

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH
Sr. No.: 203

Civil Writ Petition No.11701 of 2011 (O & M)
Date of Decision: October 23, 2017

Dalip Singh Godara

..... PETITIONER

VERSUS

Dakshin Haryana Bijli Vitran Nigam Limited & others

..... RESPONDENTS

...

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

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PRESENT: - Mr. Jagbir Malik, Advocate, for the petitioner.

Mr. Naveen Batra, Advocate, for the respondents.

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Jaspal Singh, J

1. The instant petition has been preferred by petitioner – Dalip Singh Godara praying for issuance of a writ in the nature of certiorari, quashing instruction dated January 01, 2003 (Annexure P-1) 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 as well as for quashing impugned action of the respondents of withholding of ₹ 95,924/- of Gratuity and ₹ 3,07,017/- of Leave Encashment on the ground of shortage of oil and cost of damaged transformers and penal rent for unauthorised occupation of

HVPN residential accommodation. Further prayer has been made for issuance of a writ in the nature of mandamus, directing the respondents to release the withheld amount of gratuity and leave encashment with 18% interest per annum from the date of retirement of petitioner.

Petitioner was appointed as Assistant Line Man on February 03, 1982 and retired, on attaining the age of superannuation, from the post of Sub Divisional Officer on January 31, 2010. During service, petitioner installed a number of transformers after getting them issued from the stores. While depositing the damaged transformers in the store, some shortages in transformer oil and breakages of the parts of damaged transformers were debited to the account of petitioner for which a Survey Off Report was submitted and it was held that for shortages and breakages, there is no negligence on the part of the employee. Vide instruction dated January 01, 2003 (Annexure P-1), respondent No.2 decided that breakage only upto a maximum of 5% of the existing cost of transformer and shortage only upto a maximum of 20% of the total cost of transformer oil shall be allowed and balance amount of shortage and breakage will be recovered from the employee incharge of the transformer.

Learned counsel for the parties have been heard and this Court has gone through the record available on file.

Petitioner was residing in Nigam's Quarter at 132 KV Sub Station Colony, Jiwan Nagar. After his transfer from Jiwan Nagar to Madho Singhana, he retained the house with specific permission

from the competent authority. From April 01, 2006, petitioner again remained posted at Jiwan Nagar and on August 01, 2008, he was again transferred from Jiwan Nagar to Chautala. On September 18, 2009, petitioner submitted a representation for retaining the house upto March 31, 2009. Ultimately, petitioner vacated the accommodation on March 29, 2009.

Petitioner retired on January 31, 2010 but his retiral benefits were not released. He was informed that an amount of ₹ 1,81,770/- was outstanding against him on account of Penal Rent and an amount of ₹ 2,21,171/- was outstanding on account of shortage of oil and cost of missing parts of damaged transformers, and till the amount is not deposited, retiral benefits cannot be released. Subsequently, on August 30, 2010, respondents released the amount of commutation of pension and gratuity after withholding ₹ 95,924/- of gratuity and ₹ 3,07,017/- of leave encashment on the ground of shortage of oil and cost of damaged transformers and penal rent.

As far as an outstanding amount of ₹ 1,81,770/- on account of penal rent, in respect of retention of official accommodation, is concerned, respondents, have denied the fact that petitioner retained the house in question with due permission of the respondent – authorities. Rather, as per their version, while working as AFM/JE in Operation Sub division, Jiwan Nagar, petitioner has been residing at 132 KV Sub Station Colony, Jiwan Nagar. He was transferred vide office order No.484 dated October 26, 2005 from Operation Sub

Division, Jiwan Nagar to the office of Operation Sub Division, DHBVN, Madhosinghana. He joined at Machosinghana on October 27, 2005. However, he retained the premises occupied by him at 132 KV Sub Station Colony, Jiwan Nagar, without taking any permission/ approval for retention of quarter from the competent authority i.e. from the office of GM/Admn. DHBVN, Hisar. Thereafter, petitioner was again transferred from the office of Operation Sub Division, DHBVN, Madhosinghana to the office of Operation Sub Division, DHBVN, Jiwan Nagar vide office order No.178 dated March 31, 2006. Petitioner joined the office at Jiwan Nagar on April 01, 2006 whereas his family was already residing at 132 KV HVPNL Colony, Jiwan. Thereafter, petitioner, who was working as JE, was again transferred by the office of GM/Admn. DHBVN, Hisar vide office order No.434/GM/Admn. dated August 01, 2008 to the office of Operation Sub Division, DHBVN, Chautala, in pursuance of which, he joined at Chautala on August 02, 2008. He again did not vacate the house in question and retained the same w.e.f. August 02, 2008 to March 31, 2009, without getting necessary permission from the GM/Admn. DHBVN, Hisar, who vide office memo No.1457 dated December 17, 2008, directed the petitioner to vacate the house in question but he kept on occupying it unauthorizedly. Consequently, as per office order dated December 22, 2008 of GM/Admn., DHBVN, Hisar addressed to GM, Operation Circle, DHBVN, Hisar, penal rent to the tune of ₹ 1,81,770/- was due as on December 01, 2008 towards petitioner on account of unauthorised

occupation of residential accommodation by him much prior to his superannuation i.e. January 31, 2010.

In this view of the matter, it is clear that petitioner remained in unauthorised occupation of House at 132 KV HVPNL Colony, Jiwan Nagar on being transferred at two occasions and did not vacate the same despite notices. Moreover, petitioner was intimated regarding the outstanding amount of penal rent much prior to his retirement. Thus, this Court is of the opinion that no indulgence can be shown in ordering recovery of penal rent to the tune of ₹ 1,81,770/-.

As regards withholding an amount of ₹ 2,21,171/- from the leave encashment, on account of shortage of oil and cost of missing parts of damaged transformers, Rule 2.2(b) of Punjab Civil Services, Volume 2, Part -1, deals with the situation of withholding of retiral benefits of any employee. As per the said Rule, retiral benefit of a retiree can be withheld only in case any disciplinary proceeding is pending against the retiree on the date of retirement. Admittedly, neither there was any enquiry pending against the petitioner nor was he chargesheeted for any misconduct at the time of his retirement. It is a settled proposition of law that mere issuance of show cause notice does not mean pendency of disciplinary enquiry and issuance of chargesheet is *sine-qua-non* for initiation of enquiry under Punishment & Appeal Rules; and for shortage of oil & cost of missing parts of damaged transformers, no such type of recovery can be effected. Impugned instruction dated January 01, 2003 (Annexure P-1) is not sustainable in

the eyes of law to the extent by which benefit has been restricted upto a maximum of 5% in case of breakage and 20% in case of shortage of transformer oil. As such, action of the respondents in withholding an amount of ₹ 2,21,171/- from leave encashment is arbitrary, illegal and deserves to be quashed. Ordered accordingly.

In the light of what has been discussed above, instant writ petition is partly allowed. Respondents are directed to release the withheld retiral dues of petitioner w.e.f. May 01, 2010 alongwith interest @ 9% per annum till the date of realization, within a period of three months from the date of receipt of a certified copy of this judgment. In case of non-compliance, petitioner shall be at liberty to approach this Court.

No costs.

October 23, 2017

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**(Jaspal Singh)
Judge**

Whether Speaking/ Reasoned:

Yes/ No

Whether Reportable:

Yes/ No