

Court No. - 9

Case :- CONTEMPT APPLICATION (CIVIL) No. - 2635 of 2023

Applicant :- Om Prakash Singh

Opposite Party :- Kalanidhi Naithani, S.S.P. And Another

Counsel for Applicant :- Ramesh Chandra Tiwari

Hon'ble Rohit Ranjan Agarwal, J.

The writ Court on 28.11.2022 while allowing Writ-A No.6180 of 2022 had passed the following order:-

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

Learned counsel for the petitioner submitted that petitioner was initially appointed on the post of Constable on 08.12.1984 and he has retired voluntarily from service on the post of Sub Inspector on 30.09.2021. He next submitted that while paying his post retiral dues, some amount has been deducted due to incorrect fixation of pay scale. He lastly submitted that petitioner is Class-III employee and in light of judgement of Apex Court in the matter of State of Punjab and others Vs. Rafiq Masih: 2015 (4) SCC 334, in case of incorrect fixation of pay scale, any payment is made, no recovery can be made after retirement from Class-III and Class-IV employee, therefore, impugned order is bad and liable to be set aside.

Learned standing counsel on the basis of instruction as well as legal submission, could not dispute the aforesaid facts.

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."

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.

Therefore, under such facts and circumstances of the case, the impugned orders dated 13.01.2022 & 6.3.2022 are hereby quashed and writ petition is allowed. No order as to costs.

Respondent no.4 is directed to pay the entire deducted amount along with interest as provided under the Payment of Gratuity Act, 1972 from due date to the date of actual payment within eight weeks from the date of production of certified copy of this order.

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."

An affidavit of compliance has been filed on behalf of the State, wherein in paragraphs 9 and 10, it has been mentioned that the admissible retiral dues has been paid to the applicant, while in paragraph 11, it has specially been stated that no recovery with regard to the excess payment was made from the account of the applicant, as such, no question arises for paying the same along with interest.

In view of said fact as the order of writ Court has been complied with, the contempt application is rendered infructuous and the same stands dismissed.

Contempt notice stands discharged.

However, it is open to the applicant to approach the appropriate forum, if so advised, in case there is short payment made by the opposite party.

Order Date :- 29.11.2023

SK Goswami