

Court No. - 8

Case :- WRIT - A No. - 3913 of 2023

Petitioner :- Ayodhya Singh

Respondent :- The State Of U.P. Thru. Addl. Chief Secy. Home U.P. Lko And 3 Others

Counsel for Petitioner :- Krishna Kumar Singh

Counsel for Respondent :- C.S.C.

Hon'ble Dinesh Kumar Singh,J.

1. Heard learned counsel appearing for the petitioner and learned Additional Chief Standing Counsel appearing for the State.

2. Present petition under Article 226 of the Constitution of India has been filed seeking following reliefs:-

"(i) Issue a writ, order or direction in the nature of certiorari for quashing/set aside the certificate vide letter no.419/2022 dated 25.04.2023 passed by opposite party no.4 (contained as Annexure no.1) and in pursuance thereof impugned recovery of Rs.3,10,589/- was made by the respondent No.4 from last ingredients of petitioner in the interest of justice.

(ii)...

(iii)...

(iv)..."

3. The petitioner has demitted office on 31.12.2022 from the post of Sub Inspector on attaining the age of superannuation. Order dated 24.04.2023 has been passed by respondent No.4 for recovery of Rs.3,10,589/- from the petitioner on the ground that the petitioner's pay was wrongly fixed, as a result thereof, he has been paid excess amount of Rs.3,10,589/-.

4. On the last date of listing of this petition, i.e. 24.05.2023, this

Court passed the following order:-

"1. Heard learned counsel appearing for the petitioner and Sri Yogendra Nath Verma, learned Standing Counsel appearing for the State.

2. Present petition under Article 226 of the Constitution of India has been filed inater alia seeking following reliefs:-

"Issue a writ, order or direction in the nature of certiorari for quashing/set aside the certificate vide letter no.419/2022 dated 25.04.2023 passed by opposite party no.4 (contained in Annexure No.1) and in pursuance thereof impugned recovery of Rs.3,10,589/- was made by respondent No.4 from last ingredients of the petitioner in the interest of justice."

3. Learned counsel appearing for the petitioner submits that case of the petitioner is covered by the judgment of the Supreme Court in the case of State of Punjab & Ors Vs. Rafiq Masih (Whitewasher):(2015) 4 SCC 334.

4. Sri Yogendra Nath Verma, learned Standing Counsel will seek instruction in the matter whether the case of the petitioner is covered by the judgment of the Supreme Court in the case of State of Punjab & Ors Vs. Rafiq Masih (Whitewasher):(2015) 4 SCC 334 or High Court of Punjab & Haryana & Ors Vs. Jagdev Singh (2016) 14 SCC 267.

5. List this case on 29.05.2023 peremptorily."

5. Sri Ram Pratap Singh, learned Additional Chief Standing Counsel submits that no instruction has come that whether any notice was given to the petitioner at the time of fixation of his revised pay that in case if it would be found that pay was wrongly fixed, excess amount

paid to the petitioner would be realised from him or some undertaking was taken from the petitioner that in the event if it would be found that the petitioner was wrongly paid excess amount, the same can be recovered from him.

6. The facts are not in dispute. The Supreme Court in the case of **State of Punjab & Ors Vs. Rafiq Masih (Whitewasher):(2015) 4 SCC 334** 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."

7. 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.

8. In the present case, the impugned order is dated 25.04.2023, and the petitioner has demitted office on 31.12.2022. 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).

9. The present writ petition is accordingly allowed, and the impugned order of recovery dated 25.04.2023 is hereby quashed. Consequences to follow.

(Dinesh Kumar Singh, J.)

Order Date :- 29.5.2023
prateek