

Court No. - 20

Case :- WRIT - A No. - 8754 of 2023

Petitioner :- Avadh Kishore Shukla

Respondent :- State Of U.P. Thru. Prin. Secy. Sinchai And Jal Sansadhan Deptt., Lko. And 2 Others

Counsel for Petitioner :- Shesh Ram Mishra

Counsel for Respondent :- C.S.C.,Anurag Tripathi

Hon'ble Manish Mathur,J.

1. Heard learned counsel for petitioner and learned State Counsel for opposite parties 1 and 3 and Mr. Anurag Tripathi, learned counsel for opposite party no.2.
2. At the very outset, learned counsel for petitioner on the basis of instructions has submitted that petitioner is challenging only recovery which has been effected in pursuance of impugned orders and does not press this petition with regard to re-fixation of pay-scale.
3. Petition has been filed challenging orders dated 23.08.2022 and 30.09.2022 whereby re-fixation of petitioner's pay-scale has been effected with recovery being directed against him.
4. It has been submitted that petitioner superannuated from service on 31.07.2019 from a Class III post whereafter the impugned order has been passed without any show cause notice or even affording any opportunity of hearing.
5. It has been submitted that petitioner's case is fully covered by decision of Hon'ble Supreme Court in **State of Punjab & others v. Rafiq Masih (White Washer) & others** reported in (2015) 4 SCC 334 and therefore recovery which has already been made from petitioner in pursuance of impugned orders is against the dictum of Hon'ble the Supreme Court indicated herein above.

6. Learned State Counsel appearing on behalf of opposite parties has refuted submissions advanced by learned counsel for petitioner with submission that re-fixation of pay-scale was effected upon coming to know the fact that incorrect grade pay had been provided to petitioner and therefore correction has been made with recovery being effected thereupon.

7. Upon consideration of submissions advanced by learned counsel for the parties and perusal of material on record, particularly the impugned orders, it is evident that prior to re-fixation of pay-scale and issuance of directions for recovery to be effected from pensionary benefits of petitioner, no show cause notice or opportunity of hearing was provided to petitioner. The impugned orders clearly take away a right vested in petitioner in absolutely casual and cursory manner. The aspect of recovery being effected from retiral benefits has already been dealt with by Hon'ble the Supreme Court in **State of Punjab & others v. Rafiq Masih**(supra) in the following manner:-

"2. Another essential factual component in this bunch of cases is, that the respondent-employees were not guilty of furnishing any incorrect information, which had led the concerned competent authority, to commit the mistake of making the higher payment to the employees. The payment of higher dues to the private respondents, in all these cases, was not on account of any misrepresentation made by them, nor was it on account of any fraud committed by them. Any participation of the private respondents, in the mistake committed by the employer, in extending the undeserved monetary benefits to the respondent-employees, is totally ruled out. It would therefore not be incorrect to record, that the private respondents, were as innocent as their employers, in the wrongful determination of their inflated emoluments.

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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."

8. Upon applicability of aforesaid judgment in present facts and circumstances of the case, it is evident that petitioner superannuated from a Class III post. There is no mention in impugned orders that incorrect fixation of pay scale and benefits granted to petitioner were as a result of fraud or misrepresentation on part of petitioner and therefore the dictum of Hon'ble the Supreme Court in **State of Punjab & others v. Rafiq Masih**(supra) is clearly applicable in the present case.

9. In view of aforesaid, impugned orders dated 23.08.2022 and 30.09.2022 are hereby quashed by issuance of a writ in nature of Certiorari only to the extent where it directs recovery to be effected from petitioner's post-retiral benefits. Opposite parties 2 and 3 collectively are directed to refund the amount so recovered from petitioner back to him within a period of three weeks from the date a certified copy of this order is produced before the opposite party.

10. Resultantly, the petition succeeds and is **allowed** at the admission stage itself. There shall be no order as to costs.

Order Date :- 8.11.2023

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