HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - A No. - 10354 of 2023

Mantri Prasad

.....Petitioner(s)

Versus

State Of U.P. And 2 Others

.....Respondent(s)

Counsel for Petitioner(s) : Archana Singh, Bramh Narayan Singh
Counsel for Respondent(s) : C.S.C.

Court No. - 34

Sl. No. 49

HON'BLE ANISH KUMAR GUPTA, J.

1. Heard Shri Bramh Narayan Singh, learned counsel for the petitioner and Sri Raj Kumar Tiwari, learned standing counsel for the State.

2. The instant petition has been filed seeking the following amended reliefs:

"i) Issue a writ, order or direction in the nature of certiorari to quash the impugned order dated 13.5.2019 passed by the Commandant 26th Battalion P.A.C. Gorakhpur, a copy whereof is contained as Annexure-1 to the accompanying writ petition;

ii) Issue a writ order or direction in the nature of mandamus commanding the respondents to refund the deducted amount which has been recovered from the petritioner towards the excess payment 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 Vs. Rafeek Masih (Whitewasher) and others reported in 2015 (4) SCC 332;

iiA a writ order or direction mandamus commanding the respondents to re-fix the salary of the petitioner as Rs.64,100/- in place of Rs.62,200/- and accordingly issue GPO, PPO, Pay Pension and arrears incurred along with the interest admissible in law."

3. Learned counsel for the petitioner submits that after the retirement of

the petitioner, the respondents have deducted an amount of Rs.95,650/- being an excess amount paid to the petitioner due to wrong fixation of pay scale while the petitioner was in service. It is further submitted that after the retirement the respondents have also refixed the salary of the petitioner vide order dated 13.5.2019/16.5.2019 which is impermissible in terms of the judgement and order dated **29.9.2026** passed by this Court ***Writ A No. 16910 of 2023 (Suraj Singh Vs. State of U.P. and others).*** Neither the recovery of the excess amount which was paid to the petitioner due to wrong fixation of pay scale can be made nor the refixation of the salary can be done after the retirement of the petitioner and all the retiral dues/pensionary benefits are required to be paid to the petitioner on the basis of last pay drawn by the petitioner.

4. In the case of **Suraj Singh (supra)**, this Court in paragraphs 21, 22 and 23 has observed as under:

"21. On the basis of the aforesaid judgments, it is settled position of law that any amount paid in excess due to wrong fixation of pay scale without there being any misrepresentation or fraud played upon by such government servant, the same cannot be recovered from such government servant after his retirement, specifically when such government servant belongs to class-III and class-IV. In Jagdev (Supra), the aforesaid position has been clarified that if any undertaking was submitted by such government servant at the time of fixation of the pay scale on the basis of the aforesaid undertaking, the amount paid in excess can be recovered. However, that doesn't mean that any undertaking or indemnity bonds taken by the respondents at the time of retirement would entitle them to recover the amount as in Jagdev (Supra), the undertaking, which is to be relied upon is the undertaking at the time of fixation of the pay scale, which is stated to be wrong. In Sushil Kumar Singhal (supra), the Apex Court has categorically considered the Government Order dated 16.01.2007 issued by the Government of Uttarakhand, which is identical Government Order in the State of UP as well. Tthereupon, it has been held that after the retirement of a government servant, it is not open for the State to revise the pay scale and the pensionary benefit ought to have been fixed on the basis of the last pay drawn by such government servant, which has been repeatedly followed by the Division Bench as well as by

the Coordinate Benches of this Court.

22. Nothing has been brought on record to state that the judgment of Sushil Kumar Singhal (supra) or Rafiq Masih (supra) has ever been overruled by any subsequent judgment of the Apex Court in view of the aforesaid settled position of law. Even otherwise, under the Government Order dated 07.05.2007, it was clarified that if any re-fixation was required, the respondents were obligated to issue a notice, provide a reasonable opportunity of explanation, and only thereafter proceed with the re-fixation or recovery. However, in the instant case, neither was any notice issued nor any opportunity of hearing granted to the petitioner; instead, an order for deduction from the petitioner's pensionary benefits was passed straightaway.

23. In view of the aforesaid settled position of law, this Court finds that the action of the respondents in re-fixation of the pay scale after about six years of alleged wrong fixation, which in fact has been done in 2010, that means from last 12 years, is impermissible either in terms of the Government Orders dated 16.01.2007, 07.05.2007 and in the light of the judgment of Sushil Kumar Singhal (supra) and consequently, in terms of the Rafiq Masih (supra), no recovery whatsoever could have been made from the petitioner."

5. In view of the aforesaid settled position of law the impugned order dated 13.5.2019 whereby refixation has been done and the recovery has been sought to be made from the petitioner are not sustainable in law and thus hereby quashed.

6. As per the instruction dated 19.10.2026 the respondents have already recovered an amount of Rs.95,650/- from the petitioner after refixation of pay scale on 13.5.2019, which is impermissible and the refixation of pay scale after the retirement of the petitioner is impermissible in view of aforesaid judgment in the case of Suraj Singh (supra).

7. In such view of the matter, the instant petition is **allowed** and the impugned order dated 13.5.2019 is hereby quashed. Consequently the respondents are directed to calculate all the retiral dues payment to the

petitioner on the basis of last pay drawn by the petitioner and refund the amount of Rs.95,650/- which was recovered from the petitioner alongwith interest at the rate of 8% per annum.

(Anish Kumar Gupta,J.)

October 23, 2026
o.k.

Digitally signed by :-
OM KRISHNA CHOUDHARY
High Court of Judicature at Allahabad