

Court No. - 6

Case :- WRIT - A No. - 12362 of 2024

Petitioner :- Yashpal Singh Retd. S.I Pno 822151531

Respondent :- Stae Of U.P. Thru. Prin. Secy. Deptt. Of Home Lko. And 3 Others

Counsel for Petitioner :- Ram Raj Ojha

Counsel for Respondent :- C.S.C.

Hon'ble Alok Mathur,J.

1. Heard learned counsel for the petitioner as well as learned Standing Counsel.

2. In the present writ petition, recovery of certain amount has been made from the pensionary benefits of the petitioner which according to the State is on account of wrong fixation of pay of the petitioner, by mistake, resulting in excess payment to the petitioner.

3. 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, summarize 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. Since, the controversy involved is short and legal in nature hence the petition itself is being finally decided as no purpose would be served in keeping the matter pending. After the retirement of the petitioner from the post of Sub Inspector, Civil Police (Class-III), the pay-scale of the petitioner has been redetermined. In consequence thereof, the recovery of Rs. 5,89,394/- was made from the post retiral dues of the petitioner by passing the impugned orders dated 04.04.2024 & 04.04.2024, 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/redetermination of his salary. So keeping in view the aforesaid facts, the same cannot be recovered from the petitioner.

5. The case of the petitioner is squarely covered by the decision/law laid down by the Hon'ble Supreme Court in the case of Rafiq Masih (supra), particularly by condition no. (i) & (ii) of the Hon'ble Supreme Court quoted in the earlier paragraph, which the learned State Counsel has been unable to distinguish.

6. Accordingly, the writ petition is **allowed**.

7. In view of the facts and circumstances discussed above, the impugned orders Patrank No.28/22, dated January, 2023, 4.4.2024 and 4.4.2024, are hereby quashed.

8. Respondent no. 4 i.e. Superintendent of Police, Sant Kabir Nagar is directed to ensure the payment of Rs. 5,89,394/- which has been withheld or recovered from the post retiral dues of the petitioner within a period of two months from the date of production of certified copy of this order.

9. Liberty is granted to the respondents to re-fix the salary of the petitioner after giving due opportunity of hearing to the petitioner in accordance with law.

(Alok Mathur, J.)

Order Date :- 19.12.2024
RKM.