

Court No. - 20

Case :- WRIT - A No. - 6317 of 2023

Petitioner :- Yogendra Prasad Alias Yougendra Prasad

Respondent :- State Of U.P. Thru. Addl. Secy. Home Govt. Civil Sectt.
Lko And 4 Others

Counsel for Petitioner :- Sanjay Kumar Rao, Kanhaiya Lal Sharma

Counsel for Respondent :- C.S.C.

Hon'ble Manish Mathur, J.

1. Heard learned counsel for petitioner and learned State Counsel for opposite parties.
2. Petition has been filed challenging amendment to pension payment order of petitioner and other order whereby pension of petitioner has been re-fixed and recovery of Rs.1,32,463/- (Rupee One Lakh Thirty Two Thousand Four Hundred Sixty Three) has been made from pensionary benefits.
3. In pursuance of directions issued earlier, short counter affidavit has been filed today in Court on behalf of opposite parties which is taken on record.
4. Short counter affidavit has brought on record the fact that recovery orders have been passed against petitioner in pursuance of directions issued by this Court in ***Writ A No.5238 of 2022, Ram Gulam versus State of U.P. & Ors.*** in which general directions were issued to the department for effecting recovery regarding salary and other benefits which have been erroneously granted to an employee. The short counter affidavit also indicates that vide order dated 29.11.2022, the Police Head Quarter constituted a Committee regarding revision of salary of petitioner keeping in view the date of retirement of petitioner being 31.03.2023. Documents were thereafter sent to the Finance Controller who vide order dated 02.03.2023 amended salary of petitioner indicating excess payment of salary and emolument having been made to petitioner. It has also been indicated that subsequently vide order dated 24.03.2023, the amount of Rs.1,32,463/- (Rupee One Lakh Thirty Two Thousand Four Hundred Sixty Three) was liable to be recovered from petitioner in view of payments made in excess and the same was also deducted from salary/ pension dues of petitioner. The short counter affidavit also indicates the fact that incorrect fixation of salary was earlier done on 08.04.2013 due to which excess payment was made to him. In paragraph 7 of the short counter affidavit, it has been indicated that petitioner had earlier given his undertaking for recovery of excess

payment made.

5. A perusal of orders brought on record by means of short counter affidavit as well as the averments made therein make quite evident that alleged incorrect fixation of pay of petitioner was effected on 08.04.2013, the recovery of which was sought to be made in 2023. It is also evident that prior to deduction of such amounts, no notice or opportunity of hearing was provided to petitioner which is against the dictum of Hon'ble the Supreme Court in ***State of Punjab & others v. Rafiq Masih (White Washer) & others*** reported in ***(2015) 4 SCC 334***.

6. Considering aforesaid facts, exercising extra ordinary power under Article 226 of the Constitution of India in its equitable jurisdiction, all such recovery and approval/ sanctioning order pertaining to recovery being made from petitioner are hereby quashed by issuance of a writ in nature of Certiorari granting liberty to opposite parties to pass fresh order but only after issuing a show cause notice to petitioner and affording him an opportunity of hearing. The aspect of petitioner being covered under exception indicated in judgment rendered in the case of ***Rafiq Masih*** (supra) shall also be considered by authority concerned.

7. The final decision shall be taken by the authority concerned within a period of six weeks from the date when petitioner is last required to submit his reply.

8. Resultantly, the petition succeeds and is **allowed**. The parties to bear their own costs.

Order Date :- 21.11.2023

Subodh/-