Court No. - 6

Case :- WRIT - A No. - 6491 of 2024

Petitioner :- Ram Briksha Yadav, Pno No. 822121512
Respondent :- State Of U.P. Thru. Addl. Chief Secy. Home Deptt. Lko And 2 Others
Counsel for Petitioner :- Ram Charitra Pandey,Shashank Pandey
Counsel for Respondent :- C.S.C.

Hon'ble Alok Mathur,J.

1. Heard Shri Ram Charitra Pandey, learned counsel for petitioner, learned Standing Counsel for the State and perused the material available on record.

2. With the consent of the parties, this petition is being disposed of at the admission stage.

3. By means of the present writ petition the petitioner has challenged the order dated 18.06.2024 passed by the Superintendent of Police, Rampur. By means of the impugned order dated 18.06.2024, the salary of the petitioner has been re-fixed and the Assured Career Progression granted to the petitioner on completion of the 24 years of service of Rs.4200/- was found to be incorrectly fixed and accordingly deduction has been made from the salary of the petitioner since 20.12.2006 till his superannuation amounting to Rs.4,42,947/-.

4. It has been submitted by learned counsel for petitioner that the petitioner was lastly serving on the post of Constable in Civil Police. He superannuated from service on 31.07.2023. After the superannuation, all post retiral dues were paid and he is receiving his pension as fixed by issuance of the pension payment order. He further submits that without granting any opportunity to the petitioner by means of the impugned order,

his salary from 2007 onward have been re-fixed and recovery has been sought to be made from the post retiral dues of the petitioner. It is further submitted by learned counsel for petitioner that this aspect of the matter has been considered by the Supreme Court in the case of ***State of Punjab and others Vs. Rafiq Masih (White Washer) and others*** reported in ***(2015) 4 SCC 334*** where guidelines with regard to the recovery was laid down by the Supreme Court in paragraph no. 18 of the judgment, which reads as under:-

"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."

5. He further submits that the petitioner falls in Class-III posts and recovery has been made for payment made to the petitioner since 2007, which is more than five years before the date of his retirement. He further submits that the petitioner was never a

party in the pay-fixation, which is the exercise conducted by the respondents themselves after looking to the service record of the petitioner. There is no provision for participation of an employee in fixation of his pay and it cannot be said that the petitioner in any case was responsible for any fraud or collusion with regard to fixation of his pay. He submits that in light of the aforesaid judgment, no recovery can be made from the post retiral dues of the petitioner, and accordingly, the impugned order is illegal and arbitrary. He further submits that no opportunity of hearing was given to the petitioner before denying the benefit of the grade pay as granted to him on successful completion of 24 years of service and the purported recovery for the excess amount so paid is also illegal.

6. Learned Standing Counsel on the other hand has also opposed the writ petition and submitted that the petitioner has approached this Court after a substantial period of time after passing of the said impugned order.

7. Learned Standing Counsel submitted that the genesis of the case of ***Rafiq Masih*** was passed in exercise of powers under Article 142 of the Constitution of India and would not be a binding precedent.

8. Considering the argument raised by the petitioner that the ratio in the case of ***State of Punjab and others Vs. Rafiq Masih*** would not bind this Court. This Court is of the considered view that any direction under Article 142 of the Constitution of India has to pertain to the fact of the very case and as discussed by the Supreme Court in the case of ***State of Punjab and others Vs. Rafiq Masih (White Washer) and others*** reported in ***(2014) 8 SCC 883***, the extraordinary powers under Article 142 of the Constitution of India are vested with the supreme court to pass equitable orders for meeting the “ends of complete justice”. It

gives effect to the realist approach of jurisprudence and gives preference to the justice oriented approach of equity over strict rigors of law. While exercising the said power, the Supreme Court can mould the relief in a particular case as per the circumstances of the case. However, Article 136 is more of a corrective provision that provides the highest court of the land with an amplitude of jurisdiction to settle the law of the land and build a Precedent for the future. The same is considered as a “Declaration of law” as per Article 141 of the Constitution of India.

