



2026:AHC:204323

HIGH COURT OF JUDICATURE AT ALLAHABAD
WRIT - A No. - 16910 of 2023

Suraj Singh

.....Petitioner(s)

Versus

State Of U.P. And 2 Others

.....Respondent(s)

Counsel for Petitioner(s)	:	Archana Singh, Bramh Narayan Singh
Counsel for Respondent(s)	:	C.S.C

A.F.R.

Court No. - 34
(Sl.No.12)

HON'BLE ANISH KUMAR GUPTA, J.

1. Heard Sri Brahm Narayan Singh, learned counsel for the petitioner and Sri Chandan Kumar along with Raj Kumar Tiwari, learned Standing Counsel for the State.

2. The instant petition has been filed with the following prayers:

"i) Issue a writ, order or direction in the nature of certiorari to quash the impugned Order dated 24.02.2023 passed by the Commandant 9th Battalion P.A.C. Moradabad a copy whereof is contained in Annexure-1 to the writ petition;

ii) Issue a writ, order or direction in the nature of mandamus commanding the respondents to refund the amount of Rs. 6,74,404 / in the light of the order dated 25.08.2021 passed in writ petition no. 11827 of 2019, the order passed in Special Appeal as well as the order dated 05.04.2022 passed by the Hon'ble Supreme Court in Special Leave Petition which has been recovered from the Petitioner's Rashikaran towards the alleged excess payment of salary made to the Petitioner, alongwith interest at the rate of 12%;

iii) issue any other and further writ, order or direction as this Hon'ble Court may deem fit and proper, in the facts and circumstances of the case,

iv) award the costs to the Petitioner;

v) Issue a writ order or direction in the nature of certiorari to quash the impugned order No. पत्रांक-व-13/2022 dated 22.08.2022 passed by the

Commandant 08th Battalion P.A.C. Moradabad, copy whereof is contained in Anneuxre-4 to the writ petition;

vi) Issue a writ, order or direction in the nature of mandamus commanding the respondents to refix salary of the petitioner as Rs. 58,500/- in place of Rs. 47,600/-

vii) Issue a writ, order or direction in the of mandamus commanding nature the respondents to pay all post retiral benefits and regular pension to the petitioner on the last pay drawn by the petitioner i.e. Rs. 56,300/- alongwith interest admissible in law."

3. Briefly stated facts of the case are that the petitioner herein was initially appointed as a Constable in Civil Police Department and later he was promoted on the post of Head Constable and has retired on 31.07.2021 after attaining the age of superannuation. Just before the retirement of the petitioner, since his retiral dues were not being paid, he was directed to furnish an undertaking, which the petitioner furnished on 29.09.2021 that if any amount paid in excess due to sanction of pension, gratuity etc., the petitioner would be bound to refund the same to the State authorities. Vide letter dated 27.07.2022, the Assistant Accounts Officer, U.P. Police Headquarters / Finance Controller, Lucknow wrote to the Commandant 9th Battalion, PAC, Moradabad that up to 01.01.2016, the pay scale of the petitioner was properly fixed at Rs. 39,200/-, thereupon from 01.07.2016, it was required to be revised as Rs. 40,400/- whereas it has been erroneously fixed as Rs. 41,600/-. Therefore, he had directed that the re-fixation of the pay scale of petitioner is required to be revised from 01.07.2016. Pursuant to the aforesaid directions issued, vide order dated 22.08.2022, the Commandant 9th Battalion, PAC, Moradabad revised the pay scale payable to the petitioner w.e.f. 24.02.2010 and held that from 01.07.2020 after applying all the revisions, the petitioner was entitled for Rs. 47,800/- as his salary. Consequently, another order was passed on 24.02.2023, whereby upon such re-fixation of the pay scale, it was found an excess amount of Rs. 6,74,404/- had been paid to the petitioner. This excess amount has been subsequently recovered from the pension computation amount of Rs.9,36,083/- payable to the petitioner. After deduction of the aforesaid amount of Rs.6,74,404/-, the remaining amount of Rs.2,61,679/- was paid to the petitioner. Being aggrieved by the

aforesaid deduction, the petitioner herein filed the instant writ petition.

