

(2020) 01 UK CK 0051

In the Uttarakhand High Court

Case No : Writ Petition (S/B) No. 13 Of 2020

Bharat Singh And Others

APPELLANT

Vs

Uttarakhand State Public Service Tribunal Dehradun And
Others

RESPONDENT

Date of Decision : 09-01-2020

Acts Referred:

Citation : (2020) 01 UK CK 0051

Hon'ble Judges : Ramesh Ranganathan, CJ;Alok Kumar Verma, J

Bench : Division Bench

Advocate : Abhijay Negi, Anil Kumar Bisht

Final Decision : Disposed Of

Judgement

Ramesh Ranganathan, CJ

1. Heard Mr. Abhijay Negi, learned counsel for the petitioners, and Mr. Anil Kumar Bisht, learned Standing Counsel for the State Government, and,

with their consent, the Writ Petition is disposed of at the stage of admission.

2. The petitioners herein have invoked the jurisdiction of this Court against the order passed by the Uttarakhand Public Services Tribunal, in Claim

Petition No. 161/DB/2009 dated 03.01.2020, whereby their request for grant of stay of the impugned order dated 16.09.2019 was rejected. By the

order, impugned before the Tribunal, in Claim Petition No.161/DB/2019, the difference in Grade Pay paid to the petitioners herein (i.e. difference

between Grady Pay of Rs.8700/- and Grade Pay of Rs.7600/-) was sought to be recovered from them. While the petitioners no doubt contended,

before the Tribunal, that the order impugned therein was without jurisdiction, arbitrary and illegal, it would be wholly inappropriate for us to express

any opinion in this regard, in the present writ proceedings, in as much as this question necessitates examination by the Tribunal in the first instance.

Except for petitioner Nos.3 and 4 who are still in service (one of whom (petitioner No.3), is due to retire by 31.07.2020), the other two i.e. petitioner Nos.1 and 2 have already retired from service.

3. Reliance has been placed by Mr. Abhijay Negi, learned counsel for the petitioners on the judgment of Supreme Court in State of Punjab and others

Vs. Rafiq Masih (White Washer) and others (2015)4 SCC 334 ,to contend that, in so far as those who have already retired from service and those

who are due to retire in the next one year, the amounts paid to them earlier by mistake cannot be recovered. In Rafiq Masih, the Supreme Court

observed:

“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.”

4. The petitioners are, admittedly, not Class III and Class IV employees and do not fall in the first category. They claim to fall within the ambit of

clauses II, III and V. The Tribunal held that the judgment in Rafiq Masih, was

inapplicable since the benefit of higher Grade Pay was granted to the petitioner conditionally; the condition was very specific that, if directions to the contrary were received from the Government or any other level, the excess amount would be adjustable; the petitioners had accepted the condition under the order by which the benefit had been granted; and, applying the said condition, recovery can be made.

5. In *High Court of Punjab and Haryana Vs. Jagdev Singh* (orders in Civil Appeal No.3500 of 2006 dated 29.07.2016), the Supreme Court observed:

“In *State of Punjab & Ors etc. vs. Rafiq Masih (White Washer) etc.* 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.”

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.

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.â??

6. While Mr. Abhijay Negi, learned counsel for the petitioners, would seek to distinguish the aforesaid judgment, contending that, unlike in Jagdev

Singh, the petitioners have not furnished any undertaking, it is not in dispute that the petitioners were, like in the case of Jagdev Singh, informed that, if

the higher Grade Pay being paid to them was found erroneous later, the said amount would be recovered from them.

7. Mr. Abhijay Negi, learned counsel for the petitioners, would submit that the amounts sought to be recovered from petitioner No.1 is in excess of ` 12

lacs, from petitioner No.2, in excess of Rs.15 lacs, and from petitioner No.3 in excess of ` 17 lacs; and recovering the entire amount from them, in one

lump sum, would be iniquitous.

8. Following the Judgment of the Supreme Court in Jagdev Singh, we direct the respondents to recover the amount, allegedly due from the petitioners,

in equal monthly installments spread over a period of two years.

9. The aforesaid directions shall not be construed as any expression on our part on the merits of the dispute, for these are all matters for the Tribunal

to adjudicate when the claim petition, pending before it, is finally heard. Since, on an order being passed in the claim petition in favour of the

petitioners, the respondents herein would again be required to re-pay the amount, recovered from the petitioners, to them, it is but appropriate that the

claim petition itself be decided early.

10. Mr. Anil Kumar Bisht, learned Standing Counsel for the State Government, would state that the respondents would file their counter affidavits in

the claim petition within four weeks from today. We request the Tribunal to consider hearing the claim petition early, preferably within a period of four

months from the date of production of a copy of this order. We have no reason to doubt that the Tribunal would adjudicate the dispute, in the claim

petition, on its merits after giving both the parties to the proceedings a reasonable opportunity of being heard.

11. The Writ Petition is disposed of accordingly. No costs.

12. Let a certified copy of this order be furnished to the learned counsel for the parties, on payment of the prescribed charges, by 10.01.2020.