9. The paragraph no. 12 of the aforesaid judgment is quoted below for ready reference:-

"12. Article 142 of the Constitution of India is supplementary in nature and cannot supplant the substantive provisions, though they are not limited by the substantive provisions in the statute. It is a power that gives preference to equity over law. It is a justice-oriented approach as against the strict rigours of the law. The directions issued by the Court can normally be categorised into one, in the nature of moulding of relief and the other, as the declaration of law. "Declaration of law" as contemplated in Article 141 of the Constitution: is the speech express or necessarily implied by the highest court of the land. This Court in India Vank v. ABS Marine Products (P) Ltd., Ram Pravesh Singh v. State of Bihar and in State of U.P. v. Neeraj Awasthi has expounded the principle and extolled the power of Article 142 of the Constitution of India to new heights by laying down that the directions issued under Article 142 do not constitute a bindin precedent unlike Article 141 of the Constitution of India. they are direction issued to do proper justice and exercise of such power, cannot be considered as law laid down by the Supreme Court under Article 141 of the Constitution of India. The Court has compartmentalised and differentiated the relief in the operative portion of the judgment by exercise of powers under Article 142 of the Constitution as against the law declared. The directions of the Court under Article 142 of the Constitution, while moulding the relief, that relax the application of law or exempt the case in hand from the rigour of the law in view of the peculiar facts and circumstances do not comprise the ratio decidendi and therefore, lose its basic premise of making it a binding precedent. This Court on the quivive has expended the horzons

of Article 142 of the Constitution by keeping it outside the purview of Article 141 of the Constitution and by declaring it a direction of the Court that changes its complexion with the peculiarity in the facts and circumstances of the case."

10. In light of the aforesaid decision of the Supreme Court once we see the direction issued in paragraph no. 18 in the case of ***State of Punjab and others Vs. Rafiq Masih (White Washer) and others*** reported in ***(2015) 4 SCC 334*** we find that the directions are general in nature and are not restricted to the facts of the case which are being decided by the Supreme Court.

11. In light of the above, this Court is of the considered view that the said direction of the Supreme Court have been passed in exercise of power under Article 136 of the Constitution of India rather than under Article 142 of the Constitution of India and consequently, are binding precedent.

12. Apart from the above, this Court further notices that Supreme Court itself has been following a verdict in the case of ***State of Punjab and others Vs. Rafiq Masih (White Washer) and others*** reported in ***(2015) 4 SCC 334***, inasmuch as where judgment has been followed by the Supreme Court in the case of ***Thomas Daniel Vs. State of Kerala and others in Civil Appeal No. 7115 of 2010 decided on 02.05.2022*** and also in the case of ***Jagdish Prasad Singh Vs. State of Bihar and others passed in Civil Appeal No(s) 1635 of 2013*** decided on 08.08.2023 where the Supreme Court has relied upon the judgment of ***State of Punjab and others Vs. Rafiq Masih (White Washer) and others*** reported in ***(2015) 4 SCC 334*** with approval. Accordingly, the said judgment is laid down binding precedent. Accordingly, it also applicable in the case of the petitioner.

13. In light of the above, this Court after examining the matter

is of the considered view that issue raised in the case of ***State of Punjab and others Vs. Rafiq Masih (White Washer) and others*** reported in ***(2015) 4 SCC 334*** squarely applies to the facts of the present case, the recovery which has been sought to be made is for a period 2007 and onwards and accordingly the salary of a government employee is vested right cannot be recovered by the respondents in the manner as has been done, even with regard to the re-fixation of the salary, the same cannot be done without affording any adequate opportunity to the government servant.

14. In light of the above, the writ petition is allowed. Accordingly, the impugned order dated 18.06.2024 passed by the Superintendent of Police, Rampur is set aside.

15. It is made clear that no recovery shall be made from the post retiral dues of the petitioner but liberty is granted to the respondents to refix the salary of the petitioner after giving due opportunity of hearing to him.

16. The recovery so already made shall be paid back to the petitioner expeditiously say within a period of six weeks from the date a certified copy of this order is produced before the authority concerned.

(Alok Mathur, J.)

Order Date :- 23.10.2024
Virendra

Digitally signed by :-
VIRENDRA KUMAR GUPTA
High Court of Judicature at Allahabad,
Lucknow Bench