

(2010) 07 AHC CK 0027
In the Allahabad High Court
Case No : C.M.W.P. No. 45109 of 2008

Shiv Pujan Ram

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 21-07-2010

Acts Referred:

Citation : (2010) 6 AWC 5471

Hon'ble Judges : Amreshwar Pratap Sahi, J

Bench : Single Bench

Judgement

Amreshwar Pratap Sahi, J.—Heard Sri K.S. Rathore learned Counsel for the Petitioner and the learned standing counsel.

2. Affidavits have been exchanged between the parties and therefore the matter is being finally decided at this stage itself.

3. The challenge in this writ petition is to the order dated 8.3.2008 and the order dated 7.3.2008 as well as consequential recovery whereby the Petitioner has been compelled to deposit a sum of Rs. 44,634 on the ground that while in service the Petitioner has been paid excess salary due to wrong fixation.

4. Learned Counsel for the Petitioner contends that there is no allegation of fraud and misrepresentation on the part of the Petitioner and the recital contained in the order dated 7.3.2008 clearly establishes that the pay fixation was done by mistake. The mistake is of the Department and not of the Petitioner. In such a situation the law laid down by this Court in the case of Dr. Gopalji Mishra Vs. State of U.P. and Others, squarely applies on the facts of the present case.

5. In view of the aforesaid conclusion drawn, the order dated 8.3.2008 to the extent it orders recovery from the Petitioner is quashed. It is stated at the bar that the Petitioner was compelled to deposit the said amount under protest. The said amount shall be refunded to the Petitioner. It is made clear that the pay fixation order dated 7.3.2008 shall hold good for the purposes of calculating the

pension of the Petitioner.

6. The writ petition is partly allowed. No order as to costs.