

Court No. - 6

Case :- WRIT - A No. - 12623 of 2024

Petitioner :- Kanchan Singh

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

Counsel for Petitioner :- Sanjay Kumar Sharma

Counsel for Respondent :- C.S.C.

Hon'ble Alok Mathur,J.

1. Heard learned counsel for the petitioner and learned Additional Chief Standing Counsel for the respondents.

2. Petitioner before this Court is assailing the validity of order dated 24.6.2024 passed by respondent no.2 i.e. Superintendent of Police, District Lakhimpur Kheri to direct not to recover the excess amount of Rs. 2, 34,952/- which was already paid to the husband of the petitioner.

3. Learned counsel for the petitioner submits that the husband of the petitioner was working on the post of Constable in District Lakhimpur Kheri. Unfortunately, he died on 12.4.2023 after that the petitioner completed all the formalities and submitted the paper for payment of entire death - cum-service benefits. The petitioner is aggrieved against the impugned order dated 24.6.2024 by which the opposite party No.2 directed the petitioner to deposit the total excess amount of Rs. 2,34,952/- in the account branch. There is no fault or misrepresentation on the part of husband of the petitioner. In support of his submission, he has relied upon a decision of Apex Court in the case of ***State of Punjab vs. Rafiq Masih (White Washer) reported in 2015 AIR (SC) page 696***, wherein the Hon'ble Apex Court has held that recovery from the employee belonging to Class III and Class IV service or Group 'C' and 'D' service would be impermissible even in case it is found that they were beneficiaries of receiving higher emoluments, than were due to them.

4. In ***Rajendra Prasad Singh Versus State of U.P. and others reported in 2008 (1) UPLBEC 245***, the Division Bench of this Court has held as under:-

"5. We are of the view that the contention of learned Counsel of the petitioner-appellant has substance in view of the law laid down by the Apex Court as well as this Court in the judgements

relied upon by learned Counsel for the petitioner-appellant which have been followed by this Bench also in Special Appeal No.1317 of 2003, *M.D./Chief Engineer, U.P. Jal Nigam and others Versus Sri Nath Singh and others*, connected matters in which this Bench has held as under:-

"In the matter of recovery, we may remind to the authorities that now it is well settled if certain payment has been made to the employees on account of any fault of the employer, and for which the employee is not responsible, namely, not guilty of fraud or misrepresentation, in such case, the amount which has already been received by the employee and he has spent, should not be recovered."

5. In ***Syed Abdul Qadir and others vs. State of Bihar and others* (2009) 3 SCC 475** as follows:-

"57. This Court, in a catena of decisions, has granted relief against recovery of excess payment of emoluments/allowances if (a) the excess amount was not paid on account of any misrepresentation or fraud on the part of the employee, and (b) if such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order, which is subsequently found to be erroneous.

58. The relief against recovery is granted by courts not because of any right in the employees, but in equity, exercising judicial discretion to relieve the employees from the hardship that will be caused if recovery is ordered. But, if in a given case, it is proved that the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where the error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, courts may, on the facts and circumstances of any particular case, order for recovery of the amount paid in excess. See ***Sahib Ram vs. State of Haryana*, 1995 Supp. (1) SCC 18**, ***Shyam Babu Verma vs. Union of India*, [1994] 2 SCC 521**; ***Union of India vs. M. Bhaskar*, [1996] 4 SCC 416**; ***V. Ganga Ram vs. Regional Jt., Director*, [1997] 6 SCC 139**; ***Col. B.J. Akkara [Retd.] vs. Government of India & Ors.* (2006) 11 SCC 709**; ***Purshottam Lal Das & Ors., vs. State of Bihar*, [2006] 11 SCC 492**; ***Punjab National Bank & Ors. Vs. Manjeet Singh & Anr.*, [2006] 8 SCC 647**; and ***Bihar State Electricity Board & Anr. Vs. Bijay Bahadur & Anr.*, [2000] 10 SCC 99**."

6. The Supreme Court further explained the principle in paragraph-9 of the judgment in ***Registrar, Cooperative Societies, Haryana and others vs. Israil Khan and others***

(2010) 1 SCC 440, which reads as follows:-

"What is important is, recovery of excess payments from employees is refused only where the excess payment is made by the employer by applying a wrong method or principle for calculating the pay/allowance, or on a particular interpretation of the applicable rules which is subsequently found to be erroneous. But where the excess payment is made as a result of any misrepresentation, fraud or collusion, courts will not use their discretion to deny the right to recover the excess payment."

7. Hon'ble Supreme Court in ***State of Punjab and others Vs. Rafiq Masih (supra)*** has held that it is not possible to postulate all situations of hardship where payments mistakenly made by an employer, would not be recovered but some such situations are elaborated therein as under:

"(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."
(emphasis added)

8. It is not the case that the department had fixed the salary of the husband of the petitioner on account of any misrepresentation or fraud played on the part of her husband or the department applied a wrong principle for calculating the pay/allowances, but in fact in the present matter, the petitioner had not misrepresented. The respondents in most arbitrary manner without affording any opportunity to the husband of the petitioner recover the excess amount of Rs. 2, 34, 952/- as has been paid excess to him on the basis of alleged fixation, which is also in violation of principle of natural justice.

9. In the present case, the Court finds that alleged excess payment made to the husband of the petitioner is not on account of any fault on his part. The husband of the petitioner was a Class-III employee and in view of the judgment of the Supreme Court in the case of *State of Punjab and others v. Rafiq Masih (White Washer)*, (2014) 8 SCC 833, no recovery can be made.

10. In view of the above, the writ petition is **allowed** and the impugned orders are hereby quashed. The opposite party No.2 is directed to pay the whole service benefits of late petitioner's husband to the petitioner and pay the pension to the petitioner with interest @ 6% per annum within one month from the date of production of a certified copy of this order.

(Alok Mathur, J.)

Order Date :- 20.12.2024
RKM.