BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL AT DEHRADUN

CLAIM PETITION NO.60/SB/2024

Virendra Singh Negi, aged about 61 years, s/o Late Sri Hari Singh Negi, Retd. Compressor Operator, Public Works Department, Uttarakhand, r/o Village Soda Siroli, P.O. Khas, District Dehradun

……Petitioner

vs.

1. State of Uttarakhand through Secretary, Public Works Department, Govt. of Uttarakhand, Secretariat, Subhash Road, Dehradun.
2. Engineer-in-Chief and Head of the Department, Public Works Department, Uttarakhand, Yamuna Colony, Dehradun, Uttarakhand.
3. Executive Engineer, Temporary Division, Public Works Department, Sahiya, Dehradun.

...……Respondents

Present: Sri L.K.Maithani & Sri R.C.Raturi, Advocates, for the Petitioner.

Sri V.P. Devrani, A.P.O. for the State Respondents.

JUDGMENT

DATED: MARCH 27, 2025.

Justice U.C. Dhyani (Oral)

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

> " i. To quash the impugned office order dated 19.02.2024 (Annexure No. A-1) of respondent no.2 and impugned office order dated 30.01.2023 (Annexure No. A-2) and impugned

order/Details of recovery order dated 30.01.2023 (Annexure No. A-3) of respondent no.3 with its effects and operation.

ii. To issue an order or direction to the respondents to calculate the amount of gratuity of the petitioner on the basis of monthly emoluments Rs. 51750/-which was actually getting by the petitioner at the time of retirement and accordingly paid Rs.8,53,875 /- as gratuity to the petitioner with interest as per GPF rate after adjusting the amount Rs. 99,569/-.

iii. To issue an order and direction to the respondents to return and pay the recovered amount of Rs. 6,51,841/ to the petitioner with interest as per GPF rate.

iv. To issue an order or direction to the respondents to pay the interest on delayed payment on the arrears of monthly pension and on the amount of gratuity Rs. 99,569 since the date of retirement up to the date of actual payment.

v. To issue any other order or direction which this Hon'ble Court may deem fit and proper in the circumstances of the case.

vi. Cost of the petition will be awarded to the petitioner."

2. Petitioner was initially engaged as Mixal Helper in October 1982 in muster roll. He continued to work as such up to 28.02.1986. He was taken into the Work Charged Establishment on 01.03.1986 and his services were regularized on the post of Compressor Operator in Work Charged Establishment *vide* order dated 16.07.2001. He joined at Temporary Division Sahiya on 18.07.2001.

2.1 As per judgment passed by Hon'ble Supreme Court on 02.09.2019 in SLP (Civil) No. 4371 of 2011, Prem Singh vs. State of Uttar Pradesh and others, the State of Government issued G.O. No. 372/111(1)20-04(54) dated 04.02.2020 and G.O. No. 1197/111 (1)19-09(3) dated 14.08.2020 for including the services of the employees rendered in Work Charged Establishment for the purpose of service benefits. In compliance of the G.Os. noted above, Respondent No.2 issued Office Order dated 17.03.2020 to refix the pay scale of the petitioner from the date of appointment in Work Charged Establishment i.e. from 01.03.1986.

2.2 Petitioner retired from service on 31.07.2022 from the office of Executive Engineer, Temporary Division, Sahiya. Respondent No. 3, *vide* office order dated 30.01.2023, refixed the pay of the petitioner and *vide* another order made recovery of Rs.6,51,841 from the petitioner.

Thereafter, Respondent No.4 issued pension payment order dated 21.02.2023 and sanctioned the pension and gratuity to the petitioner after recovery of Rs.6,51,841/- from the gratuity of the petitioner.

2.3 Aggrieved with the same, petitioner sent a legal notice on 24.05.2023 to the Respondent No.2, but the same remained unanswered. Petitioner filed claim petition No. 187/SB/2023 before this Tribunal, which was disposed by the Tribunal by directing the respondents to decide the pending representations of the petitioner.

