

Court No. - 18

Case :- WRIT - A No. - 3326 of 2013

Petitioner :- Bhagwan Das Dubey

Respondent :- State Of U.P. Thru Secy.Revenue Deptt.Civil
Sectt.Lko.And Ors.

Counsel for Petitioner :- Rakesh Pathak,Vijay Pathak

Counsel for Respondent :- C.S.C.

Hon'ble Manish Kumar,J.

1. Heard learned counsel for the parties and perused the record.
2. The present writ petition has been preferred for quashing of the impugned order dated 16.03.2013 passed by the Respondent No.3 Chief Treasury Officer, Faizabad whereby an order for recovery of Rs.55212/- has been passed, which is to be recovered in installments of Rs.794/ per month and with a further prayer to direct the respondents not to recover any amount from the petitioner and to fix the pension of the petitioner on the basis of the pay scale applicable treating him in continuous service upto age of 60 years.
3. Learned counsel for the petitioner has submitted that the petitioner was initially appointed on the post of peon and his services were confirmed. While he was working and discharging his duties he had been compulsorily retired from service by order dated 12.05.1995.
4. It is further submitted that aggrieved by the said order the petitioner had made a representation before the Board of Revenue and the order of compulsory retirement was set aside by the Board of Revenue by its order dated 8.9.1997 with a direction that the petitioner should be reinstated in service.
5. It is further submitted that the petitioner had given his joining at 9.9.1997 but the Commissioner Faizabad Region had not permitted him to join and the matter was referred to the State Government on 19.08.1998 for the further directions. When no decision was taken the petitioner had approached this Court by filing Service Single No.4500/1998. The writ petition was

disposed of with a direction to the petitioner to move a representation to the Respondent No.3 for consequential benefits for the period of 12.05.1995 till the date of his retirement in the year 2003 but this Court had denied the entitlement for any salary for the above mentioned period on the principle of 'no work no pay'.

6. It is further submitted that in pursuance of the judgment and order dated 27.3.2012 the petitioner had made a representation dated 20.04.2012 to the Commissioner, Faizabad for grant of consequential benefits for the period 1995 till his retirement in the year 2003 and to redetermine the pension of the petitioner accordingly. In place of taking any decision on the representation of the petitioner, the Respondent No.3 had passed the impugned order of recovery against the petitioner without issuing any show cause notice or providing any opportunity of hearing to the petitioner, hence the petitioner has filed the present writ petition in which an interim order has been granted by this Court staying the recovery against the petitioner.

7. It is further submitted that the case of the petitioner is squarely covered by the judgement of Hon'ble the Supreme Court in the case of '**State of Punjab and others Vs. Rafiq Masih (White Washer) and others, 2015 (4) SCC 334**' **Sushil Kumar Singhal vs. Pramukh Sachiv Irrigation Department & Ors** passed in **Civil Appeal No.5262 of 2008 reported in MANU/SC/0330/2014**, in which the recovery is not permissible from Class IV Employee and specially when there is no misrepresentation or fault on the part of the petitioner for making alleged excess payment as in the impugned order.

8. On the other hand learned Standing Counsel has submitted that a detailed order has been passed by the Respondent No.3 giving calculation of excess payment to the petitioner, so there is no illegality in the order impugned passed by the Respondent No.3 but unable to distinguish the applicability of the judgement of **State of Punjab and others vs. Rafiq Masih (supra)** and **Sushil Kumar Singhal vs. Pramukh Sachiv Irrigation Department & Ors (Supra)**.

9. It is also not disputed by the learned Standing Counsel that the representation of the petitioner dated 20.04.2012 in the light

of the order / judgement of this Court dated 27.03.2012 has not been decided till date and also unable to dispute that the consequential benefits in compliance of the order of this Court has not been granted in the impugned order.

10. According to the petitioner, such recovery cannot be made as per the law laid down by the Hon'ble Supreme Court in the case of '**State of Punjab and others Vs. Rafiq Masih (White Washer) and others, 2015 (4) SCC 334**', paragraph-18 of which provides:-

"18. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."

11. After hearing learned counsel for the parties, going through the record and from perusal of the impugned order it is found that the impugned order has been passed without providing any opportunity of hearing to the petitioner. It is also not the case that there was any misrepresentation or fault on the part of the

petitioner in wrong fixation / determination of his salary. So keeping in view the aforesaid facts, the same cannot be recovered from the petitioner.

12. The calculation made in the impugned order dated 16.03.2013 for recovery of excess payment from the petitioner which he was getting cannot be possible at any stretch of imagination for the reason if the consequential benefits as directed by this court in its judgement dated 27.03.2012 the pension would have been increased instead of making any deduction on the ground of excess payment, meaning hereby, the Respondent No.3 had not complied the direction of this Court while calculating the pension of the petitioner keeping in mind the consequential benefits for the period from 1995 till the date of his retirement in the year 2003.

13. The case of the petitioner is squarely covered by the decision/law laid down by the Hon'ble Supreme Court in the case of *State of Punjab and others vs. Rafiq Masih (supra)*, particularly by condition no. (i) & (ii) of the Hon'ble Supreme Court quoted in the earlier paragraph and **Sushil Kumar Singhal vs. Pramukh Sachiv Irrigation Department & Ors (Supra)** and **State of U.P through Prin. Secretary, Agriculture Deptt. & Ors vs. Pradeep Kumar Sharma (Supra)**, which the learned State Counsel has been unable to distinguish.

14. Accordingly, the writ petition is allowed.

15. The impugned orders dated 16.03.2013 are hereby quashed.

16. Respondent nos. 2 and 3 i.e. Commissioner Faizabad Division, Faizabad and Chief Treasury Officer, Faizabad respectively are directed to consider the case petitioner for consequential benefits as directed by this Court for the period from 1995 till his retirement in the year 2003 and refix the pension within a period of 3 months from the date certified copy of this order is served.

Order Date :- 7.3.2024

S. Kumar