

Court No. - 34

Case :- WRIT - A No. - 14717 of 2021

Petitioner :- Ashok Kumar Singh And 3 Others

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Shri Krishna Mishra

Counsel for Respondent :- C.S.C.

Hon'ble Ajit Kumar,J.

1. Heard learned counsel for the parties.
2. By means of this petition filed under Article 226 of the Constitution of India, petitioners have prayed for quashing of the order dated 16.09.2021 in so far as it directs for recovery for the excess payment made to the petitioners on account of wrong pay fixation done in the year 2005 and consequently he was paid excess payment with effect from 01.04.2005.
3. Learned counsel for the petitioners had submitted that a representation was made on 16.06.2004 and reminder thereof made on 22.09.2004 but by no stretch of imagination their letter can be construed as latters misleading the authorities. He had made a simple request that he may be paid higher pay scale of Rs.6500-10500/- as identically placed persons were being paid. Petitioners did possessed requisite qualification and therefore, were entitled to such payscale.
4. Learned counsel for the petitioners submit that the petitioners are confining his prayer as against the order impugned to the extent of recovery. So far as the corrected pay fixation is concerned that may be carried out.
5. *Per contra*, learned Standing Counsel has defended the order for the reasons assigned therein.
6. Having heard learned counsel for the parties and their arguments raised across the bar, I find that in the case of **State of Punjab & Others v. Rafiq Masih (White Washer) etc., (2015) 4 SCC 334** the Supreme Court very categorically held that in the case of Group - C and Group -

D employees the recovery shall not be made from the excess amount. Still further those who have retired as such, no recovery can be pursued. In the case of Rafiq Masih (*supra*) the Supreme Court has observed thus:

"18. 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)

7. Admittedly, the petitioners' commutation of pension amount has been subjected to recovery in the teeth of the law laid down by the Supreme Court which has been recently followed in the case of **Thomas Daniel v. State of Kerala & Ors, AIR 2022 SC 2153**.

7. In view of the above the order dated 16.09.2021 is hereby set aside to the extent it directs for recovery.

8. Thus writ petition stands **allowed** and liberty rests with the petitioner to apply for parity of pay in terms of higher pay scale, if he is entitled from hence onwards by means of representation and if any such representation is made, same shall be disposed of by the competent authority in the matter

in accordance with law.

9. It is made clear that any enhancement will be only prospective from the date if it is allowed.

Order Date :- 7.11.2023

Deepika