

Court No. - 20

Case :- WRIT - A No. - 8758 of 2023

Petitioner :- Rajendra Prasad Tiwari

Respondent :- State Of U.P. Thru. Prin. Secy. Home, Lucknow And 3 Others

Counsel for Petitioner :- Ashutosh Mishra,Alok Kumar Shukla

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 08.12.2022, 30.01.2023, 09.02.2023 and 16.03.2023 whereby certain recovery has been effected from post-retiral benefits of petitioner on ground that a wrong pay-scale was made admissible to petitioner earlier.
3. It has been submitted that petitioner superannuated from service on 31.10.2022 from post of Sub-Inspector(M) and it is only thereafter that impugned orders have been passed. It is submitted that a perusal of impugned orders will make it evident that prior to passing of such orders neither any notice nor any opportunity of hearing was provided to petitioner. It is submitted that even otherwise the impugned orders are against the dictum in **State of Punjab & others v. Rafiq Masih (White Washer) & others** reported in (2015) 4 SCC 334 inasmuch as such recovery could not have been effected after superannuation of petitioner since he was on a Class III post and the orders do not indicate petitioner's role in the alleged incorrect fixation of pay-scale.
4. Learned State Counsel appearing on behalf of opposite parties has refuted submissions advanced by learned counsel for petitioner with submission that impugned orders make it quite

evident that recovery has been sought from post-retiral benefits of petitioner after correcting and re-fixation of his pay-scale.

5. 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 recovery from post-retiral benefits of petitioner, neither any notice nor any opportunity of hearing has been provided to him him.

6. The aspect of petitioner's case being covered by dictum of Hon'ble the Supreme Court in **State of Punjab & others v. Rafiq Masih**(supra) is also to be considered.

7. In view of aforesaid, impugned orders dated 08.12.2022, 30.01.2023, 09.02.2023 and 16.03.2023 are hereby quashed by issuance of a writ in nature of Certiorari at the admission stage itself granting liberty to opposite parties to pass fresh orders only after affording opportunity of hearing to petitioner and considering the same. The concerned authority shall also take into account the judgment rendered by Hon'ble the Supreme Court in **State of Punjab & others v. Rafiq Masih**(supra) while passing the appropriate orders.

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

9. Recovery so made against petitioner shall abide by final decision of the competent authority.

Order Date :- 8.11.2023

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