4. Since only the order of deduction was supplied to the petitioner, later when the order dated 27.07. 2022 was brought on record regarding re-fixation of pay scale, the petitioner was permitted to challenge the same as well. Accordingly, the petitioner moved an amendment application, which was allowed and thereupon the petitioner has challenged the order dated 27.07.2022 as well as 22.08.2022 passed by the Commandant 9th Battalion PAC. By way of the amendment in the writ petition, learned counsel for the petitioner relying upon the judgments of Apex Court in **Sushil Kumar Singhal vs. Pramukh Sachiv, Irrigation Department and others, 2014 (16) SCC 444 and State of UP and others vs Bhim Sen Sharma, 2017 4 ADJ 768 (2017 3 AWC 2391)**, submits that after the retirement of a government servant especially of Class-III and Class-IV, no amount whatsoever paid in excess due to wrong fixation of pay scale can be recovered from the petitioner. It is further submitted relying upon ***Sushil Kumar Singhal (supra) and Bhim Sen Sharma (supra)*** that after retirement, it is not open for the State to revise or re-fix the pay scale, which was wrongly fixed earlier after the retirement of a person and his pensionary benefit ought to be computed and paid to the petitioner on the basis of the last pay drawn by such government servant.

5. He has further relied upon the judgments of Coordinate Benches of this Court in **Writ-A No. 60703 of 2014 (Dr. Shyam Prakash Srivastava vs. State of U.P. and 4 others)** as well as **the judgment of Coordinate Bench of this Court in Writ-A No. 2471 of 2026 (Shiv Bahadur Singh vs. State of U.P. and others)**, in which relying upon the judgments of **State of Punjab & Ors. vs Rafiq Masih (White Washer), (2014) 8 SCC 88** and ***Sushil Kumar Singhal (supra)*** as well as the Coordinate Benches of this Court has held that the no amount whatsoever which was paid in excess due to wrong fixation of pay scale to ClassIII or Class-IV employee can be recovered after his retirement and it was further directed that in the light of the ***Sushil Kumar Singhal (supra)***, it is not open for the respondents to re-fix the pay scale or revise the pension of the petitioner after his retirement. The Pensionary benefits are required to be fixed on the basis of the last pay drawn by such government servant. Thus, learned counsel for the petitioner submits that in the instant case,

after the retirement of the petitioner, it is not open for the respondents to either refix the last pay drawn or revise the pay scale or to recover any amount, which was paid to the petitioner due to wrong fixation of pay scale.

6. Sri Chandan Kumar, learned Standing Counsel for the State submits that the Apex Court in **Chandi Prasad Uniyal And Ors vs State Of Uttarakhand And Ors., (2012) 7 SCALE 376**, has categorically held the amount so paid in excess due to wrong fixation of pay scale, is the money belonging to the tax payers and it is an admitted position that the petitioner was not entitled for the said amount, which was paid to him due to wrong fixation of pay scale. He further submits that each and every pay fixation order contains a stipulation that if any error in pay fixation is found, the same shall be recovered from the salary of such government servant. Thus, relying upon **Chandi Prasad Uniyal (supra)**, learned Standing Counsel for the State submits that it is well within the right of the State to correct its mistakes by re-fixation of the pay scale as well as recover the amount. Learned Standing Counsel for the State has further submitted that the judgment of **Chandi Prasad Uniyal (supra)**, has been affirmed by three Judge Bench of Apex Court in **State of Punjab vs. Rafiq Masih (White Washer), (2014)8 SCR 228** and the Apex Court has declined to answer the reference in view of the settled position as in **Chandi Prasad Uniyal (supra)**. Learned Standing Counsel for the State further submits that the judgment in **Sushil Kumar Singhal (supra)** is based upon the Government Order dated 16.01.2007, which is further clarified by the Government Order dated 07.05.2007, which clearly stipulates that if any amount has been wrongly paid, such mistakes can be cured later on after realizing the aforesaid mistakes by the department after giving due opportunity of hearing to the person concerned. Therefore, it is improper to contend that irregularity once committed can be permitted to be perpetuated.

