

Court No. - 6

Case :- WRIT - A No. - 12441 of 2024

Petitioner :- Ram Das Prasad

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

Counsel for Petitioner :- Sheshnath Bhardwaj Advoc

Counsel for Respondent :- C.S.C.

Hon'ble Alok Mathur,J.

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

2. It has been submitted by learned counsel for petitioner the initially the petitioner was appointed on the post of Constable in U.P. Police in the year 1981 and subsequently participated in the Departmental Promotion Examination and was selected to the post of Platoon Commander in 1993 and subsequently he was promoted to the post of Company Commander in 1999 and lastly he was promoted to the post of Deputy Superintendent of Police and retired from service after attaining the age of superannuation on 30.09.2022. It has further been submitted that two years after his retirement by means of impugned order dated 05.09.2024, the respondents have refixed the salary of the petitioner from 2012 onward and have also recovered the purported excess amount of salary paid to the petitioner to the tune of Rs.6,61,815/-.

3. It has been submitted by learned counsel for petitioner that no opportunity of hearing was given to him nor a show cause notice given prior reducing his salary from 2012 onwards. He submits that with regard to re-fixing of his salary of recovery from a retired employee was an aspect, which was 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 wherein in paragraph no. 18, the following law have been enunciated by the Supreme Court, 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."

4. In the aforesaid judgment in clause 2 it was clearly stated that the recovery from a retired employee or employees who are due to retire within one year, of the order of recovery would be impermissible.

5. In the present case, the impugned order dated 05.09.2024 has been passed after two years of superannuation of the petitioner and the recovery from his salary on this account is impermissible and clearly contrary to the judgment of Hon'ble Supreme Court in the case of ***Rafiq Masih (supra)***.

6. Learned Standing Counsel on the other hand has opposed the

writ petition but does not dispute the aforesaid facts.

7. From perusal of the entire material as well as the impugned order it is clear that no opportunity of hearing was give to the petitioner and merely narrating the fact that his salary has wrongly been fixed, the respondents have proceeded to re-fix the salary of the petitioner from 2012 onwards.

8. Undoubtedly the salary is a valuable assets and property of an individual and he can be deprived only after being given opportunity of hearing. The salary of the petitioner being the property is protected under Article 300 A of the Constitution of India and the manner by which the petitioner has been deprived of his vested right and without giving an opportunity of hearing is illegal and arbitrary.

9. In light of the above, impugned order dated 05.09.2024 passed by Senior Superintendent of Police (Headquarter) U.P., Lucknow is set aside. The recovery made from the salary of the petitioner is also held to be illegal and arbitrary and accordingly, set aside. The respondents are directed to refund/reimburse the said amount deducted from the petitioner expeditiously say within a period of four weeks from the date a certified copy of this order is produced before him, failing which they shall refund the amount along with interest at the rate of 8% per annum. The liberty is also granted to the respondents to pass a fresh order re-fixing the salary after giving due opportunity of hearing to the petitioner.

10. With the aforesaid observations/directions, the writ petition stands allowed.

(Alok Mathur, J.)

Order Date :- 19.12.2024

Virendra