



HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition (SS) No. 94 of 2019

Ramesh Chandra Pant --Petitioner

Versus

State of Uttarakhand and others --Respondents

With

Writ Petition (SS) No. 87 of 2019

Puran Singh Rawat --Petitioner

Versus

State of Uttarakhand and others --Respondents

With

Writ Petition (SS) No. 88 of 2019

Bhartendu Bhushan Joshi --Petitioner

Versus

State of Uttarakhand and others --Respondents

With

Writ Petition (SS) No. 89 of 2019

Rajendra Singh Bafila --Petitioner

Versus

State of Uttarakhand and others --Respondents

Presence:-

Mr. K.P. Upadhyay, Senior Advocate assisted by Mr. Hemant Pant,
Advocate for the petitioners.

Mr. Narayan Dutt, Standing Counsel for the State

Reserved on : 30.07.2026

Delivered on : 06.08.2026

Coram : Hon'ble Manoj Kumar Tiwari, J.
Hon'ble Pankaj Purohit, J.

Hon'ble Manoj Kumar Tiwari, J. (Oral)

Since common questions of law and facts are involved in these writ petitions, they are being heard together and decided by this common judgment. However, for the sake of brevity, facts of Writ Petition (SS) No. 94 of 2019 alone are being considered.

2. Reliefs sought in Writ Petition (SS) No. 94 of 2019



are as follow:

- i) Issue a writ, order or direction in the nature of certiorari calling for the records and quashing the impugned annexure-1 order dated 14.11.2018 and annexure- 2 order dated 11.12.2018.
- ii) Issue a writ, order or direction in the nature of mandamus restraining the respondents from making any further re-fixation of pay and recovering any amount from the petitioner on the basis of impugned annexure 1 order dated 14.11.2018 and annexure -2 order dated 11.12.2018.
- iii) Issue a writ, order or direction in the nature of mandamus directing and holding that the benefit of pay revision and fixation contained in the annexure -11 Govt. order dated 29.05.2015 is to be treated w.e.f. 01.01.2006 as in the case of same post holders as the petitioner possessing a different qualification and non-grant of such benefit to the petitioner being arbitrary and discriminatory would be unsustainable in law.”

3. Petitioner was appointed as Lab Assistant (Pharmacy) in a Government Polytechnic. The said post was re-designated as Lab Technician (Pharmacy) vide Government Order dated 29.05.2015 and the pay scale admissible for the said post was also upgraded from Rs. 3200-4900 (pre-revised) to Rs. 4500-7000 (revised to Pay Band of Rs. 5200-20200, Grade Pay of Rs. 2800/-).

4. Pursuant to Government Order dated 29.05.2015, petitioner was given upgraded scale of Rs. 5200-20200, Grade Pay Rs. 2800/- w.e.f. 01.01.2006 and according to the petitioner, difference of salary between 01.01.2006 to 30.06.2015 amounting to Rs. 2,55,582/- was also paid to him pursuant to pay fixation order dated 29.07.2015 passed by Principal, Government Polytechnic, Dwarahat, Almora.



5. Petitioner is aggrieved by Government Order dated 14.11.2018 issued subsequently by Additional Chief Secretary, Technical Education Department in response to a query raised by Director, Technical Education as to whether upgraded pay scale sanctioned vide G.O. dated 29.05.2015 is payable to Lab Assistant (Pharmacy) from 01.01.1996 or 01.01.2006.

6. In reply to the query, Additional Chief Secretary clarified in his letter that Government Order dated 29.05.2015 unequivocally provides that upgraded pay scale would be admissible to Lab Assistant (Pharmacy) with immediate effect, therefore, benefit of upgraded pay scale is admissible only from the date of issuance of Government Order i.e. 29.05.2015 and in cases where upgraded pay scale is given to Lab Assistant w.e.f. 01.01.2006, then the mistake has to be rectified and pay of such Lab Assistant has to be re-fixed in upgraded pay scale from 29.05.2015 and excess amount, if paid, shall be recovered from salary of concerned employee.

7. Director, Technical Education issued a consequential letter to Principals of Government Polytechnics on 11.12.2018, directing them to re-fix the pay of Lab Assistant/Lab Technicians (Pharmacy) in the upgraded pay scale w.e.f. 29.05.2015 and to recover the excess amount from their salary.

8. Petitioner has challenged the direction issued by Additional Chief Secretary, Technical Education to recover the excess amount, vide letter dated 14.11.2018. He has also challenged the consequential letter issued by Director, Technical Education on 11.12.2018.



