

Court No. - 8

Case :- WRIT - A No. - 150 of 2022

Petitioner :- Ram Sewak Kureel

Respondent :- State Of U.P. Thru Addl Chief Secy (Khaday Evam Rasad)
Food And Civil Supplies And 2 Others

Counsel for Petitioner :- Rahul Mishra, Sr. Advocate

Counsel for Respondent :- C.S.C.

Hon'ble Dinesh Kumar Singh, J.

1. Heard Sri Manik Sinha, learned Senior Advocate, assisted by Sri Rahul Mishra, learned counsel for the petitioner and Sri Joginder Nath Verma, learned Standing Counsel.

2. The present writ petition under Article 226 of the Constitution of India has been filed seeking a Writ of Certiorari quashing of the orders dated 12.3.2021 and 17.12.2021 passed by opposite party nos.2 and 3, whereby the pension of the petitioner was reduced with further prayer for a Writ of Mandamus commanding the opposite parties to pay the pensionary benefits to the petitioner without any deduction as per the order dated 9.3.2013.

3. The petitioner was initially appointed on Class-IV post as Godown Chaukidar at Purchase Center, Auraiya in the Department of Food and Civil Supplies, Government of Uttar Pradesh. The petitioner's services were regularized on the post of Chaukidar on 21.7.1995. The petitioner was later on promoted to the post of Marketing Clerk in Group-C post and finally he retired from service on 30.6.2011 on attaining the age of superannuation. The petitioner was granted retiral dues and pension counting his past services before regularization and accordingly his pension was also fixed. Eight years after the date of retirement, the impugned orders have been passed for recovering the amount of Rs.3,37,095/- on the ground that his

past services were wrongly counted and he was paid excess amount of Rs.3,37,095/- and the same was directed to be recovered from him.

4. Learned counsel for the petitioner submits that the petitioner was not at fault when his pension and retiral dues were paid counting his past services for regularization. He, therefore, submits that the petitioner's case is squarely covered by the judgment of the Supreme Court rendered in the case of ***State of Punjab and others Vs. Rafiq Masih (Whitewasher)***, (2015) 4 SCC 334 and the said recovery order is wholly illegal and is liable to be quashed.

5. On the other hand, Sri Joginder Nath Verma, learned Standing Counsel though has disputed the contention of the learned counsel for the petitioner, but he is not in a position to dispute the legal position and the law laid down by the Supreme Court in the case of ***Rafiq Masih (Whitewasher)*** (supra).

6. Considering the aforesaid facts and the legal position, the impugned orders so far it relate to recovery of Rs.3,37,095/- is concerned, are hereby quashed. However, it is provided that pension of the petitioner is to be re-fixed treating him to be in regular service w.e.f. 21.7.1995 and be paid accordingly.

7. Subject to above noted terms, the present writ petition is ***partly allowed.***

Order Date :- 24.5.2023

Rao/-