2.4 Since the representation of the petitioner has been rejected by Respondent No.2 *vide* order dated 19.02.2024, hence petitioner has filed present claim petition. According to the petition, the petitioner is entitled to the gratuity on the basis of pay which he actually received at the time of retirement. He is entitled to refund of Rs.6,51,841/-, which was recovered from his gratuity post-retirement.

2.5 Claim petition is supported by the affidavit of the petitioner. Relevant documents have been filed along with the petition.

3. Petition has been contested on behalf of respondents. C.A. has been filed by Ms. Rachna Thapliyal, Executive Engineer, Temporary Division (P.W.D.) Sahiya, Dehradun, Uttarakhand, on behalf of Respondents. Relevant documents have been filed in support of Counter Affidavit. In the Counter Affidavit not only material contents of the claim petition have been denied, but detailed para-wise replies have been given as to why the claim of the petitioner is not admissible.

3.1 Ld. A.P.O. submitted that services rendered by the petitioner in Work Charged Establishment have been included by the respondents department while counting the service period for the purpose of giving pensionary benefits.

4. Rejoinder Affidavit has been filed by the petitioner, reiterating the facts mentioned in the claim petition.

5. The questions, which arise for consideration of the Tribunal, are:

(i) Whether the deduction from the post retiral dues of a Group 'C' employe like Compressor Operator, is permissible in law?

(ii) If the same is not permissible, whether the employee is entitled to interest during the period the recovered amount remained with the employer?

(iii) Whether refixation of the salary of an employee is permissible in law?

6 So far as the first issue is concerned, the Hon'ble Supreme Court as well as Hon'ble High Court of Uttarakhand, in catena of decisions, have held that such recovery is not permissible. The relief thus granted to such employees is based on equity and not as a matter of right.

7. So far as the second issue is concerned, since the employee was not entitled to keep such amount, therefore, he is not entitled to interest, while giving a direction to the respondent department to restore the recovered amount to the employee. It has been observed in several decisions that the relief is to be granted on the basis of equity and not as a matter of right. It is not his entitlement. When an employee is not entitled to keep the money, as of right, then he is not entitled to interest while directing the respondent department to make refund of the same to the retired employee. After all, it is public money/ tax payers' money. It was received by the recipient without any authority of law.

8. So far as the refixation of the salary is concerned, there is no embargo on the respondent department against correct fixation of pay even after retirement.

9. The Tribunal has given short replies to the above noted questions. Now, it proposes to deal with the aforesaid situation in detail.

10. The petitioner was given monetary benefit, which was in excess of his entitlement. The monetary benefits flowed to him consequent upon a mistake committed by the respondent department in determining the emoluments payable to him. The respondent

department has admitted that it is a case of wrongful fixation of salary of the petitioner. The excess payment was made, for which petitioner was not entitled. Long and short of the matter is that the petitioner was in receipt of monetary benefit, beyond the due amount, on account of unintentional mistake committed by the respondent department.

11. Another essential factual component of this case is that the petitioner was not guilty of furnishing any incorrect information, which had led the respondent department to commit the mistake of making a higher payment to the petitioner. The payment of higher dues to the petitioner was not on account of any misrepresentation made by him, nor was it on account of any fraud committed by him. Any participation of the petitioner in the mistake committed by the employer, in extending the undeserved monetary benefit to the employee (petitioner), is totally ruled out. It would, therefore, not be incorrect to record, that the petitioner was as innocent as his employer, in the wrongful determination of his inflated emoluments. The issue which is required to be adjudicated is, whether petitioner, against whom recovery (of the excess amount) has been made, should be exempted in law, from the reimbursement of the same to the employer. Merely on account of the fact that release of such monetary benefit was based on a mistaken belief at the hand of the employer, and further, because the employee (petitioner) had no role in determination of the salary, could it be legally feasible to the employee (petitioner) to assert that he should be exempted from refunding the excess amount received by him ?

