

Court No. - 8

Case :- WRIT - A No. - 2892 of 2023

Petitioner :- Shri Krishna Chandra Singh

Respondent :- State Of U.P. Thru. Addl. Chief Secy./ Chief Secy. Home Deptt., Lko. And 7 Others

Counsel for Petitioner :- Manish Kumar Mishra, Naveen Mishra

Counsel for Respondent :- C.S.C.

Hon'ble Dinesh Kumar Singh, J.

1. Heard Sri Naveen Mishra, learned counsel for the petitioners and Sri Sandeep Sharma, learned Standing Counsel.
2. The present petition under Article 226 of the Constitution of India has been filed seeking a Writ in the nature of Certiorari quashing the orders dated 19.12.2022 and 2.1.2023, whereby recovery of Rs.3,10,189/- has been directed to be recovered from the petitioner.
3. The petitioner is scheduled to retire on 31.12.2023 from the post of Sub-Inspector in Civil Police, a class-III post. The petitioner was initially appointed on the post of Constable on 21.11.1983. He was promoted to the post of Head Constable on 25.5.2000 and, thereafter, he was promoted to the post of Sub-Inspector on 26.8.2021.
4. The impugned order has been passed on the ground that the petitioner's pay was wrongly fixed while giving the benefit of Assured Career Progression (for short 'ACP'). When the mistake committed in fixing the pay of the petitioner was pointed out by the Finance and Account Officer, Economic Offenses Wing, Uttar Pradesh, excess amount paid to the petitioner because of wrong fixation of the pay of the petitioner has been calculated to be Rs.3,10,189/-, which has been directed to be recovered from the petitioner in 12 installments

w.e.f. January, 2022 @ Rs.25,850/-.

5. Learned counsel for the petitioner submits that petitioner is due to retire within a period of one year and the order of recovery is dated 2.1.2023. He, therefore, submits that petitioner being a Class-III employee, his case is squarely covered by the judgement of the supreme Court rendered in the case of ***State of Punjab and others Vs. Rafiq Masih (Whitewasher)***, (2015) 4 SCC 334.

6. Sri Sandeep Sharma, learned Standing Counsel has filed an affidavit and submitted that since the petitioner is in service, his case is not covered by the judgement of the Supreme Court in the case of ***Rafiq Masih (Whitewasher)*** (supra).

7. The facts are not in dispute. The Supreme Court in the case of ***Rafiq Masih (Whitewasher)*** (supra) in paragraph 18 held as under:-

“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 hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).

(ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from the 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. Thus, if a Class-III or Class-IV employee is retired or due to retire within one year of the order of recovery, which is passed

for recovery of the excess amount paid to such an employee as a result of wrong fixation of the pay, the same should not be given effect to.

9. In the present case, the impugned order is dated 2.12.2023 and the petitioner is due to retire on 31.12.2023. Thus, in my view, the case of the petitioner is covered by the judgement of the Supreme Court in the case of Rafiq Masih (Whitewasher) (supra).

10. The present writ petition is accordingly allowed and the impugned orders of recovery dated 19.12.2022 and 2.1.2023, so far it relates to the petitioner, are hereby quashed. Consequences to follow.

Order Date :- 26.5.2023

Rao/-