

Court No. - 4

Case :- CONTEMPT APPLICATION (CIVIL) No. - 1184 of 2021

Applicant :- Shiv Prasad Singh

Opposite Party :- Sameer Kumar Div.Forest Officer South Kheri Forest Div.Kheri

Counsel for Applicant :- Om Prakash Singh,Manoj Singh Kushwah,Vikas Singh

Hon'ble Rajesh Singh Chauhan,J.

1. Heard learned counsel for the petitioner.

2. Attention of this Court has been drawn towards an order of the Writ Court dated 23.03.2021 passed in Service Single No.2852 of 2019, which reads as under:-

"Heard learned counsel for the petitioner and learned Additional Chief Standing Counsel for the State-respondents.

The petition seeks issuance of a writ in the nature of certiorari quashing impugned order dated 02.01.2019 passed by respondent no.4/The Divisional Forest Officer, South Kheri Forest Division, District Lakhimpur Kheri which is appended with the petition as Annexure - 1.

The petition also seeks issuance of a writ in the nature of mandamus directing respondents not to recover any alleged excess money paid to the petitioner and also not to deduct any amount from his retiral benefits or pension.

Learned counsel has submitted that vide the impugned order dated 02.01.2019 (supra), respondent no.4/The Divisional Forest Officer, South Kheri Forest Division, District Lakhimpur Kheri has directed for recovery of Rs.12,28,458/-/-, which was allegedly paid excess to the petitioner during his service on the basis of wrong pay fixation.

Learned counsel for the petitioner has referred the dictum of Hon'ble Apex Court in the case of State of Punjab and others vs. Rafiq Masih, (2015) 4 SCC 334 in which the Hon'ble Apex Court has held in para 18 that recovery from the salary of Class III and IV employees may not be made even if excess amount is paid without any fault on the part of the employee.

In the present case the benefit of pay scale has been extended to the petitioner by the Department itself, without any representation / misrepresentation on the part of the petitioner, therefore, the petitioner may not be subjected to the recovery proceedings. Learned counsel for the petitioner has further submitted that the petitioner retired from service on 30.06.2017. Learned counsel for the petitioner has further submitted that

even no show cause notice or explanation has been issued to the petitioner when he was in service, therefore, the impugned order is in violation of principles of natural justice also.

Learned Additional Chief Standing Counsel has opposed the petition on merit but could not dispute the aforesaid submission of learned counsel for the petitioner, however, he tried to justify the impugned action.

Considering the facts and circumstances of the case and also the law cited above, in the light of para 18 of the judgment of Hon'ble Apex Court in re: Rafiq Masih (supra) and also in view of the fact that no opportunity of hearing has been extended to the petitioner, the writ petition is allowed.

Impugned order dated 02.01.2019 passed by respondent no.4/The Divisional Forest Officer, South Kheri Forest Division, District Lakhimpur Kheri (Annexure - 1) is hereby quashed and the respondents are directed not to make any recovery from the pension or other post retiral benefits of the petitioner pursuant to the impugned order dated 02.01.2019 and the petitioner be paid his post retiral benefits with expedition preferably within a period of three months from the date of production of certified copy of the order of this Court.

Writ petition is allowed.

Office is directed to detag the connected Service Single No. 8980 of 2018 from this petition and list separately."

3. Sri Sunil Bajpai, learned Additional Chief Standing Counsel has drawn attention of this Court towards paras-8, 9 & 10 of the counter affidavit dated 03.08.2021 wherein it has been categorically indicated that in compliance of order of the Writ Court, the admissible benefit has been provided to the petitioner.

4. Further attention of this Court has been drawn towards para-18 of the aforesaid counter affidavit wherein it has been indicated that the issue of the petitioner has been considered thoroughly by passing and a speaking and reasoned order has been passed on 20.07.2021 (Annexure No.CA-1).

5. Perusal of order dated 20.07.2021 clearly reveals that the authority has indicated that in compliance of order of the Writ Court no recovery has been executed from the petitioner and in the said order, the recital to the benefit so provided to the petitioner has been given.

6. Notably, no rejoinder affidavit to the counter affidavit dated 03.08.2021 has been filed by the petitioner till date.

7. In the wake of the aforesaid development, nothing remains to be adjudicated in the instant contempt petition.

8. Accordingly, the instant contempt petition is ***dismissed.***

9. Notice, if any, stands discharged.

10. However, it is always open for the petitioner to assail the order dated 20.07.2021, if he is aggrieved from that order or he may also approach the Competent Authority/ Court of Law for redressal of his grievance, if any.

[Rajesh Singh Chauhan,J.]

Order Date :- 22.12.2023

Suresh/