

# Vidya Ram vs State Of U.P. Thru. Addl. Chief Secy. ... on 3 March, 2025

**Author: Alok Mathur**

**Bench: Alok Mathur**

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

?Neutral Citation No. - 2025:AHC-LK0:12580

Court No. - 6

Case :- WRIT - A No. - 11348 of 2024

Petitioner :- Vidya Ram

Respondent :- State Of U.P. Thru. Addl. Chief Secy. Public Work Deptt. U.P. Govt. Lko. A

Counsel for Petitioner :- Shrawan Kumar,Deepshikha Singh,Nuzhat Ali Siddiqui,Rashmi Shar

Counsel for Respondent :- C.S.C.

Hon'ble Alok Mathur,J.

1. Heard learned counsel for petitioner, learned Standing Counsel for the State and perused the material available on record.

2. By means of the present writ petition, the petitioner has assailed the order dated 20.02.2024 passed by the Superintending Engineer, Public Works Department, Agra Circle Agra, U.P. whereby he has cancelled the order dated 19.02.2009 thereby the petitioner was held to be entitled for grant of Assured Career Progression and the same benefit continued to be paid to him till his superannuation on 28.02.2025.

3. It has been submitted by learned counsel for petitioner that the petitioner was initially appointed on the post of Junior Engineer in Akashvani, Doordarshan, Government of India on 11.03.1989 and subsequently, he was appointed on the post of Junior Engineer in Public Works Department by the U.P. Public Service Commission on 10.08.2001. It has further been submitted that an order was passed on 22.11.2002 whereby request of the the petitioner for counting his services rendered in the Akashvani Doordarshan were also to be counted for service benefits. On 19.02.2009, on completion of 14 years of services, the petitioner was entitled to be granted the benefit of Assured Career Progression and the respondents counting the previous services of the petitioner rendered in Akashvani Doordarshan, Government of India gave him the said benefit.

4. It has been submitted by learned counsel for petitioner that the recovery cannot be made from the petitioner by the respondents after his retirement considering that the Supreme Court in the case of State of Punjab and others Vs. Rafiq Masih (White Washer) and others reported in (2015) 4 SCC 334 has held that with regard to the employees of Class III, & Class IV, no recovery can be made one year prior or after the superannuation.

5. Apart from the above, it is surprising that the petitioner was held to be entitled for the next promotional pay-scale in 2009 and same was granted to him and he continued to receive the service benefits in accordance with law and the rules, which are applicable to the services of the petitioner. It is only in 2024 that the anomaly has been detected and sought to be rectified.

6. It has been submitted by learned counsel for petitioner that the error if any, in grant of promotional pay-scale should have been rectified by the respondents within a reasonable period but reversing the said order after period of 15 years is impermissible and in-fact amounts to review of the order passed in 2009 which power is not vested in any authority and consequently, the impugned order is illegal, arbitrary and without jurisdiction.

7. Learned Standing Counsel has opposed the writ petition and submitted that as per Government Order dated 05.11.2014, which pertains to grant of Assure Career Progression, there is a clear provision in clause 10 that the persons, who have rendered their services previously in Union of India/Local Bodies/Public Enterprises and Corporation, their such previous service could not be counted considering the case for grant of Assured Career Progression.

8. With regard to the provisions of aforesaid Government Order dated 05.11.2014, the petitioner submits that it was the duty of the respondents to have taken into account the various rules before grant of the financial benefits to the petitioner and once they have granted the said benefits, the same could have been revoked after giving due opportunity of hearing to the petitioner.

9. He further submits that in the present case, no opportunity or show cause notice was given to the petitioner prior to passing of the said order and submits that his case is fully covered by the judgement of State of Punjab and others Vs. Rafiq Masih (White Washer) and others reported in (2015) 4 SCC 334 and prayed for setting aside the said impugned order.

