



2026:AHC-LKO:20518-DB

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

SPECIAL APPEAL DEFECTIVE No. - 206 of 2026

Arun Kumar Singh Tomar

.....Appellant(s)

Versus

U.P. Forest Corporation, Indira Nagar, Lucknow through its Managing Director
and another

.....Respondent(s)

Counsel for Appellant(s)	: Apoorva Tewari, Vivek Kumar
Counsel for Respondent(s)	: Rishabh Tripathi, Lakshmipat Shukla

Chief Justice's Court

**HON'BLE ARUN BHANSALI, CHIEF JUSTICE
HON'BLE JASPREET SINGH, J.**

1. Mr. Rishabh Tripathi, Advocate has filed Vakalatnama on behalf of the respondents, which is taken on record.
2. This appeal is directed against orders dated 27.02.2025 and 13.02.2026 passed by learned Single Judge in Writ-A No. 5080 of 2018 and Civil Misc. Review Application No. 38 of 2025 whereby the writ petition and the review application filed by the appellant have been dismissed.
3. Office has reported the appeal as barred by 322 days from the date of the order passed in writ petition. An application under Section 5 of the Limitation Act has been filed seeking condonation of delay in filing the appeal.
4. Submissions have been made that after the order in the writ petition was passed on 27.02.2025, wherein a submission was noted on behalf of the appellant that relief Nos. (i) and (iii) stand granted by the respondents and as

such, the appellant was not pressing the said reliefs. On account of the said contention noticed, the review petition was filed, *inter alia*, with the contention that the said statement of the counsel was without any specific instructions from the appellant and that the appellant was pressing the said prayers.

5. However, though by a detailed order notices on the review petition were issued, the same ultimately came to be dismissed on 13.02.2026.

6. Whereafter without any further loss of time, the present special appeal has been filed on 16.03.2026 and as the delay occurred on account of pendency of review petition which was filed well within time, the delay in filing the appeal may be condoned.

7. The application filed under Section 5 of the Limitation Act is not seriously contested by counsel for the respondents.

8. In view of the submissions made, wherein delay essentially occurred on account of pendency of the review petition, wherein the submission made by counsel withdrawing the reliefs was sought to be contested by the appellant and on disposal/dismissal of the review petition, the present special appeal has been filed, we find that the appellant has satisfactorily explained the delay in filing the present appeal.

9. Consequently, the delay condonation application is allowed. The delay in filing the appeal is condoned.

10. The writ petition was filed by the appellant aggrieved of the order dated 27.12.2017 passed by the respondents whereby the order granting stepping up of his pay w.e.f. 14.04.2012 was withdrawn. Further, prayer was made to quash the consequential recovery order dated 28.12.2017 and release the salary for the month of December, 2017 as well as all his retirement dues.

11. The appellant was initially appointed as Assistant Logging Supervisor in the year 1983 and was promoted as Sales Officer in the year 2000 and on 22.08.2003 he was promoted as Divisional Sales Manager ('DSM'). The appellant, during course of serving as DSM, claimed stepping up, *inter alia*, on the ground that he was Senior to Shri S.P. Sinha

and Shri Reddy Razzaiya but his pay was lower than the aforesaid persons, based on the said claim, by order dated 27.02.2013, the pay of the appellant was stepped up at par with his Junior Shri S.P. Sinha on the Grade Pay of Rs. 8700/-.

12. The promotion of the appellant was challenged by certain persons by filing Writ Petition Nos. 1594 (S/B) of 2003, which came to be allowed by order dated 08.01.2016, whereby the promotion order of the appellant dated 22.08.2003 was quashed and the respondents were directed to consider the promotion of the petitioners in the said petition as well the appellant afresh.

13. Whereafter, by order dated 30.12.2017, the appellant was promoted as DSM w.e.f. 01.02.2012 and the appellant retired on attaining the age of superannuation on 31.12.2018.

14. Against the judgment dated 08.01.2016 of the Division Bench, Special Leave to Appeal filed by the appellant came to be dismissed on 24.07.2018, but it was directed that the gratuity and unpaid salary, if any, shall be paid to the appellant at the scale in the sum due to DSM to which, DSM would be entitled for the aforesaid period holding the said post.

15. Before the learned Single Judge, the arguments centered around the recovery ordered by the respondents on account of the order dated 27.12.2017 withdrawing the order of stepping up. The learned Single Judge came to the conclusion that the judgment in **State of Punjab and others Vs. Rafiq Masih (White Washer) and others : 2015 (4) SCC 334** would have no application in light of undertaking given by the appellant read with law laid down in **High Court of Punjab and Haryana and others Vs. Jagdev Singh : 2016 (14) SCC 267**. The learned Single Judge also came to the conclusion that once the promotion of the petitioner in the year 2003 has been quashed, ten months leave encashment could only be granted based on the salary drawn by him pursuant to the order of promotion dated 30.12.2017 w.e.f. 01.02.2012 and not based on the direction of the Supreme Court, which only protected the payment made and the gratuity.

