In the High Court of Punjab and Haryana at Chandigarh

RSA-2285 of 2011(O&M)
Reserved on : 14.5.2018
Date of Decision:- 1.6.2018

Raj Singh ......Appellant

Versus

UHBVNL and others .....Respondents

CORAM: **HON'BLE MR. JUSTICE GURVINDER SINGH GILL**

Present : Mr. J.K.Goel, Advocate, for the appellant.

Ms. Rajni Maurya, Advocate, for the respondents.

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GURVINDER SINGH GILL, J.

1. The appellant-plaintiff challenges judgment and decree dated 18.1.2011 passed by learned Additional District Judge, Kaithal whereby his appeal against dismissal of his suit for declaration and mandatory injunction, has been dismissed.

2. The plaintiff had filed a suit seeking declaration that he is entitled to refund of an amount of ₹54,000/- illegally recovered by the respondent-defendant from DCRG; a refund of ₹82,000/- on account of illegal and unjustified punishment awarded to him; commutation benefits and leave encashment benefits, averring therein that he remained in service of the defendant and retired from service upon attaining the age of superannuation on 30.11.2004. Though, his provisional pension was released but other benefits like DCRG, leave encashment, commutation benefits were withheld which were released at the end of October, 2005 but an amount of ₹1,85,163/- was recovered from DCRG without furnishing details. Upon enquiry, he came to know that same was on account of unrealised amount debited in the accounts of consumers on the basis of a half margins raised by the audit party and that an amount of

₹82,000/- was recovered on account of punishment awarded by Chief Engineer Operation UHBVNL, Panchkula vide order dated 28.7.2005 which was further revised vide order dated 8.9.2005. The punishment was of recovery of the amount equal to stoppage of three increments without future effect. Though, an appeal was made to the Director/Finance, UHBVNL, Panchkula but the same was rejected on flimsy grounds and even an application for reviewing the said order was not considered. The plaintiff further stated therein that out of the amount of ₹1,02,000/- recovered from DCRG, an amount of ₹48,566/- was refunded to him on his representation but the balance amount of ₹54,000/- has not been refunded so far.

3. The suit was contested by the defendants who filed the written statement wherein a stand was taken that an amount of ₹1,83,163.80/- had been withheld from DCRG of the plaintiff being outstanding against him vide L.P.C. dated 14.9.2005 which included an amount of ₹62,725/- as outstanding recovery of embezzlement in Pundri Sub Division, an amount of ₹1,01969.80/- as outstanding recovery in 'OP' Sub Division No.1, Kaithal and an amount of ₹18,468/- as recovery of three annual increments in view of letter dated 8.9.2005 issued by the Head Office. It was further stated therein that subsequently on account of some recovery having been effected from the consumers, some amount has been credited in the account of the plaintiff and presently as per the latest revised L.P.C. an amount of ₹1,20,440.70/- is outstanding against the plaintiff and the rest has been refunded to the plaintiff except an amount of ₹11,143/- and that an application has been sent to the CAO, Pension for sanction of refund of ₹11,143/- to the plaintiff.

4. The plaintiff filed replication denying the stand taken by the defendants while

reiterating the averments made therein. The parties were put to proof on the following issues:

"1. Whether the plaintiff is entitled for refund of Rs.54,000/- an Rs.82,000/- alongwith interest from the defendants? OPP

2. If 1st issue is proved what should be the rate of interest? OPP

3. Whether the plaintiff has not approached the court with clean hands? OPD

4. Whether the suit of the plaintiff is not maintainable? OPD.

5. Relief."

5. The plaintiff examined PW-1 Jagdish Kumar, UDC UHBVNL, Kaithal, PW-2 Ajmer Singh, UDC, UHBVNL (OP) Sub Division No.1, Pundri, PW-3 Prem Singh, R.A. Office, Chief Auditor, UHBVNL Panchkula and himself stepped into the witness box as PW-4. On the other hand the defendants examined DW-1 Krishan Dutt Sharma, Regional Accountant UHBVNL, Kaithal. Both the parties also led documentary evidence in support of their respective cases.

6. Upon appraisal of the evidence on record, the learned lower Court returned its findings on issues No.1 and 2 against the plaintiff. Issues No.3 and 4 were decided against the defendants. Consequently, suit was dismissed by the learned lower Court vide judgment dated 1.2.2010. The learned lower Appellate Court affirmed the said findings and dismissed the appeal vide judgment and decree dated 18.1.2011 which has been challenged by plaintiff by way of filing the present appeal.

7. Learned counsel for the appellant while assailing the impugned judgment and decree has submitted that the amounts in question had been illegally

recovered from him by deducting the same from his retiral benefits and that the same could not have been done without issuing notice to him and without any proper justification of the same. On the other hand learned counsel for the respondents has submitted that the aforesaid amounts had been recovered in view of the rules and regulations of UHBVNL prescribed in the "Manual of Duties and Responsibilities of various Functionaries for upkeep and maintenance of Consumer Accounts" issued by Financial Advisor, Head Quarters, Uttar Haryana Bijli Vitran Nigam Ltd. The learned State counsel has further submitted that the plaintiff had retired as Commercial Assistant and it was his duty to ensure recovery of all the dues from the consumers and in case it is found that necessary steps for recovery of the amounts are not taken or some undue benefit is extended to the consumer, the loss sustained by the UHBVNL can be recovered from such officer/official.

8. Having considered the rival submissions and also having perused the record of the case, it is found that out of amount ₹1,83,163/- recovered from DCRG of the plaintiff, an amount of ₹1,02,000/- was towards the unrealized amount debited in the account of the consumers and an amount of ₹82,000/- was on account of the punishment imposed by the Chief Engineer vide order dated 28.7.2005 revised on 8.9.2005. As regards the aforesaid amount of ₹1,02,000/- which had been recovered on account of the amount debited in the account of the consumers which remained un-recovered, the defendants admittedly had received various amounts subsequently from the consumers including an amount of ₹48,566/- in October 2006, an amount of ₹14,156 in May 2007 and an amount of ₹19,869 in February 2009 total amounting to ₹52,591/-. The defendants had been fairly refunding the amount to the

plaintiff-appellant as and when the amount was recovered from the consumers.

9. As regards the amount of ₹82,000, the same has been imposed as penalty pursuant to a departmental inquiry having been conducted against the plaintiff and others in respect of embezzlement which had taken place. It is borne out from the record that there had been embezzlement at 'OP' Sub Division No.1 Pundri and also at Kaithal where the plaintiff remained posted and it was pursuant to audit checks that the same had come to notice and recovery was ordered to be effected. A notice had been issued to the plaintiff who had submitted his reply which was duly considered by the authorities and it was thereafter that the Chief Engineer 'OP' UHBVNL, Panchkula after considering the report of the Inquiry Officer and also the reply of appellant-plaintiff, had imposed punishment of three increments without cumulative effect and recovery of interest amounting to ₹62,725/- on the embezzled amount. The procedure adopted is perfectly in order and it can’t even be said that there has been any violation of principles of natural justice. The appellant-plaintiff has not been able to point out any infirmity in the concurrent findings of the learned lower Courts so as to warrant any interference in the aforesaid recovery.

10. Finding no merit in the present appeal, the same is hereby dismissed.

(GURVINDER SINGH GILL)
JUDGE

June 1, 2018
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Whether speaking/reasoned Yes/No

Whether reportable Yes/No