

Court No. - 4

Case :- WRIT - A No. - 8973 of 2024

Petitioner :- Abha Rani Singh

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

Counsel for Petitioner :- Rakesh Kumar Singh

Counsel for Respondent :- C.S.C.

Hon'ble Rajesh Singh Chauhan,J.

1. Heard Sri Rakesh Kumar Singh, learned counsel for the petitioner and Sri Aditya Dwivedi, learned Standing Counsel for the State-opposite parties.

2. Sri Rakesh Kumar Singh has filed supplementary affidavit enclosing therewith copy of Government Order dated 16.01.2007 and the judgment of the Apex Court dated 17.04.2014 passed in re; **Sushil Kumar Singhal Vs. Pramukh Sachiv Irrigation Department and Others, (2014) 16 SCC 444**, the same is taken on record.

3. By means of this petition, the petitioner has prayed following main reliefs:-

"(i) To issue a writ, order or direction in the nature of Certiorari thereby quashing the Orders dated 20/8/2024 passed by the opposite party no. 4 as contained in Annexure Nos. 1 & 2 to this Writ Petition and may further be pleased to quash the letter dated 09/8/2024 issued by the opposite party no. 2, after summoning the same.

(ii) To issue a writ, order or direction in the nature of Mandamus thereby commanding and directing the opposite parties to refund the amount of Rs. 5,36,426/- which has been deducted from the gratuity of the petitioner, forthwith along with 7% interest.

(iii) To issue a writ, order or direction in the nature of Mandamus thereby commanding and directing the opposite parties to immediately release the Pension, Gratuity, General Insurance and Sanrashikaran to the petitioner, along with 7% interest."

4. The precise contention of learned counsel for the petitioner is that the petitioner retired on 30.06.2024 and after retirement, impugned orders dated 20.08.2024 have been issued against the petitioner indicating therein that the petitioner has been paid excess amount while providing him the benefit of pay scale with effect from 2014, therefore, the excess amount to the tune of Rs.5,36,426/- is directed to be recovered from the petitioner.

5. Learned counsel for the petitioner has submitted that the petitioner retired from the post of Senior Assistant which comes within the purview of Class-III post and no opportunity of hearing has been provided to the petitioner before issuing the aforesaid impugned orders dated 20.08.2024. Learned counsel has also stated that at the time of excess payment, no undertaking was received from the petitioner to the effect that if any excess amount is paid to the petitioner the same may be recovered.

6. Learned Standing Counsel has tried to defend the impugned orders, but he has submitted that there is no recital in impugned order that as to whether any opportunity of hearing has been afforded to petitioner or not or as to whether any undertaking has been received from the petitioner at the time of making excess payment.

7. Learned counsel for the petitioner has also submitted that in terms of Government Order dated 16.01.2007, which has been annexed as Annexure no.S.A-1 to the supplementary affidavit, wherein it has been categorically indicated that at the time of retirement or after the retirement, record of the employee of last 34 months may be examined, not beyond that, but in the present case, record of the petitioner is being examined from the year 2014 which is much beyond the period of 34 months.

8. Attention has also been drawn towards the judgment and order dated 17.04.2014 passed by the Apex Court in **Sushil Kumar Singhal Vs. Pramukh Sachiv Irrigation Department and Others, (2014) 16 SCC 444**, referring to paragraphs 7, 10 and 11, which reads as under:-

"7. Upon perusal of the aforestated G.O. and the submission made by the learned counsel appearing for the appellant, it is not in dispute that the appellant had retired on 31st December, 2003 and at the time of his retirement his salary was Rs.11,625/- and on the basis of the said salary his pension had been fixed as Rs.9000/-. Admittedly, if any mistake had been committed in pay fixation, the mistake had been committed in 1986, i.e. much prior to the retirement of the appellant and therefore, by virtue of the aforestated G.O. dated 16th January, 2007, neither any salary paid by mistake to the appellant could have been recovered nor pension of the appellant could have been reduced.

10. For the aforestated reasons, we quash the impugned judgment delivered by the High Court and direct the respondents not to recover any amount of salary which had been paid to the appellant in pursuance of some mistake committed in pay fixation in 1986. The amount of pension shall also not be reduced and the appellant shall be paid pension as fixed earlier at the time of his retirement. It is pertinent to note that the Government had framed such a policy under its G.O. dated 16th January, 2007 and therefore, the respondent authorities could not have taken a different view in the matter of refixing pension of the appellant.

11. *The submission made on behalf of the learned counsel appearing for the respondent that the appellant would be getting more amount than what he was entitled to cannot be accepted in view of the policy laid down by the Government in G.O. dated 16th January, 2007. If the Government feels that mistakes are committed very often, it would be open to the Government to change its policy but as far as the G.O. dated 16th January, 2007 is in force, the respondent-employer could not have passed any order for recovery of the excess salary paid to the appellant or for reducing pension of the appellant."*

9. The Apex Court has interpreted the purport and intent of Government Order dated 16.01.2007 and has observed that the respondent-employer could not have passed any order for recovery of excess salary paid to the appellant or for reducing the pension of the appellant beyond such period.

10. Learned counsel for the petitioner has also drawn attention of this Court towards the judgment and order dated 16.07.2024 passed by the Division Bench of this Court in **Writ-A No.3194 of 2022, State of U.P. and Others Vs. Suresh Kumar Tripathi**, whereby the judgment of the Apex Court in re; **Sushil Kumar Singhal** (supra) has been followed dismissing the writ petition filed by the State holding that if any recovery has been proposed or executed against the employee after his retirement or at the time of his retirement in derogation of the dictum of the Apex Court in re; **Sushil Kumar Singhal** (supra) and **State of Punjab and others v. Rafiq Masih (White Washer) and others, (2015) 4 SCC 334**, such recovery may not be permissible.

11. Having heard learned counsel for the parties and having perused the material available on record, I am of the considered opinion that the impugned recovery is in violation of Government Order dated 16.01.2007 (supra), which has been interpreted and affirmed by the Apex Court in re; **Sushil Kumar Singhal** (supra). The Apex Court in the case in re: **Rafiq Masih** (supra) has settled the legal proposition to the effect that no recovery in the name of excess payment would be undertaken from Class-III or Class-IV employees at the fag end of retirement and after the retirement then such recovery may not be executed from the petitioner, who retired from Class-III post. Therefore, the impugned orders are in utter disregard to the direction being issued by the Apex Court.

12. Accordingly, the instant writ petition is **allowed**.

13. The impugned orders dated 20.08.2024 passed by opposite party no. 4 i.e. Joint Director, Prosecution, Barabanki are hereby set aside/quashed.

14. The opposite parties are directed to refund the amount of Rs.5,36,426/- which has been recovered from the petitioner and make payment of all post retiral dues of the petitioner, if all the required formalities have been completed, within a period of six weeks from the date of receipt of certified copy of this order, failing which, the petitioner shall be entitled for the interest at the rate of 7% p.a. on the delayed payment.

15. No order as to the costs.

[Rajesh Singh Chauhan,J.]

Order Date :- 4.10.2024
RBS/-