IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.7397 of 2015
Date of Decision:- 12.07.2016

Ram Chander

....Petitioner

Versus

Haryana Agro Industries Corporation Ltd. & Anr.

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

1. **Whether Reporters of local papers may be allowed to see the judgment?**
2. **To be referred to the Reporters or not?**
3. **Whether the judgment should be reported in the Digest?**

Present: Mr. Raman B. Garg, Advocate for the petitioner.

Mr. Arvind Seth, Advocate for the respondents.

****

RITU BAHRI, J.

Petitioner is seeking directions to the respondents to pay interest on the retiral benefits and grant Leave Travel Concession (LTC) and 3rd Assured Career Progression (ACP).

Petitioner joined as Electrician on 06.05.1977 on adhoc basis and later on his services were regularized by the respondent-Corporation. He retired as Electrician on 31.01.2010 as per the order dated 18.01.2010 (Annexure P-1). Vide order dated 17.04.2008, the petitioner was imposed a punishment of recovery of ₹1,09,410/- along with interest @ 11.10% from May, 2004 till its realization. The petitioner impugned the recovery proceedings by filing CWP No.1883 of 2009 and this Court vide order dated 03.12.2009 (Annexure P-3) admitted the writ petition and the recovery proceedings has been stayed. Thereafter, the petitioner was issued another charge-sheet, vide letter dated 24.08.2009 for non-delivery of 17000 MT wheat under direct delivery from Dhamtan Mandi to FCI (Buffer Godown), Narwana up to 30.6.2005 and 50% of resultant loss of ₹12,81,494/- deducted by the FCI from the respondent Corporation. The petitioner was exonerated from the charges, vide its enquiry report dated 13.04.2010. However, the Managing Director of the respondent Corporation disagreed with the findings of the enquiry officer and imposed a penalty of ₹6,40,747/- from the petitioner towards 50% of amount of ₹12,81,494/- sustained by the respondent Corporation. Finally, the said punishment order was set aside by the appellate authority, vide its order dated 28.03.2013 (Annexure P-4). The petitioner after his superannuation on 31.01.2010 has not been granted the retiral benefits i.e. GIS payment, Gratuity and Leave Encashment.

He has not been paid leave travel concession by the respondent Corporation and also not granted the benefit of 3rd ACP on completion of 30 years regular satisfactory service in 2007 in terms of Rule 7(3) of the Haryana Civil Services (Assured Career Progression) Rules, 2008, which reads as under: -

> "7. Eligibility for Grant of ACP grade Pay under the general ACP scheme: -
>
> (1) to (2) Not relevant.

(3) Every Government servant covered under the general ACP scheme shall, for the purpose of drawl of pay, be eligible for th ethrid ACP grade pay (given in column 6 of Part II of Schedule I in respect of the functional pay scale or any structure of his post) if he has completed 30 years of regular satisfactory service and has not got any financial upgradation in the last ten years and has not got more than two financial upgradation so far. Financial upgradation in this context includes functional promoting in the hierarchy or further revision/modification of the pay structure for the same post after 1.1.2006."

Upon notice, a written statement has been filed by respondent Nos.1 and 2, in which, it is admitted that while admitting CWP No.1883 of 2009, the recovery order of ₹1,09,410/- has been stayed and further vide order dated 28.03.2013 (Annexure P-4), the Appellate Authority set aside the said punishment orders dated 15.11.2012 whereby the recovery of ₹6,40,747/- was sought to be waived from the petitioner. The retiral benefits have been withheld by the Corporation on account of letter dated 15.01.2010 (Annexure R-1) received from the District Manager, Farmers Service Centre, Jind in which it is mentioned that the dues of ₹17,48,646/- were pending against the petitioner for wheat stocks and stock articles. As per office order dated 13.05.2011 (Annexure R-2), LTC claimed by the petitioner has been sanctioned, however, the sanctioned amount is being adjusted against recovery from the petitioner as informed by the District Manager, FSC, Jind, vide letter dated 29.10.2015 (Annexure R-3). The petitioner is not entitled for grant of 3rd ACP, as a show cause notice was issued to him on 06.12.2007 for less gain as per the norms of storage gain and even if the punishment has been set aside, the recovery of ₹17,48,646/- is still pending against the petitioner. Hence, he is not entitled for payment of 3rd ACP.