7. It is further submitted by the learned Standing Counsel for the State that, while receiving the pension, the petitioner submitted an undertaking/indemnity bond stipulating that any excess amount or wrongly paid amount would be refunded by the petitioner. The authorities concerned were well within their rights to refix the petitioner's salary after

rectifying their mistake, and to recover any amount previously paid due to the erroneous pay scale fixation, thereby ensuring that the earlier irregularity was not perpetuated. He further relying upon the judgment of **High Court Of Punjab & Haryana vs Jagdev Singh, (2016) 14 SCC 267**, submits that once an undertaking is given, the amount can be recovered from such government servant. Learned Standing Counsel for the State has further relied upon the judgments of Apex court in **Union of India & Ors. v. Smt. Sujatha Vedachalam & Anr. (2000) 9 SCC 187** and **Union of India and others vs Bhanwar Lal Mundan, 2013 (12) SCC 433** and contents that the amount so paid due to wrong fixation of pay scale can be recovered in the easy installments as has been held by the Apex Court repeatedly.

8. Having heard the rival submissions so made by learned counsel for the parties, this Court has carefully gone through the record of the case. From the record, it is apparent that as per the order dated 27.07.2022, it was observed by the Finance Controller that after 01.07.2016 the wrong fixation of pay scale was done in the case of the petitioner. Since thereafter the petitioner continued in service and the aforesaid mistake could not be realized by the respondents till the retirement/superannuation of the petitioner and on 27.07.2022, it was realized that the aforesaid amount was wrongly fixed. Pursuant thereto the directions were issued to the Commandant 8th Battalion PAC to revise the pay scale of the petitioner. Accordingly with effect from 01.07.2016 whereas from the Commandant 9th Battalion PAC refixed the pay scale of the petitioner and revised the pay scale of the petitioner with effect from 24.02.2010.

9. The Government Order dated 16.01.2007 provides as under:-

"[1]. Pension Fixation Authority shall inquire into emoluments of only last 10 months prior to retirement and for that examine the records of only two years prior thereto i.e. only the records of 34 months would be examined for the purpose of grant of pension, as has been provided in the aforesaid Government order dated 13.12.1977.

[2]. Pension Allowing Authority shall not be entitled to correct the mistake in determining the pay during service tenure beyond the period prescribed in para (1) above. Mistakes in pay determination of an

employee can be effectively removed through the process of general inquiry/audit only when the employee is still in service."

10. The aforesaid Government Order has been further clarified by the Government Order dated 07.05.2007 by providing that whenever during audit and inquiry, it is found that the pay scale was wrongly fixed. In such circumstances, after due notice and explanation called from the concerned employee, the erroneous pay fixation shall be refixed and modified. In Government Order dated 16.01.2007, the outer limit for such refixation and revision is provided only 34 months from the date of retirement and beyond that period no pay fixation can be revised or reviewed. In ***Sujatha Vedachalam (supra)***, the Apex Court has directed that the recovery of excess paid amount may be recovered in easy installment, which may be spread over for 15 years or till the date of retirement, whichever is earlier. Thus from that, it is apparent that it was the recovery due to wrong fixation of pay scale while the person concerned was in service.

11. In ***Shyam Babu Verma vs Union of India (1994) 2 SCC 521***, the Apex Court has held as under:-

"Although we have held that the petitioners were entitled only to the pay scale of Rs.330-480 in terms of the recommendations of the Third Pay Commission w.e.f. January 1, 1973 and only after the period of 10 years, they became entitled to the pay scale of Rs.330-560 but as they have received the scale of Rs.330-560 since 1973 due to no fault of theirs and that scale is being reduced in the year 1984 with effect from January 1, 1973, it shall only be just and proper not to recover any excess amount which has already been paid to them."

