IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Writ Petition No. 19582 of 2013 (O&M)
Date of decision : December 13, 2016

Mohinder Singh ... Petitioner

versus

U.H.B.V.N Ltd. & Ors. ... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: None for the petitioner.

Mr. P.S. Sullar, Advocate, for the respondents.

RAJIV NARAIN RAINA, J (Oral)

The petitioner was an Assistant Lineman in the respondent-Nigam and superannuated on 31.10.2008. His gratuity was withheld on the pretext that the petitioner was guilty of committing theft of transformers and was in addition guilty of shortage of material from his custody. He was issued G.P.O on 31.03.2010, releasing gratuity in the sum of ₹ 2,63,614/-, after making a deduction of ₹ 76,121/- as recovery due on account of theft and shortage of material. Apart from this, a further cut was made in a sum of ₹ 51,801/- to set off the alleged loss of material. The balance payable as calculated was credited into the account of the petitioner after making deductions. The petitioner has approached this Court for setting aside the illegal deductions without notice or inquiry into the blind accusation.

It is the case of the petitioner that the deduction is illegal since an enquiry was not held and charge-sheet was not issued to him while he was in service to establish the accusation. There was not even a criminal case registered against him by name for theft of transformer or loss of material. However, an FIR No. 105 dated 16.06.2008 under Section 136 of the Electricity Act, read with Section 379 IPC was registered at Police Station, Naraingarh, against some unknown persons regarding the theft of transformers and loss of material, but an untraceable report was submitted by the police on 19.10.2008 and therefore the petitioner is an innocent person. No order was passed in writing deducting the two amounts which were movable property protected by Article 300-A of the Constitution and gratuity was a precious right of the petitioner which he could only be deprived of by procedure established by law. Therefore, there can be hardly any doubt that the recovery was illegal, arbitrary and unconstitutional.

Mr. Sullar, fairly states that the said deductions are not supportable in law which ought not to have been effected unilaterally and to candidly throw up his arms he has produced a copy of office order dated 24.08.2016 by which U.V.B.N, Panchkula has waived off the amount of ₹ 74,070/- in favour of the petitioner deducted on account of suspicion of theft. A copy office order dated 24.08.2016 is retained on record as Mark 'A'. Besides, an amount of ₹ 32,466/- out of ₹ 51,801/- stands waived off earlier.

The document produced by Mr. Sullar does not reveal as to whether the balance from ₹ 51,801/- has been released or not. It may however not be necessary to go into this issue or to delve into any further on the facts of the case since the action of the Nigam in withholding the gratuity was illegal and erroneous. To repeat, the right to property guarded by the Article 300-A of the Constitution is a valuable right and gratuity is a right to moveable property and property can be taken away only by procedure established by law. The Nigam followed its own wayward procedure to inflict serious injury on the petitioner by withholding his gratuity due and payable from 2008.

As a result of the above discussion, I find sufficient merit in this petition to accept it and as a result thereof quash the recoveries and to direct the Nigam by a mandamus to pay the balance gratuity within a period of six weeks from the date of receipt of certified copy of this order by the office or from the petitioner, whichever is earlier. The petitioner would also be entitled to interest @ 8% from the date of superannuation till payment within the time specified above

Accordingly, the writ petition is allowed.

(RAJIV NARAIN RAINA)
JUDGE

December 13, 2016
tripti/monika

Whether speaking/reasoned *Yes / No*

Whether reportable *Yes / No*