

Court No. - 20

Case :- WRIT - A No. - 9744 of 2023

Petitioner :- Durga Prasad Singh

Respondent :- State Of U.P. Thru. Addl. Chief Secy. Deptt. Of Home Civil Sectt. Lko And 3 Others

Counsel for Petitioner :- M.P. Raju

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 6.9.2023 and 8.9.2023 whereby recovery has been directed from service emoluments of petitioner on account of incorrect fixation of pay scale.

3. It has been submitted that a perusal of impugned order will make it evident that petitioner's alleged fixation of incorrect pay scale has been indicated without issuing any notice to petitioner or providing any opportunity of hearing to him. It is submitted that aforesaid grant of service benefits was done in the year 2007, the recovery of which is being sought to be made in the year 2023 and therefore is against the law enunciated by Supreme Court in the case of State of Punjab and Others versus Rafiq Masih and Others (2015) 4SCC 334.

4. Upon consideration submission advanced by learned counsel for parties and perusal of material on record, particularly the impugned order, it is quite evident that recovery has been sought from service emoluments of petitioner without issuance of any show cause notice for affording any opportunity of hearing to him. The aspect of whether recovery can be effected from petitioner in view of judgment rendered by Hon'ble Supreme Court in the case of Rafiq Masih (supra) is also to be considered.

5. In view of aforesaid, the impugned orders dated 6.9.2023 and 8.9.2023 are hereby quashed by issuance of a writ in the nature of certiorari granting liberty to opposite parties to pass fresh orders but only after affording opportunity of hearing to petitioner and considering his reply. The authority concerned is also

required to apply its mind as to whether such recovery can be effected in the light of judgment in the case of RafiqMasih (supra).

6. Resultantly, the petition succeeds and is allowed at the admission stage itself. Parties to bear their own cost.

Order Date :- 19.12.2023

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