

Court No. - 34

Case :- WRIT - A No. - 14006 of 2023

Petitioner :- Kshetrapal Singh

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

Counsel for Petitioner :- Mohd. Parvez

Counsel for Respondent :- C.S.C.

Hon'ble Ajit Kumar,J.

1. Heard learned counsel for the parties and perused the record.
2. This matter arises out of a recovery proceeding which is claimed to be in the teeth of judgment in the case of ***State of Punjab vs. Rafiq Masih (White Washer) reported in 2015 (4) SCC 334***, as the petitioner has retired from the post of Sub Inspector which is a Group-C post. This Court had given several opportunity in the past to the State to file response. As the case is covered by the Supreme Court judgment, this Court had passed following order on 11.10.2023:-

"1. Learned Standing Counsel prays for and is allowed two weeks' and no more time to file counter affidavit. Rejoinder affidavit, if any, may be filed within one week thereafter.

2. List this case on 20.11.2023 in the list of top ten cases.

3. It is made clear that in the event no counter affidavit is filed by the next date fixed, the Court will proceed to decide the case on the basis of pleadings available on record and the law laid down by the Apex Court in the case of State of Punjab vs. Rafiq Masih (White washer); (2015) 4 SCC 334."

3. Today again, no counter affidavit is filed and therefore, averments made in the writ petition stand unreplied and undenied. Accordingly, this Court now proceeds to decide the matter. This conduct of the State also amounts to a fair concession to the relief prayed for.

4. Admittedly, the law laid down by the Apex Court in case of ***Rafiq Masih (supra)*** clearly provides that no recovery can be pursued from a retired employee more especially, Group-C and Group-D employees. Still further those who have retired as such, no recovery can be pursued. In the case of ***Rafiq Masih (supra)***, it has been directed thus:

"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."

5. Above view has been followed subsequently by the Apex Court in the case of ***Thomas Daniel vs. State of Kerala & ors; (Live Law(SC) 438.***

6. From the above, it is, therefore, very clear that not only in respect of Group-C and Group-D employees, even in certain other cases this Court can exercise discretion to quash the order of recovery if justice so demands and the Court finds it quite equitable as well.

7. It has been argued in his behalf that petitioner neither mislead the authorities, nor made any misrepresentation of fact for being conferred upon such pay scale benefits which according to the respondents have wrongly been given to the petitioner. It is, thus, clear that he is neither guilty for *suppresio veri* and *suggestio falsi*.

8. This argument could not be confronted by the learned Standing Counsel appearing for the State-respondents.

10. In view of the above, this petition succeeds and is allowed. The orders dated 21.06.2022 and 28.12.2022 are hereby quashed.

11. The legal position is also equally sound that ignorance of law is no excuse. In the case of ***The Swadehi Cotton Mills Co. Ltd. vs. The Government of U.P. & ors; 1975 (4) SCC 37***, the Supreme Court vide paragraph 3 has held thus that "***The courts***

merely interpret the law and do not make law. Ignorance of law is not an excuse....."

12. Accordingly, recovery being against the law, petitioner is not only entitled to refund but interest as well. Thus, the amount already recovered/withheld is directed to be refunded along with 8% interest within two months of presentation of certified copy of this order.

13. With the aforesaid directions and observations, writ petition succeeds and is allowed.

Order Date :- 20.11.2023

P Kesari