IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Sr. No.201

CWP No.18369 of 2011
Date of decision: 04.05.2016

Ved Parkash ....Petitioner

versus

Uttar Haryana Bijli Vitran Nigam Limited, Panchkula and others ....Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. J.K. Goel, Advocate for the petitioner.

Mr. Suvir Sehgal, Advocate for the respondents.

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DEEPAK SIBAL, J. (Oral)

Through the present petition, the petitioner, who retired as an Assistant Foreman from the services of the respondent-Uttar Haryana Bijli Vitran Nigam Limited, Panchkula (hereinafter referred to as the 'Nigam') seeks the release of his retiral benefits.

The relevant facts which need to be noticed for adjudicating upon the issue raised in the present petition are that on 31.05.2007, the petitioner retired as an Assistant Foreman from the services of the respondent-Nigam. When his retiral benefits were not released, he approached this Court seeking release of the same through **CWP No.3733 of 2008** titled as **Ved Parkash versus Uttar Haryana Bijli Vitran Nigam**

Limited, Panchkula and others, which was disposed of on 22.04.2009 by passing the following directions:-

> *"In view of the above, this petition is disposed of with a direction to the respondents to release 25% amount of the pension and the amount of leave encashment to the petitioner along with interest @ 8% per annum within a period of two months. As far as the other benefits i.e. gratuity and the amount payable on commutation of pension are concerned, the respondents may withhold the same till the decision of the aforesaid charge-sheet and the show cause notices. The respondents are also directed to take a final decision on the aforesaid charge-sheet as well as the three show cause notices within a period of six months."*

It is not disputed that in spite of the petitioner having retired on 31.05.2007 and also that this Court in the earlier writ petition filed by him had directed to finalize the matter with regard to release of his retiral benefits by 22.10.2009, till date an amount of ₹6,64,834/- out of his retiral dues still remains unpaid.

The afore-referred amount has been retained by the respondent-Nigam out of the petitioner's retiral dues and the details with regard to the same were given by the respondent-Nigam to the petitioner under the Right to Information Act, 2005, which are reproduced below:-

Sr. No.	*Name of Office*	*Memo No.*	*Date*	*Amount*	*Remarks*
1.	XEN (OP) Division Pundri	335/PF-829	21.06.2010	3300.00	Losses of Nigam's
2.	XEN (OP) Division Pundri	93/EP-18	21.01.2010	894.00	GH.28.870

Sr. No.	*Name of Office*	*Memo No.*	*Date*	*Amount*	*Remarks*
3.	XEN (OP) Division Panchkula	104/PF-2752	06.01.2010	2773.00	On A/c of Excess pay
4.	XEN (OP) Division Pehowa	241/EPT-4509	01.02.2010	10812.54	GH.28.401
5.	XEN (OP) Division Pehowa	241/EPT-4509	01.02.2010	541717.00	GH.28.870
6.	XEN (OP) Division Narnaul	6613/PF-2621	25.07.2007	18546.00	GH.28.870
7.	XEN (OP) Division Narnaul	3/LPC	25.07.2007	3700.00	Marriage Advance
8.	XEN S/U Division No.1	3/LPC	21.02.2007	550.00	On A/c of Excess Pay
9.	XEN S/U Division No.1	3/LPC	21.02.2007	28180.60	GH.28.401
10.	CA, UHBVN, Panchkula		21.02.2007	4055.42	GH.28.870
11.	XEN (OP) Division, Kurukshetra			312.00	
12.	XEN (OP) Division, Kurukshetra			33823.50	GH.28.401
13.	XEN (OP) Division, Kurukshetra			223031.00	GH.28.870
14.	/xen (OP) Division, Kurukshetra			26112.00	Due to non-effecting stopped increment
15.	XEN (OP) Division, Kurukshetra			2487.00	Due to late passing the safety code test
				900294.06	

Learned counsel for the petitioner does not claim the amount of ₹26,112/- as given against column No.14.

So far as the other amounts are concerned, there is a specific averment made in the petition that they have been deducted from the retiral dues of the petitioner without issuance of any show cause notice to him.

This fact has not been denied in the counter filed on behalf of the respondent-Nigam.

Without any notice these amounts could have not been deducted.

Further, no specific details are forthcoming on behalf of the respondent-Nigam that on what basis, these amounts have been deducted.

Even otherwise, the 4th column in the afore-quoted table gives the dates on which the recoveries have been made from the petitioner which are either after or within one year of the petitioner's retirement.

At the time of retirement, the petitioner was admittedly a Class-III employee.

That being so, as per the authoritative pronouncement by the Apex Court in ***'State of Punjab and others versus Rafiq Masih (White Washer) etc.***, **(2015) 4 SCC 334,** the impugned recovery could not have been made from the petitioner. The relevant extract from ***Rafiq Masih's case (supra)*** is reproduced below:-

> *"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 extent, as would far outweigh the equitable balance of the employer's right to recover."(empahsis supplied).

The petitioner being admittedly a Class-III employee and that the impugned recoveries having being made from his retiral benefits after his retirement or within one year of his retirement, in view of the afore-quoted directions by the Apex Court in **Rafiq Masih's case (supra)** are impermissible.

In view of the above, a direction is issued to release all retiral dues payable to the petitioner (except the one foregone by learned counsel for the petitioner during the course of hearing) alongwith simple interest at the rate of 8% per annum. The needful be done within a period of three months from the date of receipt of a certified copy of this order.

No costs.

(DEEPAK SIBAL)
JUDGE

May 04, 2016
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