

Court No. - 44

Case :- WRIT - A No. - 16943 of 2022

Petitioner :- Krishna Kumar Mishra

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

Counsel for Petitioner :- R.P. Tiwari

Counsel for Respondent :- C.S.C.

Hon'ble Donadi Ramesh,J.

1. The instant writ petition has been filed for quashing the orders dated 2.12.2019, 7.12.2019, 30.11.2019 and 30.10.2019 passed by respondent no.3, respondent no.5, respondent no.3 and respondent no.2 respectively. Further, prayer has also been made for direction to respondent nos. 2 to 4 to release the amount of terminal benefits wrongly withholding by deducting Rs. 434770/- and other emoluments with interest at the rate of 18% per month.

2. Brief facts of the case is that the petitioner was superannuated on 31.07.2019 as Administrative Officer (Class-III) in the office of Executive Engineer, Jhansi Division, Betawa Nahar, Jhansi. Initially, the petitioner was appointed as Junior Clerk on 9.2.1982 in the department of Irrigation and Water Resources at Jhansi. After completion of satisfactory service of more than 26 years, he was entitled for benefit of third ACP and pay grade of Rs. 4600/-. Subsequently, the petitioner after completing more than 26 years of service, got his first, second and third ACP as per the Government Order dated 5.11.2014. The Finance Controller issued orders on 16.10.2017 that the grade pay of Rs. 4600/- has wrongly been given to the petitioner w.e.f. 1.12.2008. Consequently, respondent no.3-Executive Engineer has determined the pay-scale of the petitioner vide order dated 30.10.2019 i.e. after the retirement of the petitioner on 31.7.2019.

3. According to the determination order passed by respondent no.3, the respondents have recovered the amount from the pension and gratuity of the petitioner vide order dated 2.12.2019 by withholding Rs. 434770/-, which is assailed in the instant petition.

4. Rebutting to the said averments, respondent no. 3 has filed counter affidavit on 13.01.2023. In the said affidavit, it is stated that the petitioner after completion of 26 years of satisfactory service, the benefit of third ACP grade pay 4600/- effected from

1.12.2008 was to be proposed. Prior to rearrangement of clerical cadre i.e. 18.3.2011 grade pay of Rs. 4200/- was approved, in which from December 2008 to 18.3.2011, the petitioner was entitled for pay grade of Rs. 4200/- and pay grade of Rs. 4600/- from 18.3.2011, till his retirement. Due to mistake from 1st December, 2008 in place of grade pay of Rs. 4200/-, the grade pay of Rs. 4600/- was given to the petitioner by the concerned division. As per the orders of the Finance Controller, Irrigation and Water Resources Department, U.P., Lucknow, correct fixation was made and the department has made efforts for recovery of the excess amount during service period of the petitioner.

5. Further, ascertaining that fixation made by the office of Finance Controller, Irrigation and Water Resources Department, U.P., Lucknow was treated as final for different cadres and on the basis of the same, retiral benefits are to be calculated. Accordingly, the excess amount, which was paid to the petitioner, was recovered from his retiral dues.

6. Based on the above averments, learned counsel appearing on behalf of the petitioner has submitted that the respondents themselves have fixed the pay scale of the petitioner after completion of 26 years as pay scale of Rs. 4600/- and accordingly, they have paid the salary to the petitioner and it is not the case of the respondents that by virtue of misrepresentation made by the petitioner, they have made the said mistake and there is no averment with regard to involvement of the petitioner in such fixation.

7. In the identical situation, the Apex Court in **State of Punjab and others Vs. Rafiq Masih (White Washer)** reported in **2015 AIR (SC) 696**, after considering the entire issue, has passed the following directions:

"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."

8. According to the above observations made by the Apex Court, directions (iii), (iv) and (v) that recovery from employees would be impermissible in law, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued. In the instant case, fixation was done on 1.12.2008 and hence, the respondent ought not to have recovered the amount from the retiral benefits after lapse of more than a decade.

9. In identical issue, co-ordinate Benches of this Court in Writ A Nos. 13080 of 2022 and 20106 of 2018 have set aside the recovery orders issued against the employees by following the observations made in the aforesaid judgment of the Apex Court.

10. Learned Standing Counsel appearing on behalf of State-respondents on the basis of averments made in the counter affidavit has submitted that even in the writ petition, the petitioner has not disputed that the wrong fixation was made against the petitioner that he is not eligible to pay scale of Rs. 4600/- and he is eligible only for pay scale of Rs. 4200/-. The respondents have considered the orders passed by Finance Controller, Irrigation and Water Resources Department, U.P., Lucknow. Accordingly, they have made recovery, which is wrongly fixed and paid to the petitioner from the retiral benefits.

11. Considering the submissions made by learned counsel for the petitioner as well as learned Standing Counsel and on perusal of the orders passed, it is apparent that no doubt there is no averment with regard to the involvement of the petitioner in wrong fixation of the pay scale and further as contended by learned counsel for the petitioner that no averment whether any opportunity has been granted to the petitioner before re-fixing or making recovery of the said amount from the retiral benefits of the petitioner.

12. In view of the observations made by the Apex Court in the aforesaid judgment, no doubt the impugned orders are not only in violation of principles of natural justice, but also contrary to the

directives given by the Apex Court in the aforesaid judgment. Accordingly, the impugned orders are set aside. The respondents are directed to release the withheld amount, which was recovered from the petitioner forthwith.

13. The writ petition stands allowed.

(Donadi Ramesh, J.)

Order Date :- 17.10.2023

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