2026:UHC:10428-DB

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

HON'BLE THE ACTING CHIEF JUSTICE SRI MANOJ KUMAR TIWARI
AND
HON'BLE SRI JUSTICE SUBHASH UPADHYAY

WRIT PETITION (S/B) NO. 713 OF 2026

17TH NOVEMBER, 2026

State of Uttarakhand & others ..... Petitioners

Versus

Gokulanand Pathak ..... Respondent

Counsel for the petitioners : Mr. Ganesh Datt Kandpal, learned Additional Advocate General for the State

Counsel for the respondent : Dr. Kartikey Hari Gupta, learned counsel

The Court made the following:

JUDGMENT: (per Sri Manoj Kumar Tiwari, A.C.J.)

1) State has challenged the judgment dated 20.12.2024, passed by Uttarakhand Public Services Tribunal, in Claim Petition No. 94/NB/DB/2023. By the said judgment, claim petition filed by respondent was allowed; order dated 01.06.2023 which provided for recovery of Rs.23,08,264/- from the amount payable as gratuity to the respondent was set aside, and the State authorities were directed to release pension and all other retiral dues to the respondent within 60 days.

2) The operative portion of the impugned judgment is extracted below :

"18. Petitioner was working as constable when he retired on 31.12.2022. After his retirement, all the retiral dues as well as pension was withheld by the respondent and petitioner has been asked to deposit excess payment of Rs.23,08,264/- or give an undertaking that the amount may be recovered from his gratuity amount. There was no misrepresentation by the petitioner in excess payment made to him by the respondent department. His case is squarely covered by the decision rendered by Hon'ble Apex Court in Rafiq Masih's case (*supra*) and hosts of other decisions rendered by Hon'ble High Court of Uttarakhand, from time to time.

19. In view of the above, the impugned order of the respondent dated 01.06.2023 for the recovery of Rs.23,08,264/- is liable to be set aside and the claim petition is liable to be allowed.

ORDER

The claim petition is hereby allowed and the impugned order dated 01.06.2023 is hereby set aside. The respondents are hereby directed to release the pension and all other retiral dues to the petitioner within 60 days from the date of presentation of certified copy of this judgment. No order as to costs."

3) Learned State counsel appearing for the petitioners submits that as many as 19 punishments were imposed upon the respondent (Gokulanand Pathak) between 1997 to 2003 and, he was well aware that he is not entitled to the amount which he received as salary, yet he never apprised the departmental authorities about

the excess amount which he received as salary. Thus, learned counsel submits that respondent was equally responsible for receiving excess payment and, as such, the competent authority was justified in making recovery of the amount paid to the respondent in excess of what was due to him.

4) Learned Tribunal has considered the matter in detail and has relied upon the judgment rendered by Hon'ble Supreme Court in the case of ***State of Punjab Vs Rafiq Masih (White washer) & others (2015) 4 SCC 334***. In paragraph 6 of the impugned judgment, the submission made by learned State counsel before Tribunal is noted that the controversy is covered by the judgment rendered in the case of *Rafiq Masih*.

5) It is not the case of the petitioners that respondent played fraud for receiving excess amount or he was instrumental in any manner in getting such excess amount released in his favour, nor is it the case of the petitioners that the respondent ever submitted undertaking before the Tribunal that he will refund the excess amount if it is found that he is not entitled for such payment. In the absence of any such pleading, we do not find any reason to interfere with the view taken by learned Tribunal, by relying upon the judgment rendered

by the Hon'ble Supreme Court. Thus, there is hardly any scope for interference in the impugned judgment.

6) Respondent in paragraph 4 of his rejoinder-affidavit filed before learned Tribunal has categorically stated that the respondent does not wish to contest the refixation of pay / salary. Dr. Kartikey Hari Gupta, learned counsel appearing for the respondent further submits that he has instructions to state that his client has no objection against refixation of pension based on refixation of pay, if made by the competent authority.

7) We, therefore, dispose of the writ petition by providing that it shall be open to the competent authority to refix the pay / pension of the respondent and release all retiral dues to the respondent within ten weeks from the date of presentation of certified copy of this Order.

MANOJ KUMAR TIWARI, A.C.J.

SUBHASH UPADHYAY, J.

Dt: 17TH NOVEMBER, 2026
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