

CWP No. 12330-2012

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

CWP No. 12330-2012

Date of Decision: 20.02.2015

Hari Ram

... Petitioner(s)

Versus

State of Haryana and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

- 1) Whether Reporters of the local papers may be allowed to see the judgment ?.
- 2) To be referred to the Reporters or not ?.
- 3) Whether the judgment should be reported in the Digest ?

Present: Mr. J.P.Sharma, Advocate,
for the petitioner.

Dr. Sushil Gautam, DAG, Haryana.

Paramjeet Singh, J. (Oral)

Instant writ petition has been filed under Articles 226/227 of the Constitution of India for quashing the order dated 15.04.2008 (Annexure P-1) passed by respondent no.4 whereby shortage of oil and parts has been shown against the petitioner after his retirement and for quashing the order dated 07.10.2009 (Annexure P-2) whereby an amount of ₹ 2,37,237/- has been deducted by the respondents from the gratuity of the petitioner.

Brief facts of the case are to the effect that the petitioner was working with the respondents-department as Assistant Foreman. The petitioner retired from the service on 30.04.2007 and at that time,

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nothing was due against the petitioner. When the petitioner requested for release of gratuity, respondent no.4 issued a letter dated 15.04.2008 (Annexure P-1) to respondent no.5 showing the shortage of oil and parts against the petitioner. The petitioner was only the Assistant Foreman and not incharge of the store in any manner. It is further pleaded that the shortage has been shown w.e.f 1998 to 2004, however, no show cause notice was issued to the petitioner during his service period. The respondents-department deducted an amount of ₹ 2,37,237/- from the gratuity amount for the alleged shortage vide impugned order dated 22.07.2008/Endst. dated 07.10.2009 (Annexure P-2). It is further pleaded that the amount cannot be deducted from the gratuity in view of Section 4(6) of the Payment of the Gratuity Act, 1972. Hence, this writ petition.

In pursuance of notice of motion, respondents put in appearance. Respondents no.2 to 5 filed their written statement with the averments that while working in the office of XEN (OP) Mohindergarh, the petitioner had withdrawn the materials from the store, but had not submitted the account of the same. Respondent no.5 received Last Pay Certificate dated 15.04.2008 from respondent no.4 showing shortage of materials worth of ₹ 3,36,621/- which were withdrawn by the petitioner from the store. Since the petitioner submitted his record of drawn materials worth of ₹ 90774/- only, therefore, a revised Last Pay Certificate dated 22.05.2009 was issued in which amount of ₹ 90774/-

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was deducted and shown net recoverable amount as ₹ 2,45,847/- for the shortage of oil and parts etc. It is further pleaded that the petitioner was fully aware about the shortage of Store Requisition/Store Return Warrant. The petitioner admitted the shortage of material and he submitted the record of SR/SRW of ₹ 90,774/- after his retirement.

I have heard learned counsel for the parties and perused the record.

Perusal of impugned order (Annexure P-2) reveals that there is no disclosure about the deduction of amount. In para 8 of writ petition, the petitioner has specifically claimed that Rs.2,37,237/- has been ordered to be deducted from the amount of gratuity. Para 8 of writ petition reads as under:

“8. That further the respondents deducted Rs.2,37,237/- from the amount of the gratuity on account of the shortage of the alleged period of 1998 to 2004 and for which the respondents have no right to deduct the same from the gratuity of the petitioner which is statutory right and hence the impugned order dated 22.07.2008 is liable to be quashed being unconstitutional. The impugned order dated 22.07.2008 is annexed herewith as Annexure P-2.”

Respondents no.2 to 5 have replied to para no.8 of writ petition admitting the factum of recovery from the petitioner. Para no.8 of written statement reads as under:

“8. That the contents of para no.8 of the writ petition are wrong and hence denied. However it is

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stated that the recovery had been made on account of shortage of material which was drawn by the petitioner and the complete record of SR/SRW (Store Requisition/Store Return Warrant) had not been submitted by the petitioner. Additionally the averments made in para no.7 are reasserted here.”

Admittedly, the petitioner has retired from service on 30.04.2007. The recovery was for the shortage of material drawn by the petitioner from 1998 to 2004. The recovery has been effected without holding any inquiry, therefore, the recovery is against the Government instructions and the Rules applicable to the Department. The same is also against the principles of natural justice as no opportunity of hearing has been afforded to the petitioner. The respondents-department has remained inactive in holding inquiry prior to his retirement. In an identical case, learned Single Judge of this Court in **CWP-2768-2009**, titled '**Dhan Singh vs. Uttar Haryana Bijli Vitran Nigam Ltd. and others**', decided on 11.03.2010, has held that without holding an appropriate inquiry and giving an appropriate opportunity of hearing to the delinquent, deduction cannot be made. The case in hand is squarely covered by the judgment passed by learned Single Judge in the aforesaid writ petition.

Accordingly, the order dated 15.04.2008 (Annexure P-1) whereby shortage of oil and parts has been shown against the petitioner and order dated 22.07.2008/Endst. dated 07.10.2009 (Annexure P-2) to the extent of deduction of gratuity amount of the petitioner are set aside.

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The department is directed to reimburse the amount along with simple interest @ 9% per annum from the date of deduction of the amount. Needful shall be done within a period of two months from the date of receipt of certified copy of this order.

However, the respondents-department will be at liberty to constitute an inquiry and proceed in accordance with law as per Rule 2.2. (b) of the Punjab Civil Services Rules.

Disposed of in the aforementioned terms.

20.02.2015
parveen kumar

(Paramjeet Singh)
Judge