16. Learned counsel for the appellant made submissions that the learned Single Judge was not justified in dismissing the writ petition, once the Hon'ble Supreme Court had directed that the gratuity and unpaid salary shall be paid at the scale in the sum due to DSM, the same necessarily means the stepping up, which was granted to the appellant and the salary paid, based on such stepping up, could not be withdrawn and therefore, the order impugned deserves to be set aside on the said ground alone.

17. Further submissions were made that the case of the appellant was covered by the judgment in the case of **Rafiq Masih** (supra) and judgment in the case of **Jagdev Singh** (supra) has no application inasmuch as in the case of **Jagdev Singh** (supra) the undertaking was specific to the revision of pay, which was withdrawn whereas in the present case, the undertaking relied on by the respondents, is of 02.01.2010, whereas stepping up was granted on 27.02.2013 to which the said undertaking did not pertain and therefore, the order impugned passed by the learned Single Judge deserves to be set aside.

18. Counsel for the respondents supported the order impugned. Submissions were made that the undertaking while being general in nature, would apply to the present circumstance as well and the issue was rightly decided by the learned Single Judge based on the judgment in the case of **Jagdev Singh** (supra).

19. Further submissions were made that Hon'ble Supreme Court only protected the status as on the date of its order and on 24.07.2018, the stepping up had already been withdrawn and therefore, the plea raised in this regard has no substance.

20. We have considered the submissions made and have perused the material available on record.

21. The undisputed facts are that the appellant was promoted in the year 2003, which promotion came to be quashed by this court with a direction to reconsider, which petition was decided in the year 2016. The promotion ultimately came to be granted to the appellant w.e.f. 01.02.2012 by order dated 30.12.2017. However, during the period before quashing of the

promotion order of the appellant, he was granted stepping up by order dated 27.02.2013 w.e.f. 14.04.2012. Independent of the quashing of the promotion order, the said stepping up was withdrawn by order dated 27.12.2017 and recovery was ordered on account of such withdrawal.

22. The special leave petition filed by the appellant came to be dismissed by order dated 24.07.2018, which order, inter alia, reads as under:

“We see no reason to interfere with the impugned judgment and order of the High Court. The special leave petition is dismissed.

However, in view of the admitted fact that the petitioner has worked in the post of Divisional Sales Manager from 22/08/2003 till 28/12/2017, we consider it appropriate to direct the respondent that the gratuity and unpaid salary, if any, shall be paid at the scale in the sum due to Divisional Sales Manager to which Divisional Sales Manager would be entitled for the aforesaid period, holding the said post.

Pending application (s), if any, shall stand disposed of.”

23. A perusal of the order would reveal that Hon’ble Supreme Court, noticing that the appellant had worked on the post of DSM from 22.08.2003 till 28.12.2017, directed the respondent that the gratuity and unpaid salary, if any, shall be paid at the scale in the sum due to Divisional Sales Manager to which Divisional Sales Manager would be entitled for the aforesaid period, holding the said post.

24. It is apparent that the order dated 27.12.2017 withdrawing the stepping up was passed prior to the order dated 24.07.2018 passed by Hon’ble Supreme Court and therefore, the appellant cannot claim that the said direction would mean that the appellant would be entitled to stepping up of the pay as besides the fact that on the date of passing of the order by Supreme Court, the order was not in existence and Hon’ble Supreme Court only protected the salary and gratuity for the post of DSM on which post the appellant even otherwise got promoted w.e.f. 01.02.2012 despite quashing of the earlier order.

25. In view thereof, the plea based on the order passed by the Supreme Court apparently has no substance.

26. Though counsel for the appellant attempted to make submissions questioning the validity of the order dated 27.12.2017, ultimately confined

his submissions based on the applicability of the judgment in the case of **Rafiq Masih** (supra) and distinguishing judgment in the case of **Jagdev Singh** (supra).

27. In the case of **Rafiq Masih** (supra) Hon'ble Supreme Court, inter alia, 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.

28. It is submitted that the case of the appellant would be governed by Clause (ii) and (iii), wherein Hon'ble Supreme Court observed that recovery from retired employees, or employees who are due to retire within one year, of the order of recovery and from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued would be impermissible.

29. In the present case, both the conditions stand fulfilled, wherein the order has been passed for recovery on 28.12.2017 and the appellant retired on 31.12.2018 and he was paid the stepping up salary w.e.f. 14.04.2012 till 27.12.2017 when the order was withdrawn, i.e., for a period in excess of five years.