12. 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."

13. 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 petitioner is a retired Compressor Operator (a Group 'C' employee).

14. 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.
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> 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]

15. Based on the decision, rendered by Hon'ble Apex Court in Syed Abdul Qadir vs. State of Bihar, (2009) 3 SCC 475 and hosts of other decisions, which were cited therein including B.J. Akkara vs. Union of India, (2006) 11 SCC 709, the Hon'ble Apex Court concluded thus:

"18. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an

> extent, as would far outweigh the equitable balance of the employer's right to recover."

16. The parties are not in conflict on facts. Petitioner's case is squarely covered by the aforesaid decision of Hon'ble Supreme Court. Petitioner is a 'retired Compressor Operator' (a Group 'C' post) and recovery made from him would be iniquitous or harsh to such an extent that it would far outweigh the equitable balance of employer's right to recover.

17. 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.

* * *

18. There is, however, no embargo on the respondent department against correct fixation of pay even after retirement, as per the decision rendered by Hon'ble High Court of Judicature at Allahabad on 17.12.2018 in Writ -A No. 26639/2018, Smt. Hasina Begum vs. Purvanchal Vidyut Vitran Nigam Ltd, Prayagraj and 02 others [Citation-2018:AHC:204373]. Relevant paragraphs of the judgment read as below:

> "5. The Division Bench has placed reliance upon a similar case decided by them earlier of one Smt. Omwati who had filed Writ - A No. 28420 of 2016 and the Court had observed that no recovery of excess payment can be made from the

writ petitioner although the respondents may correct the pension that had been wrongly fixed for future disbursement to the widow. For this conclusion arrived at by this Court reliance was placed on the Supreme Court's decision in State of Punjab and others Vs. Rafiq Masih (White Washer) and Ors., (2015) 4 SCC 334.

6. It is undisputed that some excess payment has been made to the petitioner. If some correction has been done by the respondents, they are entitled to correct and refix the family pension as the Supreme Court has observed in several cases that administrative mistake regarding the pay fixation or family pension can be corrected by the authorities. However, in view of the law settled by the Supreme Court in Rafiq Masih (supra) no recovery of excess payment allegedly made to the petitioner already can be done from her.

7. This writ petition is disposed off with a direction to the respondents to pay the correctly fixed pension from December, 2018 onward to the petitioner and not to make recovery of alleged excess payment already made to the petitioner due to wrong pay fixation earlier."

19. Hon'ble Supreme Court, in the decision rendered in Civil Appeal No.1985 of 2022, the State of Maharashtra and another vs. Madhukar Antu Patil and another, on 21.03.2022, has observed as below:

"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.

2.2 Feeling aggrieved and dissatisfied with orders dated 06.10.2015 and 21.11.2015 down-grading his pay scale and pension, respondent no.1 approached the Tribunal by way of Original Application No. 238/2016. By judgment and order dated 25.06.2019, the Tribunal allowed the said original application and set aside orders dated 06.10.2015 and 21.11.2015 and directed the appellants herein to release the pension of respondent no.1 as per his pay scale on the date of his retirement. While passing the aforesaid order, the Tribunal observed and held that respondent no.1 was granted the first TBP considering his initial period of appointment of 1982 pursuant to the approval granted by the Government vide order dated 18.03.1998 and the subsequent

approval of the Finance Department, and therefore, it cannot be said that the benefit of the first TBP was granted mistakenly. The Tribunal also observed that the services rendered by respondent no.1 on the post of Technical Assistant (for the period 11.05.1982 to 26.09.1989) cannot be wiped out from consideration while granting the benefit of first TBP.