12. In ***Sahib Ram Verma vs State of Haryana (1995) Supp. 1 SCC 18*** the Apex Court has held as under:-

"Admittedly the appellant does not possess the required educational qualifications. Under the circumstances the appellant would not be entitled to the relaxation. The principal erred in granting him the relaxation. Since the date

of relaxation the appellant had been paid his salary on the revised scale. However, it is not on account of any misrepresentation made by the appellant that the benefit of the higher pay scale was given to him but by wrong construction made by the Principal for which appellant cannot be held to be fault. Under the circumstances the amount paid till date may not be recovered from the appellant."

13. In **Chandi Prasad Uniyal (supra)**, the Apex Court has held as under:-

"16. We are concerned with the excess payment of public money which is often described as "tax payers money" which belongs neither to the officers who have effected over-payment nor that of the recipients. We fail to see why the concept of fraud or misrepresentation is being brought in such situations. Question to be asked is whether excess money has been paid or not may be due to a bona fide mistake. Possibly, effecting excess payment of public money by Government officers, may be due to various reasons like negligence, carelessness, collusion, favouritism etc. because money in such situation does not belong to the payer or the payee. Situations may also arise where both the payer and the payee are at fault, then the mistake is mutual. Payments are being effected in many situations without any authority of law and payments have been received by the recipients also without any authority of law. Any amount paid/received without authority of law can always be recovered barring few exceptions of extreme hardships but not as a matter of right, in such situations law implies an obligation on the payee to repay the money, otherwise it would amount to unjust enrichment.

17. We are, therefore, of the considered view that except few instances pointed out in Syed Abdul Qadir case (supra) and in Col. B.J. Akkara (retd.) case (supra), the excess payment made due to wrong/irregular pay fixation can always be recovered."

14. In view of the conflict in the judgments of **Shyam Babu Verma (supra)**, **Sahib Ram Verma (supra)** as well as **Chandi Prasad Uniyal (supra)**, a reference was made to the three Judges Bench of the Apex Court in **Rafiq Masih (2014) 8 SCC 228**, wherein the Apex Court has observed as under.

"9. In our view, the law laid down in Chandi Prasad Uniyal's case, no

way conflicts with the observations made by this Court in the other two cases. In those decisions, directions were issued in exercise of the powers of this Court under Article 142 of the Constitution, but in the subsequent decision this Court under Article 136 of the Constitution, in laying down the law had dismissed the petition of the employee. This Court in a number of cases had battled with tracing the contours of the provision in Article 136 and 142 of the Constitution of India. Distinctively, although the words employed under the two aforesaid provision speak of the powers of this Court, the former vest a plenary jurisdiction in supreme court in the matter of entertaining and hearing of appeals by granting special leave against any judgment or order made by a Court or Tribunal in any cause or matter. The powers are plenary to the extent that they are paramount to the limitations under the specific provisions for appeal contained in the Constitution or other laws. Article 142 of the Constitution of India, on the other hand is a step ahead of the powers envisaged under Article 136 of the Constitution of India. It is the exercise of jurisdiction to pass such enforceable decree or order as is necessary for doing 'complete justice' in any cause or matter. The word 'complete justice' was fraught with uncertainty until Article 142 of the Constitution received its first interpretation in *Prem Chand Garg v. Excise Commissioner, U.P.*, AIR (1963) SC 996 which. added a rider to the exercise of wide extraordinary powers by laying down that though the powers are wide, the same is an ancillary power and can be used when not expressly in conflict with the substantive provisions of law. This view was endorsed by a Nine-Judges Bench in *Naresh Shridhar Mirajkar v. State of Maharashtra*, (1966) 3 SCR 744 reiterated by a Seven Judge Bench in *A.R. Antulay v. R.S. Nayak*, (1988) 2 SCC , 602 and finally settled in the *Supreme Court Bar Association v. Union of India*, (1998) 4 SCC 409

