

Court No. - 20

Case :- WRIT - A No. - 2535 of 2023

Petitioner :- Ajay Kumar Singh

Respondent :- State Of U.P. Thru. Prin. Secy. Deptt. Home
Civil Sectt. Lko. And 3 Others

Counsel for Petitioner :- Mahendra Nath Yadav

Counsel for Respondent :- C.S.C.

Hon'ble Manish Mathur,J.

1. Heard learned counsel for petitioner and learned State Counsel for opposite parties.
2. Liberty is granted to petitioner to challenge order dated 09.01.2023 (Annexure No. 4) by amending the prayer clause of petition during the course of day.
3. Petition has been filed challenging orders dated 08.02.2023 and 09.01.2023 (as per amendment) whereby recovery has been directed from salary and emoluments of petitioner in view of re-determination of his pay scale.
4. It has been submitted that earlier vide order dated 09.01.2023, directions have been issued for re-determination of petitioner's pay scale and for recovery whereafter notice was issued to petitioner on 30.01.2023 directing him to submit a reply within a period of two days. It has been submitted that an unreasonable time was granted to file his reply due to which he could not submit his reply and resulted in passing of the order dated 08.02.2023 whereby recovery has been directed as indicated hereinabove. It is further submitted that upon receipt of the show cause notice, petitioner submitted a reply dated 12.03.2023 which remained unconsidered.
5. Learned counsel has also placed reliance on judgment rendered by Hon'ble Supreme Court in the case of **Rafiq Masih v. State of Punjab reported in (2015) 4 SCC 334** to submit that petitioner is covered by the exceptions indicated therein and therefore also such recovery orders could not have been passed.
6. Learned State Counsel has refuted submissions advanced by learned counsel for petitioner with the submission that it would be evident from material on record that ample opportunity was granted to petitioner for submitting a representation against the

recovery which was prima facie found to be effected from salary of petitioner but he himself failed to take advantage of the same. It has been further submitted that since excess payment was made to petitioner on account of incorrect fixation of his pay scale, such a fact was required to be corrected as has been done by the impugned orders.

7. Upon consideration of submissions advanced by learned counsel for parties and perusal of material on record, it is quite evident that impugned orders have been passed redetermining petitioner's pay scale and for effecting recovery from the salary but without affording ample opportunity for him to reply to the show cause notice. It is also on record that petitioner alleges to have submitted a representation dated 12.03.2023.

8. A perusal of impugned orders were also make it evident that the same have been passed without taking into account petitioner's reply to the show cause notice and are in fact in the nature of ex-parte orders.

9. Considering the aforesaid facts, the impugned orders dated 09.01.2023 and 08.02.2023 are hereby quashed by issuance of writ in the nature of certiorari granting liberty to opposite parties to pass fresh orders but only after considering petitioner's reply to the show cause notice. The aspect of petitioner being covered under the exceptions indicated in the case of Rafiq Masih (supra) shall also be considered by the competent authority. Decision with regard to the same shall be taken by the concerned authority within a period of eight weeks from the date a certified copy of this order is produced before the said authority. Refund of payment recovered shall be subject to final order passed.

10. Resultantly, petition succeeds and is **allowed** to said extent. Parties to bear their own costs.

Order Date :- 16.11.2023

Satish