

Court No. - 20

Case :- WRIT - A No. - 10028 of 2023

Petitioner :- Mohd. Zafar Siddqui

Respondent :- State Of U.P. Thru. Prin. Secy. Irrigation Deptt. Lko And 2 Others

Counsel for Petitioner :- Avnish Kumar Singh

Counsel for Respondent :- C.S.C.

Hon'ble Manish Mathur,J.

1. Heard learned counsel for petitioner and learned State Counsel appearing on behalf of opposite parties.
2. Petition has been filed challenging notice dated 05.12.2023 whereby petitioner has been directed to submit his reply with regard to audit objections being taken against his pensionary benefits and seeking recovery of excess payment made to him.
3. Mr. Diwakar Singh, learned State counsel has raised a preliminary objection regarding maintainability of this petition in view of the fact that only a show cause notice has been issued to petitioner which is not alleged to be without jurisdiction and therefore petition is premature.
4. Learned counsel for petitioner refuting the same submits that in effect the opposite parties had clearly made up their mind of imposing such deductions from petitioner's pensionary benefits as would be evident from the impugned order itself and therefore the petition would be maintainable. He placed reliance on judgment rendered by Hon'ble the Supreme Court in the cases of ***ORYX Fisheries Private Limited*** versus ***Union of India & Ors.*** reported in ***(2010)13 Supreme Court Cases 427*** and in ***State of Punjab & Ors.*** versus ***Rafiq Masih (White Washer) & Ors.*** reported in ***(2015) 4 SCC 334***.
5. Upon consideration of submissions advanced by learned counsel for parties and perusal of material available on record, it appears that opposite parties have only disclosed their prima facie satisfaction regarding excess payment having been made to petitioner for which recovery is proposed and for that purpose they have merely disclosed their mind and required petitioner to submit a reply thereto. Notice as indicated from the wordings therein does not indicate any definitive mind having been made up by opposite parties at all and therefore the judgment rendered by Hon'ble the Supreme Court in the case of ***ORYX Fisheries Private Limited*** (supra), in the considered opinion of this Court, would be inapplicable since it pertained

not only to quasi judicial proceedings but also on the ground that the concerned authority had already made up its mind with regard to guilt of delinquent employee.

6. In view of aforesaid, petitioner is granted liberty to file a reply to the notice dated 05.12.2023 within a period of 15 days' from today, which shall be considered and decided by opposite parties expeditiously.

7. With the aforesaid observation, petition stands **disposed of**.

Order Date :- 22.12.2023

Subodh/-