Order dated 27th April 2018, which is not applicable in the facts and circumstance of the case.

3.23 The impugned Office Order dated 10th July 2023, is not sustainable. The Petitioners have been paid the excess amount, which is incorrect and infact the petitioners were paid the salary of the posts of Assistant Review Officer, on the basis of the promotion order dated 10th September 2018, which specifically mentions that the Petitioners has been promoted on the post carrying the pay scale of Rs. 44900-142400/-. No excess amount has been paid to them.

3.24 The impugned office order dated 10th July 2023, issued by the Appointing Authority is not sustainable for the reason that the promotion order of the petitioners dated 10th September 2018 nowhere mentions that the petitioners will not be entitled for the salary of the post of Assistant Review Officer. The exercise for recovery of the amount paid to the Petitioners is not sustainable for the reason that the petitioners have not been paid any amount which can be termed as an amount paid to the Petitioners in excess of the financial rules.

3.25 The impugned Office Order dated 10th July 2023, issued by the Appointing Authority is not sustainable for the reason that in reply to the show cause notice the petitioners have specifically stated that the Govt. Order dated 27th April 2018 is not applicable on the petitioners as they have been have granted adhoc promotion.

3.26 The impugned office order has been passed by relying on Clause 8 and Clause 12(6) of the Govt. Order dated 27th April 2018, but perusal of the said two provisions shows that the same would be applicable were the appointments are made on contractual daily wage or adhoc basis without approval of the Department of Personnel Govt. of Uttarakhand.

3.27 The Clause 8 and Clause 12(6) of the Govt. Order dated 27th April 2018 is not applicable on the Petitioners in as much as the Respondent Appointing Authority is equating the adhoc appointment on the post of direct recruitment with adhoc promotion made under the Service Rules, 2013.

3.28 The impugned Office Order dated 10th July 2023, passed by the Appointing Authority directing for recovery of the salary and allowances by relying on the judgment of Apex Court passed in the case of Chandi Prasad Uniyal and Ors V/s State of Uttarakhand & Ors is not sustainable for the reason that the Hon'ble Apex Court in the case of State of Punjab vs. Rafiq Masih has laid down the category in which the recovery cannot be made.

3.29 The petitioners have discharged the duties of the post of Assistant Review Officer during the period 10th September 2018 to 2nd September 2021 and they were paid the salary of the posts of which the petitioners discharged the duties. Hence it cannot be said that the petitioners have been paid the excess amount apart from the salary and allowances attached to the post of Assistant review Officer.

3.30 The impugned office order dated 10th July 2023, is not sustainable for the reason that the Petitioners never misrepresented or committed fraud at the time of granting promotion to the petitioners on the post of Assistant Review Officer or fixation of the salary on the said post, therefore the petitioners are being wrongly subjected to the recovery of an amount approximately Rs 5.5 lakh from each.

3.31 The recovery of Rs. 5.5 Lakh from the each of petitioners by the impugned office order would cause financial hardship to the petitioners who are working in a Group-C posts and that to when the petitioners have discharged the duties of the post of Assistant Review Officer pursuant to the promotion order.

3.32 The case of the petitioners falls within the categories of the conditions as enumerated in paragraph 18 of the judgment of the Hon'ble Apex Court passed in the case of State of Punjab Vs. Rafiq Masih and thus the impugned office order by which the recovery has been directed against the petitioners is not sustainable.

4. The claim petitions have been opposed by the respondents. They have stated that respondents have already filed the detailed objections to the interim relief, which may be treated as Counter Affidavit, in which, it has been stated that-

4.1 The petitioners were promoted on ad-hoc basis to the post of Assistant Review Officer. In the promotion orders, it is clearly mentioned that "If the situation of excess payment is seen in any matter other than the provisions made under the Uttarakhand Advocate General Office Establishment (Employees' Service) Rules,

2013 and the Financial Rules, the salary/pension will be refixed as per the rules. Proceedings for recovery/adjustment from the salary/pension of the concerned government servant can also be done as per provision of Para-81(3) of Part-1 of Financial Handbook Volume-5. The Office Order No.-80/Maha. Adhi/Reversion/2021 Dated 02.09.2021 was passed by the Advocate General vide which the petitioners were reverted back to his original post i.e. Junior Assistants clearly mentions that "If in future with regard to Government Order No.-111/xxx (2)/2018-30(12)2018 dated April 27, 2018, if any guidelines are received related to the recovery of pay and allowances drawn by them, then the above orders will be issued separately."

