

Court No. - 20

Case :- WRIT - A No. - 8887 of 2023

Petitioner :- Shiv Sharan

Respondent :- State Of U.P. Thru. Prin. Secy./Addl. Chief Secy. Lko And 2 Others

Counsel for Petitioner :- Jahan Singh Yadav, Mohammad Tauseef Siddiqui, Shiv Pratap 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. Rejoinder affidavit filed today on behalf of petitioner is taken on record.
3. Petition has been filed challenging order dated 30.06.2022 directing recovery of an amount of Rs.1,23,416/- from post-retiral benefits of petitioner. A further writ seeking quashing of any order pertaining to aforesaid recovery made from Earned Leave encashment as indicated in the Treasury Voucher dated 16.11.2022 has also been made along with prayer of refund of the recovered amount.
4. It has been submitted that petitioner superannuated from service on 31.05.2021 on the post of Junior Clerk whereafter the impugned recovery has been directed more than one year thereafter. It has been submitted that prior to making recovery of said amount, no show cause notice or any opportunity of hearing was afforded to petitioner. Learned counsel has further submitted that even the order dated 30.06.2022 was not provided to him. He has placed reliance on decision rendered by Hon'ble the Supreme Court in **State of Punjab & others v. Rafiq Masih (White Washer) & others** reported in (2015) 4 SCC 334.

5. Learned State Counsel appearing on behalf of opposite parties on the basis of counter affidavit has refuted the submissions advanced by learned counsel for petitioner with submission that during preparation of pension papers pertaining to petitioner, the entries made in his service book were examined and it was found that petitioner has been provided excess salary from 02.11.2009 which was sanctioned by petitioner himself when he was working as Clerk in the relevant office. It is submitted that in pursuance thereof, petitioner was apprised with regard to said fact and vide letter dated 20.10.2022, he gave his consent for making recovery of excess payment made to him. It is submitted that therefore the order dated 30.06.2022 was passed directing such recovery.

6. Upon consideration of submissions advanced by learned counsel for the parties and perusal of material on record, it is admitted that recovery has been effected from post-retiral benefits of petitioner in pursuance of letter dated 30.06.2022 issued by the Directorate. Despite time having been granted, aforesaid letter has not been brought on record till date. However, a perusal of the counter affidavit as well as documents on record make it quite evident that prior to making recovery from post-retiral benefits of petitioner, he was neither given any opportunity of hearing nor was any reply considered. The opposite parties have only relied upon a letter dated 20.10.2022 allegedly given by petitioner giving his consent for making recovery of the excess payment.

7. Since recovery effected against petitioner is on a stigmatic ground that the same was sanctioned by petitioner himself when he was posted as a Clerk in the concerned Department, in the considered opinion of this Court, an opportunity of hearing was required to be provided to petitioner prior to effecting such

recovery. Such a course of action not having been followed by opposite parties clearly vitiates the impugned order.

8. In view of aforesaid, impugned recovery order dated 30.06.2022 is hereby quashed by issuance of a writ in nature of Certiorari granting liberty to opposite parties to pass fresh orders with regard thereto but only after affording opportunity of hearing to petitioner and considering his reply. Such recovery is not to be effected only on the basis of an alleged admission by petitioner. Fresh orders with regard thereto shall be passed by opposite parties within a maximum period of two months from the date a certified copy of this order is produced before authority concerned.

9. Consequently, the petition succeeds and is **allowed**. There shall be no order as to costs.

Order Date :- 18.12.2023

kvg/-