

Court No. - 8

Case :- WRIT - A No. - 9361 of 2023

Petitioner :- Nadeem Zafar Inspector Pno. 972350165

Respondent :- State Of U.P. Thru. Addl. Chief Secy. Home Deptt. Lko. And 7 Others

Counsel for Petitioner :- Amjad Siddiqui

Counsel for Respondent :- C.S.C.

Hon'ble Pankaj Bhatia,J.

1. Heard learned Counsel for the petitioner and learned Standing Counsel.

2. The present petition has been filed challenging an order dated 18.07.2023 whereby the amount paid to petitioner in excess of his entitlement was directed to be recovered, the salary of the petitioner was modified with retrospective effect and the recovery allegedly paid in excess is sought to be recovered.

3. The contention of the Counsel for the petitioner is that the said action is clearly contrary to the law laid down in the case of ***State of Punjab vs Rafiq Masih; 2015 (4) SCC 334***.

4. The Counsel for the petitioner also relies upon the orders passed by this Court in the case of ***Shri Krishna Chandra Singh vs State of U.P. and others (Writ-A No.2892 of 2023)***, decided 26.05.2023.

5. Considering the fact that the order impugned is clearly contrary to the law laid down in the case of ***Rafiq Masih (Supra)***, the impugned order cannot be sustained, insofar as it pertains to the recovery of the alleged amount paid in excess.

6. As regards the modification of the salary of the petitioner, it is clear that the same has been done without giving an opportunity of hearing to the petitioner, as such, with regard to the re-fixation of salary, the present petition is ***disposed off*** permitting the petitioner to file an appropriate application for recalling of the order, insofar as it relates to re-fixation of salary with retrospective effect. In case, such an application is filed along with a copy of this order, the respondent no.3 shall pass a fresh order after affording an opportunity of hearing.

7. It is clarified that even if, it is found that the petitioner has been paid salary in excess, the same shall not be recovered in

view of the law laid down in the case of *Rafiq Masih (Supra)*.

Order Date :- 8.12.2023

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