In the written statement, the retiral benefits had not been released to the petitioner on account of letter dated 15.01.2010 (Annexure R-1) whereby an amount of ₹17,48,646/- are shown to be recovered from the petitioner. It is not the case of the respondents that this amount is being sought to be recovered on account of the fact that the wheat stock and stock articles was still under the charge of the petitioner. Petitioner has since been retired on 31.01.2010 and on the date of his retirement, neither any disciplinary inquiry was pending nor any notice issued to him for effecting inquiry as reflected from letter dated 15.01.2010 (Annexure R-1).

The Division Bench in the case of **The Haryana Vidyut Parsaran Nigam Limited and another** Vs. **Satpal Arora**, **2012(4) PLR 222**, has held that once the respondent has been allowed to retire, the recovery could not be affected from the retiree without holding an enquiry. In the absence of holding an enquiry, only on account of audit objections, the recovery could not be affected from the retired employee. In paragraph 4, the Division Bench, has observed as under: -

> "Regarding the recovery proceedings, which were initiated against the respondent after his retirement, the learned Single Judge, while relying upon the decision of the Hon'ble Supreme Court in ***Bhagirathi Jena Vs. Board of Directors, O.S.F.C and others,*** 1999 (3) Supreme Court Cases 666, held that once the respondent was allowed to retire, then the recovery could not have been made after his retirement, without holding an enquiry. It has not been disputed that recovery proceedings were not initiated on the basis of an enquiry against the respondent, but the same were initiated on the basis of some audit objections. It has also not been disputed that recovery proceedings on the basis of those objections could not be initiated without holding an enquiry, which has not been held in this case. Therefore, learned counsel for the appellants is not in a position to assail the judgment of the learned Single Judge."

In case **Hans Raj Sharma** Vs. **Uttar Haryana Bijli Vitran Nigam Limited and others**, **2004(7) SLR 820**, the petitioner had retired and thereafter 25% of the pension and other retiral benefits had been withheld on the ground that a show-cause notice had been issued to him before retirement, however, no departmental enquiry was initiated and hence the Division Bench has held that there was no justification for withholding the pension of the petitioner and followed the ratio of law laid by the Supreme Court in case **P.R. Nayak** v. **Union of India**, **AIR 1972 SC 554** that issuance of a charge-sheet is sine-qua-non for initiation of departmental enquiry. In the absence of any charge-sheet, there was no justification for withholding the pension of the petitioner.

In **Ram Narain Dua** Vs. **Dakshin Haryana Bijli Vitran Nigam Ltd. and others**, **2007(1) S.C.T. 161**, the Division Bench again held that withholding of pension and gratuity for recovery of losses cannot be withheld on account of allegations, which have emanated after the date of retirement of the employee. In paragraph 2, the Division Bench, has held as under: -

> "Having heard the learned Counsel for the parties, we are of the considered view that the respondents could not have with-held any amount of gratuity payable to the petitioner on account of allegation which have been emanated after the date of his retirement. Such a course is not available to the respondents. In some what similar circumstances, this Court has earlier also in the case of Hans Raj Sharma v. Uttar Haryana Bijli Vitran Nigam Limited and Ors. Civil Writ Petition No. 152 of 2004, decided on October 29, 2004 has allowed the writ petition by following the judgment of Hon'ble the Supreme Court in **P.R. Naik** v. **Union of India**. It has been laid down in the aforementioned judgment that issuance of charge-sheet for initiation of departmental enquiry is a since qua non."

In the facts of the present case, the petitioner retired on 31.01.2010 and his retiral benefits had been withheld only on account of letter dated 15.01.2010 (Annexure R-1) whereby ₹17,48,646/- are sought to be recovered from the petitioner. It is not the case of the respondents that any inquiry proceeding has been initiated against the petitioner. Hence, the respondent cannot withhold the retiral benefits on account of letter dated 15.01.2010 (Annexure R-1). The second prayer of the petitioner is that he has not been granted the benefit of 3rd ACP after serving 10 years on the ground that he was facing a charge-sheet in the year 2007.

Reference, at this stage, can now be made to a judgment of Co-ordinate Bench of this Court in **Omi Devi** Vs. **Uttar Haryana Bijli Vitran Nigam Limited and others**, **2012(4) S.C.T. 153** whereby it has been held that on account of departmental inquiry and withdrawal of two increments, the right for consideration of grant of ACP scales cannot be denied.

