IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No. 23090 of 2014
Date of decision : 12.04.2016

Babu Ram ....Petitioner

versus

U.H.B.V.N.L and others ...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Naveen Daryal, Advocate
for the petitioner.

Mr. Kuldip Tiwari, Advocate
for the respondents

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

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RITU BAHRI , J.

The petitioner complains of withholding of his retiral benefits on the ground that he had been found guilty of breaking/shortage of some transformers and for cost of transformer oil. Petitioner is seeking quashing of recovery orders dated 10.01.2013 and 21.04.2014 whereby recovery of Rs.11,255/- and 1,78,878/- have been effected from the gratuity of the petitioner. Petitioner is also seeking quashing of impugned instruction dated 02.09.2005 to the extent by which the benefit of breakage/shortage has been restricted to 5% of the existing cost of transformer and 20% of the total cost of transformer oil despite the fact that there is no negligence on the part of the employee.

Learned counsel for the petitioner contends that the department had issued charge sheets to the petitioner after his retirement to which the petitioner filed his replies denying all the allegations. The department has appointed the Enquiry Officer vide order dated 17.04.2014 after the retirement of the petitioner. Further no enquiry report was supplied to the petitioner before imposing the punishment of the recovery of the amount. Petitioner was not afforded any opportunity as provided in Rule 7.2 of Haryana Civil Services (Punishment and Appeal) Rules, 1987 and Regulation 1990 (HSEB). Niether any witness nor any document has been produced during the course of enquiry. The department has already issued a notice to the petitioner on 25.06.2012 directing him to deposit the cost of material worth Rs.554978.50 without holding any departmental enquiry. The petitioner retired on 31.05.2012 and charge sheet was given to him on 07.11.2012 (P-5) under Regulation 7 of UHBVN (HSEB) employee (P&A) Regulation 1990 and 2.2 (b) of CSR.

Learned counsel for the respondents on the other hand has not been able to deny the fact that any enquiry was conducted against the petitioner or any enquiry report was supplied to the petitioner. Learned counsel submits that the charge sheet pending against the petitioner was dropped by the Chief Engineer vide order dated 16.04.2014. Therefore, pension case of the petitioner was sent.

Heard learned counsel for the parties.

A bare perusal of Annexure R-2/3 shows that the reply submitted by the petitioner to the charge sheet dated 07.11.2012 was considered and the charge sheet was dropped vide order dated 16.04.2014. As per Annexure R-2/4, the reply filed by the petitioner to the charge sheet dated 30.10.2012 was considered and it was decided to recovery Rs.1,36,910/- from the pensionary benefit of the petitioner, vide order dated 20.06.2014.

The above said orders have not been passed on any enquiry report thus no enquiry has been conducted against the petitioner.

Reference at this stage can be made to a judgment of this Court in a case of ***Ram Phal v. U.H.B.V.N.L and others, passed in CWP No. 1318 of 2009, decided on 08.01.2010*** wherein also the retiral benefits of the petitioner was withheld as he was found guilty of breaking/shortage of some transformers and for cost of transformer oil. This Court disposed of the writ petition on 08.01.2010 by directing the respondents to give 9% interest on the withheld payment of retiral benefits. However, respondent-department was given liberty to constitute an enquiry if rules permit and establish the guilt of the petitioner. The suitable proceedings shall be issued within a period of four week.

Applying the ratio of the above said judgment to the facts of the present case, the present petition is allowed and orders dated 10.01.2013 and 21.04.21014 are hereby set aside. A direction is given to the respondents to release the withheld amount of the petitioner by giving 9% interest from the date of retirement of the petitioner i.e 31.05.2012 till the payment is made. However, if the rules permits the constitution of an enquiry even subsequent to the superannuation, the respondents will be at liberty to take such action and establish the guilt of the petitioner, within a period of four weeks from the date of receipt of certified copy of this order.

(RITU BAHRI)
JUDGE

12.04.2016
G Arora