



2026:AHC:1142

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - A No. - 18965 of 2022

Shyam Narain Pathak

.....Petitioner(s)

Versus

State Of U.P. And 3 Others

.....Respondent(s)

Counsel for Petitioner(s)	:	Arvind Kumar Verma, Mahesh Sharma
Counsel for Respondent(s)	:	C.S.C.

Court No. - 33

HON'BLE VIKAS BUDHWAR, J.

1. Heard Sri Mahesh Sharma, learned counsel for the petitioner and Sri R.S. Umrao, learned Standing Counsel, who appears for State-respondents.

2. Since counter and rejoinder affidavits have been exchanged and the petition be decided on the basis of the documents available on record, thus with the consent of the parties, writ petition is being decided at the fresh stage.

3. The case of the writ petitioner is that the writ petitioner was appointed as Seasonal Collection Amin on 22.04.1983. He staked his claim for regularisation as Collection Amin in terms of U.P. Collection Amin Service Rules, 1974, according to the writ petitioner, one Ramanand Yadav who was junior to the writ petitioner was granted regularisation on 17.01.1992, however, the services of the writ petitioner stood regularized on 04.10.2004 though the writ petitioner was entitled from 17.01.1992. The services of the other junior collection amin were also regularized and further one Ramanand Yadav and Chandra Bahadur Yadav who were not accorded benefits from the due date. They preferred Writ-A No. 23804 of 2000 which came to be decided on 17.10.2001 against which intra court appeal was preferred which was dismissed and since the order passed by the coordinate Bench was not complied with, contempt petition was also preferred. The writ petitioner claims to have preferred Writ-A No. 37040 of 2016 which was also allowed in terms of a judgment in Writ-A No. 65644 of 2011. The second respondent, District Magistrate, Deoria accorded benefits to the writ petitioner regarding regularisation on 02.07.2006 and the Sub-Divisional Magistrate passed a consequential order on 08.07.2016, however, on

30.11.2011, the writ petitioner superannuated. However, post retirement, when the writ petitioner did not pay any dues, the writ petitioner preferred Writ-A No. 5427 of 2022 which came to be disposed of requiring the respondents to consider the claim. However, on 30.09.2022, an order came to be passed relating to the making of recovery of Rs.22,79,984/-.

4. Questioning the same, the writ petitioner has been filed the present writ petition.

5. This Court entertained the writ petition on 25.11.2022 while passing the following orders:

"Heard learned counsel for the petitioner and learned Standing Counsel for the State-respondents.

Learned counsel for the petitioner submitted that petitioner was working on the post of Collection Amin and junior to petitioner, have been paid pay scale and consequential benefits whereas petitioner has not been paid any consequential benefits, therefore, he has approached this Court by filing Writ-A No.37040 of 2016, which was disposed of vide order dated 18.02.2016 with direction to grant consequential benefits to the petitioner as granted to Chandra Bhusan Yadav and Ramanand Yadav. In compliance of the order of this Court dated 18.02.2016, District Magistrate, Deoria-respondent no.2 has passed an order dated 02.07.2016 directing the payment of salary etc. to the petitioner along with certain conditions. He next submitted that in pursuance of direction made by respondent no.2, Sub-Divisional Magistrate, Salempur, Deoria - respondent no.4 has passed order dated 08.07.2016 fixing the pay scale and payment has also been made to the petitioner.

Respondent no.4 has passed impugned order dated 30.09.2022 with the observation that earlier order dated 08.07.2016 passed by Sub-Divisional Magistrate is not correct as pay scale was wrongly fixed at that time and further fixing the liability of recovery of Rs.22,79,984/- against the petitioner.

Learned counsel for the petitioner has assailed the impugned order on two grounds. He firstly submitted that respondent no.4 is having no authority to review earlier order dated 08.07.2016 vide impugned order dated 30.09.2022 and secondly, in light of judgment of Apex Court in the matter of State of Punjab and others Vs. Rafiq Masih: 2015 (4) SCC 334, in case of incorrect fixation of pay scale, any payment is made, no recovery can be made after retirement, therefore, impugned order is bad on both the grounds and liable to be set aside with direction to pay post retiral dues.

Learned Standing Counsel though opposed, but could not dispute the legal and factual submissions raised by the learned counsel for the petitioner.

Matter requires consideration.

Respondents are also directed to file counter affidavit within six weeks. Rejoinder affidavit may be filed within two weeks thereafter.

List and connect with Writ A No.15883 of 2022.

Until further orders of this Court, effect and operation of the order dated 30.09.2022 passed by the respondent no.4 shall remain stayed.

Let an ad interim mandamus be issued to respondent no.4 to pay post retiral dues to the petitioner or show cause by filing affidavit within the same time."

