

Dinanath Vishwakarma vs State Of U.P. And 3 Others on 1 May, 2025

Author: Ajit Kumar

Bench: Ajit Kumar

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:70746

Court No. - 4

Case :- WRIT - A No. - 13736 of 2022

Petitioner :- Dinanath Vishwakarma

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Sharwan Kumar Tripathi

Counsel for Respondent :- C.S.C.

Hon'ble Ajit Kumar, J.

Heard Sri S.K.Tripathi, learned counsel for the petitioner and learned Standing Counsel.

By means of present petition filed under Article 226 of the Constitution, petitioner has questioned the order dated 7th May, 2022, whereby recovery has been directed from the post retirement dues of the petitioner for wrongful pay fixation done in respect of pay-scale in the year 2022.

It is contended on behalf of the petitioner that pay re-fixation has been done without giving opportunity of hearing to the petitioner . The pleadings to this effect has been raised in paragraph 15 to the petitioner. It is very well pleaded in the said paragraph that petitioner has no knowledge of

fresh computation carried out by respondent after refixing the salary of the petitioner and that too after retirement. Paragraph 15 of the petition is reproduced hereunder:

"That the petitioner further states as a matter of fact that before alleged both the amendments and excess payment amounting of Rs. 1,32,207/- and 1,73,700/- total of Rs. 3,05,907/-. The present petitioner has never been given any opportunity of hearing and even till the date he has no knowledge about any computation, he has never been called for explanation nor afforded opportunity of hearing and as such both the recovery are illegal, arbitrary and abuse of process of law."

In reply of paragraph 15, vide paragraph 19 in the counter affidavit, it has been averred thus:

"That the contents of paragraph nos. 15,16, 17,18 of the writ petition are wrong hence denied and it is stated that the petitioner was informed time to time and he was given consent, regarding any recovery if paid in excess from his retiral dues as stated in his declaration. That it is further stated that the respondent no. 2 has written an inter departmental letter dated 28.4.2022 and the petitioner was informed about the fixation of salary the petitioner and recovery was in pursuance to the public welfare/govt. exchanger. That it is stated that due to clerical mistake the petitioner has been calculated excess amount and which was recovered by deposit no. 534 dated 29.6.2022 in pursuant to the order passed by Apex Court in Chandi Prasad Unniyan and in Jagdev Singh's case."

Learned counsel for the petitioner states that not only petitioner had no notice as such of the proposed re-fixation of pay and computation of salary amount allegedly paid in excess to what was otherwise ought to have paid to the petitioner, petitioner cannot be held responsible for such earlier pay fixation which may have resulted in excess payment of salary for the fact that petitioner at any point of time had not made any representation, nor did he apply for a particular pay fixation.

It is further contended by the learned counsel for the petitioner that petitioner being Group-C employee being Sub-Inspector, recovery from post retirement dues of the petitioner could not have been ordered on account of re-fixation in the light of law laid down by the Supreme Court in the case of State Of Punjab & Ors vs Rafiq Masih (White Washer), 2015 (4) SCC 334 . He has placed reliance of paragraph 18 of the judgment, which is reproduced hereunder:

"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."

Meeting the argument, learned Standing Counsel submitted that petitioner's pay fixation if was wrongly done, then that was liable to be corrected and petitioner had given an undertaking at the time of superannuation that whatever the amount he would receive by mistake, he would returned the same. It is further contended by learned Standing Counsel that employee is entitled to pay fixation only as per rules and any wrongful pay fixation is clear loss of State exchequer by which petitioner cannot be benefitted.

Having heard learned counsel for the respective parties and having perused the records, particularly the pleadings raised in the paragraph 15 of the petitioner and reply thereof in paragraph 19 of the counter affidavit, as well as the order impugned, two things become apparently clear:

(i). petitioner had not been given any notice or opportunity of hearing prior to passing of the order dated 07th May, 2022.

(ii) It is well settled principle that that the law which has adverse civil consequences, the order passed must pass on parameters as laid down by the court qua principle of natural justice and hence the order dated 07th May, 2022 becomes questionable.

Besides above, I find that while reply of paragraph 15 in paragraph 19 of the counter affidavit, was given nothing has been stated therein as to whether petitioner had ever given ever any undertaking at the time of pay fixation. The judgment of the Supreme Court in the case of High Court of Punjab & Haryana v. Jagdev Singh, 2016 14 SCC 267 that carves out an exception in respect of such cases where an employee gives an undertaking at the time of pay fixation that he would return the amount if it comes to be paid for wrongful pay fixation. This is not the position in the present case. Any undertaking given at the time of disbursement of pension is only a routine undertaking to the effect that if for wrong calculation of post retirement dues excess payment is provided that will be returned. Such undertaking has nothing to do with pay fixation having already taken place during service period of an employer. Thus, the law laid down in the judgment of Rafiq Masih (supra) is applicable to the case where petitioner having not made any representation for particular pay fixation, he could not have been held liable for the same.

In view of above, the order dated 07th May, 2022 deserves to be quashed.

The writ petition succeeds and is allowed. The order dated 07th May, 2022 passed by the Superintendent of Police filed as annexure 7 to the petition is hereby quashed.

Since ignorance of law is no excuse, the authority cannot shirk away from the liability of interest to be paid to the petitioner for alleged recovery despite law laid down by the Supreme Court in the case of Rafiq Masih (supra), the entire recovered amount, if any, under the order impugned shall be refunded to the petitioner alongwith interest @ 8 per cent from the date of recovery as had been effected upon till actual payment is made.

In so far as re-fixation order is concerned, respondents are directed to give opportunity of hearing to the petitioner by supplying him copy of the computation chart within two weeks from the date of presentation of certified copy of this order and petitioner would be submitting reply in two weeks and thereafter only a fresh order will be passed by the authority concerned within a further period of one month. Revision of pension of the petitioner of the post retirement dues shall abide by result of final order to be passed by the authority.

Order Date :- 1.5.2025 Sanjeev