

Court No. - 9

Case :- CONTEMPT APPLICATION (CIVIL) No. - 2881 of 2023

Applicant :- Akbar Singh

Opposite Party :- Sri Achal Kumar Mishra, District Inspector Of Schools

Counsel for Applicant :- Shiv Shankar Pd Gupta, Girijesh Kumar Gupta

Hon'ble Rohit Ranjan Agarwal, J.

1. The writ Court on 21.12.2022 in Writ -A No.21572 of 2022 has passed the following order :

"1. Heard Sri Shiv Shankar Prasad Gupta, learned counsel for the petitioner and Sri Ajay Singh, learned Additional Chief Standing for the State-respondents.

2. Present writ petition has been filed against the communication dated 29.07.2022 issued by the DIOS, Kanpur Dehat, seeking to recover Rs. 5,59,524/- from the gratuity payment due to the petitioner.

3. Earlier, the petitioner retired on 31.12.2020 on the post of Daftari at Janta Higher Secondary School, Railway Station, Maitha, Kanpur Dehat. Later, on 13.09.2021, the Deputy Director of Secondary Education, Kanpur Division, Kanpur wrote to the DIOS, Kanpur Dehat, requiring him to deduct Rs. 5,59,524/- from the gratuity payable to the petitioner.

4. Perusal of the communication dated 13.09.2021 issued by the Deputy Director of Secondary Education reveals, the only reason to direct the impugned recovery is, wrong computation of certain salary dues that were paid to the petitioner while he was in service.

5. Perusal of the communication clearly indicates, there is not iota of allegation against the petitioner in having wrongly obtained such payments. The only allegation is, such payment totaling to Rs. 5,59,524/- was paid to the petitioner contrary to the Rules. That allegation even if true, does not contain any ingredient of wrong doing on part of the petitioner. It only indicates, the authority is of the view, the petitioner was not entitled to such payments, in law.

6. Second, that communication clearly indicates, as of now no enquiry has been conducted to fix the responsibility on any person. Thus, the communication requires fixation of such liability on the office bearers and employees of the Committee of Management of the educational institution (described above), Finance Officer, Accounts Officer and the concerned DIOS.

7. Unless such enquiry had been conducted and concluded and responsibility fixed on the basis of material found and unless while reaching such conclusion, it is found, the petitioner had played an active role by committing any act of concealment or misrepresentation etc. as may have led the authorities to make wrong computation of salary dues of the petitioner resulting in excess payment of Rs. 5,59,524/-, no

recovery may have been directed against the petitioner, who was a Class IV employee. That principle is firmly laid down by the Supreme Court in State of Punjab & Ors. Vs. Rafiq Masih (White Washer) & Ors., (2015) 4 SCC 334.

8. In view of the principle in law being very clear and in view of the observations made above, the impugned recovery is directed against the petitioner is found to be pre-mature and not based on any material, at this stage.

9. Accordingly, the present writ petition is allowed, at this stage. The order/communication dated 29.07.2022 is quashed to the extent it seeks to recover the amount of Rs. 5,59,524/- from the petitioner without fixation of primary responsibility."

2. From perusal of the order it is clear that the writ petition filed by the applicant was allowed and a direction was issued for refunding an amount of Rs.5,59,524/-.

3. A compliance affidavit has been filed by the State wherein it has been stated that the said amount has been credited into the account of the applicant on 16.10.2023. The said fact has been stated in para 13 of the compliance affidavit.

4. As the order of the writ Court has been complied with, the contempt application has rendered infructuous and stands dismissed.

5. Contempt notice stands discharged.

Order Date :- 18.10.2023

Kushal