

Court No. - 18

Case :- WRIT - A No. - 8069 of 2022

Petitioner :- Rakesh Kumar Shukla

Respondent :- State Of U.P. Thru. Prin. Secy. Deptt. Of
Ayush Anubhag-I, Lko. And 4 Others

Counsel for Petitioner :- Pradeep Kumar Shukla

Counsel for Respondent :- C.S.C.

Hon'ble Manish Kumar,J.

1. The present writ petition has been preferred for quashing of the impugned order dated 08.08.2022 passed by respondent no. 5 and consequently, pension payment order of the petitioner which relates to withholding of amount of Rs. 2,62,000/- from the post-retiral dues i.e. gratuity of the petitioner and to further direct the respondent no. 3 to release the amount of Rs. 2,62,000/- along with interest.

2. Learned counsel for petitioner had retired from the post of Chief Pharmacist on 31.03.2022. It is further submitted that the order dated 13.09.2021 and 05.03.2021 were passed by the respondents whereby payment of excess salary said to be paid to the petitioner was sought to be recovered from him. Against the said order, the petitioner had approached this Court by filing Writ-A No. 61 of 2022 with the prayer that the orders of recovery dated 13.09.2021 and 05.03.2021 are in contravention of law laid down by the Hon'ble Supreme Court in the case of ***State of Punjab and others versus Rafiq Masih (White Washer) and others reported in 2015 (4) SCC Page 334*** and no opportunity was provided to the petitioner prior to the passing of the said order.

3. This Court vide judgment and order dated 10.01.2022 allowed the writ petition and set-aside the orders of recovery dated 13.09.2021 and 05.03.2021 and it was left open for the respondents to pass fresh orders after giving proper opportunity of hearing to the petitioner.

4. It is further submitted that on the last working day of the petitioner i.e the date of retirement of the petitioner on 31.03.2022, the notice was issued to the petitioner for giving his reply as to why the recovery shall not be made against the petitioner of a sum of Rs. 2,62,000/-.

5. Against the said notice, the petitioner had submitted his reply on 12.04.2022, but till date, no decision has been taken by the authorities.

6. It is further submitted that when a period of about three months had passed and no post-retiral dues were paid to

the petitioner, the petitioner had no other option except to approach this Court again by filing a Writ-A No. 4176 of 2022 and this Court vide its judgment and order dated 12.07.2022 had disposed of the writ petition with a direction to the respondent no. 3/Director of Ayurvedic Services, U.P. Lucknow to consider and decide the representation of the petitioner dated 16.05.2022.

7. It is further submitted that despite the order/judgment of this Court, the authorities had not taken any decision. Even after the lapse of about five months, the order dated 07.12.2022 was passed which has been filed along with the counter affidavit showing the post retiral dues paid to the petitioner but the amount of Rs. 2,62,000/- has been withheld without mentioning about the same or without giving any reason for withholding the same. It is further submitted that the Hon'ble Supreme Court in the case of State of Punjab and others and Rafiq Masih (white washer) and others has held that no recovery from the employees belonging to Class III and IV service (or Group C & D service) is impermissible. The petitioner was belonging to Class III post service.

8. It is further submitted that the petitioner had never made any fraud or misrepresentation and if any excess payment was made, it was by mistake of office.

9. On the other hand, learned State counsel has submitted that due to some wrong calculation made by the office, excess salary of Rs. 2,62,000/- was paid to the petitioner and hence there is no illegality in withholding the same.

10. After hearing learned counsel for parties and going through the record, it is apparent that despite the judgment and order dated 10.01.2022 by which liberty was given to the authorities to proceed afresh, if they so chooses, the authorities kept quiet for about more than two months and on the last date of retirement of the petitioner, notice was given which was replied by the petitioner within fifteen days and thereafter, no decision has been taken till date and keeping the matter pending.

11. When no decision was taken and the post-retiral dues were also not paid, the petitioner was compelled to again approach this Court by filing a Writ A No. 4176 of 2022 for payment of post retiral dues, which was disposed of vide judgment and order dated 12.07.2022 with a direction to the authorities to decide the representation of the petitioner but till date, no decision has been taken on the representation of the petitioner and on 07.12.2022, an order has been passed for payment of post-retiral dues to the petitioner. Though the recovery has been set aside, by this Court and thereafter, no fresh orders have been passed by the authorities till date. But neither the sum of Rs. 2,62,000/- was paid nor any reason has been given for the non-payment.

12. The impugned order dated 08.08.2022 passed by respondent no. 5 is not tenable in the eyes of law for the reason that after the judgment and order dated 10.01.2022, by which the orders of recovery were set aside and liberty was given to the authorities to pass a fresh order after providing opportunity of hearing to the petitioner. In pursuance thereof, notice was served upon the petitioner on the last date of his working i.e. on the date of his retirement i.e 31.03.2022, against which the petitioner has already submitted its reply within two weeks, but till date, no decision has been taken by respondent no. 3 i.e. Director of Ayurvedic Services U.P. Lucknow. In absence of any decision taken by the Director in compliance of the judgment and order dated 10.01.2022, the respondent no. 5 i.e Regional Ayurvedic and Unani Officer, District Ayodhya had passed the impugned order that due to the excess payment made to the petitioner, the same has been withheld and the payment is subject to final decision in the writ petition.

13. The impugned order has been passed completely without application of mind as the writ petitions filed by the petitioner i.e. Writ A No. 61 of 2022 and Writ A. No. 4176 of 2022 have already been decided by this Court vide its judgments and orders dated 10.01.2022 and 12.07.2022 respectively and in pursuance thereof, the Director has not taken any decision on the representation of the petitioner and again repeating the same thing that the excess payment was made to the petitioner.

14. Hon'ble Apex Court in the case of **State of Punjab and others versus Rafiq Masih (White Washer) (supra)** has laid down certain conditions wherein recoveries by the employees would be impermissible in law. The relevant extract is quoted herein below:-

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

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

(iii) Recovery from the 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. "

15. The present case is fully covered by Condition No. (i) and (ii) of the judgment of Hon'ble Apex Court as mentioned in preceding paragraph.

16. In view of the acts and circumstances discussed above, the impugned order dated 08.08.2022 passed by respondent no. 5 withholding the amount of Rs. 2,62,000/- from the post-retiral dues of the petitioner is hereby quashed.

17. The writ petition is **allowed**.

18. Respondent no. 3 is directed to make the payment of Rs. 2,62,000/- to the petitioner within a period of two months.

19. In case, the same is not paid within the aforesaid period, respondent no. 3 shall be liable to pay interest at the rate of 7% from the date of expiry period as mentioned above till the actual payment is made.

Order Date :- 17.1.2024
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