IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.945 of 2012
Date of Decision:- 28.04.2016

Ram Kumar @ Ram Kanwar

....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. Sudhir Hooda, Advocate for the respondents.

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<u>RITU BAHRI, J. (Oral)</u>

Petitioner by way of present petition is seeking quashing of order dated 11.11.2010 (Annexure P-3) by which the stoppage of one annual increment without future effect has been recovered from the pensionary benefit, after his retirement on 31.05.2006.

Petitioner was issued a charge-sheet on 23.01.2003 to which he gave his reply. After going through the said reply, vide order dated 24.09.2004 (Annexure P-1) the punishment of stoppage of one annual increment without future effect was passed. Thereafter, the petitioner retired on 31.05.2006, after attaining the age of superannuation i.e. 58 years, vide retirement order dated 31.05.2006 (Annexure P-2). Vide impugned order dated 11.11.2010 (Annexure P-3), the recovery of an amount of ₹29,200/- has been effected from the petitoner.

Upon notice, the written statement has been filed by respondent Nos.1 to 3 stating therein that the petitioner was charge-sheeted vide office memo dated 23.01.2003 for the embezzlement of ₹9,000/-. The petitioner filed reply to the above-said charge-sheet and also deposited ₹9,000/- on 05.08.2002, to make up the loss of the Nigam. Keeping in view the findings of inquiry report and no loss caused to the department, the competent authority i.e. S.E., Operation Circle, UHBVNL, Karnal, vide its office order dated 24.09.2004 decided to stop one annual increment without future effect. The respondents have referred another charge-sheet, which was issued to the petitioner on 26.07.2004. Petitioner has not filed reply to the said charge-sheet and the competent authority, vide office order dated 28.12.2004 (Annexure R-3/2), has ordered to stop one annual increment without future effect. Another charge-sheet was also issued to the petitioner on 07.07.2009 on the allegation that he was found negligent in performing his duty as Consumer Clerk. Petitioner gave his reply to the charge-sheet on 03.10.2009 and thereafter the punishment of stoppage of one annual increment without future effect was passed, vide office order dated 31.03.2010 (Annexure R-3/3). It has also been stated in the written statement that the petitioner retired on 31.05.2006. His case was sent by the office of Executive Engineer, Sub Division No.1, Karnal along with the service book for the scrutiny for the purpose of release of pensionary benefits. The Chief Accounts Officer, PF, UHBVNL, Panchkula, vide its office memo dated 23.03.2010 (Annexure R-3/4) raised six objections. On account of punishment suffered by the petitioner, it was decided on 02.12.2010 (Annexure R-3/5) that the equal amount of stoppage of two increments may be recovered from the retirement benefits of the petitioner. The petitioner had been issued last pay certificate by the respondent-Nigam on 09.02.2011 (Annexure P-3/6), in which, it was duly mentioned that an amount of ₹29,220/- was outstanding against him on account of punishment orders passed by the respondent-Nigam. This amount has been deducted from the DCRG/Gratuity as per GPO No.7739/UHBVNL/P-4741 dated 10.02.2011 (Annexure P-3/7).

Learned counsel for the petitioner has argued that the punishment orders dated 24.09.2004 (Annexure R-3/1) and 28.12.2004 (Annexure R-3/2) are not in dispute as the same have been passed before the date of retirement of the petitioner. As far as the charge-sheet dated 07.07.2009, he argues that this punishment was served after his retirement and hence no recovery can be effected on account of the punishment order dated 31.03.2010 (Annexure R-3/3). On account of above-said two punishment, the recovery of ₹29,200/- has rightly been made from the DCRG/Gratuity of the petitioner, vide letter dated 10.02.2011 (Annexure R-3/7). The only order which requires to be interfered by this Court is 11.11.2010 (Annexure P-3), which has been passed after four years of his retirement. He does not dispute the punishment, however, he further argues that pursuant to the order passed on 11.11.2010 (Annexure P-3), the recovery of ₹29,220/- cannot be effected after his retirement. He has also referred to a judgment dated 23.10.2009, passed by District Judge, Karnal whereby the suit of the plaintiff has been decreed and directions to the respondents-defendants to release all the withheld pensionary or retiral benefit and the deducted amount of ₹45,042 along with interest at the rate of 9% per annum along with interest. A perusal of the said judgment shows that the petitioner had been issued a show cause notice dated 25.08.2006 (Ex.D1) and on the basis a sum of ₹45,042/- had been withheld by the defendants. There was no other pending enquiry against the petitioner after his retirement and the department had issued 'No Demand Certificate' (Ex.PC). Pursuant to this ‘No Demand Certificate’, 75% pension has been given to the petitioner. The suit was decreed and the withheld amount was directed to be paid along with interest. The present suit of the plaintiff has been decreed on account of said show-cause notice dated 25.08.2006, which had been issued to him after the date of his retirement. Perusal of the judgment further shows that the date of retirement of the petitioner was 31.05.2006 and show cause notice has been issued to him on 25.08.2006. Apart from this show-cause notice dated 25.08.2006, another show-cause notice was issued to the petitioner on 06.02.2008, after his retirement to which he submitted his reply. The suit of the plaintiff was decreed keeping in view that 'No Demand Certificate' has been given on 25.07.2007. The respondents could not withhold the amount of ₹45042/- without giving any show-cause notice or opportunity of being heard.

In the present case, pursuant to order dated 11.11.2010 (Annexure P-3), the recovery of ₹29220/- was sought to be effected by modifying the date of retirement i.e. 31.05.2005. Even this order has been passed after four years of retirement of the petitioner. The suit of the plaintiff has been decreed on 23.10.2009 and has attained finality as 'No

Demand Certificate' has been given way back in the year 2007. The respondents have admitted the contents of paragraph 3 of the writ petition whereby the petitioner has placed on record retirement order (Annexure P-2) to show that he retired on 31.05.2006. Once this fact has been admitted by the respondents, the order dated 11.11.2010 (Annexure P-3), seeking to recover an amount of ₹29,220/- by changing the date of his retirement as 31.05.2005 is required to be set aside.

In view of above, the present petition is allowed. The impugned order dated 11.11.2010 (Annexure P-3) is set aside and the directions to the respondents to release the amount of ₹29,220/- along with 9% interest with all consequential benefits from the date of accrual till the the realization.

April 28, 2016 (**RITU BAHRI**)
naresh.k JUDGE