6. Learned counsel for the writ petitioner has submitted that the case of the writ petitioner is covered by the judgement in **Writ-A No. 15301 of 2022 (Ram Kishore Yadav v. State of U.P. and 3 others)** decided on 16.05.2025. He submits that there is no question of fraud, concealment or misrepresentation and further the entire action is unilateral behind the back of the writ petitioner.

7. Learned Standing Counsel on the other hand submits that whatever might be the order in question needs to be revisited and consequential benefits are to be paid in that regard post passing of the fresh order.

8. I have heard learned counsel for the parties and gone through the records carefully.

9. Facts are not in issue. It is not in issue that the writ petitioner superannuated on 30.11.2021 prior to it, his services were also regularised, however, subsequently, a counter affidavit came to be filed and thereafter now pension has been paid and the ACP is to be paid subsequent post decision in the writ petition.

10. In **Ram Kishore Yadav (supra)**, the following orders were observed as under:

"1. Heard Sri Manish Singh, learned counsel for the petitioner and learned Standing Counsel for the State.

2. By means of this petition filed under Article 226 of Constitution of India, the petitioner has assailed the order dated 13.07.2022 whereby not only the correction in the pay fixation of the petitioner has been done with effect from 1992 but even recovery has been directed on account of assessment of excess payment made to the petitioner for such pay fixation. Hence the consequential order deducting the amount

of Rs.12,64,917/- has been done under the order dated 13.07.2022 is also under challenge.

3. It is argued by learned counsel for the petitioner that the petitioner who was initially appointed as seasonal collection ameen on 03.03.1976 came to be given regular permanent appointment under the relevant service rules on 24.08.2006 for giving benefit to the petitioner with effect from 17.01.1992 as in similar matters orders were passed vide Writ Petition No.4668 of 2017 that came to be disposed of with a direction to decide the claim of the petitioner under order of the High Court dated 31.08.2021 and it is in compliance of the said order that benefit was conferred upon, by the District Magistrate on 06.05.2022 deciding the matter and directing for payment of post retirement dues.

4. It is argued by learned counsel for the petitioner that even though the petitioner had retired on 30.03.2017 but the service benefits and retirement benefits remained pending consideration on account of improper assessment of regular pay scale. All similarly placed employees including the petitioner came to file petition before this Court being no.4668 of 2017 which stood disposed of vide order dated 23.08.2021. It is in compliance of the order of the High Court that the District Magistrate came to pass final order for payment of all the dues on 16.12.2016 pursuant to which the Sub Divisional Officer passed a consequential order on 20.12.2016. It is submitted that it is on account of such pay fixation that ultimately salary was paid. However, it is contended, petitioner upon retirement unlike similarly placed other employees was not paid the terminal dues so he filed a petition being Writ A No.67258 of 2013 which stood disposed of vide order dated 31.08.2021 but again when nothing further progressed, petitioner and other employees moved contempt application being Contempt Application (Civil) No.298 of 2022 and it is upon cognizance being taken in the matter of contempt petition that the impugned order came to be passed.

5. The submission is that while passing the order on 06.05.2022, the respondent-District Magistrate has proceeded to pass order directing the authorities to clear the terminal dues, the Sub Divisional Officer wholly erroneously further refixed the salary of the petitioner with effect from 1992 holding that the petitioner was to be awarded selection grade and promotional grade taking regular service with effect from 28.08.2006 only.

6. According to learned counsel for the petitioner the order of Sub Divisional Officer is assailable on twin grounds: Firstly he sat in appeal over and above the order passed by the District Magistrate on 26.04.2016 which he could not have done; and secondly, in view of the Government Order issued in 2007, the refixation could not have been done beyond a period of 34 weeks from the date of retirement of the employee. He has also placed reliance upon the judgment of the Supreme Court in the case of Sushil Kumar Singhal Vs. Pramukh Sachiv Irrigation Department and others: 2014 (16) SCC 444 in which Government Order 16.01.2007 was discussed and

interpreted.

7. It is further contended that the recovery in such matter could not have been ordered from the retirement dues of the retired employee, and petitioner being a Class III employee, recovery was hit by judgment of the Supreme Court in the case of State Of Punjab & Ors vs Rafiq Masih (White Washer): AIR 2015 Supreme Court 696.

8. It is also contended that since the petitioner had never made any mis-representation with regard to his service benefit claims while earlier matter was decided by the District Magistrate, petitioner cannot be held liable to recovery even on the principles of law laid down by the Supreme Court in the case of High Court of Punjab and Haryana & others v. Jagdev Singh: (2016) 14 SCC 267.

