IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : C. W. P.No. 5715 of 2013

Date of Decision : September 15, 2015

R. S. Dhull .... Petitioner

Vs.

State of Haryana and others .... Respondents

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL.

* * *

To be referred to Reporters or not ?

Whether the judgment should be reported in the digest ?

* * *

Present : Mr. K. S. Khehar, Advocate
for the petitioner.

Mr. Harish Rathee, Senior DAG, Haryana.

Ms. Madhu Dayal, Advocate
for respondent no. 2.

* * *

DEEPAK SIBAL, J. :

The petitioner, being aggrieved by the action of the respondent – Haryana State Warehousing Corporation, Panchkula (hereinafter referred to as – the Corporation), of withholding the amount of ₹ 4,37,500/- from his gratuity, through the impugned order dated 27.09.2012 (Annexure P-8), has approached this Court through the present petition seeking quashing of the same. The petitioner further prays for release of his pension, as per applicable rules, which has not been released in view of the issuance of the above said order impugned by the petitioner.

A perusal of the order impugned by the petitioner shows that the amount of ₹ 4,37,500/- has been withheld from his gratuity on account of following three cases :-

> ***"1.*** *In the case of construction of 2000 MTs godown at Baroli due to abnormal delay in finalization of case and announcement of award by the Arbitrator against the Corporation which involves interest component of Rs. 4.75 lacs due to delay. The case remained pending with him for 11 years in capacity of SDE and XEN. An amount of Rs. 2,37,500/- has been withheld from his amount of gratuity.*
>
> ***2.*** *In the case of construction of 12000 MTs capacity godown at SWH, Jullana, an enquiry conducted by Sh. I. M. Khunger, IAS (Retd.) against Sh. B. R. Aggarwal have prima-facie revealed that due to change of site of godown, by Sh. R. S. Dhull, who was SDE Incharge at that time, the Corporation has suffered a loss of Rs.*

5.55 lacs. Due to this loss, the Corporation has issued show cause notice to Sh. B. R. Aggarwal who was XEN at that time for recovery of the amount. The appeal of Sh. B. R. Aggarwal is pending with Executive Committee of the Corporation. An amount of Rs. One lac has been withheld from the amount of gratuity of Sh. R. S. Dhull, Executive Engineer (Retd.), till the finalization of appeal against Shri B. R. Aggarwal, XEN (Retd.).

3. *In the case of construction of godowns at Hodal, the site was inspected by Vigilance Deptt. of Haryana State which had also taken samples of the work. The majority of the construction work at this centre was executed under the supervision of Sh. R. S. Dhull, who was Executive Engineer at that time. A sum of Rs. One lac has been withheld till vigilance enquiry is completed and report received by the Corporation from the Vigilance Department.*

> *An amount of Rs. 43,750/- is recovered on account of interest on conveyance advance drawn by him from this amount of gratuity."*

So far as the recovery of ₹ 2,37,500/- on account of delay in construction of 2000 MTs godown at Baroli and recovery of ₹ 1,00,000/- on account of loss suffered by the respondent Corporation on account of construction of 12000 MTs capacity godown at Jullana are concerned, these recoveries admittedly have been ordered after the petitioner had retired from service after attaining the age of superannuation as it is not disputed that the petitioner retired from service on 30.04.2011 and these recoveries have been ordered for the first time on 27.09.2012, through the order impugned by the petitioner.

Whether the above referred recoveries could be effected from a retired employee like the petitioner, is a matter, which is no longer res integra as the Apex Court in the case of **State of Punjab and others etc. vs. Rafiq Masih (White Washer) etc.** reported as **2015 (1) RSJ 177** has authoritatively held as under :-

> ***"12.*** *It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the*

decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) *Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).*

(ii) *Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.*

(iii) *Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.*

(iv) *Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.*

(v) *In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.* ***[Emphasis supplied]"***

The above referred recoveries are sought to be made from the petitioner, a retired employee, which, as per the directions of the Apex Court, as reproduced above, are clearly impermissible in law.

Even otherwise, the above said recoveries have been ordered against the petitioner without issuance of any Show Cause Notice or conducting of any inquiry.

So far as recovery of ₹ 1,00,000/-, sought from the petitioner on account of loss caused to the respondent Corporation in the case of construction of godowns at Hodal is concerned, learned counsel appearing for respondent Corporation fairly states that the Executive Committee of the respondent Corporation, in its decision dated 02.09.2013, has decided not to recover this amount from the petitioner.

In view of the above, the impugned order dated 27.09.2012 (Annexure P-8) is quashed and resultantly, the petitioner is held entitled to the withheld amount of his gratuity amounting to ₹ 4,37,500/-, along with simple interest @ 6% per annum from the date it was due to be paid till the date of actual payment. Consequently, the pension of the petitioner be also released, as per applicable rules.

The writ petition stands allowed in the above terms.

(DEEPAK SIBAL)
JUDGE

September 15, 2015
monika