



2026:AHC:33167

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - A No. - 15290 of 2024

Hcp Gyanendra Kumar

.....Petitioner(s)

Versus

State Of Up And 3 Others

.....Respondent(s)

Counsel for Petitioner(s)	:	Punit Khare, Shubham Tandon
Counsel for Respondent(s)	:	C.S.C.

Court No. - 33

HON'BLE VIKAS BUDHWAR, J.

1. Heard Sri Punit Khare along with Sri Shubham Tandon, learned counsel for the writ petitioner as well as Sri V.K. Srivastava, learned Standing Counsel for the State.

2. Since affidavits have been exchanged between the parties and they do not propose to file any further affidavit, the writ petition is being decided at the initial stage.

3. The case of the writ petitioner is that he was appointed as a police constable on 01.05.1982 and was promoted as a Head Constable in the year 2017 and is superannuated on 31.03.2021. According to the writ petitioner, two orders came to be passed, one dated 31.03.2021 and the other dated 03.10.2022 seeking to refix the pay scale and the salary to the determined of the writ petitioner and also to make recovery, which was subject matter of challenge in Writ-A No. 21241 of 2022 (Hcp Gyanendra Kumar Vs. State of U.P. and 3 others), which came to be disposed of on 23.02.2023, which is delineated herein below:-

"Heard learned counsel for the petitioner and the learned Standing Counsel for the State-respondents who has furnished the written instructions dated 22.02.2023 under the signature of the Superintendent of Police, Pilibhit, which is taken on record.

By means of the instant petition, the petitioner prays for the following reliefs which reads as under:-

"(i) Issue a writ, order or direction in the nature of certiorari to quash the impugned order dated 3.10.2022 passed by respondent no.3 (Annexure-1)

and the order dated 31.03.2021 passed by respondent no.2 (Annexure 3).

(ii) Issue a writ, order or direction in the nature of mandamus commanding the concerned respondent authorities, to modify the pension order dated 29.04.2021 to the extent of/ and make payment of petitioner's retiral dues/benefit, including pension and leave encashment etc. at this last fixed/drawn basic pay i.e. Rs.60,400/- alongwith other applicable emoluments and applicable interest thereon."

The Court had required the learned Standing Counsel to seek instructions as to why the deduction has been made and as per the written instructions, it is indicated that the wrong fixation was made in the year 2006 whereas the petitioner retired on 31.03.2020.

Having taken note of the written instructions where it is not disputed that the petitioner has retired and there is no fault on the part of the petitioner regarding the alleged incorrect pay fixation, accordingly the authorities by passing the impugned orders dated 03.10.2022 and 31.03.2021 have not taken note of the decision of the Apex Court in the case of State of Punjab and others Vs. Rafiq Masih (White Washer), reported in (2015) 4 SCC 334. The relevant para of the decision of the Apex Court in the case of Rafiq Masih (supra) has been pleased to lay down following principles in para 18:-

"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."

Admittedly, there does not appear to be any case of misrepresentation or fraud on the part of the petitioner in the matter.

In such circumstances, the orders impugned dated 03.10.2022 and 31.03.2021 cannot be sustained and are set aside. The matter is remitted back to the authority concerned to examine the matter, afresh, and pass appropriate order, keeping in view the principles laid down by the Apex Court in the case of Rafiq Masih (supra), within a period of three months from the date of presentation of an authenticated copy of this order. Whatever retiral dues are found payable shall be released to the petitioner within a further period of two months.

As regards, the claim of interest on the delay dues, it would be open to the petitioner to raise such grievance before the appropriate forum.

Writ petition is accordingly disposed of."

"The instant correction application has been moved by the petitioner with the limited prayer that in the order dated 23.02.2023, in the third paragraph, last line, the year '2020' has been transcribed instead of '2021'.

Having considered the aforesaid, the submission of the counsel for the petitioner appears to be correct. Accordingly, the application is allowed. The order dated 23.02.2023 shall stand corrected and in the third paragraph, last line, the year '2020' shall be read as '2021'

The order of correction shall be read with the principal order dated 23.02.2023.

Office is directed to provide a corrected copy of the order to the learned counsel for the petitioner upon payment of usual charges."

4. According to the writ petitioner, post passing of the same order, the writ petitioner represented the respondents, however no fixation was done. This led to the filing of the present writ petition for a direction to the respondents to correct the last drawn salary of the writ petitioner from Rs.60,400/- instead of Rs. 56,900/- and to make pension on the basis of the last salary drawn and to pay arrears also. Learned counsel for the writ petitioner submitted that the entire action of the respondents in reducing the basic pay

of the writ petition from Rs. 60,400/- to 58,600 is not only unilateral but behind the back of the writ petitioner without putting to notice to writ petitioner. Submission is that though there might be an error committed by the employer but there happens to be a procedure which is to be resorted too.

5. Sri B.K. Srivastava, learned Standing Counsel, on the other hand, submits that it was open for the employer to correct the errors but according to him no order seems to have been passed and obviously order cannot be passed without putting to notice the writ petitioner.

6. I have heard the submissions so made and perused the records. Apparently, quashing of the order dated 31.03.2021 and 03.10.2022, a writ petition came to be preferred being Writ A No. 21241 of 2022, which was allowed on 23.02.2023. The basic question is whether in a unilateral manner refixation of the salary can be done to the determined of the employees. The answer is obviously "NO". The employer is to put notice the writ petitioner/affected party and seeking the explanation pass an order making all the contentions sought to be raised in that report. Since the said exercise is lacking and there is nothing on record to suggest that there has been any application of mind while passing and order. Thus, the writ petition is being decided in the following terms:

(a). the writ petitioner shall approach the Finance Controller/Chief Account Officer, Police Headquarters, Lucknow i.e. respondent no. 3 by filing a comprehensive representation along with a self attested copy of the writ petition and certified copy of the order by 13.03.2026.

(b). on the said motion, the respondent no. 3 shall issue a show cause notice within a period of two weeks therefrom and the writ petitioner shall respond to the same within a period of two weeks thereafter and on the date so fixed, a reasoned and speaking order dealing with all the contentions sought to be raised by the writ petitioner shall be passed two months thereafter.

7. With the aforesaid directions, the writ petition is disposed of.

February 13, 2026
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0(Vikas Budhwar,J.)