9. Learned Standing Counsel opposing the petition has placed reliance upon the counter affidavit in the matter justifying the stand of re-fixation on the ground that the salary fixation done by the District Magistrate was erroneous one and thus has sought to justify the order for the reasons assigned therein. However, on the question of fixation afresh of the pay of a retired employee beyond period of 34 weeks as restrained under the Government Order dated 16.01.2007 learned Standing Counsel could not dispute that provisions contained under the Government Order as well as the Supreme Court Judgment relied upon by learned counsel for the petitioner. He also could not dispute the legal principles laid down in the case of Rafiq Masih (Supra) and could not demonstrate from any averments made in the counter affidavit that at any point of time any undertaking was given by the petitioner for refund of the amount on account of alleged wrong fixation when the order was passed in the year 2016 by the District Magistrate concerned and consequential order passed by the concerned Sub Divisional Officer. He further could not justify the action of the Sub Divisional Officer sitting in appeal over and above the order passed by the District Magistrate, nor could demonstrate from the recitals contained in the order impugned that any such prior permission or approval was taken from the District Magistrate before passing the order or even after any approval was granted by the District Magistrate.

10. I find that the District Magistrate had finally decided the matter under his order dated 26.04.2016 in compliance of the order of Writ Court passed in Writ A No.62250 of 2013 and gave benefit of pay fixation to the petitioner since 2006 giving benefit of service with effect from 17.01.1992. This benefit has been accorded notionally so as to benefit the petitioner with selection grade. It appears that some review application was pending in respect of order passed in Writ A No.62250 of 2013 and therefore, the District Magistrate also passed order to the effect that the order passed by him on 26.04.2025 shall abide by the final order that may be passed in review in the writ petition. This order passed by the District Magistrate has now been recalled while there is nothing coming forth in the counter affidavit that any review petition if filed in the matter of order passed in Writ A No.62250 of 2013, was ever allowed or disposed

of with a direction to redecide the matter.

11. In the circumstances therefore, the order passed by the District Magistrate shall have to be taken as final one and in my considered view, therefore, the Sub Divisional Magistrate who had earlier passed an order on 16.12.2016 as a consequence to the order of District Magistrate dated 26.04.2016, could not have rectified pay fixation holding that the petitioner was wrongly awarded notional benefit by counting the period with effect from 17.01.1992. Thus it as an act of insubordination by the Sub Divisional Magistrate, Rudrapur in passing order dated 13.07.2022 without seeking prior permission from District Magistrate and for which he deserves to be not only reprimanded but also proceed with a departmental proceedings. The order of District Magistrate having become final in the matter of pay-fixation giving notional benefit counting the period of service with effect from 17.01.1992, the order of refixation passed by the Sub Division Officer and that too after the petitioner had attained the age of superannuation is per se bad and hence deserves to be set aside.

12. Besides the above, fixation having taken place previously on 16.12.2016 in view of the Government Order dated 16.01.2007 and the judgment of the Supreme Court in the matter of Sushil Kumar Singhal (supra) interpreting the same no refixation could have been done beyond period of 34 weeks. Thus correction in earlier fixation of salary is held unsustainable.

13. The Sub Divisional Officer having exceeded his authority in passing the order and petitioner having not only been penalised with the recovery but also being forced to approach a court of law after attaining age of superannuation wayback on 31.03.2017, he in fact deserves refund with interest.

14. Writ petition succeeds and is allowed. The order passed by the Sub Divisional Officer dated 13.07.2022 impugned as Annexure 14 to the writ petition is hereby quashed. The respondent concerned is directed to review the impugned representation of the petitioner as a consequence to the order impugned alongwith interest @ 12 per cent with a maximum period of two months of production of certified copy of this order. If the amount is not refunded alongwith interest then the Sub Divisional Officer concerned would be liable to pay interest @ 18 per cent from the date recovery has been done till the actual payment is made.

15. It is left open for the State-respondents to recover the amount from the then Sub Divisional Officer, Rudrapur for whose conduct petitioner was forced to approach this Court and amount has directed to be refunded with interest."

11. It is not apparent from the order impugned that the writ petitioner was put to notice and further the other incumbents have been accorded benefits. It is also not the case wherein the writ petitioner committed fraud, concealment or misrepresentation. Accordingly, the order impugned cannot

be sustained.

12. Resultantly, the writ petition is **allowed**.

13. The order dated 30.09.2022 passed by the respondent no. 4, Sub-Divisional Magistrate, Salempur, District- Deoria is set aside.

14. The matter stands remitted back to the authority to pass fresh order strictly in accordance with law after putting notice to the writ petitioner.

15. In case any amount is liable to be paid to the writ petitioner, the same shall be paid within the same period.

January 6, 2026

A. Prajapati

(Vikas Budhwar,J.)