

BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL
BENCH AT NAINITAL

Present: Hon'ble Mr. Ram Singh

----- Vice Chairman (J)

Hon'ble Mr. D.K.Kotia

-----Vice Chairman (A)

CLAIM PETITION NO 17A/NB/DB/2017

Ajay Kumar Sharma, S/o Sri G.N. Sharma, Presently posted on the post of Stenographer, Govt. Post Graduate College, Ranikhet.

.....Petitioner

VERSUS

1. State of Uttarakhand through Secretary, Department of Higher Education, Civil Secretariat, Dehradun.
2. State of Uttarakhand through Secretary, Department of Finance, Civil Secretariat, Dehradun.
3. Director of Higher Education, Uttarakhand at Haldwani, District Nainital.

.....Respondents

Present: Sri Rajesh Singh Nagarkoti, Ld. Counsel
for the petitioner.

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

JUDGMENT

DATED: MARCH 14, 2018

HON'BLE MR. D.K. KOTIA, VICE CHAIRMAN (A)

1. The present case was originally filed before the Hon'ble High Court at Nainital as Writ Petition No. 1272 (S/S) of 2008. Since the issue raised in the writ petition was already under consideration

before the Tribunal in Claim Petition No. 25/NB/DB/2015, Sohal Lal Vs. State & others, on the request of learned counsel for the petitioner, Writ Petition no. 1272 of 2008 has been transferred to the Tribunal. The case has been taken up as Claim Petition No. 17A/NB/DB/2017. The petitioner has sought the following relief:

- “i) To issue writ, order or direction in the nature of certiorari quashing the impugned order dated 17 Nov. 2008 (Annexure-I) to this writ petition.*
- ii) To issue writ, rule or direction in the nature of mandamus commanding the respondent to pay the petitioner regular pay scale of Rs. 4500-7000 as he is getting.*
- iii) To issue writ, order or direction in the nature of mandamus commanding the respondent not to recover the amount from the salary, already paid to the petitioner.*
- iv) To pass any order, writ or direction as this Hon’ble Court deem fit and proper.*
- v) To award to the cost of petition.*

2.1 The petitioner was initially appointed on the post of Stenographer on 14.08.1996 in the pay scale of Rs. 1200-2040 at Government Degree College, Chaubatta Khal (Pauri Garhwal).

2.2 On the basis of the recommendations of the ‘Samta Samiti’, Uttar Pradesh (1989), a Govt. Order dated 16.11.1998 was issued by the Department of Higher Education of Uttar Pradesh to the Director, Higher Education whereby, the initial pay scale of Stenographers who were working in the government colleges was fixed as Rs. 1350-2200 in place of 1200-2040.

2.3 On the basis of the aforesaid Govt. Order, the Principal of Degree College, Chaubatta Khal made re-fixation of pay scale of the petitioner on 01.04.2000.

2.4 Thereafter, the Finance Department of the Government of Uttarakhand (respondent No. 2) issued a Govt. Order dated 29.06.2006 in respect of all the departments of the State Govt. that as per the recommendations of the 'Samta Samiti' of Uttar Pradesh (1989), the pay scale of all the employees in 1200-2040 will be refixed in 1350-2200. By issuing clarifications on 05.09.2006 and 15.11.2006, it was made clear by the Finance Department that the revision in pay scale as above, is applicable in respect of only those Stenographers who were working as Stenographers before 01.01.1986. The clarification was issued in the light of the recommendations of the Vetan Samiti (1997-1999), Uttar Pradesh and other relevant Govt. Orders issued by the State of Uttar Pradesh. By this clarification, it was made clear that the Stenographers who were appointed after 01.01.1986 (or the posts which were created after 01.01.1986), the said revision of pay scale will not apply on them. It was also directed to the Head of the Departments of all the departments to take concurrence of the Finance Department before making revision of pay scale of Stenographers under the G.Os mentioned above.

2.5 The Government of Uttarakhand also introduced the staffing pattern as per the recommendations of the Vetan Samiti (1997-1999) on 29.06.2006 and 4 grades were prescribed for the Stenographers so that they may get benefit of higher pay scale after gaining experience in the lower grade.

2.6 Thereafter, the Department of Higher Education issued a G.O. on 19.03.2007 to implement the staffing pattern scheme. On the basis of the Govt. order dated 19.03.2007, the Directorate, Higher Education, Uttarakhand fixed the pay scale of Stenographers vide order dated 25.07.2007. However, the said order dated 25.07.2007 was kept in abeyance and the final pay fixation as per the staffing pattern was made vide order dated 17.11.2008 (Annexure: A 1).

