

**HIGH COURT OF UTTARAKHAND AT NAINITAL****Writ Petition (S/B) No. 80 of 2020**

HON'BLE SRI MANOJ KUMAR TIWARI

AND

HON'BLE SRI JUSTICE PANKAJ PUROHIT

August 06, 2026

Sudhir Kant Uniyal & another ... Petitioners
Versus

State of Uttarakhand & others ... Respondents

Presence:-

Mr. M.C. Pant, learned counsel for the petitioners.

Mr. Narayan Dutt, learned Standing Counsel for the State of Uttarakhand.

Hon'ble Manoj Kumar Tiwari, J.**Hon'ble Pankaj Purohit, J.****(Per: Hon'ble Manoj Kumar Tiwari, J.)****JUDGMENT**

1. Petitioners have challenged judgment and order dated 13.02.2020 passed by Uttarakhand Public Services Tribunal in Claim Petition No. 39/DB/2019, whereby their claim petition was dismissed.

2. Petitioners were appointed as Lab Assistant (Pharmacy) in Department of Technical Education in the pay scale of ₹230-385 by separate orders dated 30.05.1986 and 23/25.11.1985, respectively. On the recommendation of Pay Anomaly Committee, Lab Assistant, serving in Medical Department, were designated as Lab Technician, however, Lab Assistant (Pharmacy), serving in Technical Education Department were designated as Lab Technician (Pharmacy) vide Government Order dated 29.05.2015 and their pay scale was also upgraded from ₹3200-4900 to ₹4500-



7000 (revised to Pay Band-I ₹5200-20200, Grade Pay ₹2800).

3. In terms of Government Order dated 29.05.2015, pay of petitioners was fixed in Pay Band-I ₹5200-20200, Grade Pay ₹2800 w.e.f. 01.01.2006 vide pay fixation order dated 23.11.2015 and they were given difference of salary, w.e.f. 01.01.2006. By Government Order dated 14.11.2018, issued by Additional Chief Secretary, Technical Education, it was provided that upgraded pay scale is payable only from 29.05.2015 in view of clear stipulation made in Government Order dated 29.05.2015 and excess payment, if released in favour of Lab Assistants, was directed to be recovered. Director, Technical Education issued consequential letter on 11.12.2018, asking the Principals of Government Polytechnics to re-fix the pay of Lab Assistant in upgraded pay scale only from the date of issuance of Government Order i.e. 29.05.2015 and to recover the excess payment, if released, from their salary in installments.

4. Before learned Tribunal, petitioners challenged Government Order dated 14.11.2018 and the consequential letter issued by Director, Technical Education on 11.12.2018, wherein it was provided that upgraded scale i.e. ₹5200-20200, Grade Pay ₹2800, would be admissible to Lab Technician (Pharmacy) only from the date of issuance of Government Order i.e., 29.05.2015.

5. State Authorities filed counter affidavit before



learned Tribunal stating that the post held by petitioners was re-designated as Lab Technician (Pharmacy) only on 29.05.2015, and pay scale of the post held by petitioners was also upgraded to Pay Band-I ₹5200-20200, Grade Pay ₹2800 with immediate effect, as mentioned in the Government Order. It was further stated that benefit of pay upgradation was wrongly given w.e.f. 01.01.2006, based on undertaking given by petitioners that they will refund the excess amount, if it is later found that they are not entitled to such benefit. It was further stated that in the order of pay fixation issued on 23.11.2015, there was a stipulation that petitioners would be liable to refund the excess amount, if it is later found that amount in excess of what is due to them was paid, but petitioners did not challenge that condition, in fact, they accepted the same, therefore, they cannot have any grievance when recovery is made from them.

6. Learned Tribunal examined the matter in detail and held that though petitioners pay was upgraded to Pay Band-I ₹5200-20200, Grade Pay of ₹2800 vide Government Order dated 29.05.2015, however, the upgraded pay was effective from the date Government Order was issued. Learned Tribunal thus held that the Government Order issued on 14.11.2018 only reiterated what was manifest in Government Order dated 29.05.2015, namely, benefit of upgraded scale was available only from 29.05.2015 and upgraded scale, if given from anterior date, is not in order.

7. The contention raised by petitioners, based



on judgment rendered in the case of *State of Punjab v. Rafiq Masih*, reported as (2015) 4 SCC 334, was not accepted by learned Tribunal by holding that petitioners received excess amount based on the undertaking which they gave before the competent authority that they will refund the excess amount, if any objection is raised later.

8. This Court do not find any scope for interference with the judgment rendered by learned Tribunal. Government Order dated 29.05.2015 unequivocally provides that Grade Pay of ₹2800 would be payable with immediate effect to Lab Assistant (Pharmacy) [re-designated as Lab Technician Pharmacy]. Thus, petitioners were entitled to Grade Pay of ₹2800 only with effect from date of issuance of said Government Order. The benefit of upgraded pay was, however, wrongly received by petitioners from 01.01.2006 in the form of difference of salary. Petitioners were instrumental in securing the benefit of Government Order dated 29.05.2015 from 01.01.2006 as they gave undertaking that in case any objection is raised later, they shall refund the excess amount received by them.

9. In view of the judgment rendered in the case of *High Court of Punjab & Haryana & others vs. Jagdev Singh*, reported as (2016) 14 SCC 267 the recovery of excess amount from the petitioners in terms of their undertaking, cannot be faulted. Para 10 and 11 of the judgment rendered in the case of Jagdev Singh is reproduced below:-

“10. In *State of Panjab Rafiq Masih* this Court held that while it



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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: (SCC pp. 334-35)

- (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.”

10. Learned counsel for the petitioner could not point out any infirmity in the view taken by learned Tribunal. Thus, any interference in the matter would not be warranted.

11. The writ petition thus fails and is dismissed.

MANOJ KUMAR TIWARI, J.

PANKAJ PUROHIT, J.

Dt: 06.08.2026