2.3 Feeling aggrieved and dissatisfied with the judgment and order passed by the Tribunal, quashing and setting aside orders dated 06.10.2015 and 21.11.2015, refixing the pay scale and pension of respondent no.1, the appellants herein preferred writ petition before the High Court. By the impugned judgment and order, the High Court has dismissed the said writ petition. Hence, the present appeal.

3. ……..

3.1 At the outset, it is required to be noted and it is not in dispute that respondent no.1 was initially appointed on 11.05.1982 as a Technical Assistant on work charge basis. It is also not in dispute that thereafter he was absorbed in the year 1989 on the newly created post of Civil Engineering Assistant, which carried a different pay scale. Therefore, when the contesting respondent was absorbed in the year 1989 on the newly created post of Civil Engineering Assistant which carried a different pay scale, he shall be entitled to the first TBP on completion of twelve years of service from the date of his absorption in the post of Civil Engineering Assistant. The services rendered by the contesting respondent as Technical Assistant on work charge basis from 11.05.1982 could not have been considered for the grant of benefit of first TBP. If the contesting respondent would have been absorbed on the same post of Technical Assistant on which he was serving on work charge basis, the position may have been different. The benefit of TBP scheme shall be applicable when an employee has worked for twelve years in the same post and in the same pay scale.

4. In the present case, as observed hereinabove, his initial appointment in the year 1982 was in the post of Technical Assistant on work charge basis, which was altogether a different post than the newly created post of Civil Engineering Assistant in which he was absorbed in the year 1989, which carried a different pay scale. Therefore, the department was right in holding that the contesting respondent was entitled to the first TBP on completion of twelve years from the date of his absorption in the year 1989 in the post of Civil Engineering Assistant. Therefore both, the High Court as well as the Tribunal have erred in observing that as the first TBP was granted on the approval of the Government and the Finance Department, subsequently the same cannot be modified and/or withdrawn. Merely because the benefit of the first TBP was granted after the approval of the Department cannot be a ground to continue the same, if ultimately it is found that the contesting respondent was entitled to the first TBP on completion of twelve years of service only from the year 1989. Therefore both, the High Court as well as the Tribunal have committed a grave error in quashing and setting aside the revision of pay scale and the revision in pension, which were on re-fixing the date of grant of first TBP from the date of his absorption in the year 1989 as Civil Engineering Assistant.

5. However, at the same time, as the grant of first TBP considering his initial period of appointment of 1982 was not due to any misrepresentation by the contesting respondent and on the contrary, the same was granted on the approval of the Government and the Finance Department and since the downward revision of the pay scale was after the retirement of the respondent, we are of the opinion that there shall not be any recovery on re-fixation of the pay scale. However, the respondent shall be entitled to the pension on the basis of the re-fixation of the pay scale on grant of first TBP from the year 1989, i.e., from the date of his absorption as Civil Engineering Assistant.

> *6. In view of the above and for the reasons stated above, the present appeal succeeds in part. The impugned judgment and order passed by the High Court as well as that of the Tribunal quashing and setting aside orders dated 6.10.2015 and 21.11.2015 downgrading the pay scale and pension of the contesting respondent are hereby quashed and set aside. It is observed and held that the contesting respondent shall be entitled to the first TBP on completion of twelve years from the year 1989, i.e., from the date on which he was absorbed on the post of Civil Engineering Assistant and his pay scale and pension are to be revised accordingly. However, it is observed and directed that on re-fixation of his pay scale and pension, as observed hereinabove, there shall not be any recovery of the amount already paid to the contesting respondent, while granting the first TBP considering his initial appointment from the year 1982."*
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> *[Emphasis supplied]*

20. Interference is called for in the impugned order dated 30.01.2023 on the basis of above discussion. The same is, accordingly, set aside/ modified, to the extent as is deemed necessary.

21. Respondents are directed to refund a sum of Rs.6,51,841-00/- to the petitioner, which has been recovered from him post-retirement, without unreasonable delay.

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: MARCH 27, 2025
DEHRADUN

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