2.7 The petitioner is aggrieved by the impugned order dated 17.11.2008 and the contention of the petitioner is that by fixation of his pay as per order dated 17.11.2008, the revision of his pay from 1200-2040 to 1350-2200, which was granted by the Principal, Degree College, Chaubatta Khal (Pauri Garhwal) in 2000 has been withdrawn and the order of the Directorate, Higher Education dated 17.11.2008 has also mentioned to recover the amount of excess payment made to him. Thus, the revision of pay of the petitioner from 1200-2040 to 1350-2200 has not been recognized by the impugned order dated 17.11.2008 and the petitioner has been made liable for recovery due to excess payment made to him in this regard.

2.8 The petitioner has also contended that it is discriminatory and against the equity to recover the amount of excess payment made by the employer voluntarily and that too without any fault or mistake of the petitioner. Further, the petitioner submitted that it is not the case where he has been paid excess salary due to any fraud or misrepresentation on his part and, therefore, it is not open to the respondents to recover any amount of salary paid to the petitioner even if later on it is found that the petitioner was not entitled to the rate/scale of the pay. Therefore, no recovery can be made from the petitioner for excess payment of salary by the respondents.

3.1 Respondents have opposed the claim petition and in their joint written statement, it has been stated that the petitioner was wrongly given the pay scale of 1350-2200 in place of 1200-2040 as per G.O. dated 16.11.1998 by the Principal of the Degree College, Chaubatta Khal (Pauri Garhwal) in 2000. According to the G.O. dated 16.11.1998, the enhanced pay scale was allowed for the posts of Stenographers which were available between 01.01.1986 to 31.03.1989. Further, the pay scale of Rs. 1350-2200 (in place of 1200-2040) was to be given in accordance with seniority of the

Stenographers. Learned A.P.O. has also stated on behalf of the respondents that the Principal was not competent authority to grant enhanced pay scale as the names of the Stenographers according to seniority were to be decided by the Directorate of Higher Education and not by the Principal, Degree College, Chaubatta Khal (Pauri Garhwal) as only the Directorate had the seniority list of the Stenographers with it.

3.2 Learned A.P.O. has also contended that the revision of pay of Stenographers working in the Govt. Degree/Postgraduate Colleges in Uttarakhand has been done vide order dated 17.11.2008 (Annexure: A 1) in accordance with the Govt. Orders dated 29.06.2006, dated 05.09.2006 and dated 15.11.2006 and the Directorate of Higher Education, Uttarakhand issued the revised pay scales as per the staffing pattern scheme dated 25.07.2007 in pursuant to the Govt. order of the Department of Higher Education dated 19.03.2007. The order of the Directorate, Higher Education, Uttarakhand was deferred for some times and the final order regarding fixation of pay according to the staffing pattern was issued on 17.11.2008. The order dated 17.11.2008 has also made it clear that if any Stenographer has earlier got any higher pay scale inadvertently/wrongly and the excess payment made to him, the same will be liable to be recovered.

3.3. Learned A.P.O. has also stated that the petitioner has referred to a case No. 119/SS/2006 filed by the similarly situated Stenographers of Higher Education, Uttarakhand for granting them a pay scale of Rs. 1640-2900 before the Single Bench of Hon'ble High Court, Uttarakhand, Nainital which was finally decided by the Hon'ble High Court on 21.04.2006. The operative portion of the judgment and order is hereunder:

“In view of above, a writ of mandamus is issued directing the respondents to grant appropriate revised pay scale to the petitioner according to the recommendation of Pay Commission as

well as by the Head of the Department, within a period of three months after obtaining certified copy of this order.

Accordingly, the writ petition is allowed. No order as to cost.”

Learned A.P.O. further submitted that against the said order, the State filed a special appeal bearing No.25/2007, State of Uttarakhand and others vs. Uttarakhand Govt. Degree Colleges and others. The Hon’ble Court passed order on this appeal on 19.07.2011. The operating portion reads as under:-

“We, accordingly, feel that the judgment and order under appeal is not sustainable. In the circumstances, however, we would have had issued a direction upon the State to consider the recommendations made by the Director of Higher Education, Uttarakhand, but we will not issue such direction in view of the decision taken by the State of Uttarakhand on 29th June, 2006 whereby staffing pattern has been provided, and in terms thereof, Stenographer are entitled to be promoted to higher scales and accordingly, the reason for fixing a pay scale commensurate with the pay scale of the officer, to whom a Stenographer is to be attached, has lost its ground. We, accordingly, allow the appeal, set aside the judgment and order under appeal and dismiss the writ petition.”

It is, therefore, the submission of learned A.P.O. that the writ petition No. 119/S/S/2006 referred by the petitioner in a claim petition, has already been dismissed by the Division Bench of the Hon’ble High Court at Nainital in Special Appeal no. 25/2007 and in view of the decision by the Hon’ble High Court in Special Appeal, there is no case of the petitioner for enhanced pay scale.

