



HIGH COURT OF UTTARAKHAND AT NAINITAL

THE HON'BLE CHIEF JUSTICE SHRI MANOJ KUMAR GUPTA

AND

THE HON'BLE JUSTICE SHRI SUBHASH UPADHYAY

19th August, 2026

WRIT PETITION (S/B) NO. 541 of 2026

State of Uttarakhand & others

-----State/Petitioners

Versus

Padmendra Singh Bartwal

----Respondent

Presence:-

Mr. Amrendra Pratap Singh, learned Additional Advocate General with Mr. B.S. Parihar, learned Additional CSC for the State.

JUDGMENT: (per Manoj Kumar Gupta, C.J.)

1. The present writ petition has been filed by the State of Uttarakhand and its officials challenging the order of the Uttarakhand Public Services Tribunal, Dehradun dated 30.01.2025, whereby the Claim Petition bearing No.29/SB/2024 filed by the respondent has been allowed placing reliance on the judgment of the Apex Court in *State of Punjab vs. Rafiq Masih* 2015 (4) SCC 334, judgment dated 21.03.2022 in *Civil Appeal No.1985 of 2022, State of Maharashtra & Ors. vs. Madhukar Antu Patil & Ors.* and judgment dated 17.12.2018 of *Allahabad High Court in Writ-A No.26639 of 2018, Smt. Hasina Begum vs. Purvanchal Vidyut Vitran Nigam Ltd. Prayagraj & 02 Others*. The Tribunal has issued the following directions:-

“27. Respondents are, accordingly, directed to pay to the petitioner:

(i) Interest on the amount of gratuity (Rs.9,66,173/-) from 01.09.2023 till the date of actual payment;

(ii). If G.I.S. has not been paid as yet, the petitioner is entitled to interest on the amount of G.I.S. from 01.09.2023 till the date of actual payment.



The rate of interest shall be the simple rate of interest payable on General Provident Fund during the relevant period."

2. The brief facts are that the respondent retired on 31.05.2023 from the post of Assistant Engineer. On 26.07.2023, i.e., after retirement of the respondent, an office memorandum was issued by the In-charge Chief Engineer, Office of Chief Engineer, Zonal Office, Public Works Department, Uttarakhand, Yamuna Colony, Dehradun (appellant no.2 herein) stating that upon examination of the service book of the respondent, it transpired that his salary was fixed erroneously and accordingly, since the date of his initial appointment, i.e., 30.08.1990, his salary was revised. In pursuance of the said order, the Department deducted a sum of Rs.10,33,827/- from the gratuity of the respondent and directed for payment of only the balance amount of Rs.9,66,173/- to him. Aggrieved thereby, the respondent filed the claim petition. The claim petition, as noted above, has been allowed placing reliance on the judgments cited above.

3. It is not disputed before us that the order of re-fixation of salary dated 26.07.2023 was passed after the retirement of the respondent. The revision of the salary was ordered since 30.08.1990. The recovery has thus been effected for a period in excess of five years and that too after retirement.



4. In view of the aforesaid undisputed facts, the present case would be covered by Clause (ii) and (iii) as enumerated in the judgment of *Rafiq Masih (supra)*. The relevant extract from the said judgment is reproduced below:-

“15. Based on the decision, rendered by Hon'ble Apex Court in Syed Abdul Qadir vs. State of Bihar, (2009) 3 SCC 475 and hosts of other decisions, which were cited therein including B.J. Akkara vs. Union of India, (2006) 11 SCC 709, the Hon'ble Apex Court concluded thus:

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

(i)

(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)

5. Apart from the aforesaid facts, we also find that since the re-fixation has been done since the date of initial appointment of the respondent on the post of Junior Engineer, therefore, the recovery, if made would be iniquitous and completely harsh, therefore, the case of the respondent is also covered under clause (v) of the situations enumerated by the Supreme Court in *Rafiq Masih (supra)*.

6. In view of the above, we find no error in the order



of the Public Services Tribunal to warrant any interference.

The writ petition lacks merit and is, accordingly, dismissed.

7. Pending application(s), if any, stand disposed of accordingly.

(MANOJ KUMAR GUPTA, C.J.)

(SUBHASH UPADHYAY, J.)

Dated: 19.08.2026
PP/