

HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition (S/B) No.292 of 2021

Mitthan Lal Shah

.....Petitioner

Versus

State of Uttarakhand and others

.....Respondents

Present:-

Mr. V.B.S. Negi, Senior Advocate assisted by Ms. Azmeen Wason,
Advocate holding brief of Mr. Ankush Negi, Advocate for the petitioner.
Mr. Ganga Singh Negi, Additoinal Chief Standing Counsel for the State.
Mr. Bhuwan Bhatt, Advocate for respondent no.3.

JUDGMENT

Coram: **Hon'ble Ravindra Maithani, J.**
 Hon'ble Siddhartha Sah, J.

Hon'ble Ravindra Maithani, J. (Oral)

The challenge in this petition is made to the order dated 15.06.2021 issued by the respondent no.2/the Director Urban Development Directorate, Dehradun. By the impugned order, direction has been issued to recover excess payment made to the petitioner.

2. Heard learned counsel for the parties and perused the record.

3. In order to appreciate the controversy, the facts may be summarized as below:-

- (i) On 30.08.1989, the petitioner was appointed as Secretary, Town Area Committee, Mahuwa Dawara Haripur, Nainital.
- (ii) On 21.03.1996, the petitioner was promoted to the post of Executive Officer, Nagar Palika Parishad, Tehri

Garhwal. At the relevant time, Nagar Palika Parishad, Tehri Garhwal was Class IV Nagar Palika Parishad.

- (iii) On 21.08.1997, Nagar Palika Parishad, Tehri Garhwal was upgraded from Class IV to Class I.
- (iv) On 12.12.2000, the petitioner was granted pay scale of Class-I, Nagar Palika Parishad.
- (v) On 20.12.2006, the respondent no.1 cancelled the promotion order of the petitioner as well as salary up-gradation order and directed that the excess amount may be recovered. Aggrieved by it, the order dated 20.12.2006, the petitioner filed writ petition bearing WPSB No.06 of 2007, Mithan Lal Shah Vs. State of Uttarakhand and others in this Court (the first petition), which was allowed on 17.07.2012. The Court observed as followed:-

“Petitioner was an employee of Nagar Palika Parishad, Tehri. Being such employee, petitioner was governed by the Centralised Service Rules. Nagar Palika Parishad, Tehri was a Class-IV Nagar Palika. Salary payable to the employees of Class-IV Nagar Palikas was different from the salaries payable to Class-I Nagar Palika. Nagar Palika Parishad, Tehri was upgraded to category-I on 21st August, 1997. Because Nagar Palika Parishad, Tehri was promoted from Class-IV to Class-I, a recommendation was made for payment of salaries of the petitioner in the same scale as salaries of employees of a category-I Nagar Palika is paid. That was hounoured and the petitioner was paid such salaries. As a result, petitioner got a four-fold jump in his pay-scale, despite being a part and parcel of the Centralised Service. When the same was noticed, petitioner was put back to the scale, to which he was otherwise entitled to as a member of the Centralized Service and, at the same time, it was held out that the overdrawn must be recovered from the petitioner. In the meantime, petitioner received salaries at a higher scale for almost 10 years. We think that while there is no scope of interference with the order impugned to the effect that the petitioner was not entitled to the salary, which was paid to him by mistake, there is every reason to interfere with the directions contained in the impugned order, by which it has been held out that excess payment would be recovered from the petitioner,

inasmuch as petitioner had no role to pay in the matter of payment of higher salaries to him and the same were paid to him taking into consideration the recommendation made by the District Magistrate, Tehri Garhwal to that effect. We, accordingly, allow the writ petition partly and thereby quash that part of the impugned order, whereby a decision has been taken to recover excess paid to the petitioner.”

(vi) The State of Uttarakhand challenged the order dated 17.07.2012, passed in the first petition before the Hon’ble Supreme Court in SLP CC No.7501 of 2013, State of Uttarakhand Vs. Mitthan Lal Shah and others , which was dismissed on 12.04.2013. The Hon’ble Supreme Court observed that, **“but we see no reason to interfere with the order by which the High Court has quashed the order of recovery of excess amount.”**

(vii) On 03.09.2013, the pay scale of the petitioner was reduced and by an order dated 25.02.2014, recovery was issued against the petitioner.

