IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P. No. 18130 of 2013

DATE OF DECISION: 30.6.2015

Dayanand ....Petitioner

Versus

UHBVNL and others ....Respondents

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

1. **Whether reporters of local newspaper may be allowed to see judgment?**
2. **To be referred to reporters or not?**
3. **Whether the judgment should be reported in the Digest?**

Present:- Mr. Sushil Jain, Advocate
for the petitioner.

Mr. K.S. Malik, Advocate
for the respondents.

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DAYA CHAUDHARY, J.

The petitioner was initially appointed to the post of Assistant Lineman in the year 1979 and thereafter was promoted to the post of Lineman in the year 1992. He was further promoted to the post of Assistant Foreman in the year 2007. He sought voluntarily retirement and as such retired on 31.12.2010. The petitioner was paid leave encashment, GPF and GIS but the amount of gratuity/commutation of pension/pension was not paid to him. He served a legal notice upon the respondents through his counsel but still the same was not paid to him. The petitioner thereafter filed C.W.P. No. 8564 of 2012 before this Court, wherein, notice of motion was issued. After issuing notice of motion, written statement was filed by the respondents stating therein that the respondents had released retiral benefits as claimed in the petition. However, at the time of release of the amount to the petitioner, a sum of ₹ 40,008/- was deducted from his retiral benefits on account of shortage of oil and breakage of parts of transformers.

The present petition has been filed for quashing of action of the respondents, whereby, a sum of ₹ 40,008/- has been deducted from the retiral benefits of the petitioner on account of shortage of oil and breakage of parts of transformers and to refund said amount of ₹ 40,008/- to the petitioner.

Learned counsel for the petitioner contends that the petitioner voluntarily retired from service w.e.f. 31.12.2010 and at that time there was no charge-sheet or inquiry pending against him and all benefits except gratuity and commutation of pension were released to the petitioner. The petitioner earlier filed C.W.P. No. 8564 of 2012 before this Court, wherein, a wrong averment was made in the reply filed that all benefits have been released. However, while releasing the benefits a sum of ₹ 40,008/- has wrongly been deducted, whereas, neither any inquiry nor any charge-sheet was pending at the time of seeking voluntary retirement. Learned counsel further submits that as per Rule 2.2 (b) of Punjab Civil Services Volume II Part I, the retiral benefits can be withheld only in case any disciplinary proceedings are pending against the retiree on the date of retirement but in the present case neither any proceedings nor any inquiry was pending. Learned counsel has also relied upon the Division Bench judgments of this Court in **Kirat Gopal Vs. HVPNL and others** (C.W.P. No. 13039 of 1999 decided on 20.3.2000),**Suraj Mal Vs. UHBVNL and others** (C.W.P. No. 12036 of 2008 decided on 11.9.2008) and **Ram Phal Vs. UHBVNL and others** (C.W.P. No. 1318 of 2009 decided on 8.1.2010) in support of his contentions.

Learned counsel for the respondents has not disputed the submissions made by learned counsel for the petitioner. He has also not disputed the date of retirement, payment released and deduction made from the retiral benefits. Learned counsel for the respondents submits that the deduction was made on account of shortage of transformer oil and breakage of parts of transformers in view of instructions issued by the Nigam. The shortage was got acknowledged to the petitioner during his service tenure and he has also returned one transformer of 10KVA costing to ₹ 14234/- on 14.8.2013 and payment was released vide cheque dated 15.10.2013 by the competent authority to the petitioner. The remaining amount of ₹ 25,774 was on account of shortage of parts and oil of transformers etc. Learned counsel for the respondents also submits that the petitioner was to submit his request on the prescribed proforma for waiving of amount of shortage to the competent authority but the same has not been done so far and the amount is recoverable from the retiree as per relevant instructions dated 2.9.2005.

Heard the arguments advanced by learned counsel for the parties and have also perused the documents available on the file.

Admittedly, the petitioner was allowed to retire by the respondent-Nigam on 31.12.2010. It is also not disputed that no inquiry or charge-sheet was pending against the petitioner at the time of retirement. Even in the written statement filed by the respondents in the earlier petition there was no mention that any amount was due against the petitioner or any inquiry was pending. A statement was also made before this Court in the earlier petition that all the benefits have been released to the petitioner but while releasing payment the amount deducted was due to shortage of oil and breakage of parts of transformers but no where it has been mentioned whether any inquiry has been conducted or any opportunity of hearing was afforded to the petitioner. The similar issue was there before the Division Bench of this Court in **Suraj Mal's case (supra),** wherein, also all the retiral benefits were released to the petitioner including GPF, GIS, leave enchashment and commutation of pension but an amount of ₹ 48,528/- was withheld due to shortage of oil and breakage. In that case also no show cause notice or charge-sheet/disciplinary proceedings were initiated against the petitioner before making any recovery before the date of retirement. The said petition was allowed and action of the respondents in deducting ₹ 48,528/- was quashed. Similar controversy was there in case of **Hans Raj Sharma Vs. UHBVNL and others** (C.W.P. No. 152 of 2014 decided on 29.10.2004) by following the judgment of Hon'ble the Apex Court in case of **P.R. Naik Vs. Union of India** AIR 1972 SC 554. Similar view was taken in the Division Bench judgment of this Court in **Ram Narain Dua Vs. DHBVNL and others** 2007 (1) RSJ 402.

In view of facts and law position as discussed above, the present petition is allowed and the impugned action of respondents in deducting an amount of ₹ 40,008/- from the retiral benefits of the petitioner is quashed. The respondents are directed to release the said amount recovered from the petitioner within a period of two months from the date of receipt of certified copy of the order.

June 30, 2015 **(DAYA CHAUDHARY)**
pooja **JUDGE**