4.2 It has been clearly directed in sub section (1) and (2) of point 4 Department of Law & Justice Section-3 letter no.-245/XXXVI-A-3/2021-144 (S.0)/2016 dated 26-08-2021 that:-

(1) The promotions in question have been made after the issuance of Government Order dated 27.04.2018 by the Personnel Department. Therefore, it would be appropriate that necessary action should be taken as soon as possible in connection with sending the requisition for selection to the vacant posts of direct recruitment to the concerned Selection Commission in compliance of the instructions issued by the relevant mandate dated 27.04.2018 of the Personnel Department.

(2) By cancelling the ad-hoc promotions, action be taken for promotion, as per the rules. The continuity period of respective ad-hoc promotions should not be extended without the consent of the Government (Personnel Department) in future.

4.3 It is clearly mentioned in point 8 of Government Order dated April 27, 2018, that ad-hoc employees are not eligible for equal pay for equal work and under sub-section of point 12 (6) it is also clearly mentioned that "Such payment/employment made other than the permission of the government will be recovered from the

salary/pension of the concerned officer/Drawing and Disbursing officer."

4.4 Accordingly, the Advocate General directed the petitioner by office order number-270/Maha Adhi/2023 dated 24.04.2023 to give their version within a period of three days as to whether they are ready to volunteer for recovery/deduction of the salary and allowance which were paid to him on the basis of ad-hoc promotion. The petitioners submitted their replies on 26.04.2023 that the above mandate does not apply to them. The details of further action (by the government) were made available by the office through the office order number-278/Maha.Adhi/2023 dated 28.04.2023 as to why the said mandate does not apply to you. No such evidence has been provided by petitioners in order to prove that the said mandate does not apply to petitioners. It is also known that the petitioners made a representation on 03.09.2020, to the Advocate General, in which they had demanded regular promotion on ad hoc posts, which was rejected by the Advocate General and reverted all 21 ad-hoc promotes to their original posts vide his Office Order No.-80/Maha.Adhi/reversion/2021 dated 02.09.2021. Out of 21 persons, the recovery of excess payment either has been made or is being made from 18 ad-hoc promoted employees on their request. In this case, the office has taken action on wrongful /excess payments as per the order issued by DoPT of the Government of India DoPT's OM No.18/03/2015-estt (Pay 11) dated 02-03-2016.

4.5 The issue of recovery of wrongful/excess payments made to Government servants was examined by the Department of Personnel & Training in consultation with the Department of Expenditure and the Department of Legal Affairs in the light of the following judgments of the Hon'ble Supreme Court:

- (i) Chandi Prasad Uniyal and Ors Vs State of Uttarakhand and Ors, 2012 AIR SCW 4742. (2012) 8 SCC 417, decided on 17th August, 2012 (i)

(ii) State of Punjab & Ors Vs Rafiq Masih (White Washer) ete in CA No.11527 of 2014 (Arising out of SLP(C) No 11684 of 2012) decided on 18 December 2014.

4.6 In view of the law declared by the Courts and reiterated by the Hon'ble Supreme Court in the case of Chandi Prasad Uniyal and Ors Vs State of Uttarakhand and Ors, 2012 AIR SCW 4742. (2012) 8 SCC 417, the Ministries/Departments were advised to deal with the issue of wrongful/excess payments as follows:

(i) In all cases where the excess payments on account of wrong pay fixation, grant of scale without due approvals, promotions without following the procedure, or in excess of entitlements, etc. come to notice, immediate corrective action must be taken.

