

Court No. - 8

Case :- WRIT - A No. - 24482 of 2021

Petitioner :- Bajrang Singh

Respondent :- State Of U.P. Thru. Prin. Secy. Finance Lko. And Ors.

Counsel for Petitioner :- Vishal Kumar Upadhyay, Sarvesh Kumar Saxena

Counsel for Respondent :- C.S.C.

Hon'ble Dinesh Kumar Singh, J.

1. Heard learned counsel for the petitioner as well as Mr. Tushar Verma, learned Standing Counsel for the respondents-State Authorities.
2. This petition under Article 226 of the Constitution of India seeks the following reliefs:-

*"(i) To issue a writ order or direction in the nature of certiorari thereby quashing the impugned order dated 11.05.2016, which is contained as **Annexure no. 1** to this writ petition.*

*(ii) To issue a writ order or direction in the nature of certiorari thereby quashing the impugned recovery order dated 26.08.2021, which is contained as **Annexure no. 2** to this writ petition.*

(iii) To issue a writ or direction in the nature of mandamus thereby commanding and directing the Opp. Parties to re-fix the pension of the petitioner in the light of relevant government orders issued by the state government from time to time.

(iv) To issue any other writ.....

(v) To allow....."

3. The petitioner retired on 30.08.2019 on attaining the age of superannuation from the post of accountant. In the impugned order, it has been said that the petitioner was paid excess amount of Rs.2,76,492/- from 01.08.2001 to 31.12.2015 because of wrong fixation of his pay. In the impugned order, it has also been said that exact amount to be recovered from eight named

accountants is to be calculated and necessary order is to be issued for recovery of the said amount from each of the eight accountants.

4. Mr. Tushar Verma, learned Standing Counsel, submits that a final decision for calculation and recovery of the exact amount is yet to be taken, and before taking decision for recovery, the petitioner shall be afforded an opportunity of hearing.

5. Considering the aforesaid statement given on behalf of the State, this petition is **disposed of** with a direction to the respondents that before passing order for recovery against the petitioner, the petitioner should be afforded an opportunity of hearing, and the competent authority should take into consideration the judgment *(2015) 4 SCC 334 [State of Punjab and others Vs. Rafiq Masih (White Washer) and others]* in paragraph-18 of which it has been 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."

6. If the petitioner's case is covered by decision in State of Punjab and others Vs. Rafiq Masih (White Washer) and others (supra), the competent authority will take a decision in accordance with law, however, if it is found that the petitioner could get his revised pay fixed fraudulently, the order may be passed, accordingly.

7. *DISPOSED OF.*

[D.K. SINGH, J.]

Order Date :- 4.7.2023

MVS/-