10. Article 136 of the Constitution of India, confers a wide discretionary power on the Supreme Court to interfere in suitable cases. Article 136 is a special jurisdiction and can be best described in the words of this Court in *Ramakant Rai v. Madab Rai*, (2003) 12 SCC 395, "It is a residuary power, it is extraordinary in its amplitude, its limits when it chases injustice, is the sky itself". Article 136 of the Constitution of India was

*legislatively intended to be exercised by the Highest Court of the Land, with scrupulous adherence to the settled judicial principle well established by precedents in our jurisprudence. **Article 136 of the Constitution is a corrective jurisdiction that vest a discretion in the Supreme Court to settle the law clear and as forthrightly forwarded in the case of Union of India v. Karnail Singh, (1995) 2 SCC 728, it makes the law operational to make it a binding precedent for the future instead of keeping it vague. In short, it declares the law, as under Article 141 of the Constitution.***

*11. **Article 142 of the Constitution of India is supplementary in nature and cannot supplant the substantive provisions, though they are not limited by the substantive provisions in the statute. It is a power that gives preference to equity over law.** It is a justice oriented approach as against the strict rigors of the law. The directions issued by the court can normally be categorized into one, in the nature of moulding of relief and the other, as the declaration of law. ‘Declaration of Law’ as contemplated in Article 141 of the Constitution: is the speech express or necessarily implied by the Highest Court of the land. This Court in the case of Indian Bank v. ABS Marine Products (P) Ltd., 2006 5 SCC 72, Ram Pravesh Singh v. State of Bihar, (2006) 8 SCC 381 and in State of U.P. v. Neeraj Awasthi (2006) 1 SCC 667, has expounded the principle and extolled the power of Article 142 of the Constitution of India to new heights by laying down that the **directions issued under Article 142 do not constitute a binding precedent unlike Article 141 of the Constitution of India.** They are direction issued to do proper justice and exercise of such power, cannot be considered as law laid down by the Supreme Court under Article 141 of the Constitution of India. The Court have compartmentalized and differentiated the relief in the operative portion of the judgment by exercise of powers under Article 142 of the Constitution as against the law declared. The directions of the Court under Article 142 of the Constitution, while moulding the relief, that relax the application of law or exempt the case in hand from the rigour of the law in view of the peculiar facts and circumstances do not comprise the ratio decidendi and therefore lose its basic premise of making it a binding precedent. This Court on the qui vive has expanded the horizons of Article 142 of the*

Constitution by keeping it outside the purview of Article 141 of the Constitution and by declaring it a direction of the Court that changes its complexion with the peculiarity in the facts and circumstances of the case.

*12. Therefore, in our opinion, the decisions of the Court based on different scales of Article 136 and Article 142 of the Constitution of India cannot be best weighed on the same grounds of reasoning and thus in view of the aforesaid discussion, **there is no conflict in the views expressed in the first two judgments and the latter judgment.***

13. In that view of the above, we are of the considered opinion that reference was unnecessary. Therefore, without answering the reference, we send back the matters to the Division Bench for its appropriate disposal."

15. After the matter was remitted back declining the reference the Division Bench of the Apex Court in **Rafiq Masih (2015) 4 SCC 334** has settled the legal position as under:-

"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) 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. "

16. In ***Bhanwar Lal Mundan (supra)*** the case rested on an entirely different set of facts, where the person was on deputation and receiving an excess amount, the Supreme Court held that such excess payments made to an employee cannot be recovered upon repatriation. In ***Sushil Kumar Singhal (supra)***, the Apex Court relying upon the Government Order dated 16.01.2007 held as under:-

"7. Upon perusal of the aforestated G.O. and the submission made by the learned counsel appearing for the Appellant, it is not in dispute that the Appellant had retired on 31st December, 2003 and at the time of his retirement his salary was Rs. 11,625/- and on the basis of the said salary his pension had been fixed as Rs. 9000/-. Admittedly, if any mistake had been committed in pay fixation, the mistake had been committed in 1986, i.e. much prior to the retirement of the appellant and therefore, by virtue of the aforestated G.O. dated 16th January, 2007, neither any salary paid by mistake to the Appellant could have been recovered nor pension of the Appellant could have been reduced.

