

Court No. - 6

Case :- WRIT - A No. - 8881 of 2024

Petitioner :- Virendra Kumar Mishra

Respondent :- Union Of India Ministry Of Railways Thru. Secy. Rail Bhawan And 3 Others

Counsel for Petitioner :- Birendra Narain Shukla, Prabhaw Kumar Tripathi

Counsel for Respondent :- A.S.G.I.

Hon'ble Alok Mathur, J.

1. Heard Sri Birendra Narain Shukla, learned counsel for the petitioner as also Sri S.B. Pandey, learned Senior Advocate & D.S.G.I, assisted by Sri Varun Pandey, Advocate, for the opp. parties and perused the record.
2. By means of the present writ petition the petitioner has challenged the order dated 27.06.2024 passed by the Senior Safety Commissioner/Training, Jagjivan Ram RPF Academy, Lucknow, indicating that it has been determined that the petitioner's salary since 01.01.2006 has been wrongly fixed and even his entire pay has been revised, and an excess amount of Rs. 7,69,102.00 is to be recovered from him and accordingly show-cause notice is given to him to response to the same.
3. Learned counsel for the petitioner has submitted that in fact the entire determination has been done *ex parte* by the opp. parties and by means of the impugned order, though in the nature of a show-cause notice, but nothing remains to be determined and the entire exercise has been conducted behind the back of the petitioner.
4. In view of the aforesaid circumstances, this court had directed the opp. parties to seek instructions.
5. Written instructions have been received from the Addl. Divisional Finance Manager, Northern Railway, Lucknow, according to which on receiving service record of the petitioner at the time of superannuation it was found that erroneously benefits have been given at the time of fixation in the VIth Pay Commission with effect from 01.01.2006 and wrong fixation with notional increment has been done on *ad hoc* promotion in A.S.C. with effect from 12.10.2014, after already granting the 2nd MACP with effect from 19.12.2008 GP-4800.00.

Accordingly, revised pay fixation has been done with effect from 01.01.2006 and even a revised pay-slip has been issued on 24.06.2024, and the amount in excess has to be recovered. The written instructions are taken on record.

6. From the aforesaid it is clear that the show-cause notice is a mere sham and the entire exercise of re-fixation of salary of the petitioner has been done behind his back, without associating him with any sort of proceeding or giving him any show-cause notice. The aspect as to whether at the verge of retirement or after retirement the pay can be revised, has been duly considered by the Supreme Court in the case of **State of Punjab v. Rafiq Masiah(White Washer)** reported in **[(2015) 4 SCC 334]**. Relevant portion of the judgment is quoted hereinbelow:

"7. Having examined a number of judgments rendered by this Court, we are of the view, that orders passed by the employer seeking recovery of monetary benefits wrongly extended to employees, can only be interfered with, in cases where such recovery would result in a hardship of a nature, which would far outweigh, the equitable balance of the employer's right to recover. In other words, interference would be called for, only in such cases where, it would be iniquitous to recover the payment made. In order to ascertain the parameters of the above consideration, and the test to be applied, reference needs to be made to situations when this Court exempted employees from such recovery, even in exercise of its jurisdiction under Article 142 of the Constitution of India. Repeated exercise of such power, "for doing complete justice in any cause" would establish that the recovery being effected was iniquitous, and therefore arbitrary. And accordingly, the interference at the hands of this Court."

"10. In view of the afore-stated constitutional mandate, equity and good conscience, in the matter of livelihood of the people of this country, has to be the basis of all governmental actions. An action of the State, ordering a recovery from an employee, would be in order, so long as it is not rendered iniquitous to the extent, that the action of recovery would be more unfair, more wrongful, more improper, and more unwarranted, than the corresponding right of the employer, to recover the amount. Or in other words, till such time as the recovery would have a harsh and arbitrary effect on the employee, it would be permissible in law. Orders passed in given situations repeatedly, even in exercise of the power vested in this Court under Article 142 of the Constitution of India, will disclose the parameters of the realm of an action of recovery" (of an excess amount paid to an employee) which would breach the obligations of the State, to citizens of this country, and render the action arbitrary, and therefore, violative of the mandate contained in Article 14 of the Constitution of India."

7. The judgment of in the case of **Rafiq Masiah (supre)** came to be considered by the Government of India and office

memorandum in this regard was also issued on 02.03.2016 where relying on the judgment of the Supreme Court of India it has also been directed not to make any recovery from the employee belonging to Class III and Class IV services (or Group-C and Group-D services) and also from retired employees or employees, who are due to retire within one year of the order of recovery.

8. In the present case, it is clear that the said notice has been given three days prior to his superannuation and the entire exercise has been done at the time of superannuation of the petitioner. Accordingly, the case of the petitioner is squarely covered by the judgment of the Supreme Court in the case of **Rafiq Masiah (supra)** as well as the office memorandum issued by the Government of India dated 02.03.2016.

9. In the light of the above, the proposed recovery from the petitioner, as indicated in the order dated 27.06.2024, is illegal and arbitrary and accordingly the writ petition is allowed and the **order dated 27.06.2024 is hereby quashed.**

10. Matter pertaining to re-fixation of his salary having been done *ex parte* and amended pay-slip having been issued is also illegal and arbitrary and cannot be acted upon.

11. It is open for the opp parties to pass a fresh order with regard to re-fixation of salary after giving due opportunity of hearing to the petitioner.

12. In the light of the above, in case any amount has been recovered in pursuance to the impugned order dated 27.06.2024, same shall be repaid to the petitioner forthwith without any delay, within a maximum period four weeks from the date certified copy of this order is produced before the competent authority.

(Alok Mathur, J.)

Order Date :- 13.11.2024

A.Nigam