4. We have heard learned counsel for the petitioner as well as learned A.P.O. and perused the record.

5. After arguing at length, learned counsel for the petitioner has confined the relief in the claim petition to only one prayer that the

excess amount of salary paid to the petitioner should not be recovered as it cannot sustain in the eye of law. The enhanced pay scale was given to the petitioner by the respondents voluntarily by fixing the pay of the petitioner in 2000 in accordance with the Govt. Order dated 16.11.1998. The petitioner has not made any misrepresentation/fraud in getting his pay refixed in 2000 which respondents now find that the petitioner was not entitled to get the same. It has also been contended by learned counsel for the petitioner that he was given the revised pay scale in 2000 and now nearly after 9 years vide order of the Directorate of Higher Education, Uttarakhand dated 17.11.2008, he has been made liable to the recovery which is highly unreasonable and not justified. In his counter argument, learned A.P.O. has argued that since the excess payment has been received by the petitioner, it is fully justified to recover extra amount paid to him. We have perused the written statement as well as other documents submitted by the respondents and find that the respondents have not stated anything explaining the circumstances in which he was paid excess amount and nothing is stated for not taking corrective steps during a long period of time. Learned A.P.O. could also not demonstrate that in getting his pay refixed, the petitioner has done any misrepresentation/fraud and because of that, he received the excess payment.

6. Learned counsel for the petitioner has also referred the case law **State of Punjab and others etc vs. Rafiq Masih (White Washer) etc., 2014 (2) U.D., 576** to demonstrate that the amount of excess payment as a result of incorrect fixation of pay cannot be recovered by the respondents.

7. In the above mentioned case, the Hon'ble Supreme Court has laid down the law in respect of the situations where recovery is not permissible. It would be appropriate to reproduce the following paragraphs of this landmark judgment:-

“2. All the private respondents in the present bunch of cases, were given monetary benefits, which were in excess of their entitlement. These benefits flowed to them, consequent upon a mistake committed by the concerned competent authority, in determining the emoluments payable to them. The mistake could have occurred on account of a variety of reasons; including the grant of a status, which the concerned employee was not entitled to; or payment of salary in a higher scale, than in consonance of the right of the concerned employee; or because of a wrongful fixation of salary of the employee, consequent upon the upward revision of pay scales; or for having been granted allowances, for which the concerned employee was not authorized. The long and short of the matter is, that all the private respondents were beneficiaries of a mistake committed by the employer, and on account of the said unintentional mistake, employees were in receipt of monetary benefits, beyond their due.

3. Another essential factual component in this bunch of cases is, that the respondent-employees were not guilty of furnishing any incorrect information, which had led the concerned competent authority, to commit the mistake of making the higher payment to the employees. The payment of higher dues to the private respondents, in all these cases, 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 private respondents, in the mistake committed by the employer, in extending the undeserved monetary benefits to the respondent-employees, is totally ruled out. It would therefore not be incorrect to record, that the private respondents, were as innocent as their employers, in the wrongful determination of their inflated emoluments.

4. The issue that we have been required to adjudicate is, whether all the private respondents, against whom an order of recovery (of the excess amount) has been made, should be exempted in law, from the reimbursement of the same to the employer. For the applicability of the instant order, and the conclusions recorded by us hereinafter, the ingredients depicted in the foregoing two paragraphs are essentially indispensable.

12. *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."

8. After hearing both the parties; careful perusal of record; and legal position stated in preceding paragraph, we reach the following conclusion:

(i) Admittedly, there was no misrepresentation or fraud played on the part of the petitioner; the petitioner was not guilty of furnishing any incorrect information which led to excess payment; there was no fault of the petitioner for alleged wrong fixation of his salary; and participation of the petitioner in the mistake committed by the respondents in extending the undeserved monetary benefit to the petitioner is ruled out.

(ii) Admittedly, the respondents have refixed the salary of the petitioner on 17.11.2008, which is after more than 9 years of incorrect fixation of pay in 2000. In view of the law laid down by the Apex Court, as mentioned in the preceding paragraph, the recovery is impermissible when the excess payment has been made for a period in excess of 5 years, before the order of recovery is issued.

(iii) Admittedly, the petitioner is an employee belonging to Class-III (Group-C). In view of the law laid down by the Apex Court as mentioned in the preceding paragraph, the recovery is impermissible when the recovery is to be made from the employees belonging to Class-III or Group-C employees.

9. For the reasons stated in preceding paragraphs, the claim petition deserves to be partly allowed. Recovery is not permissible for any excess payment made to the petitioner.

ORDER

The claim petition is partly allowed. The respondents are directed not to make any recovery for excess payment of salary from the petitioner as per impugned order dated 17.11.2008 (Annexure: A1). The respondents are also directed to refund the amount, if any, which has been recovered in pursuant to the impugned order dated 17.11.2008 within a period of 8 weeks. No order as to costs.

(RAM SINGH)
VICE CHAIRMAN (J)

(D.K.KOTIA)
VICE CHAIRMAN (A)

DATE: MARCH 14, 2018
NAINITAL

KNP