

Court No. - 6

Case :- WRIT - A No. - 12356 of 2024

Petitioner :- Santosh Kumar Srivastava

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

Counsel for Petitioner :- Drupad Upadhyay

Counsel for Respondent :- C.S.C.

Hon'ble Alok Mathur,J.

1. Heard Sri Drupad Upadhyay, learned counsel for petitioner as well as learned Standing Counsel for respondents.
2. The grievance of the petitioner is with regard to refixation of the pay and consequent recovery by the respondents about three years after his superannuation from service.
3. It has been submitted by learned counsel for petitioner that the petitioner was initially appointed on the post of Junior Accounts Clerk in 1986 and retired from the post of Accountant, . which is a Class-3 post from the office of Director Internal and Accounts and Audits, government of Uttar Pradesh, Lucknow. It has been submitted that during his service period, he was granted increments and other service benefits regularly. He further submits that the salary of the petitioner was revised sometimes in 2006 which according to the respondents was incorrect and an order dated 07.11.2020 was passed revising the salary of the petitioner and also consequential order for recovery was passed.
4. The petitioner had moved a representation stating that his pay fixation was correctly done. He has further submitted that during the said period, pension was not granted to the petitioner by the respondents stating that until and unless the issue pertaining to his pay fixation is finalised, pension shall not be released in his favour and in those circumstances, the petitioner wrote a letter to the respondent to release the remaining portion keeping the excess amount with them and it is on the request of the petitioner that resultant pension and other post retiral dues were released in his favour.
5. He further submits that no opportunity of hearing was granted to the petitioner before re-fixation of his salary. He submits that in case there is any error in refixing of the salary, the respondents should have given an opportunity to the

petitioner before passing of recovery and re-fixation of the salary.

6. Learned counsel for petitioner submits that the respondents could not have refixed the pension after his superannuation and this aspect of the matter has been duly considered by Hon'ble the Supreme Court in the case of **State of Punjab and others Vs. Rafiq Masi (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, 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."

7. Learned Standing Counsel on the other hand has opposed the writ petition but does not dispute the aforesaid facts.

5. Having heard learned counsel for the parties and having perused the material available on record, I am of the opinion that the alleged consent was taken from the petitioner before his retirement would be meaningless in as much as the consent could have been taken at the time when the actual benefit was given to the petitioner, therefore, in view of the dictum of the Hon'ble Apex Court in re; **Rafiq Masih (supra)**, the impugned

orders dated 07.11.2020, 21.12.2020 and 24.03.2021 are patently illegal, arbitrary and uncalled for, therefore, the same are hereby set aside/quashed.

6. Since such recovery is not tenable in the eyes of law, therefore, if any amount is deducted, the same shall be refunded to the petitioner within a period of six weeks from the date a certified copy of this order is produced before the competent authority. In case the amount is not refunded within the time prescribed, the respondents shall refund the same along with interest of 8% per annum. Liberty is granted to the respondents to re-fix the salary of the petitioner only after giving full opportunity of hearing to the petitioner in accordance with law.

7. With the aforesaid, the writ petition is **allowed**.

(Alok Mathur, J.)

Order Date :- 19.12.2024

Ravi/