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

CWP No.15834 of 2013 (O&M)
Date of decision : July 11, 2016

Punjab State Civil Supplies Corporation Limited .... Petitioner

Versus

The Appellate Authority and others .... Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Aman Chaudhary, Advocate for the petitioner.

Mr. O.P. Batra, Advocate for respondent No.3.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

<u>KULDIP SINGH J. (ORAL)</u>

Petitioner-Punjab State Civil Supplies Corporation Limited (in short 'PUNSUP') through the present writ petition seeks issuance of writ certiorari for quashing the judgment dated 03.05.2012 (Annexure P-2) passed by the learned Appellate Authority under the Payment of Gratuity Act, 1972 (in short 'the Act'), U.T., Chandigarh and order dated 29.12.2010 (Annexure P-1) passed by the learned Controlling Authority under the Act, U.T., Chandigarh, whereby respondent No.3 – R.K. Sharma has been held entitled for gratuity amount of ₹1,66,153/- along with interest @ 9% per annum from the date of retirement till the date of depositing the same before the lower court.

Respondent No.3 was working with PUNSUP for the last 24 years and retired on 28.02.2001 after attaining the age of superannuation. At the time of retirement, respondent No.3 was working as Field Officer with the PUNSUP. According to the petitioner, respondent No.3 caused financial loss to the tune of ₹11,15,655/- and disciplinary proceedings were initiated against him, vide show cause notice dated 01.02.2001 i.e. prior to his retirement relating to the period 1998-99 and 1999-2000 with the charge of laxity in supervision of wheat at Samana Centre. The punishing authority vide order dated 28.03.2007 having found respondent No.3 responsible for causing loss, ordered deduction of ₹2,23,131/- and thereafter ordered to release the remaining amount of ₹45,567/- to the respondent vide order dated 29.06.2007.

Respondent No.3 filed the application before the Controlling Authority under the Act for releasing a sum of ₹1,66,153/- plus interest @ 18% per annum till realization towards gratuity. The same was allowed, ignoring the fact that punishment order was never challenged. The appeal filed by the petitioner was dismissed by the Appellate Authority.

I have heard learned counsel for the parties and have also carefully gone through the case file.

The impugned order dated 29.12.2010 (Annexue P-1) passed by the Controlling Authority under the Act shows that respondent No.3 had filed an application for releasing his gratuity. The respondents had taken the plea that the charge-sheet was issued to the applicant (respondent No.3 herein) for causing financial loss to the respondents and that is why his gratuity was forfeited.

However, it was held by the Controlling Authority that at the time of retirement, no final order for causing loss was passed and the inquiry was completed after his retirement on 05.04.2007. Therefore, the gratuity was ordered to be released.

In appeal, the Appellate Authority vide judgment dated 03.05.2012 (Annexure P-2) concluded as under:

> " *12. After hearing the counsel for the parties and baring the anatomy of material on record, admittedly, the respondent No.1 attained the age of superannuation on 28.2.2001. In department inquiry initiated against him prior to attainment of age of Superannuation and the alleged loss caused by the respondent and others to the tune of Rs.11,15,655/- were not proved. This fact has clearly been mentioned in an order dated 29.6.2007 and despite that the Managing Director of the Corporation held the respondent responsible for causing loss of Rs.2,23,131.10 as 20% of the total loss falling in the share of the respondent and thereafter, this amount of Rs.2,23,131/- deducted from his retiral benefits. Once, the respondent was not found guilty of any charge, the Corporation was not justified to deduct an amount of Rs.2,23,131/-. Furthermore, it is settled law if the retial benefit. Of any employee are to be withheld by the employer, then conscious order/speaking order is required to be passed. The view of this authority is supported by law supplied by counsel for the respondent* ***Jaswant Singh Gill Vs. M/s Bharat Coking Coal Ltd. & Ors. (2006) RD-SC 778."***

I am of the view that the order of both the authorities below are illegal. Undisputedly, the Managing Director had passed an order of punishment for deducting of ₹2,23,131/- from retiral benefits by way of punishment. The Controlling Authority and Appellate Authority under the Act are not the appellate authority against the order passed by the Managing

Director of PUNSUP. The said order was not challenged before the competent authority. Admittedly, before respondent No.3 retired, the disciplinary proceeding were already initiated against him for causing loss. Though, these were ultimately concluded after his retirement. Once the proceedings have been initiated on 01.02.2001 i.e. prior to the retirement of respondent No.3 on 28.02.2001, the punishment order could be passed later on. If the concerned employee was aggrieved of the said order, the same could be challenged before the competent authority. The aforesaid authorities under the Act are not the authorities, where the said order could be challenged on merits. Therefore, they cannot sit on the judgment of Managing Director of PUNSUP, imposing the penalty, merely on the ground that the said order was passed after the retirement of respondent No.3.

It being so, the impugned judgment dated 03.05.2012 (Annexure P-2) passed by the learned Appellate Authority and order dated 29.12.2010 (Annexure P-1) passed by the learned Controlling Authority under the Act, are held to be illegal and are set aside.

Accordingly, the present writ petition is allowed.

(KULDIP SINGH)
JUDGE

July 11, 2016
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