30. Learned Single Judge placed reliance on the judgment in the case of **Jagdev Singh** (supra) as well as the undertaking given by the appellant. The undertaking dated 02.01.2010 reads as under:

“सहमति पत्र

मैं यह सहमति प्रदान करता हूँ कि यदि मेरे वेतन निर्धारण में किसी त्रुटि के कारण अथवा बाद में किसी असंगति के कारण अधिक भुगतान हो जाने की स्थिति पायी जाती है तो ऐसे अधिक किये गये भुगतान की धनराशि, सरकार द्वारा मुझे भविष्य में होने वाले भुगतानों में से समायोजन द्वारा अथवा अन्य किसी प्रकार से, मेरे द्वारा वापस कर दी जायेगी।

दिनांक 2.1.2010

हस्ताक्षर

स्थान लखीमपुर

नाम: ए.के. सिंह तोमर

पद नाम: प्रभागीय विक्रय प्रबंधक”

31. A perusal of the above undertaking reveals that the same was given on 02.01.2010 in relation to any mistake in pay fixation and any excess payment made on account of any discrepancy, whereas the present order of stepping up was passed on 27.02.2013.

32. The purported undertaking, cannot and does not relate to the present order, which was passed stepping up the pay of the appellant. The undertaking pertained to error and discrepancy in the pay fixation and the said undertaking cannot be taken as a general undertaking for the entire service period so as to negate the effect of the judgment in the case of **Rafiq Masih** (supra).

33. So far as the judgment in the case of **Jagdev Singh** (supra) heavily relied on by counsel for the respondent and learned Single Judge is concerned, it would be appropriate to quote the relevant paragraphs from the said judgment which reveals that the entire judgment distinguishing the case of **Rafiq Masih** (supra) was based on specific undertaking given in relation to the revised pay scale. The relevant paras read as under:

“2. The facts lie in a narrow compass. The respondent was appointed as a Civil Judge (Junior Division) on 16-7-1987 and was promoted as Additional Civil Judge on 28-8-1997 in the judicial service of the State. By Notification dated 28-9-2001, a pay scale of Rs. 10000-325-15200 (senior scale) was allowed under the Haryana Civil Service (Judicial Branch) and Haryana Superior Judicial Service Revised Pay Rules, 2001. Under the Rules, each officer was required to submit an undertaking that any excess which may be found to have been paid will be refunded to the Government either by adjustment against future payments due or otherwise.

3. The respondent furnished an undertaking and was granted the revised pay scale and selection grade of Rs. 14,300-400-18,000-300. While opting for the revised pay scale, the respondent undertook to refund any excess payment if it was so detected and demanded subsequently. The revised pay scale in the selection grade was allowed to the respondent on 7-1-2002.

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6. In view thereof the pay scales of judicial officers in Haryana were once again revised with effect from 1-1-1996. An exercise was undertaken for adjustment of excess payments made to judicial officers, following the notification of the revised pay rules. On 18-2-2004, a letter for the recovery of an amount of Rs. 1,22,003 was served upon the respondent pursuant to the direction of the Registrar of the High Court.

7. The respondent challenged the action for recovery in writ proceedings under Article 226. The petition was allowed by the impugned judgment of the High Court. The High Court found substance in the grievance of the respondent that the excess payment made to him towards salary and allowance prior to his retirement could not be recovered at that stage, there being no fraud or misrepresentation on his part.

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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.”

(emphasis supplied)

34. A perusal of the above clearly reveals that under the Revised Pay Rules 2001, each officer was required to submit an undertaking that any excess which may be found to have been paid will be refunded to the Government either by adjustment against future payments due or otherwise and while opting for the revised pay scale, the officer undertook to refund any excess payment if it was so detected and demanded subsequently and Hon’ble Supreme Court distinguished the judgment in the case of **Rafiq Masih** (supra) *qua* proposition (ii) as noticed hereinbefore on account of the fact that 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 and the officer furnished an undertaking while opting for the revised pay scale and therefore, he was bound by the undertaking.

35. The undertaking in the case of **Jagdev Singh** (supra) was specific to the revised pay scale and the recovery also pertained to the revised pay scale whereas in the present case, there has been no undertaking by the appellant in relation to stepping up of the pay. In view thereof, the judgment in the case of **Jagdev Singh** (supra) would have no application to the present case.

36. So far as the rejection of the case of the appellant in relation to leave encashment for the period of ten months based on stepping up pay is concerned, no case in this regard is made out.

37. Consequently, the special appeal filed by the appellant is allowed. The order dated 27.02.2025 passed by the learned Single Judge in the writ petition and order dated 13.02.2026 passed in the review application are set aside.

38. The respondents are restrained from effecting any recovery from the appellant pursuant to order dated 27.12.2017 and 28.12.2017. Further, in terms of the order passed on 19.02.2018 in the writ petition, whereby counsel for the Corporation had stated that the entire dues of the appellant would be released 'except amount which is under dispute' within a period of one month, any amount which has been 'withheld by the respondents being under dispute', shall now be released to the appellant within a period of four weeks from the date of this order.

39. No order as to costs.

(Jaspreet Singh, J.) (Arun Bhansali, CJ.)

March 19, 2026

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