

Court No. - 4

Case :- CONTEMPT APPLICATION (CIVIL) No. - 2683 of 2023

Applicant :- Smt. Radha Pandey

Opposite Party :- Dr. Indra Mani, Director (Administration And Development), Animal Husbandry Deptt., Lko.

Counsel for Applicant :- Dr. Sunil Kumar, Amit Awasthi

Hon'ble Rajesh Singh Chauhan, J.

1. Heard learned counsel for the petitioner and Sri Sanjay Kumar Trivedi, learned State Counsel.

2. Sri Trivedi has filed affidavit of compliance, the same is taken on record.

3. Attention has been drawn towards the order of the writ court dated 22.02.2023 passed in Writ-A No.1141 of 2020, which reads as under:-

"Heard learned counsel for petitioner and learned Standing Counsel for the State.

Present writ petition is filed by the petitioner challenging the order dated 22.02.2019 passed by respondent no.2 by which certain amount is directed to be recovered from the post retiral dues of the petitioner.

By means of this petition, learned counsel for petitioner has placed grievance to the effect that petitioner, who was working on the post of Stenographer (Class-III post) retired from services on 31.08.2017. The petitioner was extended certain benefits during her service tenure by the department itself without any misrepresentation on part of the petitioner. By the impugned order respondents, holding that certain excess salary was paid to the petitioner while in service, have directed for recovery/adjustment of the same from the retiral benefits of the petitioner.

While challenging the impugned order, learned counsel for petitioners submits that the impugned order is an ex parte order passed without giving any opportunity of hearing to the petitioner. Since, neither any fraud is played by the petitioner nor she has given any undertaking for recovery of salary paid to her by the respondents, no recovery can be made from the petitioner. The law in this regard is well settled by Hon'ble Apex Court in the case of 'State of Punjab and others Vs. Rafiq Masih (White Washer) and others, 2015 (4) SCC 334', paragraph-18 of which provides:-

"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 herein above, we may, as

a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

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

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

(iii) Recovery from 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."

Learned counsel for petitioner submits that case of petitioner does not fall within the exception of the said judgment and, hence, being covered by the Rafiq Masih case (supra), the impugned order is liable to be set aside.

Learned Additional Chief Standing Counsel has opposed the petition on merit but could not dispute the aforesaid submission of learned counsel for the petitioner and that the impugned order is passed without giving any opportunity of hearing to petitioner, however, he tried to justify the impugned action.

Having heard learned counsel for the parties and having perused the material available on record, I am of the opinion that in view of the dictum of the Hon'ble Apex Court in re; Rafiq Masih (supra) as well as fact that the impugned orders is passed without giving any opportunity of hearing to petitioner, the impugned order dated 22.02.2019 is patently illegal, arbitrary and uncalled for, therefore, the same is hereby set aside/quashed.

In case, respondents believe that case of petitioner falls within the exception of Rafiq Masih case (supra) or that her salary was wrongly paid in excess and need for refixation for future payment is required, they may pass fresh order only after giving a notice and proper opportunity of hearing to petitioner.

Such a notice may be given by respondents, if so required, to the petitioner within a period of six weeks from the date of production of certified copy of this order and the entire process shall also be completed within a further period of two months from the date of issuance of notice. In case such a notice is not issued to petitioner within six weeks, respondents shall also pay the amount already deducted from the petitioner under the impugned order.

With the aforesaid, present writ petition is allowed."

4. Sri Trivedi has drawn attention of this Court towards paragraphs no.7 & 8 of the affidavit of compliance indicating therein that the order of the writ court has been complied with in its letter and spirit inasmuch as a sum of Rs.10,09,487/-, which was withheld from the retiral dues of the petitioner, has been returned to the petitioner. For the convenience paragraphs no.7 & 8 of the affidavit of compliance are being reproduced herein below:-

"7. That it is submitted that in compliance of order dated 22.02.2023 passed by the Hon'ble Writ Court in Writ Petition No. 1141 of 2020 filed by the petitioner, vide office order No. 4885/संश्लो-2/1-सं/ 14(1543)/2020 dated 07.11.2023, order has been issued regarding the release of the amount of Rs. 10,09,487/- withheld out of the retiral dues of the petitioner. Subsequently, vide letter No. 6557/ संश्लो-1/एक-का(8) 1 (6621) dated 16 11 2023 and letter No. 6656/संश्लो-1/एक-का(8)1 (6621) dated 22.11.2023, the order has been issued to the Joint Director, Treasury and Pension, Lucknow to release withheld amount in favour of the petitioner. True photostat copies of the office order dated 07.11.2023, letter dated 16.11.2023 and letter dated 22.11.2023 are being annexed herewith as Annexure No. 1, 2 & 3 to this Affidavit respectively.

8. That it is further submitted that the amount of Rs. 10,09,487/- withheld out of the retiral dues of the petitioner has been paid on 29.11.2023 through token No. 6023447313 and U.T.R. No. RBI3342314226291 of the Treasury. As proceedings for releasing the withheld amount has been done, thus, any action is not remained to be taken in the present matter at this level. A True photostat copy of the papers showing that the payment has been made to the petitioner is being annexed herewith as Annexure No. 4 to this Affidavit."

5. On being confronted the learned State Counsel as to whether any notice has been issued to the petitioner for verification of the fact as to whether any excess amount has been paid to the petitioner wrongly, Sri Trivedi has stated that he has got no information to that effect.

6. Therefore, it is clear that the aforesaid notice could have been issued against the petitioner within a period of six weeks and decision, if any, could have been taken within a further period of two months as about nine months' period has passed w.e.f. the order of the writ court dated 22.02.2023 so it appears that the competent authority has not opted to prefer a notice to the petitioner.

7. However, learned counsel for the petitioner has stated that the amount so refunded to the petitioner is not an appropriate amount, therefore, he may be given some time to file objection on that.

8. Having heard learned counsel for the parties and having perused the material available on record as well as the contents of affidavit of compliance, *prima facie*, I find that the order of the writ court has been complied with in its letter and spirit, therefore, there is no purpose to keep this contempt petition pending any longer.

9. Accordingly, the present contempt petition is **dismissed**.

10. Notice is discharged.

11. However, it is always open for the petitioner to raise her claim in respect of calculation of the amount, which was withheld by the authorities vide impugned order dated 22.02.2019 before the competent authority/ court of law inasmuch as the aforesaid calculation dispute may not be adjudicated by the Contempt Court as the same may be adjudicated firstly by the competent authority and if said grievance is remain unredressed, the same may be redressed by the competent court of law.

[Rajesh Singh Chauhan,J.]

Order Date :- 30.11.2023

RBS/-