

Nawab vs State Of U.P. And 2 Others on 31 January, 2025

Author: Neeraj Tiwari

Bench: Neeraj Tiwari

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:14681

Court No. - 6

Case :- WRIT - A No. - 18573 of 2024

Petitioner :- Nawab

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Arun Kumar Tripathi

Counsel for Respondent :- C.S.C.

Hon'ble Neeraj Tiwari,J.

1. Heard learned Counsel for the petitioner and learned Additional Chief Standing Counsel for the respondents.

2. Present petition has been filed for the following reliefs:-

" (i) Issue a writ, order or direction in the nature of certiorari quashing the impugned pay fixation order dated 03.07.2023 passed by the respondent no.1 and the Show Cause Notice dated 27.06.2023 issued by respondent no.3.

(ii) Issue a writ, order or direction in the nature of mandamus commanding the respondent no.3 to return the recovered amount sum of Rs. 1,79,374/- (Rupees One

Lakh Seventy Nine Thousand Three Hundred Seventy Four only) to the petitioner, within specific time as fixed by this Court."

3. At the outset, learned counsel for the petitioner submitted that he does not want to press the prayer no.1.

4. He stated that petitioner has retired from the post of Sweeper on 30.09.2023 and after the retirement, certain dues amounting Rs.1,79,374/- have been deducted/ recovered from the post retiral benefit which according to the petitioner is contrary to law.

5. Learned Additional Chief Standing Counsel argues that the recovery certificate has been issued on account of wrong fixation of salary.

6. I have considered the rival submissions advanced by the learned counsel for the parties and perused the records as well as impugned order. Apex Court in the case of State of Punjab and others Vs. Rafiq Masih (White Washer); (2015) 4 SCC 334 while dealing with such dispute, had framed following guidelines:-

"12. 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, summarize 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."

7. Undisputedly, case of petitioner is squarely covered with the judgement of Rafiq Masih (supra) and husband of petitioner was not responsible for fixation of incorrect pay scale and consequently for excess payment.

8. Therefore, under such facts and circumstances of the case, the impugned order dated 03.07.2023 is hereby quashed and writ petition is allowed. The respondent No.3 is directed to release the entire deducted amount of Rs.1,79,374/- to the petitioner within a period of three months from the date of production of certified copy of this order.

9. In case, the amount of Rs.1,79,374/- is not released within the aforesaid period, same shall carry simple interest @ 7% per annum from the date the amount became due till the date of its payment.

10. However, respondents are at liberty to file a recall application if this order is obtained by the petitioner by concealing material fact.

11. Liberty is also given to State-authorities to conduct inquiry in the matter and to fix the responsibility for excess payment and recover the same from the Officers/employees, who are responsible for the same.

Order Date :- 31.1.2025 AKT