(ii) In a case where the authorities decide to rectify an incorrect order, a show-cause notice may be issued to the concerned employee informing him of the decision to rectify the order which has resulted in the overpayment, and intention to recover such excess payments. Reasons for the decision should be clearly conveyed to enable the employee to represent against the same. Speaking orders may thereafter be passed after consideration of the representations if made by the employee.

4.7 That the order passed by the Advocate General according to the guidelines issued by the Government of India dated 02-03-2016 and Letter issued by the Govt. of Uttarakhand Nyay Anubhag-3 through their letter no-245/XXXVI-A-3/2021-144 (S0)/2016 dated 26-08-2021 and Under the provisions of Government Order No.-111/xxx(2)/2018-30(12)2018 dated April 27, 2018, to deduct/recover the salary/allowances issued at the time of their ad-hoc promotion from their salary is per the rules because of the conditions mentioned in point 04 of petitioner's promotion order.

4.8 The ad-hoc promotion of the petitioners has been considered against the rules by the Uttarakhand government and action was directed as per the mandate of April 27, 2018, therefore, the ad hoc

promotion of the petitioner was cancelled. The posts of ad-hoc promotion on which the petitioner was posted, is the post of direct recruitment, therefore the Chief Treasury Officer, Nainital also objected to the said promotions under the provisions of the government order dated March 29, 1986. All the conditions of the promotion order were accepted by the petitioners and no objection was presented by them at the time of promotion, meaning thereby they accepted all the conditions of the ad-hoc promotion, therefore, the order of the Supreme Court in State of Punjab & ors Vs Rafiq Masih (White Washer) etc in CA No.11527 of 2014 (Arising out of SLP(C) No.11684 of 2012) decided on 18 December, 2014. does not necessarily apply in the case of petitioner. Hon'ble Supreme court order in Chandi Prasad Uniyal and Ors Vs State Of Uttarakhand And Ors, 2012 AIR SCW 4742, (2012) 8 SCC 417, decided on 17th August 2012 (1) applies to the petitioner which has been upheld by the Hon'ble Supreme Court of India dealt in Para No. 7 and 8 in State of Punjab & Ors Vs Rafiq Masih (White Washer) etc in CA No.11527 of 2014 (Arising out of SLP (C) No 11684 of 2012).

4.9 The case of petitioners is not a case of excess payment, rather it is the case of wrongful payment, which was given to the petitioners in aforesaid ad-hoc promotion period, because said ad-hoc promotion was not according to service rules of Advocate General Office, 2013. Hence aforesaid conditions were mentioned in the ad-hoc promotion order of the petitioner which was accepted by the petitioner without restrain. The office order number-31/AG./2023 Dated July 10, 2023 is according to the orders of the Hon'ble Supreme Court in Chandi Prasad Uniyal and Ors Vs State Of Uttarakhand and the mandate, is lawful and the claim petitions are liable to be dismissed.

5. Learned Counsel for the petitioners has filed reply to the objections/Counter Affidavit filed by the respondents in one of the claim petitions and stated that the same may be treated as reply/R.A., in which, the petitioners have refuted the contentions

made in the objections/Counter affidavit and reiterated the averments made in the claim petitions.

5.1 The extract of the Service Book of the petitioners shows that after issuance of the Promotion Order dated 10.09.2018 granting ad-hoc promotion to the claimant on the post of Assistant Review Officer, the salary of the petitioners was fixed on the post of Assistant Review Officer. After issuance of the order 02.09.2021, the petitioners were reverted to his substantive post of Junior Assistant, the salary of the petitioners was again refixed at Rs. 28400/-.

5.2 The communication dated 26.08.2021 issued by the Joint Secretary, Law shows that the adhoc promotion of the petitioners was extended from time to time by the Appointing Authority, which is also reflected from the Service Books of the petitioners, wherein the petitioners were granted extension by the Appointing Authority on 08.07.2019 and in the subsequent years the adhoc promotion of the claimant was extended until further orders. It is necessary to mention here that all the orders which includes promotion, fixation of salary and extension of adhoc promotion were signed by the Appointing Authority. Therefore, it is apparent that the Appointing Authority had passed the orders consciously and being aware of the fact that adhoc promotion can be made for a period of one year as per the Govt. Order of 1986.