10. It is further submitted by learned counsel for petitioner that this aspect of the matter has been considered by the Supreme Court in the case of State of Punjab and others Vs. Rafiq Masih (White Washer) and others reported in (2015) 4 SCC 334 where guidelines with regard to the recovery was laid down by the Supreme Court in paragraph no. 18 of the judgment, which reads 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 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."

11. He further submits that the petitioner was never a party in the pay-fixation, which is the exercise conducted by the respondents themselves after looking to the service record of the petitioner. There is no provision for participation of an employee in fixation of his pay and it cannot be said that the petitioner in any case was responsible for any fraud or collusion with regard to fixation of his pay. He submits that in light of the aforesaid judgment, no recovery can be made from the the petitioner, and accordingly, the impugned order is illegal and arbitrary. He further submits that neither opportunity of hearing nor any show cause notice was given to the petitioner before passing of the impugned order, therefore, the same is illegal, arbitrary and deserves to be set aside.

12. Having heard learned counsel for parties and after examining the matter, this Court is of the considered view that issue raised in the case of State of Punjab and others Vs. Rafiq Masih (White Washer) and others reported in (2015) 4 SCC 334 squarely applies to the facts of the present case. The salary of a government employee is vested right cannot be recovered by the respondents in the manner as has been done, even with regard to the re-fixation of the salary, the same cannot be done without affording any adequate opportunity to the government servant.

13. In light of the above, the writ petition is allowed. Accordingly, the impugned order dated 20.02.2024 and 05.11.2024 is set aside.

14. It is made clear that no recovery shall be made from the post retiral dues of the petitioner but liberty is granted to the respondents to re-fix the salary of the petitioner after giving due opportunity of hearing to him.

15. Apart from the above, this Court notices that as a matter of routine, the entire service record of the employees, who are about to retire are duly examined prior to superannuation and whenever, it is found that any financial benefit was granted to them contrary to any rules or government orders, such benefits are sought to be recovered after the superannuation or just before the retirement.

16. Firstly this Court fails to understand as to why such scrutiny is done only at the end of the service tenure of the government employee and why this scrutiny is not done immediately after benefits are granted.

17. This Court again fails to understand as to why in the age of computerization, all the records are not computerized so as to enable the competent authority to deduct any anomaly in grant of financial benefits to a government servant immediately after the same is made or within any reasonable period after the same.

18. In case the financial records of the government servants are not being maintained on computer, the respondents are directed to immediately computerize the entire service record and grant of financial benefits.

19. This Court also does not any reason as to why this information cannot be displayed, inasmuch as, the pay scale are already are published in the relevant rules and even in the government orders provide for the admissibility of the financial benefits and such information is neither confidential and government servants being paid out of public exchequer, the public depletion has a right to know that the money paid to the government servants is as per rules and in case such records are in public then there would be occasion to individual bring it to the the notice of the competent authority with regard to the excess payment being made to some of the government servants, in case the same are being made considering the fact that repeated matters gaining attention of this Court with regard to the excess payment made to the government servant after his superannuation.

20. This Court finds that excess amounts paid cannot be recovered from the government servants extending the benefit of the judgment of Supreme Court in the case of State of Punjab and others Vs. Rafiq Masih (White Washer) and others reported in (2015) 4 SCC 334 and only looser is the State Government and the exchequer is being constantly defeated of his resources unauthorizedly by certain persons, who are granted the benefit.

21. This Court further directs the Head of Department to immediately take effective steps to control the menace of wrong fixation of financial benefits to the government servants and deduct them at the earliest so as to ensure that the State Exchquer is not defeated of such funds in such an

unauthorized manner.

22. Let a copy of this judgment be sent to the respondent no. 1- Additional Chief Secretary, Public Works Department, Government of U.P. Civil Secretariat, Lucknow by the learned Chief Standing Counsel for necessary compliance.

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(Alok Mathur, J.) Order Date :- 3.3.2025/Virendra