

Court No. - 20

Case :- WRIT - A No. - 7900 of 2023

Petitioner :- Chhote Lal Gautam

Respondent :- State Of U.P. Thru. Addl. Chief Secy. Irrigation And Water Resources, Lko. And 5 Others

Counsel for Petitioner :- Avinash Tiwari

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 orders dated 26.07.2023 and 21.08.2023 whereby recovery has been made from salary of petitioner on the allegation of incorrect fixation of pay-scale of petitioner.
3. It has been submitted that petitioner was in fact provided the correct pay-scale in terms of extant Government Orders with effect from 04.10.2001, recovery of which has been sought to be effected in year 2023. It has been further submitted that earlier show cause notice had been issued to petitioner to which he has submitted reply dated 12.06.2017, a fact which has been admitted in impugned order itself. However, it is submitted that aforesaid reply has not been considered by opposite parties prior to passing of impugned orders.
4. Learned State Counsel has refuted submissions advanced by learned counsel for petitioner with submission that since earlier fixation of pay-scale of petitioner was against the relevant rules, recovery has been initiated from petitioner after affording opportunity of hearing to him.
5. Upon consideration of submissions advanced by learned counsel for the parties and perusal of material on record, it is evident that although impugned orders refer to reply submitted

by petitioner but there is absolutely no consideration of the same. Recovery has been sought to be made for the benefits which were provided to petitioner with effect from 04.10.2001 and therefore 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 would also require consideration.

6. However, in view of fact that impugned orders have been passed without considering reply submitted by petitioner, the same is quashed by issuance of a writ in nature of Certiorari granting liberty to opposite parties to pass fresh orders in accordance with law but only after considering reply submitted by petitioner and affording him opportunity of hearing. . The authorities concerned shall also keep in mind the law enunciated by Hon'ble the Supreme Court in **State of Punjab & others v. Rafiq Masih** (supra) in case the same is applicable.

7. Resultantly, the petition succeeds and is **allowed** at the admission stage itself. The parties to bear their own costs.

Order Date :- 12.10.2023

kvg/-