



2025:JHC-1 K0389854

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

WRIT - A No. - 14495 of 2025

Vijay Prakash Srivastava

.....Petitioner(s)

Versus

State Of U.P. Thru. Prin. Secy. Food Safety Deptt.
And 2 Others

.....Respondent(s)

Counsel for Petitioner(s)	:	Savita Jain
Counsel for Respondent(s)	:	C.S.C., Prafulla Tiwari

Court No. - 18

HON'BLE SHREE PRAKASH SINGH, J.

1. Heard learned counsel for petitioner, learned Standing Counsel for the State and Mrs. Shubhra Kumar, learned counsel for respondent no. 2 to 4.

2. Petitioner has approached this Court challenging the orders dated 29.1.2024 & 22.11.2025 whereby after his retirement certain recovery is being made by respondents without providing any opportunity of hearing. The amount which is sought to be recovered from the petitioner was given to petitioner as certain advances and there is also claim of recovery with regard to certain damages of goods caused by petitioner.

3. It is apparent from the impugned order that no opportunity of hearing was given to the petitioner while passing the order. Learned counsel for petitioner places reliance upon the judgment of Supreme Court in case of **State of Punjab and Ors. Vs. Rafiq Masih (White Washerman)** reported in **(2015) 4 SCC page.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."

4. Since, impugned order has been passed without giving any opportunity of hearing to the petitioner, hence, the same is liable to be quashed and writ petition deserves to be allowed.

5. In view thereof, the impugned orders dated 29.1.2024 & 22.11.2025 are set aside with liberty to respondent no. 2 & 4 to pass fresh order with regard to re-fixing retiral dues payable to the petitioner, after giving appropriate opportunity of hearing to the petitioner, within a period of six weeks from the date a certified copy of this order is placed before it.

6. The recovery, however, shall not be made from the petitioner keeping in view of the Supreme Court judgment of Rafiq Masih (**supra**) case before passing a fresh order after due opportunity.

7. It is further directed that the remaining admitted post retiral dues of the petitioner shall be paid within a period of four weeks from the date a certified copy of this order is placed before it.

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

(Shree Prakash Singh,J.)

December 16, 2025

Ram Murti