IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(I) CWP-11695-2011 (O&M)
Date of decision : 08.07.2015

Pritam Singh Saggu

...petitioner

Versus

Uttar Haryana Bijli Vitran Nigam Ltd. and others

...respondents

(II) CWP-26461-2013 (O&M)
Date of decision : 08.07.2015

Pal Singh

...petitioner

Versus

Uttar Haryana Bijli Vitran Nigam Ltd. and others

...respondents

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Jagbir Malik, Advocate,
for the petitioners.

Mr. Jasbir Mor, Advocate,
Mr. P.S. Punia, Advocate,
for the respondents.

JITENDRA CHAUHAN, J.

The above noticed two writ petitions are being disposed of by this single judgment of mine as common questions of facts and law are involved therein. For brevity, the facts are being derived from CWP No.26461 of 2013.

The petitioner, who was appointed on 26.02.1973 as Assistant Lineman, upon attaining the age of superannuation, retired from service on 31.05.2011, as Junior Engineer. On 02.06.2011, the respondents released an amount of Rs.3,08.140/- towards Leave Encashment. He was also granted 75% Provisional Pension, however, the amount of Gratuity, Commutation of Pension and 25% of the pension was withheld. Thereafter, the petitioner approached this Court by way of filing CWP No.436 of 2013, which was disposed of vide order dated 08.08.2013 (Annexure P-3), with a direction to the respondents to consider the claim of the petitioner within two months. In compliance thereof, the respondents have release a part of the retiral benefits but have again withheld an amount of Rs.2,31,269/- of Gratuity, on account of shortage of oil and cost of breakage of damaged transformers.

The learned counsel for the petitioner refers to Rule 2.2(b) of the Punjab Civil Services Rules, Vol.2 Part-I and states that the retiral benefit of a petitioner could be withheld, only in case, where any disciplinary proceedings were pending against the employee on the date of his retirement. It is contended that no disciplinary proceedings were ever initiated against the petitioner either prior to or after his retirement.

On the other hand, the learned counsel for the respondents submits that the irregularities committed by the petitioner came to light only at the time of his retirement. Thus, the show-cause notice was issued on 22.06.2011, after his retirement.

I have heard learned counsel for the parties and perused the case file.

As per the notice of recovery dated 22.06.2011, Annexure R-3/1, an amount of Rs.2,26,882/- had been shown outstanding against the petitioner. Apparently, on account of the same, an amount of Rs.2,31,269/- was recovered from the amount of gratuity payable to the petitioner. The amount recovered/withheld has been calculated unilaterally by the respondents, without holding any inquiry or associating the petitioner. No fact finding report was prepared on the basis of some departmental inquiry, has been produced on record.

This Court, in ***Ram Phal Vs. Uttar Haryana Bijli Vitran Nigam Ltd. and others,*** rendered in CWP No.1318 of 2009, decided on 08.01.2010, has held as under:-

> *"2. The written statement of respondent Nos.1 to 6 only makes out the point that a notice had been issued and it is nowhere stated that any enquiry was constituted or any finding was recorded that the petitioner was bound to make the payment. It has also been stated that the SDO, S/U, S. Division, Gohana had already submitted a report to write off in view of the stand taken in the show cause notice issued on 30.12.2005.*
>
> *3. In my view, a mere service of notice that did not*

> *culminate in an enquiry or a finding that the petitioner was liable for such a sum, cannot be justifiable cause to withhold the retiral benefits. If the rules permit the constitution of an enquiry even subsequent to the superannuation, the respondents will be at liberty to take such action and establish the guilt of the petitioner...."*

The above case law is squarely applicable to the facts of the present case. The demand notice never culminated into departmental proceedings and there is no finding of fact recorded against the petitioner. Therefore, the action of the respondents in withholding the amount of Rs.2,31,269/-, is illegal, ultra vires and deserves to be quashed.

Accordingly, both the petitions are allowed and the respondents are directed to release the amount withheld by them to the respective petitioners within a period of two months from the date of receipt of a certified copy of this order, failing which, the same shall carry interest at the rate of 8% per annum from the date of filing the present petitions, till its payment.

Allowed.

08.07.2015 **(JITENDRA CHAUHAN)**
atulsethi **JUDGE**

Note : Whether to be referred to Reporter : Yes