9. Learned State Counsel submits that Government Order dated 29.05.2015 expressly provides that upgraded pay scale is being sanctioned to Lab Assistant/Lab Technician (Pharmacy) with immediate effect; however, benefit of upgraded pay scale was wrongly given to the petitioner w.e.f. 01.01.2006, therefore Additional Chief Secretary, Technical Education Department intervened by issuing letter dated 14.11.2018 reiterating that benefit of upgraded pay scale is admissible only w.e.f. 29.05.2015.

10. He further submits that since petitioners were entitled to scale of Rs. 5200-20500, Grade Pay Rs. 2800/- only w.e.f. 29.05.2015; however, they received upgraded pay scale w.e.f. 01.01.2006, therefore, Additional Chief Secretary, Technical Education was justified in directing the concerned authorities to recover the excess payment paid to petitioners.

11. Learned State Counsel further submits that order of recovery has not been passed against the petitioner by concerned Principal, therefore there is no cause of action available to the petitioner to challenge the interdepartmental communications issued by Additional Chief Secretary, Technical Education and Director, Technical Education.

12. Learned Counsel for the petitioner, however, submits that petitioner is not responsible for wrong fixation of his pay w.e.f. 01.01.2006 and excess payment, if any, was made by the concerned authorities based on their interpretation of Government Order dated 29.05.2015. He further submits that petitioner neither



played fraud for getting excess payment released in his favour nor he made any misrepresentation for getting the benefit of upgraded pay scale from 01.01.2006.

13. He further submits that petitioner is a retired Group 'C' employee of the State Government, therefore he is protected from recovery of the excess payment made to him in view of the law declared by Hon'ble Supreme Court in the case of **State of Punjab v. Rafiq Masih**, reported a **(2015) 4 SCC 334**.

14. Learned State Counsel submits that as per the stand taken in the counter affidavit, petitioner was not instrumental in getting the benefit of upgraded pay scale w.e.f. 01.01.2006.

15. This Court do not find any reason to interfere with the letter dated 14.11.2018 issued by Additional Chief Secretary, Technical Education Department and consequential letter issued by Director, Technical Education on 11.12.2018.

16. Government Order dated 29.05.2015 provided, in unequivocal terms, that upgraded pay would be admissible with immediate effect. Thus, there was no occasion to release the arrears/difference of salary to the Lab Assistant/Lab Technician serving in Technical Education Department w.e.f. 01.01.2006. Therefore, direction issued by Additional Chief Secretary to re-fix the pay of Lab Assistant/Lab Technician in terms of Government Order dated 29.05.2015, cannot be faulted.

17. Petitioner is a retired Government servant. In case of **High Court of Punjab and Haryana & Others v.**



Jagdev Singh, reported as **(2016) 14 SCC 267**, Hon'ble Supreme Court held that recovery from retired employee, or an employee who is due to retire within one year of the order of recovery would be permissible if he was put on notice that any payment found to have been made in excess would be required to be refunded. Moreover, a person who furnished an undertaking, while claiming benefit of revised pay scale, that he will be liable to refund the excess payment, would be bound by the undertaking given by him. Para 10 and 11 of the said judgment is reproduced below:

“10. In *State of Punjab v. Rafiq Masih* this Court held that while it is not possible to postulate all situations of hardship where payments have mistakenly been made by an employer, in the following situations, a recovery by the employer 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).

11. The principle enunciated in Proposition (ii) above cannot apply to a situation such as in the present case. In the present case, the officer to whom the payment was made in the first instance was clearly placed on notice that any payment found to have been made in excess would be required to be refunded. The officer furnished an undertaking while opting for the revised pay scale. He is bound by the undertaking.



12 For these reasons, the judgment of the High Court which set aside the action for recovery is unsustainable. However, we are of the view that the recovery should be made in reasonable instalments. We direct that the recovery be made in equated monthly instalments spread over a period of two years.”

18. In view of the law declared by Hon’ble Supreme Court, the writ petitions are, disposed of by providing that petitioners would be liable for recovery of excess payment received by them only if: (i) they were put on notice by the authority passing pay fixation order that they would be required to refund the excess amount, if it is found later that they were not entitled to the amount released in their favour; or (ii) they have furnished an undertaking while receiving the benefit of upgraded pay scale that they will refund the excess payment, if it is found later that they were not entitled to the amount paid to them.

19. With the aforesaid direction, writ petitions stand disposed of.

(Pankaj Purohit, J.) (Manoj Kumar Tiwari, J.)

06.08.2026

Mahinder/
MAHINDER SINGH

Digitally signed by Mahinder Singh, DN: cn=Mahinder Singh, o=UK High Court, email=Mahinder.Singh@ukhc.gov.in, c=IN