The essential conditions for grant of ACPs in terms of Rule 7(3) of the Haryana Civil Services (Assured Career Progression) Rules, 2008, is as under: -

> "(1) Every Government servant covered under the General ACP Scheme shall for the purposes of drawl of pay, be eligible for the 1st ACP grade by (given in Column 4 of Part-II of Schedule-I in respect of the functional pay scale or pay structure of the post) if he/she has completed 10 years of regular satisfactory service and has not got any financial up-gradation in these ten years with reference to the functional pay structure of the post to which he was recruit as a direct entrant. Financial up-gradation in this context functional promotion in the hierarchy or further revision/modification of the matter for the same post after 1.1.2006.
>
> (2) Every Government servant covered under the general ACP scheme shall, for the purposes of drawal of pay, be eligible for the second ACP grade pay (given in column 5 of Part II of Schedule I in respect of the functional pay scale or pay structure of his post) if he has completed 20 years of regular satisfactory service and has not got any financial upgradation in the last ten years. Financial upgradation in this context includes functional promotion in the hierarchy or further revision/modification of the pay structure for the same post after 1.1.2006.
>
> (3) Every Government servant covered under the General ACP Scheme

> shall, for the purpose of drawl of Every Government servant covered under the general ACP scheme shall, for the purposes of drawal of pay, be eligible for the third ACP grade pay (given in column 6 of Part II of Schedule I in respect of the functional pay scale or pay structure of his post) if he has completed 30 years of regular satisfactory service and has not got any financial upgradation in the last ten years and has not got more than two financial upgradation so far. Financial upgradation in this context includes functional promotion in the hierarchy or further revision/ modification of the pay structure for the same post after 1.1.2006.
>
> (4) In case of a Government servant who gets promoted, he will be considered for the next ACP grade pay after he completes 10 years of regular satisfactory service in the promotional post without any financial upgradation and will be entitled to the next ACP grade pay with reference to the grade pay of the promotional post he holds :
>
> Provided that a Government servant shall not be entitled to avail ACP upgradation if, he has already availed of three financial upgradation of any kind in his career.

The conditions for grant of ACPs nowhere state that imposition of punishment would be a ground to deny the benefit of ACP. The petitioner was facing a charge sheet in the year 2007 and finally he was exonerated. The petitioner was facing a charge-sheet in the year 2009, in which, finally he was exonerated, vide order dated 28.03.2013 (Annexure P-4). The minor punishment of recovery of ₹1,09,410/- has been imposed, vide order dated 17.04.2008 (Annexure P-2) on account of show-cause notice dated 06.12.2007. As per the said order, the recovery is a minor punishment and cannot be made a ground not to consider the case for grant of 3rd ACP. An employee on account of above-said punishment cannot be ignored for promotion and this Court in **Omi Devi's case (supra)** whereby the petitioner, who had been imposed a punishment for withdrawal of two increments without cumulative effect was not being considered for grant of 1st ACP after completing 10 years of regular satisfactory. In this case, it is further observed that on account of an audit objection, the DCRG of an employee could not be withheld. The writ petition was allowed on both the above-said points with cost as assessed ₹10,000/- and direction to the respondents to make payment of DCRG and consider the case for grant of ACP.

In the present case, apart from the punishment order dated 17.04.2008 (Annexure P-2), there is no order which dis-entitled the petitioner for his right to be considered for payment of 3rd ACP as per the ACP Rules. Finally, vide order dated 10.05.2011 (Annexure R-2), the department has sanctioned the LTC benefit to the petitioner. Thereafter, vide order dated 29.10.2015 (Annexure R-3), the said amount was sought to be adjusted against the recovery of ₹18,62,315/-

Keeping in view that recovery of ₹17,48,646/- could not be effected without withholding of departmental inquiry as held by Division Bench of this Court in **The Haryana Vidyut Parsaran Nigam Limited and another** Vs. **Satpal Arora case (supra),** the present writ petition is allowed and directions to the respondents to pay all the retiral benefits of the petitioner without insisting on the letter dated 15.01.2010 (Annexure R-1) as amount of ₹17,48,646/- cannot be recovered without holding of departmental inquiry from the petitioner. Further, directions to consider the claim for 3rd ACP and to release the LTC amount sanctioned vide order dated 13.05.2011 (Annexure R-2). All the above-said payments shall be released to the petitioner along with 9 % interest from the date of retirement till the payment is made, within a period of three months.

July 12, 2016 **(RITU BAHRI)**
naresh.k JUDGE