

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP-17987-2005 (O&M)
Date of decision : 11.05.2015

Kuldip Chand Bhargav

...Petitioner

V/S

Punjab Agricultural University, Ludhiana and others.

...Respondents

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Namit Kumar, Advocate for the petitioner.

Mr. HNS Gill, Advocate for the respondents

JITENDRA CHAUHAN, J. (Oral)

CM No.1103 of 2013

CM under Order 6 Rule 17 CPC are allowed as prayed.

Complete amended pleadings are already on record.

Main case

This Civil Writ Petition has been filed, under Articles 226/227 of the Constitution of India, for quashing the orders dated 16.09.2004 (Annexure P-11), 21.12.2011 (Annexure P-15), 27.04.2012 (Annexure P-16) and 15.11.2012 (Annexure P-16A), whereby claim of

the petitioner for the grant of retiral benefits has been rejected and recovery orders have been passed against him for a sum of Rs.8,91,714.95 and it has been ordered to be recovered from the pension of the petitioner at the rate of 60% of pension per month and for issuance of directions to the respondents to release all the retiral benefits along with interest @18% PA.

It is contended that on 07.12.1970, the petitioner joined as Sectional Officer in Punjab Agricultural University and retired on 31.03.2002. He had also crossed efficiency bar twice i.e. on 01.12.1983 and 01.12.1987. He submitted the requisite documents to the respondents prior to his retirement. He had been granted provisional pension of Rs.5642/- per month w.e.f. 01.4.2002 instead of regular pension. For the redressal of his grievance, the petitioner has moved various representations and served a notice of demand of justice dated 20.03.2004 (Annexure P-10), however, the same has not been decided so far. Feeling aggrieved, he approached this Court vide CWP No.9411 of 2004 and this writ petition was disposed of with a direction to the respondents to take decision on the legal notice of the petitioner. In response to this, vide order dated 16.09.2004 (Annexure P-11), the respondents rejected the claim of the petitioner on the ground that he had not rendered the accounts pertaining to the year 1970-74. But from the orders passed by the Estate Officer and Vice Chancellor it clearly

showed that he had already rendered the accounts pertaining to the period 1970-74.

Learned counsel for the respondents states that the petitioner was constantly impressed upon to render the MAS Accounts of the works worth lacs of rupees and also return the relevant/original official record viz Measurement Books, MAS registers, Indent Books etc. during the period the petitioner was serving with the respondent university. He was issued chargesheet vide letter dated 16.05.1986 for non rendering of the accounts of the works. Since he did not respond to the query raised, an enquiry was initiated against him and a show cause notice was issued to him. The retiral benefits of the petitioner were rightly withheld by the University because he had failed to render the accounts of the works. So, No Due Certificate was not issued to him, but leave encashment and gratuity had already been paid to him.

Learned counsel for the respondents further submits that petitioner is drawing pension Rs.25,747/- per month approximately out of which Rs.13,000/- is being recovered towards the recovery against him.

Heard.

Recovery order of Rs.8,91,714.95 (Annexure P-15) has been passed against the petitioner on the allegation that the petitioner while working as Sectional Officer (JE) in the year 1973 got executed

15 works of total estimated cost was Rs.7,30,753/- and as per the work registers, an expenditure of Rs.8,91,714.95 had been incurred and the petitioner has failed to submit the accounts of these works and the original record i.e. Measurement Book, MAS Registration and Intends Books etc. However, a perusal of Annexure P-17 clearly shows that the accounts of these works had been already submitted by the petitioner and this fact was duly confirmed by the XEN-III vide his letter No.1374 dated 1.2.1974 to the Chief Engineer and also by the XEN-II vide his Memo. No.401 dated 24.4.1974 and Memo. No.494 dated 14.5.1975 and this aspect was also kept in view while promoting him as Sub Divisional Engineer in 1975. These documents have been withheld by the University and when the petitioner demanded these documents under the RTI Act, the same have been denied vide Annexure P-27.

Further, on the basis of said record, the University has made payments to the Contractor and the labour force employed on these works. Further, there is a procedure of “handing over and taking over” of the charge which was given by the petitioner to his successor and at no point of time any short-coming/discrepancy was ever pointed out by his successor.

As per Rule 11.4 (a), no recovery can be made from the pension of any employee without his consent and as per Rule 11.5(a),

the disciplinary proceedings cannot be instituted for an event which took place more than four years before the retirement. In the present case, the Show Cause Notice was issued on 5.4.2011, Annexure P-14, for an event which took place in the year 1973. It has been held in the judgment in **RSA No.2432/2014 decided on 7.5.2014 Panjab Agricultural University, Ludhiana and others Vs. Mangal Sain Gupta** and **RSA No.341/2009 decided on 14.9.2012 (Annexure P-16B) Brij Mohan Sondhi Vs. Haryana Vidyut Parsaran Nigam and others, 2007 (3) SCT 788 Dr. Inderjit Singh Wasu Vs. State of Punjab and others, 2000 (3) SCT 515 Sub Inspector Puran Chand (Retd.) Vs. State of Punjab and others and 2007 (2) SCT 49 and 2008 (4) SCT 652 Baldhir Singh Vs. State of Punjab and others**, that the right of an employee to withhold or withdraw a pension or any part thereof has been reserved with certain conditions. The right of ordering recovery from pension by withholding the whole pension or part thereof, for any pecuniary loss caused to the employer in a departmental or judicial proceedings if the pensioner is found guilty of grave misconduct or negligence during the period of service provided the departmental proceedings were instituted while the officer was in service. If such disciplinary proceedings were not instituted while the officer was not in service, then the same cannot be instituted without the prior sanction of the superior authority and in any case cannot be in

respect of an event which had taken place more than four years before such institution.

In the present case, it is the pleaded case of the petitioner in Para 17 (V) at page 22 that no loss has been caused to the University and it is also not the allegation in the Show Cause Notice dated 5.4.2011, Annexure P-14, which has not been denied by the University.

In view of the above facts and circumstances, the present petition is allowed, impugned orders dated 16.09.2004 (Annexure P-11); 21.12.2011 (Annexure P-15); 27.04.2012 (Annexure P-16) and 15.11.2012 (Annexure P-16A) are set aside and a direction is issued to the respondents to release all the remaining retiral benefits along with interest @8% per annum from the date of retirement till its payment and the amount already deducted from retiral dues along with the same interest from the date of deduction till its payment, within four months after the receipt of certified copy of this order. It is further directed that no amount be deducted in future from the pension of the petitioner.

11.05.2015

ashok

(JITENDRA CHAUHAN)
JUDGE

whether referred to reporter? Yes/No.