

Court No. - 34

Case :- WRIT - A No. - 11123 of 2020

Petitioner :- Gauri Shankar

Respondent :- State Of U P And 3 Others

Counsel for Petitioner :- Balram Jee Verma,Prabhakar Dwivedi

Counsel for Respondent :- C.S.C.

Hon'ble Ajit Kumar,J.

1. Heard learned counsel for the parties.

2. The petitioner who retired from the post of Surveyor from the Irrigation Department of State of U.P. came to file this petition with prayer that since he had retired on 31st December, 2017, he has not been paid full pension even though gratuity and other GPF was paid but he was being paid only provisional pension. During pendency of the writ petition, respondents came to pass two orders firstly on 26.08.2021 whereby revised pay fixation was done w.e.f. 1.12.1997 on the ground that if previous pay fixation was wrongly done and accordingly also issued a consequential order on 27th August, 2021 to the effect access payment made to the petitioner to the tune of Rs. 40,88,380/- in the grade pay of Rs. 2800/- 4200/- and 4600/- as determined later on under the order dated 26th August, 2021 should be refunded.

3. These two orders now been challenged before this Court by amending writ petition. It further transpires from the record of the writ petition that even gratuity amount was paid to the petitioner by virtue of two deductions order dated 31st March, 2018 and 22nd June, 2018.

4. Learned counsel for the petitioner states that any deduction from the retirement dues of petitioner who was working on group C post of Surveyor, it is not permissible in law in view of decision in the case of **State of Punjab v. Rafiq Masih, 2015 (4) SCC 334** later on followed by **Thomas Daniel v. State of Kerala and Others, AIR 2022 SC 2153**.

5. Orders of fixation of pay that are now under challenge dated 26.08.2021 and consequential order directing for refund dated 27.8.2021 do not make any acknowledgment of any undertaking being ever advanced by the petitioner that such pay fixation has later on turned to be put faulty one.

6. In the circumstances, therefore, ratio laid by the Supreme Court in the case of **High Court of Pajab and Haryan and Others v. Jagdev Singh (2016) 14 SCC 267** cannot be said attracted in the given facts and circumstances of the case. Even two earlier orders dated 31st March, 2018 and 22nd June, 2018 do not refer to any such undertaking ever advanced by the petitioner.

7. The law is equally settled and ratio laid down in the guidelines as provided in the judgment of **Rafiq Masih (supra)** vide paragraph 18 is reproduced hereunder:

"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."

8. The law is equally well settled that ignorance of law is no excuse, moreso when the State is involved . This act of a model employer like the the State authority cannot say that they were not aware of the law.

9. Supreme Court in the case of **The Swadeshi Cotton Mills Co. Ltd. v. The Government of U.P. & Ors,(1975) 4 SCC 378** held that "every individual is deemed to know the law of the land" and the judgment of Rafiq Masih (*supra*) was delivered on 18.12.2014 prior to the recovery of amount from the gratuity of the petitioner, and hence recovery is absolutely unsustainable as University Registrar cannot claim that he was not aware of the law.

10. The Learned counsel for the petitioner submits that the order dated 20th April, 2016 though has been challenged but the petitioner no more wants to press the prayer to set aside the order dated 26th August, 2021.

11. In view of above the order dated 27th August, 2021 providing the petitioner to deposit back the amount of access amount is hereby quashed. Since I already quashed the order of excess payment, recovery already directed under the order of the respondent dated 31st March, 2018 and 22nd June, 2018 are also quashed. Whatever the amount has already been recovered from the gratuity amount of the petitioner as reflected from the orders dated 22nd June, 2018 shall be refunded to him with interest which is assessed as per 8 percent from the date of recovery has been done till actual payment is made. The payment shall be made alonggwith interest and shall be paid within a period of two months from the date of production of certified copy of this order. The petitioner shall be paid his regular full pension if otherwise there is no other legal impediment, that comes to be calculated under the pay fixation rectification order dated 26th August, 2021.

12.The writ petition is accordingly allowed in view of above directions.

Order Date :- 31.10.2023

Sanjeev