

Court No. - 21

Case :- WRIT - A No. - 2245 of 2023

Petitioner :- Surendra Singh

Respondent :- State Of U.P. And 5 Others

Counsel for Petitioner :- Ishir Sripat, Saurabh Patel

Counsel for Respondent :- C.S.C.

Hon'ble Donadi Ramesh, J.

1. Heard learned counsel for petitioner and learned standing counsel for State-respondents.

2. By means of the instant petition, petitioner seeks the following reliefs:

i) Issue a writ, order or direction, in the nature of certiorari quashing the impugned order dated 17.09.2022 passed by the respondent No. 4 by which for an amount of Rs.2,36,204/- has been recovered from the post retiral benefits of the petitioner.;

ii) Issue a writ, order or direction in the nature of mandamus directing the respondent-Authorities to refund the amount of Rs.2,36,204/- recovered from the post retiral benefits of the petitioner along with interest.

3. Case was heard on 13.02.2023 and Court has passed the following order:-

*"The petitioner is a retired Sub-Inspector and a sum of Rs. 2,36,204/- has been order to be recovered from his post retiral dues by the Superintendent of Police, Hapur, vide order dated 17.09.2022 which is impugned herein. The case of the petitioner is that he is a group C employee and the excess payment, if any, made to him was under a wrong fixation done unilaterally by the respondents, wherein the petitioner had no contributory role. It is made out in that in view of law laid down in **State of Punjab v. Rafiq Masih (White Washer) and others, (2015) 4 SCC 334** and **Thomas Daniel v. State of Kerala and others, AIR 2022 SC 2153**, the respondents are not entitled to recover from the petitioner's post retiral benefits.*

Admit.

Issue notice.

Notice on behalf of all the respondents is accepted by learned Standing Counsel, who prays for and is granted four weeks' time to file a counter affidavit.

List for hearing on 13.03.2023.

The status of pleadings shall also be reported.

Order on Civil Misc. Stay Application No. 1 of 2023

Issue notice.

Until further orders, operation of the impugned order dated 17.09.2022 passed by the Superintendent of Police, Hapur shall remain suspended and the sum of Rs. 2,36,204/- shall not be recovered from the petitioner in any manner.

Let this order be communicated to the Superintendent of Police, Hapur by the Registrar (Compliance) within 72 hours."

4. Learned standing counsel has submitted that due to incorrect fixation of pay scale excess payment has been made to the petitioner.

5. Being confronted by the Court, he fairly accepts that petitioner is not responsible for incorrect fixation of pay scale.

6. I have considered the rival submissions advanced by the learned counsel for the parties and perused the records as well as impugned order. Facts of the case are undisputed. Apex Court in the case of **Rafiq Masih (supra)** while dealing with such dispute, had framed following guidelines:-

"12. 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."

7. Undisputedly, case of petitioner is squarely covered with the judgment of **Rafiq Masih (supra)** and petitioner was not responsible for fixation of incorrect pay scale and consequently for excess payment.

8. Therefore, under such facts and circumstances of the case, the impugned order dated 17.09.2022 passed by the respondent No. 4 is hereby quashed and writ petition is allowed. No order as to costs.

9. Respondent no.4 is directed to pay the entire deducted amount along with interest from due date to the date of actual payment within three weeks from the date of production of certified copy of this order.

10. However, liberty is given to State-authorities to conduct inquiry in the matter and to fix the responsibility for excess payment and recover the same from the Officers/employees, who are responsible for the same.

Order Date :- 27.10.2023

Mukesh Kr.

(Donadi Ramesh,J.)