6. We have heard the learned Counsel for the petitioners and the Learned A.P.O. and perused the documents.

7. Learned Counsel for the petitioners pleaded that the petitioners were paid the salary for the post of Assistant Review Officer on which they worked on adhoc basis from 10.09.2018 to 02.09.2021. No excess payment has been made to them. There is no misrepresentation of the facts or fraud committed by the petitioners. If any wrong full payment is there that has been made by the Respondents. The petitioners have received the payment for the work they have done. They were promoted after following the

procedure for the promotion. The present claim petitions are covered under the judgement of Rafiq Masih and ors vs State of Punjab. The claim petition is liable to be allowed.

8. Learned A.P.O. pleaded that the petitioners were not entitled to excess payment of the salary to them. This was mentioned in the promotion order for the post of the Asstt. Review Officers, which the petitioners have agreed also. The excess payment made to them is liable to recovered. Their claim against the recovery of the excess payment is against the Judgement of the Hon'ble Supreme Court in the matter of Chandi Prasad Uniyal and Ors Vs State of Uttarakhand and Ors. The claim petition is liable to be dismissed.

9. We have heard the parties and also went through the records and found that the petitioners were given monetary benefit, which was the salary for the post of Asstt. Review Officer. The monetary benefits flowed to them consequent upon a mistake committed by the respondent department in determining the emoluments payable to them on their adhoc promotion. The respondent department has admitted that it is a case of wrongful fixation of salary of the petitioners.

10. The payment of excess amount to the petitioners was neither on account of any misrepresentation made by them, nor 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 benefit to the employee (petitioners), is totally ruled out. **The issue which is required to be adjudicated is, whether petitioners should be exempted in law, from the reimbursement of the excess amount 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 to the employees (petitioners) to assert that he should be exempted from refunding the excess amount received by them?

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) 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, a reference of which is given by Ld. A.P.O. for favouring respondents 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.”

12. 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 Pay Scales of Teachers/ Principals, based on the 5th Pay Commission Report.

Here the petitioners have been sanctioned adhoc promotion on the post of Assistant Review Officer in the Pay Scale of the said post and the salary was accordingly fixed in the pay scale attached to the promoted post. During the period they have worked on the promoted post as Assistant Review Officer, they were not paid any amount excess to the salary and allowance attached to the post of Assistant Review Officer.

13. 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]

14. 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."

15. On the basis of the above, it is clear that the petitioners were paid the salary for the post of Assistant Review Officer on which they worked on adhoc basis from 10.09.2018 to 02.09.2021. No excess payment has been made to them. There is no misrepresentation of the facts or fraud committed by the petitioners. If any wrongful payment is there that has been made by the Respondents. The petitioners have received the payment for the work they have done. They were promoted after following the procedure for the promotion. Hence it cannot be said that the petitioners have been paid the excess amount apart from the salary and allowances attached to the post of Assistant Review Officer.

16. The petitioners are squarely covered by the situations no. (i) & (iv) of the aforesaid decision of Hon'ble Supreme Court. Accordingly, we hold that the petitioners are Group 'C' employees and recovery made from them would be iniquitous or harsh to such an extent that it would far outweigh the equitable balance of employer's right to recover. The impugned order dated 10.07.2023 is liable to be quashed and the claim petition is liable to be allowed.

ORDER

The claim petitions are hereby allowed. The impugned order dated 10.07.2023 is hereby quashed. The respondents are directed not to recover the amount of salary paid to the petitioners during period they worked as Assistant Review Officers on adhoc basis from 10.09.2018 to 02.09.2021. No order as to costs.

Let copies of this judgment be kept on the files of Claim Petitions No.120/NB/DB/2023 & 129/NB/ DB/2023.

RAJENDRA SINGH
VICE CHAIRMAN (J)

A.S.RAWAT
VICE CHAIRMAN (A)

DATED: MARCH 12, 2025
NAINITAL.
KNP