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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP- 9126-2016

Date of Decision : October 26, 2018

Satbir Singh

.... Petitioner.

Versus

Uttar Haryana Bijli Vitran Nigam Limited
and others.

.... Respondents.

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present Mr. Naveen Daryal, Advocate
for the petitioner.

Ms. Simranjit Kaur, Advocate,
for the respondents.

SHEKHER DHAWAN, J.

Present writ petition under Articles 226/227 of the Constitution of India is for issuance of a writ in the nature of certiorari for quashing order dated 07.08.2015 (Annexure P/5) whereby punishment of recovery of an amount of Rs.23,156/- has been imposed on the petitioner after his superannuation on 31.05.2015.

2. As per the petitioner, while he was working as Junior Engineer with the respondent-Nigam, on 16.12.2013 (Annexure P/2), a charge sheet was issued by the respondent-Nigam against him under Rule 7 of the Haryana State Electricity Board Regulations, 1990 (hereinafter referred to as “**1990 Regulations**”) for major punishment. The petitioner submitted

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his detailed reply (Annexure P/3) to the said charge-sheet denying all the charges levelled against him. Comments from SDO, Gharaunda were also obtained. As per the petitioner, he retired from the service of the respondent-Nigam on 31.05.2015 after attaining the age of superannuation. The recovery has been ordered to be effected from his pensionary benefits. As per the petitioner, such recovery could not be effected as per provisions of Rule 2.2 (b) of the Punjab Civil Services Vol.2, Part I, which lays down that if any departmental enquiry is to be conducted against a retiree for a minor punishment, the procedure of enquiry for punishment of dismissal has to be followed. The relevant rule is extracted below:-

"2.2(b) The Government further reserve to themselves the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government, if the pensioner is found in departmental or judicial proceedings, to have been guilty of grave misconduct or to have caused pecuniary loss to Government by misconduct or negligence, during his service including service rendered on re-employment after retirement.

Provided that-

(1) such departmental proceedings, if instituted while the officer was in service whether before his retirement or during his re-employment shall after the final retirement of the officer, be deemed to be a proceeding under this rule and shall be continued and concluded by the authority by which it was commenced in the same manner and as if the officer had continued in service."

3. The petitioner prayed that the impugned order, dated 7.8.2015 (Annexure P/5) ordering recovery of Rs.23,156/- be quashed.

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4. In the reply, the respondents have taken the plea that on the date of his retirement i.e., 31.05.2015, charge sheet dated 16.12.2013 (Annexure P/2) was pending against the petitioner under Rule 7 of the 1990 Regulations. The allegations in the charge sheet were that one M&T seal was found broken and the petitioner had not contacted the Area Incharge and consumer. The meter was not packed/declared suspected theft of energy, which shows that the petitioner had given undue benefit to the consumer due to *mala fide* intentions and their connivance into theft cannot be ruled out. SDO, UHBVN, Gharaunda vide his comments, Annexure P/4 recommended action against the petitioner. Thereafter, the petitioner retired from service on 31.05.2015 and penalty has been imposed vide order dated 7.8.2015 (Annexure P/5). The said order has been issued strictly in accordance with the rules and 1990 Regulations. As per Rule 4 of the 1990 Regulations, "the recovery from the pay of the whole or part of any pecuniary loss caused by negligence or breach of order of the Board or Corporation is covered under minor penalty". The petitioner has already been given adequate opportunity to defend his case. So, he cannot take the plea that reasonable opportunity of making representation was not given to him. There was no requirement for holding any departmental enquiry as minor penalty was imposed and charge sheet was issued before the retirement of the petitioner. It was prayed that the writ petition is liable to dismissed.

5. At the time of arguments, learned counsel for the petitioner contended that since the petitioner had already retired on 31.5.2015 and the order of effecting the recovery from the retiral benefits of the petitioner

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was passed on 7.8.2015, i.e., after his retirement, the recovery cannot be effected. On this point, reliance was placed upon the judgment of Hon`ble Apex Court in **State of Punjab and others Vs. Rafiq Masih (White Washer) etc., 2015(1) RSJ 177.**

6. Learned counsel for the respondents, while arguing on this point, contended that the charge sheet was issued to the petitioner during the period of his employment. The allegations levelled against the petitioner were for causing pecuniary loss to the respondent-Nigam and the order was passed after giving reasonable opportunity to the petitioner and he had, in fact, availed that opportunity by filing reply to the charge sheet. The SDO concerned had also submitted his comments in the matter that the petitioner herein was liable for causing loss to the respondent-Nigam and only thereafter that the recovery order was issued against the petitioner as per the relevant rules/regulations governing his service conditions. He prayed that the present writ petition be dismissed.

7. Having considered the submissions made by learned counsel for the parties and appraisal of the record, this Court is of the considered view that there is no dispute on the fact that the petitioner retired from service of the respondent-Nigam on 31.05.2015 but before his retirement, a charge sheet dated 16.12.2013 was pending against him. The allegations in the charge sheet were for causing pecuniary loss to the the respondent-Nigam. As such, it was not a case of effecting recovery or passing order for recovery after the date of superannuation of the petitioner as the process had already been initiated much prior to the date of superannuation by issuance of charge sheet dated 16.12.2013 and the

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allegations were for causing pecuniary loss to the respondent-Nigam. The respondent-Nigam was well within its rights, on the basis of rules/regulations governing the service conditions of the petitioner, to initiate and order imposition of minor punishment of recovery after giving due opportunity to the petitioner. Here in this case, the petitioner was in fact, given due opportunity and he had availed the same by filing the reply. The concerned SDO had also offered his comments that the petitioner herein was responsible for causing pecuniary loss to the respondent-Nigam and as such, the respondent-Nigam was well within its rights to effect the recovery from the petitioner as per relevant rules/regulations, i.e. Regulation 7 of the 1990 Regulations and Civil Services Rules, governing the service conditions of the petitioner.

8. In the light of the above facts, the facts of the case in hand are quite distinguishable from the set of facts of **Rafiq Masih's case (supra)** because the present is not a case of having released some payment to the petitioner in excess of his admissibility during his employment and the recovery thereof, rather recovery in this case was ordered to be effected from the petitioner for causing pecuniary loss to the respondent-Nigam, which is clearly attributable to the petitioner.

9. In view of the above, there is no merit in the present writ petition and the same stands dismissed.

(SHEKHER DHAWAN)
JUDGE

October 26, 2018.

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Whether speaking/reasoned? :	Yes
Whether reportable? :	Yes