8. The learned counsel appearing for the respondent employer could not deny any of the facts stated hereinabove.

9. In the aforestated circumstances, the High Court was not correct while permitting the respondent authorities to reduce the pension payable to the appellant by not setting aside the order whereby excess amount of salary paid to the appellant was sought to be recovered.

*10. For the aforestated reasons, we quash the impugned judgment delivered by the High Court and direct the respondents not to recover any amount of salary which had been paid to the appellant in pursuance of some mistake committed in pay fixation in 1986. **The amount of pension shall also not be reduced and the appellant shall be paid pension as fixed earlier at the time of his retirement. It is pertinent to note that the Government had framed such a policy under its G.O. dated 16th January, 2007 and therefore, the respondent authorities could not have taken a different view in the matter of re-fixing pension of the appellant.***

11. The submission made on behalf of the learned Counsel appearing for

*the Respondent that the Appellant would be getting more amount than what he was entitled to cannot be accepted in view of the policy laid down by the Government in G.O. dated 16th January, 2007. **If the Government feels that mistakes are committed very often, it would be open to the Government to change its policy but as far as the G.O. dated 16th January, 2007 is in force, the Respondent-employer could not have passed any order for recovery of the excess salary paid to the Appellant or for reducing pension of the Appellant.***"

17. Relying upon the aforesaid judgment of **Sushil Kumar Singhal (supra)** the Division Bench of this Court in **Bhim Sen Sharma (surpa)** has held as under.

"5. Learned Standing Counsel submitted that the issue was already considered by High Court. However, we find that thereafter a fresh order has been passed by State rectifying alleged mistake committed in 1979, i.e., after almost 19 years, which was not permissible in view of Government Order dated 16.1.2007 as also law laid down by Supreme Court in Civil Appeal No. 5262 of 2008, decided on 17.4.2014. The order of Supreme Court has been referred to in Tribunal's order, which reads as under:

"7. Upon perusal of the afore-stated G.O. and the submission made by the learned counsel appearing for the appellant, it is not in dispute that the appellant had retired on 31st December, 2003 and at the time of his retirement his salary was Rs. 11,625/- and on the basis of the said salary his pension had been fixed as Rs. 9000/-. Admittedly, if any mistake had been committed in pay fixation, the mistake had been committed in 1986, i.e. much prior to the retirement of the appellant and therefore, by virtue of the aforestated G.O. dated 16th January, 2007, neither any salary paid by mistake to the appellant could have been recovered nor pension of the appellant could have been reduced.

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10. For the aforestated reasons, we quash the impugned judgment delivered by the High Court and direct the

*respondents not to recover any amount of salary which had been paid to the appellant in pursuance of some mistake committed in pay fixation in 1986. The amount of pension shall also not be reduced and the appellant shall be paid pension as fixed earlier at the time of his retirement. **It is pertinent to note that the Government had framed such a policy under its G.O. dated 16th January, 2007 and therefore, the respondent authorities could not have taken a different view in the matter of re-fixing pension of the appellant.***"

6. Besides, this Court in Writ Petition No. 3137 of 2017 (State of U.P. and another v. Ram Naresh and another), decided on 10.2.2017 has also taken a view that if there is any error or mistake committed by authorities, after an indefinite or long period and that too after retirement of Government servant, Government cannot reduce benefits by rectifying said mistake since even if mistake has been committed, same cannot be rectified after a long period. It is true that there is a power of rectification but when a power is there, it must be exercised within a reasonable period. Court in paras 5 to 10 said:

"5. It is not in dispute that in revised pay-scale, basic pay of petitioner was found to be fixed at Rs. 7580/-. That being so pay band granted to him by Tribunal, in our view, is in accordance with relevant Government order. This is evident from page 44 of the paper book of writ petition.

