

**IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL****Writ Petition (S/B) No. 361 of 2026**

The Secretary Forest and Others

..... Petitioners

Vs.

Om Kailash Tyagi

..... Respondent

Present:

Mr. S.M.S. Mehta, Additional C.S.C. for the State/petitioners.

Mr. Piyush Tiwari, Advocate for the respondent.

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 judgment and order dated 14.05.2025, passed in the Claim Petition No.153/SB/2024, Om Kailash Tyagi v. The Secretary, Forest, Environment Protection and Climate Change and others ("the claim petition"), by the Uttarakhand Public Services Tribunal, Dehradun ("the Tribunal"). By it, the petitioners have been directed to refund Rs. 13,63,630/- to the respondent. The impugned judgment and order also gives liberty to the petitioners to hear the respondent in person before re-fixing his pay scale, which is permissible.

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

3. The respondent was working as the Statistical Officer in the petitioners' department. He retired on 30.09.2023. His retiral benefits were not paid to him. On 01.03.2024, the petitioners' department re-fixed the pay scale of the respondent and the petitioners' department has also deducted Rs.

13,63,630/- from the gratuity of the respondent. It was challenged by the respondent in the claim petition. The impugned judgment summarized the reliefs in paragraph no.5 of the judgment, which is as below:-

“5. The relief in the claim petition is two fold:
 (i) reduction of pay scale without taking into consideration the recommendation of the Departmental Screening Committee (DSC) and
 (ii) setting aside the order by which respondents have recovered a sum of Rs.13,63,630/- from the gratuity of the petitioner and refund of the same along with interest.”

4. After discussing the law on the point of recovery from government servants and taking note of the judgment passed by the Hon’ble Supreme Court in the case of State of Punjab and Others v. Rafiq Masih (White Washer) and Others, (2015) 4 SCC 334, the Tribunal opined that the respondent is entitled to Rs. 13,63,630/- and accordingly, the petitioners were directed. The Tribunal also gave liberty to the petitioners to hear the respondent in person before re-fixing his pay scale, which is permissible in view of the judgments of the Hon’ble Supreme Court and this Court. Aggrieved by it, the petitioners are before this Court.

5. Learned counsel for the petitioners submits that the respondent was working as Statistical Officer in the petitioners’ department. He himself made entries in the service book, which were not correct, and without getting those entries verified by the competent officer, straightway, counter signatures were obtained on those entries. Therefore, the respondent may not continue to enjoy the benefits of that amount, which was wrongly paid to him and the order of refund is bad in the eye of law.

6. The Court wanted to know from learned counsel for the petitioners as to whether in the counter affidavit filed in the claim petition, any such plea has been taken that it is the

respondent, who had wrongly entered the entries in the service book of the respondent? He submits that it has not been the case of the petitioners before the Tribunal, which means that the petitioners are taking a new case before this Court.

7. The impugned judgment has taken note of various judgments of the Hon'ble Supreme Court on the point of recovery from a government employee, as also whether re-fixation of pay scale is permissible to the petitioner, and has quoted para 18 of the judgment in the case of Rafiq Masih (*supra*), which is as below:-

“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 hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

- (i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).
- (ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.
- (iii) Recovery from the 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. Admittedly, the respondent was working in a Group-C post. Para No.14 of the impugned judgment records that the respondent had no role to play in the alleged wrong fixation of pay scale. The impugned judgment further records that, **“It is not the case of the respondents that the petitioner**

misrepresented his case or played fraud when the respondent department fixed his salary”

9. Admittedly, it has never been the case of the petitioners that the respondent misrepresented or played fraud on the department. It is also admitted fact that the respondent was a Group-C employee. The Tribunal has rightly applied the principles, as laid down by the Hon’ble Supreme Court in the case of Rafiq Masih (*supra*) to hold that the amount of gratuity recovered from the respondent post retirement should be refunded to him. There is no error in the impugned judgment to that extent. Accordingly, we are of the view that there is no reason to make any interference. The petition deserves to be dismissed at the stage of admission itself.

10. The writ petition is dismissed *in limine*.

(Siddhartha Sah, J.)

30.06.2026

(Ravindra Maithani, J.)

Ravi Bisht