

(Delivered by Hon'ble Rajesh Singh  
Chauhan, J.)

1. Heard Sri Ravi Singh, learned counsel for the petitioner and Sri Ashwani Kumar Singh Rathore, learned Standing Counsel.

2. By means of the present petition, the petitioner has prayed the following main reliefs:

**Aniruddh Singh** ...Petitioner  
**Versus**  
**State of U.P. & Ors.** ...Respondents

*"I. To issue a writ, order or direction of or in the nature of certiorari, thereby quashing the order dated 06.09.2024, contained in Annexure No. 1 to this writ petition.*

*II. To issue a writ, order or direction of or in the nature of certiorari, thereby quashing the order dated 07.09.2024, contained in Annexure No. 2 to this writ petition.*

*III. To issue a writ, order or direction of or in the nature of mandamus directing the respondents not to recover any amount from the petitioner in pursuance of impugned orders 06.09.2024 & 07.09.2024, contained in Annexure No. 1 & 2 to this writ petition.*

IV. To issue a writ, order or direction in the nature of mandamus directing the respondents to release her entire post retiral dues including pension, gratuity, leave encashment within the period to be fixed by this Hon'ble Court."

3. Learned counsel for the petitioner has stated that the petitioner has retired from the post of Senior Assistant from the office of Deputy Director Agriculture, Barabanki on 31.07.2024. The aforesaid post comes within the purview of Class--III post. After his retirement, the impugned order dated 06.09.2024 (Annexure No. 1) has been passed re-fixing the salary and

1. St. of Punj. & ors. Vs Rafiq Masih & ors.; (2005) 4 SSC 334
2. High Court of Punj. and Har. & ors. Vs Jagdev Singh; (2014) 16 SCC 267
3. Sushil Kumar Singhal Vs Pramukh Sachiv Irrigation Department & ors.; (2014) 16 SCC 444

Pay-Grade of the petitioner w.e.f. 01.07.2006. On account of re-fixation of salary of the sum of Rs.5,68,082/- has been directed to be recovered from the petitioner vide order dated 07.09.2024 (as contained in Annexure No.2).

4. Learned counsel for the petitioner has assailed the aforesaid inaction on the ground that in view of the dictum of the Hon'ble Apex Court in re; **State of Punjab and Others Vs. Rafiq Masih and Others (2005) 4 SSC 334**, no such recovery may be executed from a Class III employee at the fag end of retirement or after retirement in the name of access amount being paid when the employee was in service.

5. Sri Ravi Singh has also submitted that the Hon'ble Apex Court has clarified the dictum in re; **High Court of Punjab and Haryana and Other Vs. Jagdev Singh (2014) 16 SCC 267 and in State of Punjab and Others Vs. Rafiq Masih and Others (supra)** to the extent that if at the time of making access payment, any undertaking has been received from the employee, such recovery may be executed but in the present case no such undertaking has been received from the petitioner when the benefit of pay-grade etc. was provided to the petitioner.

6. He has also submitted that before passing the impugned order, no opportunity of hearing was given to the petitioner.

7. Sri Ravi Singh has further submitted that in view of the policy of the State Government itself pursuant to the Government Order dated 16.01.2007, the employer may examine

the last 34 months period of an employee after his retirement for re-fixation of salary etc but in the present case, such re-fixation has been carried out w.e.f. 01.07.2006.

8. The aforesaid Government Order dated 16.01.2007 has been approved by the Hon'ble Apex Court in re; **Sushil Kumar Singhal Vs. Pramukh Sachiv Irrigation Department and Others (2014) 16 SCC 444**.

9. Therefore, the impugned orders are patently illegal, arbitrary, discriminatory and uncalled for in view of the dictum of Hon'ble Apex Court in re; **State of Punjab and Others Vs. Rafiq Masih and Others (supra)** and **Sushil Kumar Singhal Vs. Pramukh Sachiv Irrigation Department and Others (supra)**.

10. Sri Ashwani Kumar Singh Rathore tried to defend the impugned orders but has submitted that undisputedly the petitioner retired from Class III post an impugned exercise of re-fixation of salary and pay-grad etc. as well as the direction for recovery has been passed after his retirement, therefore, appropriate order may be passed.

11. Having heard learned counsel for the parties and having perused the material on record, since the petitioner retired from Class III post and impugned recovery direction/ order has been passed after his retirement, therefore, such impugned order is in violation of the instructions being issued by the Hon'ble Apex Court in re; **State of Punjab and Others Vs. Rafiq Masih and Others (supra)**. Besides, the period for re-fixation of salary which has

been considered is beyond 34 months, therefore, in view of the Government Order dated 16.01.2007 and also in view of the dictum of Hon'ble Apex Court in re; **Sushil Kumar Singhal Vs. Pramukh Sachiv Irrigation Department and Others (supra)**, such re-fixation may not be permitted in the eyes of law. Since no recital has been given regarding any undertaking at the time of making access payment to the petitioner, therefore, in view of the dictum of Hon'ble Apex Court in re; **High Court of Punjab and Haryana and Other Vs. Jagdev Singh (supra)** such recovery may not be permitted.

12. Accordingly, the writ petition is allowed. Consequently, the impugned orders dated 06.09.2024 (contained in Annexure No. 1) and 07.09.2024 (contained in Annexure No. 2) are hereby set aside/ quashed.

13. The opposite parties are further directed to release the entire service benefits of the petitioner including pension, gratuity, leave encashment and other applicable benefits, with expedition, preferably within a period of six weeks from the receipt of certified copy of the order of this Court, provided the petitioner has completed all required formalities, failing which the petitioner would be entitled for the interest @ 8% per annum on delayed payment.

14. With the aforesaid observations and directions, the writ petition is **allowed**.

15. No order as to costs.

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**(2024) 9 ILRA 1406**

**ORIGINAL JURISDICTION**

**CIVIL SIDE**

**DATED: ALLAHABAD 23.09.2024**

**BEFORE**

**THE HON'BLE AJIT KUMAR, J.**

Writ -A No. 39076 of 2015

**Heeraman Prasad ...Petitioner**  
**Versus**  
**State of U.P. & Ors. ...Respondents**

**Counsel for the Petitioner:**

Ashutosh Kumar Pandey, Sanjeev Singh, Sujeet Kumar Rai

**Counsel for the Respondents:**

C.S.C.

**Service Law – claim for compassionate appointment-rejected-father's post as Sahyogi to the Collection Amin was abolished upon his death-Uttar Pradesh Co-operative Collection Fund and the Amins and other Staff Service Rules, 2002-Rule 5-rules have statutory force-framed by the Governor-Section 130 read with Section 92(A) and Section 92(B) of the U.P. Cooperative Societies Act, 1965-deceased employee-government servant-post's abolition did not preclude offering a compassionate appointment on a suitable Group 'D' post-rejection order quashed-direction to grant compassionate appointment-petition allowed. (paras 10, 12, 14, 15 and 16)**

**HELD:**

Rule 5 clearly stipulates that strength of service of each category of post under the service cadre mentioned under the Rules would be with prior approval of the Government. The rules that have been framed by the Governor taking aid to the provision as contained under Section 130 read with Section 92(A) and Section 92(B) of the U.P. Cooperative Societies Act, 1965, are definitely having statutory force. Number of posts of Sahyogi to the Amin are prescribed to be 90 in the service cadre and it appears that immediately after rules were framed and brought into force, the Government decided to regularize all such Sahyogis working on a temporary basis and so resultantly the order of confirmed appointment was issued in favour of