



2025:UHC:8362

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition (S/S) No. 335 of 2023

Surendra Dutt Gairola ... Petitioner

Versus

State of Uttarakhand & Others ... Respondents

With

Writ Petition (S/S) No. 568 of 2023

Writ Petition (S/S) No. 975 of 2023

Writ Petition (S/S) No. 1345 of 2023

Writ Petition (S/S) No. 1899 of 2023

Writ Petition (S/S) No. 2246 of 2023

Mr. Pooran Singh Rawat, Advocate, i/b Mr. M.C. Upadhyaya,
Advocate for the petitioners.

Mr. Ganesh Dutt Kandpal, Deputy AG, with Mr. Narayan Dutt,
Standing Counsel, for the State.

J U D G M E N T

Hon'ble Manoj Kumar Tiwari, J.

Petitioners were appointed as Constable in Police Department and they retired upon completing the age of superannuation. They are aggrieved by recovery made from their retiral dues.

2. Since common questions of fact and law are involved in these writ petitions, these are being heard and decided together by this common judgment. However, for brevity, facts of Writ Petition (S/S) No. 335 of 2023 alone are being considered and discussed here.

3. Petitioner in Writ Petition (S/S) No. 335 of 2023 was appointed as Constable in State Police on 1.1.1982 and he retired from the post of Sub



Inspector on 30.6.2022. According to petitioner, he is entitled to a sum of ₹12,58,059/- as gratuity, however a sum of ₹3,72,021/- has been illegally deducted and, as per the Pension/Gratuity Payment Order, the gratuity payable to him is shown as ₹8,86,038/- only. Petitioner has challenged deduction of the aforesaid amount from his gratuity.

4. A counter affidavit has been filed by Superintendent of Police, Rudraprayag, wherein it is stated that the Finance Controller, Police Headquarters found the pay fixation of the petitioner to be erroneous.

5. Learned State Counsel, by referring to the counter affidavit filed on behalf of respondent no. 4, submits that due to mistake, the pay of the petitioner was fixed at higher level than what he was entitled to and ultimately the competent authority corrected the mistake and after calculation, it was found that excess amount was paid to the petitioner due to wrong fixation of pay, which has now been deducted from his gratuity.

6. Hon'ble Supreme Court in the case of State of Punjab v. Rafiq Masih, reported as (2015) 4 SCC 334, has held that in certain conditions, excess payment mistakenly made by the employer shall not be recoverable.

7. Learned State Counsel, however, submits that the protection of the aforesaid law would not



be available if (i) the concerned employee has received excess payment by playing fraud or by adopting deceitful means; or (ii) he, before receiving the amount, has given an undertaking that he will refund whole or part of the amount, in case it is later found that he is not entitled thereto.

8. Elaborating his submission, learned State Counsel contends that an employee, who received excess payment, if is responsible for receiving such excess payment, then he will not be entitled to any protection, in law or in equity, against recovery of such excess amount. Learned State Counsel further submits that no one can be permitted to take benefit of his own wrong, therefore an employee, who has induced his employer to pay him excess amount by misrepresentation, cannot then contend that whatever is received by him cannot be recovered.

9. Learned State Counsel relied upon a judgment rendered in the case of High Court of Punjab and Haryana & Others v. Jagdev Singh, reported as (2016) 14 SCC 267. In the said judgment, Hon'ble Supreme Court held that the principle that no recovery can be made from retired employees, or employees who are due to retire within one year, will not be attracted to a case where the employee to whom the excess payment is made was clearly placed on notice that any payment found to have been made in excess would be required to be refunded and the employee furnished an undertaking while opting for the



revised pay scale. Para 9, 10, 11 and 12 of the said judgment are extracted below:

“9 The submission of the Respondent, which found favour with the High Court, was that a payment which has been made in excess cannot be recovered from an employee who has retired from the service of the state. This, in our view, will have no application to a situation such as the present where an undertaking was specifically furnished by the officer at the time when his pay was initially revised accepting that any payment found to have been made in excess would be liable to be adjusted. While opting for the benefit of the revised pay scale, the Respondent was clearly on notice of the fact that a future re-fixation or revision may warrant an adjustment of the excess payment, if any, made.

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.”

10. In the case of Subhash Chand & Others v. Punjab Water Resources Management and Development Corporation Ltd., a learned Single Judge of Punjab and Haryana High Court accepted the plea raised by writ petitioner, who served as Class III employee, that after retirement, amount already paid to him cannot be recovered and allowed the writ petition by relying on the law declared in the case of State of Punjab v. Rafiq Masih (supra). The said judgment, however, was reversed by Division Bench of that Court in LPA No. 2230 of 2016, by relying on the law declared by Hon’ble Apex Court in the case of High Court of Punjab and Haryana & Others v. Jagdev Singh. Para 13 and 14 of the judgment rendered by Division Bench of Punjab and Haryana High Court in the case of Punjab Water Resources and Development Corporation Ltd. v. Subhash Chand & Others are extracted below:

“13. Considering the aforesaid enunciation of law laid down by Hon’ble the Supreme Court, in our view, the order passed by this Court in Ravinder Paul Malhi’s case (supra),



which was decided on 21.12.2015, will not come to the rescue of the respondents/writ petitioners, where a distinction was carved out regarding payment of emolument before the undertaking was furnished and subsequent thereto. In the case in hand, definite stand taken by the appellant is that entire amount, which is sought to be recovered from the respondents/writ petitioners was paid to them only after they had furnished the undertaking.

14. For the reasons mentioned above, the present appeal is allowed. The order dated 6.5.2016 passed in the writ petition and the order dated 17.8.2016 passed in Review Application are set aside. As a consequence thereof, the writ petition stands dismissed.”

11. SLP No. 9015 of 2018, filed by the employee against judgment rendered by Division Bench in the case of Punjab Water Resources Management and Development Corporation Ltd. v. Jasbir Singh, was dismissed by Hon’ble Supreme Court vide order dated 2.7.2018.

12. Learned State Counsel submits that petitioners have given an undertaking before the competent authority that the amount, which is being paid to them, if found to be not admissible, or in excess of what is due, shall be recoverable by the employer/State.

13. Learned Counsel for the petitioners, however, disputes the submission made by learned



State Counsel and submits that no such undertaking was given by the petitioners.

14. Be that as it may. From the aforesaid judgments, it is clear that excess amount, if paid to an employee, would be recoverable (i) only when the employee concerned is in any manner responsible for such excess payment, e.g. by playing fraud or by adopting other deceitful means; or (ii) where an employee has given an undertaking before grant of such monetary benefit to the effect that in case the amount paid to him is found to be not admissible or is found to be in excess of what is due to him, then he will refund such amount/excess amount.

15. Writ petitions are, accordingly, disposed of by providing that recovery shall be permissible from the petitioners, if and only if their case falls within either of the two contingencies mentioned in Paragraph No. 12 of this judgment.

(Manoj Kumar Tiwari, J.)
18.9.2025

Pr

PRABODH
KUMAR