(viii) The petitioner challenged the order dated 03.09.2013 and 25.02.2014 in WPSB No.68 of 2024, Mitthan Lal Shah Vs. State of Uttarakhand and others (“the second petition”), which was initially dismissed in non-prosecution, but in the meantime, on 02.05.2016, the services of the petitioner were absorbed in Uttar Pradesh Municipal Administrative Services from 05.09.1989 on the pay scale of Rs.5200 – 20200 with Grade Pay Rs.2800/-. According to the petitioner, he was awarded notional pay-band of Rs.15600 – 39100 with Grade Pay of Rs.5400/- by Office Memorandum dated 24.08.2017.

(ix) In view of these development though the petitioner sought restoration of the second writ petition, but gave a statement that the State Government, by issuing orders dated 26.05.2016 and 24.08.2017, respectively redressed the grievance of the petitioner and the cause does not survive.

- (x) On 18.10.2019, the second petition was restored, but it was dismissed as infructuous in view of the statement that was given on behalf of the petitioner.
- (xi) Thereafter, by the impugned order, the respondent no.2 observed that the petitioner has been paid excess payment because by virtue of order dated 03.09.2013 of the respondent, the pay scale of the petitioner was fixed at Rs. 8950 with Grade Pay of Rs.2000/- w.e.f. 24.09.2008, whereas the petitioner since that date has withdrawn salary at basic pay scale of Rs.22060 with Grade Pay of Rs.5400/-.

4. State has filed counter affidavit and it is stated that, in fact, the petitioner became entitled to the Grade Pay of Rs.5400/-, in fact, on 05.09.2015 after completing 26 years of satisfactory service.

5. According to the respondents, the petitioner is not entitled to be granted any relief and the petition deserves to be dismissed.

6. Learned Senior Counsel appearing for the petitioner submits that earlier also, by virtue of order dated 20.12.2006, the respondents had proceeded to recover excess payment that had paid to him, which order was challenged in the first petition and the recovery was stayed and that order had attained finality up to the Hon'ble Supreme Court. It is argued that subsequent to it, when the pay scale of the petitioner was reduced by the respondent authorities and recovery order was made, the petitioner again challenged it in the second petition. But, in the meantime, the State Government passed two orders on 26.05.2017 and 24.08.2017

giving higher pay scale to the petitioner, therefore, the second petition was dismissed as infructuous.

7. It is argued that now, the respondents may not be permitted to recover any amount from the petitioner. It is argued that the petitioner did not commit any fraud or misrepresentation in getting excess amount, if any. Moreover, it is argued that the second petition was decided by this Court on 18.10.2019 and much thereafter, the impugned order was issued on 15.06.2021 initiating the recovery for a period which ends on 06.03.2013, according to the respondents.

8. Learned State Counsel submits that, in fact, the petitioner was not entitled to the Grade Pay of Rs. 5400/- on 24.09.2008. He was entitled to Grade Pay of Rs.4200/- on that date. He would submit that the recovery is initiated for excess payment that the petitioner has received for a period between 25.09.2008 till 06.03.2013.

9. Admittedly, the petitioner did not make any misrepresentation or fraud in receiving excess amount. His services has been absorbed by subsequent order dated 26.05.2016 and he has been given higher pay scale by virtue of the order dated 24.08.2017, passed by the respondents. Earlier also in the first petition, this Court had quashed the part of the impugned order, by which a decision was taken to recover excess payment from the petitioner observing that the petitioner has no role to make payment in the matter of higher salary paid to him. As stated, the order dated 17.07.2012, passed in the first petition by this Court has attained finality up to the Hon'ble Supreme Court. In the

instant matter also if any excess payment is made to the petitioner for a period from 25.09.2008 to 06.03.2013, the petitioner has no role to get excess payment in that. It is not the case of the respondent authorities that the petitioner did manipulate to get any excess payment. Therefore, there are good grounds to make an intervention and quash that part of the impugned order where a decision is being taken to recover the excess payment made to the petitioner. Accordingly, the petition deserves to be allowed.

10. The petition is allowed.

11. The impugned order dated 15.06.2021, passed by the respondent no.2 is hereby quashed.

(Siddhartha Sah, J.)

(Ravindra Maithani, J.)

20.05.2026

Sanjay

SANJAY KANOJIA

Digitally signed by SANJAY KANOJIA
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