Court No. - 20

Case :- WRIT - A No. - 8879 of 2023

Petitioner :- Ram Babu Verma
Respondent :- State Of U.P. Thru. Addl. Chief Secy. Home Lko And 3 Others
Counsel for Petitioner :- Krishna Kumar Singh
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 order dated 22.08.2022 whereby recovery has been effected from post retiral benefits of petitioner.

3. It has been submitted that petitioner has superannuated on 28.02.2022 from the post of Head Constable whereafter aforesaid recovery has been effected by means of impugned order without issuing any show cause notice or affording any opportunity of hearing to him. It is submitted that the impugned order itself indicates that there is no departmental inquiry pending against him as on the date of superannuation.

4. Learned counsel has placed reliance on judgment rendered by Hon'ble Supreme Court in the case of **State of Punjab and Others versus Rafiq Masih and Others (2015) 4 SCC 334** to submit that even otherwise recovery could not have been effected from petitioner who superannuated from a Class- III post.

5. Considering the aforesaid submissions and after perusal of material on record, it is quite evident that impugned order has been passed directing recovery to be effected from post retiral benefits of petitioner while indicating that there is no departmental inquiry pending against him as on the date of superannuation. It is also evident that prior to issuance of impugned order, no opportunity of hearing has been afforded to petitioner.

6. Considering the aforesaid facts, impugned order dated 22.08.2022 is hereby quashed by issuance of a writ in the nature of certiorari granting liberty to opposite parties to passed fresh orders but only after affording opportunity of hearing to

petitioner and adverting to reply submitted by him. Such proceedings shall be concluded within a period of eight weeks from the date a certified copy of this order is produced before the concerned authority subject to co-operation by the petitioner. The aspect of refund of withheld post retiral benefits shall abide by the final decision.

7. In view of aforesaid, petition succeeds and is **allowed** at the admission stage itself. Parties to bear their own costs.

Order Date :- 9.11.2023
Satish

Digitally signed by :-
SATISH KUMAR BHARATI
High Court of Judicature at Allahabad,
Lucknow Bench