

Court No. - 34

Case :- WRIT - A No. - 21490 of 2022

Petitioner :- Roshan Lal

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 and perused the record.
2. Petitioner is aggrieved by the order by which excess payment has been directed to be recovered and consequentially been recovered from those post retirement dues on account of alleged excess payment of salary for wrongful fixation.
3. It is submitted by learned counsel for the petitioner that petitioner had not been responsible in any manner to get the pay fixation done, nor was he required at any point of time to furnish any affidavit to hold him responsible for such pay fixation and resultant excess payment of salary.
4. Specific plea to this above effect has been taken in paragraph 15 of the writ petition in reply to which in counter affidavit to the effect that petitioner made a statement at the time of declaration made by pension papers being finalized. Thus, it is submitted by learned counsel for the petitioner that principle enunciated in the case of **High Court of Punjab and Haryana v. Jagdev Singh (2016) 14 SCC 267** would not be attracted so as to justify the recovery on account of such undertaking if at all taken at the time of post retirement dues. Such undertaking was required to be taken at the time of pay fixation was being done and, therefore, petitioner cannot be held guilty of the principle of *suggestio falsi or suppressio veri*.
5. Learned Standing Counsel has sought to justify the order for the reasons assigned therein in paragraph 12 of the counter affidavit.
6. I have recently held in the case of one **Vijay Kumar Gupta v. Union of India and others** (Writ - A No.- 9870 of 2018) decided on 2nd May, 2023 that such an undertaking for the purposes of pay fixation is required to be taken in the relevant financial year before

such fixation is being done. Any such undertaking at the time of payment of pension would amount to an admission in terrarum as petitioner would be retiring and so he is compelled to file papers so that his post retirement dues are cleared without any hurdle.

7. I have also noticed one Government order dated 16th November, 2023 issued by the Government, wherein Government had directed to adopt corrective measures by the officials of various department and Government order indicates that inquiry should be conducted in the relevant financial year if wrongful pay fixation is done.

8. In the circumstances, therefore, the principle enunciated in the case of **State of Punjab and others v. Rafiq Masih (White Washer) 2015 (4) SCC 334** would apply as it very clearly directs that no such recovery should be directed from the retirement dues of an employee. In the case of Rafiq Masih (*supra*) the Supreme Court vide paragraph 18 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."

9. Besides above, I find that clause (v) of the directives issued in the case of Rafiq Masih (*supra*) is also enforceable in the present case as I do not find any justifiable reasons on equity also to justify such recovery.

10. However, I may hasten to add that wrongful pay fixation if done cannot benefit the petitioner for the purposes of fixation of pension. Protection is only provided insofar as the recovery is concerned for the amount which has already been paid to the petitioner for none of his fault and he has also consumed the same.

11. It is equally 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 vide paragraph 3 has held that "*...the courts merely interpret the law and do not make law. Ignorance of law is not an excuse*"

12. Under the circumstances, therefore, since recovery has taken place by the order impugned in the year 2022 much after the judgment in the case of Rafiq Masih (*supra*), it cannot be said that the order was justified for the simple reason that department was not aware of law.

13. In view of the above, the writ petition succeeds and is, accordingly, allowed.

14. The order dated 13th May, 2022 is hereby quashed.

15. The amount already recovered under the dated 14th September, 2022 shall be refunded to the petitioner along with interest @ 8% within a period 60 days from the date of production of certified copy of this order.

16. The corrected pay fixation order dated 13th May, 2022, however, is maintained for the purposes of fixation of payment of pension etc.

Order Date :- 2.12.2023

Atmesh