6. Be that as it may, even if there is some error in fixation of pay committed almost more than a decade back, fundamental question which needs be examined in this matter is, how long it is open to State and its authorities to re-open the issue and put a retired Government servant in jeopardy, financial scarcity and other difficulties, particularly when he has no access to Government record, retired long back and has arranged his funds and maintenance of family in the light of ultimate retiral benefits already determined, computed and being paid to him."

7. Learned Standing Counsel could not dispute that alleged one increment was wrongly granted in 1979 and pension of claimant-respondent No. 1 was sought to be fixed by rectifying said mistake only after almost 19 years and more. It is clearly barred in view of the law laid down as referred to hereinabove, as also Government Orders dated 13.12.1977, 5.12.2001 and 16.1.2007. "

18. In *State of UP through Principal Secretary, Public Works Department, Lucknow and another vs. Ram Naresh and another*, being Service Bench No. 3137 of 2017, the Division Bench of this Court has observed as under-

"6. Be that as it may, even if there is some error in fixation of pay committed almost more than a decade back, fundamental question which needs be examined in this matter is, how long it is open to State and its authorities to re-open the issue and put a retired Government servant in jeopardy, financial scarcity and other difficulties, particularly when he has no access to Government record, retired long back and has arranged his funds and maintenance of family in the light of ultimate retiral benefits already determined, computed and being paid to him.

7. This Court has experience of similar matters coming in large numbers, where, after 10 or 20 or 30 years, irrespective of any time limit, and that too after retirement of Government servant, this type of alleged wrong fixation is claimed and for entire long period of decades, pay is reduced and recovery is ordered. This ultimately results in large number of litigation before this Court and mostly this Court has directed in such matters, not to make any recovery of the amount, already paid.

8. Learned Standing Counsel stated that there is no bar for review or rectification of mistake and there is no time limit prescribed anywhere, therefore, it can be done at any point of time.

9. However, we do not find ourselves in agreement with aforesaid submission. Whenever any action prejudicial to interest of a Government servant is taken, Competent Authority must exercise its power within a reasonable time and it cannot be appreciated that such power should be exercised after decades and that too after retirement of Government

servant. In the present case, impugned order has been passed after almost 6 years from the date of retirement.

10. It is well established that when a power is there and there is no period prescribed under law, power should be exercised reasonably and within a reasonable period also and not after a very long time or at any time. In these facts and circumstances, we are of the view that if there is any error in pay fixation etc., Competent Authority is entitled to rectify mistake within a period of three years. We further provide that in case such a mistake is detected after three years in that case instead of taking action against the person who is benefited with such wrong fixation, Competent Authority must take action against the person who caused such mistake and is responsible and recover loss suffered by department."

19. Relying upon the judgment of Apex Court in **Sushil Kumar Singhal (supra)**, this Court in **Dr. Shyam Prakash Srivastava (supra)** has observed as under:-

"12. Thereafter, vide impugned order dating 28.06.2014 the State has sought to revise and reduce the pay-scale, which was already granted to the petitioner. The Government Order dated 16.01.2007 specifically provides that all revision/correction with regard to pay-scale ought to have been done while a Government Servant is in service and the same cannot be done after his retirement and the provisions of the aforesaid identical Government Order issued by the Government of Uttarakhand had been interpreted by the Apex Court, wherein the Apex Court has held that neither any salary paid by mistake to the appellant could have been recovered nor pension of the appellant could have been reduced subsequent after his retirement.

