

Court No. - 34

Case :- WRIT - A No. - 12366 of 2023

Petitioner :- Jagdish Swaroop Pandey

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

Counsel for Petitioner :- Ramesh Chandra Tiwari

Counsel for Respondent :- C.S.C.

Hon'ble Ajit Kumar,J.

1. Heard learned counsel for the parties.
2. This petition arises out of a recovery proceedings initiated against the petitioner from his post retirement dues on account of wrong pay fixation while he was in service.
3. Learned counsel for the petitioner relied upon a judgment of the Supreme Court in the case of **State of Punjab and Ors. Vs. Rafiq Masih (White-Washer) & Ors. 2015 (4) SCC 334** and later on followed the case of **Thomas Daniel v. State of Kerala & Ors, AIR 2022 SC 2153**.
4. Considering the facts and circumstances that the order of recovery has been passed and it was necessary therefore, to hear the State-respondents. They were granted time on 08.08.2023 to file counter affidavit within four weeks fixing 25.09.2023 but no counter affidavit was filed and accordingly last opportunity was afforded on 25.09.2023 to learned Standing Counsel by passing following order:

"Learned Standing Counsel states that letter has been sent on 08th August, 2023 to the concerned authority, but no response has been received till date.

Four weeks' and no more time is allowed to the learned Standing Counsel to file counter affidavit. Rejoinder affidavit, if any, may be filed within two weeks' thereafter.

It is made clear that if the counter affidavit is not filed by the next date fixed, the Court will proceed to decide the present matter on the basis of pleadings available on record.

List this case on 31.10.2023."

5. Learned Standing Counsel today submits that although earlier letter has been sent to the respondents on 16.08.2023 and lastly on 03.10.2023 by fax and mail on 04.10.2023 from the office of the Chief Standing Counsel, Allahabad High Court but no response has been received till date.

6. Since the law is well settled regarding recovery of the excess payment made due to wrong pay fixation *qua* Group C and D employee and those retired, the Court proceeds to hear and decide the matter.

7. Under the order dated 20.12.2023, petitioners' pay fixation came to be revisited on the ground that as per the recommendation of the office, pay fixation dated 01.01.2006, petitioner shall be getting 24 years benefit to attain the grade pay of Rs.4200 /- and pay of Rs.13,500/-. Thus the pay fixed on 01.06.2007 as Rs.14,430/- came to be rectified. The order is absolutely silent as to under what circumstances the incorrect pay fixation was done but the order shows that a notice was issued on 07.12.2022 and was received on 08.12.2022 by the petitioner but the said fact has been denied vide paragraph nos. 13 and 14 of the petition. A consequential recovery order came to be passed on 08.06.2023.

8. Learned counsel for the petitioner submits that petitioner is not aggrieved by the pay fixation order but is aggrieved by the recovery order passed as a result of rectification made in the pay fixation since 01.06.2007. He submits that in paragraph no.13 and 14 of the writ petition, petitioner has claimed the recovery made to be illegal one as he had never given any undertaking for such pay fixation or deduction or refund for resultant excess payment.

9. Interestingly, I notice that the order impugned also does not refer to any undertaking ever advanced by the petitioner. In such above view of the matter and since no counter affidavit has been filed despite stop order passed by this Court, the averments made in paragraph nos.13 and 14 of the writ petition are taken to be true and admitted by the respondents.

10. Petitioner admittedly retired on 28.02.2023 from the post of Assistant Sub Inspector, U.P. Police which admittedly is a Group C post.

11. 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 **State of Punjab and others vs. Rafiq Masih (White Washer); (2015) 4 SCC 334** 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."

(Emphasis added)

11. This above view has been followed by the Supreme Court in the case of **Thomas Daniel v. State of Kerala & Ors, AIR 2022 SC 2153**. In the absence of any affidavit to counter the statement made in paragraph nos.13 and 14 of the writ petition, principle in the case of **High court of Punjab and Haryana and Others vs. Jagdev Singh: (2016) 14 SCC 267** would not be attracted.

12. In view of the above, impugned order of recovery cannot be sustained.

13. It is a well settled law that ignorance of law is no excuse. In the case of **Swadeshi Cotton Mill Company Limited vs. Government of U.P. and others: (1975) 4 SCC 378**, the Supreme Court has held that "*every individual is deemed to know the law*".

14. Petitioner is also held entitled to the interest upon the amount wholly and illegally deducted from the post retirement dues of the petitioner from the date it has been deducted till the actual refund is made.

15. In view of the above writ petition succeeds and is allowed. The order dated 20.12.2022 in so far as recovery is concerned and order dated 08.06.2023 in so far as it justifies recovery of Rs.2,69,997/- is quashed.

16. Respondents are directed to return the entire deducted amount from the post retirement dues of the petitioner as a consequence to the order dated 20.12.2022 alongwith interest @ 8 % within a period of two months from the date of production of certified copy of this order.

17. Order dated 20.12.2022 is however, maintained for the revised pay structure and consequential pension fixation.

Order Date :- 31.10.2023

Deepika