

**Court No. - 8**

**Case :-** WRIT - A No. - 5880 of 2022

**Petitioner :-** Kamlesh Kumar Gautam

**Respondent :-** State Of U.P. Thru. Prin. Secy. Social Welfare Dept.  
Lko. And 2 Others

**Counsel for Petitioner :-** Yogesh Chandra Srivastava

**Counsel for Respondent :-** C.S.C.

**Hon'ble Dinesh Kumar Singh,J.**

1. Heard Shri Yogesh Chandra Srivastava, learned counsel for the petitioner and Shri Prafulla Kumar Yadav, learned Additional Chief Standing Counsel appearing for the State-respondents.

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

*"1. To issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 28.10.2021 contained in Annexure No.1 to this writ petition.*

*2. To issue a writ, order or direction in the nature of mandamus commanding the opposite parties not to give effect to the impugned order dated 28.10.2021 contained in Annexure No.1 to the writ petition and restore the fixation as made prior to impugned order dated 28.10.2021 and also refund the amount if any recovered or adjusted alongwith the arrears and interest.*

*3. To issue a writ, order or direction in the nature of mandamus commanding the opposite parties to extend the benefit of judgment and order passed in the Spl. Appeal No.421 of 2006 (State of U.P. and Ors. vs. Raj Kumar Soni and Others).*

*4...*

*5..."*

3. It is admitted case that the petitioner was not given any show cause notice before the impugned order was passed for recovery of the alleged excess amount paid to the petitioner because of wrong fixation of pay of the petitioner. It is also not in dispute that the case of the petitioner is not covered by the Judgment of the Supreme Court in the case of **Rafiq Masih (White Washer) vs. State of Punjab and Others** reported in (2015) 4 SCC 334 inasmuch as the petitioner is a Lecturer in the Government Polytechnic, which is a Class-II post, however, the impugned order has civil consequences inasmuch as recovery has been ordered from the petitioner in respect of the alleged excess payment. The petitioner ought to have been issued a show

cause notice and afforded an opportunity of hearing before passing the impugned order.

4. In view thereof, the present petition is **allowed**. The impugned order dated 28.10.2021 is set aside. The Principal Rajkiya Govind Ballabh Pant Polytechnic, Mohan Road, District-Lucknow-respondent No.3 is directed to issue a show cause notice within a period of 15 days from today and after giving 15 days' time to the petitioner to file a reply to the said show cause notice and after hearing him, should pass a reasoned and speaking order in respect of the recovery of the alleged excess amount paid to the petitioner.

5. The petitioner as well as Standing Counsel for the State-respondents are directed to communicate this order to the concerned authority.

**(Dinesh Kumar Singh, J.)**

**Order Date :- 31.5.2023**

Piyush/-