13. In such view the matter, the impugned order which has been passed after about two years of the retirement of the petitioner, whereby the pay-scale of the petitioner is being sought to be reduced after the retirement of the petitioner is not sustainable in the light of the aforesaid Government Order as interpreted by the Apex Court in Sushil Kumar Singhal(supra)"

20. The Coordinate Bench of this Court relying upon the judgments of

apex court in **Rafiq Masih (2015) 4 SCC 334** and **Sushil Kumar Singhal (supra)**, has quashed the orders of the re-fixation as well as recovery and it was directed that the pension and pensionary benefits admissible to the petitioner shall be fixed on the basis of the last pay drawn by the petitioner. With regard to an undertaking submitted by a government servant, the following observation of **Jagdev (Supra)** are relevant. Following observation of the apex court in **Jagdev (Supra)** are relevant which are as under:-

*"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."*

21. On the basis of the aforesaid judgments, it is settled position of law that any amount paid in excess due to wrong fixation of pay scale without there being any misrepresentation or fraud played upon by such government servant, the same cannot be recovered from such government servant after his retirement, specifically when such government servant belongs to class-III and class-IV. In **Jagdev (Supra)**, the aforesaid position has been clarified that if any undertaking was submitted by such government servant at the time of fixation of the pay scale on the basis of the aforesaid undertaking, the amount paid in excess can be recovered. However, that doesn't mean that any undertaking or indemnity bonds taken by the respondents at the time of retirement would entitle them to recover the amount as in **Jagdev (Supra)**, the undertaking, which is to be relied upon is the undertaking at the time of fixation of the pay scale, which is stated to be wrong. In **Sushil Kumar Singhal (supra)**, the Apex Court has categorically considered the Government Order dated 16.01.2007 issued by the Government of Uttarakhand, which is identical Government Order in the State of UP as well. Thereupon, it has been held that after the retirement of a government servant, it is not open for the State to revise the pay scale and the pensionary benefit ought to have been fixed on the basis of the last pay drawn by such government servant, which has been repeatedly followed by the Division Bench as well as by

the Coordinate Benches of this Court.

22. Nothing has been brought on record to state that the judgment of ***Sushil Kumar Singhal (supra) or Rafiq Masih (supra)*** has ever been overruled by any subsequent judgment of the Apex Court in view of the aforesaid settled position of law. Even otherwise, under the Government Order dated 07.05.2007, it was clarified that if any re-fixation was required, the respondents were obligated to issue a notice, provide a reasonable opportunity of explanation, and only thereafter proceed with the re-fixation or recovery. However, in the instant case, neither was any notice issued nor any opportunity of hearing granted to the petitioner; instead, an order for deduction from the petitioner's pensionary benefits was passed straightaway.

23. In view of the aforesaid settled position of law, this Court finds that the action of the respondents in re-fixation of the pay scale after about six years of alleged wrong fixation, which in fact has been done in 2010, that means from last 12 years, is impermissible either in terms of the Government Orders dated 16.01.2007, 07.05.2007 and in the light of the judgment of ***Sushil Kumar Singhal (supra)*** and consequently, in terms of the ***Rafiq Masih (supra)***, no recovery whatsoever could have been made from the petitioner.

24. Therefore, the orders dated 27.07.2022 passed by the Finance Controller and order dated 22.08.2022, whereby the re-fixation has been done by the Commandant, 9th Battalion PAC and the order dated 24.02.2023, whereby the recovery has been made from the pension computation amount of the petitioner are quashed.

25. The respondents are directed to refund the sum of Rs. 6,74,404/-, which was wrongfully deducted from the petitioner's pension computation amount along with interest at the rate of 8% per annum, within a period of eight weeks from the date of production of a certified copy of this order. Since this Court has quashed the re-fixation of the salary/pay scale ordered on 22.08.2022 following the order dated 27.07.2022, the petitioner shall be entitled to all ancillary dues based on the last pay drawn and the pension shall be fixed on the basis of the last pay drawn by

the petitioner at the time of his retirement.

26. The writ petition is **allowed** accordingly.

(Anish Kumar Gupta,J.)

September 29, 2026

Ashish Pd.