



2026:AHC:191987

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - A No. - 15461 of 2023

Rajendra Singh

.....Petitioner(s)

Versus

The State Of U.P. And 2 Others

.....Respondent(s)

Counsel for Petitioner(s) : Abhishek Kumar Yadav, Archana Singh, Bhola Nath Yadav, Bramh Narayan Singh, Prem Singh
Counsel for Respondent(s) : C.S.C.

Court No. - 34

(SN.11)

HON'BLE ANISH KUMAR GUPTA, J.

1. Heard Sri Bramh Narayan Singh, learned counsel for the petitioner and Sri Anand Mani Tripathi, learned Standing Counsel for the State.
2. The instant petition has been filed with the following prayers:

"i) Issue a writ, order or direction in the nature of certiorari to quash the impugned Order dated 10.10.2002 passed by the Senior Superintendent of Police, Saharanpur the copy whereof is contained in Annexure -1 to the writ petition whereby the amount of gratuity and commutation has been paid but an amount of Rs. 4,93,073/- has been recovered from the leave encashment of the petitioner towards alleged excess payment made to the petitioner;

ii) Issue a writ, order or direction in the nature of mandamus commanding the respondents to refund the amount of Rs. 4,93,073/- which has been recovered from the Petitioner's leave encashment towards the alleged excess payment of salary made to the Petitioner which cannot be made in the light of the judgment delivered by the Hon'ble Supreme Court in State of Punjab and others Versus Rafeek Masih (whitewasher) and others reported in 2015(4) S.C.C. 332;"

3. Learned counsel for the petitioner submits that after the retirement of the petitioner, on 30.06.2022, a notice was issued on 06.08.2022 to the petitioner regarding deduction of the amount to the tune of Rs. 4,93,073/- being the excess amount paid to the petitioner due to wrong fixation of pay-scale. In response thereto, as the petitioner's all retiral dues were withheld by the respondents and the pension was also not paid to the petitioner, in such circumstances the petitioner, under compelling circumstances, given his consent that after deduction of the aforesaid amount the remaining amount be paid to the petitioner and the pension be fixed and thereupon, vide impugned order dated 10.10.2022, the respondents have deducted the aforesaid amount of Rs. 4,93,073/- from the leave encashment amount payable to the petitioner. Being aggrieved, the instant writ petition has been filed by the petitioner herein.

4. Learned counsel for the petitioner submits the amount so deducted is an amount, which is allegedly paid by the respondents due to wrong fixation of pay-scale. The respondents are not in a position to point out that at any point of time either the petitioner herein has played any role in such wrong fixation of pay-scale or he has played any fraud or misrepresentation on his part. Therefore, for the fault on the part of the respondents, the petitioner cannot be made to suffer.

5. Learned counsel for the petitioner further relying upon the judgment of the Apex Court in ***State of Punjab and Others vs. Rafiq Masih (White Washer)*, 2015 4 SCC 334** submits that no amount paid in excess due to wrong fixation of pay-scale can be recovered from a Government servant after his retirement. Therefore, he seeks quashing of the impugned order dated 10.10.2022.

6. *Per contra*, Sri Anand Mani Tripathi, learned counsel for the respondents submits that the pay fixation so made erroneously in favor of the petitioner was re-fixed on 05.05.2022 and thereupon the notices were issued to the petitioner, to which the petitioner has agreed that the aforesaid amount be deducted from the leave encashment amount payable to the petitioner. Accordingly, the said amount has been deducted. Therefore, there is no illegality in the aforesaid deduction, which was done with prior notice and with consent of the petitioner. Therefore,

learned counsel for the respondents seeks dismissal of the instant petition.

7. Having heard the rival submissions so made by learned counsel for the parties, this Court has carefully gone through the record of the case. From the record of the case, it is apparent in terms of the Government Order dated 08.12.2008, an option was asked from the petitioner to pay the revised pay-scale in terms of this recommendation of the Sixth Pay Commission to the petitioner and the petitioner has exercised the option from 01.01.2006. However, despite the correct option given by the petitioner, the pay fixation was wrongly fixed in excess to the petitioner. Thereafter, just before the retirement of the petitioner on 05.05.2022 the pay fixation which was erroneously made was revised vide order dated 05.05.2022. Thereupon, the petitioner has retired on 30.06.2022 and after his retirement, since the retiral dues of the petitioner were not being paid and nor the pension was released. Under such compelling circumstances, the petitioner has agreed for the aforesaid deduction, so that the remaining amount be paid to the petitioner and the pension is also released in favor of the petitioner. Thereafter, the instant petition has been filed by the petitioner stating that the respondents have wrongly deducted the aforesaid amount, which cannot be recovered by them in terms of the judgment of **Rafiq Masih (supra)**.

8. In **Rafiq Masih (supra)**, the Apex Court has held 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 hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).

(ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from the 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."

9. From the aforesaid judgment, it is apparent that any amount paid to the Government servant in excess due to wrong fixation of pay-scale without there being any fault or any role of such Government servant in such wrong fixation of pay-scale, the said amount cannot be recovered from such Government servant after his retirement.

10. In view of the aforesaid settled position of law, in the instant case, the amount deducted is an excess amount paid to the petitioner due to wrong fixation of pay-scale. Respondents have not been able to point out any fraud or misrepresentation committed by the petitioner while such pay-scale was fixed erroneously in favor of the petitioner.

11. In such view of the matter, in the considered opinion of this Court, the aforesaid amount could not have been recovered from the petitioner. In such view of the matter, the instant petition is **allowed**. The respondents are directed to release the amount of Rs. 4,93,073/- in favor of the petitioner within a period of eight weeks from today, failing which the aforesaid amount shall carry an interest at the rate of 8% per annum.

(Anish Kumar Gupta,J.)

September 14, 2026
Shubham Arya