

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

215

CWP-16971-2017

Date of Decision : February 26, 2020

MAHAVIR SINGH

.....Petitioner

VERSUS

UTTAR HARYANA BIJLI VITRAN NIGAM LTD., & ORS

.....Respondents

CORAM: HON'BLE MS. JUSTICE NIRMALJIT KAUR

Present : Mr. Jagbir Malik, Advocate
for the petitioner.

Mr. Kamal Chaudhary, Advocate for
Mr. C.S.Bakshi, Advocate
for the respondents.

NIRMALJIT KAUR, J. (Oral)

The present writ petition is filed for quashing of the order dated 26.9.2016 to the extent by which recovery of Rs.3,65,566/- has been passed for the shortage of oil etc. to the extent of Rs.2,81,513/- and the remaining amount on account of withdrawal of the annual increment w.e.f. 31.12.2008 granted to the petitioner on his promotion to the post of Junior Engineer which is stated to have been wrongly granted.

While praying for setting aside the said order, learned counsel for the petitioner contends that no enquiry was held. No shortage was assessed and till date no order has been passed qua any such shortage. In spite of the same, his gratuity has been withheld to recover the alleged amount of Rs.2,81,513/-. Secondly, the amount of Rs.84,053/- is sought to be recovered from the gratuity on account of one increment having been wrongly granted on his promotion to the post of

Junior Engineer. The petitioner is stated to have been retired on 31.12.2015 whereas, the amount is being sought to be recovered vide Annexure P-9 dated 26.9.2016 without passing any order and that too after retirement.

Heard.

It is not disputed that neither any show cause nor any charge-sheet has been issued to the petitioner till date qua any shortage. The petitioner meanwhile retired on 31.12.2015. Thus, no amount could have been withheld on account of any alleged such shortage. It is a settled proposition of law that the petitioner cannot be deprived of his retiral benefits simply on the ground that some show cause notice was issued. In the present case, the petitioner has long retired. The show cause notice was issued subsequently and till date neither any charge-sheet nor any final order has been passed.

With respect to recovery of the amount towards increment wrongly granted, learned counsel for the respondents has not been able to dispute the settled proposition of law as rendered by the Hon'ble Apex Court in various judgments as also the judgment rendered in the case of **State of Punjab and others etc. Vs. Rafiq Masih (White Washer) etc.** 2015(1) RSJ 177 wherein it was held in para No. 12 as under:-

“It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few

situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.”

Applying the principle in the present case, the recovery cannot be affected from the petitioner who has been retired and that too on account of the excess payment for which he cannot be blamed in any manner and neither he has misled or concealed anything.

It is further evident that the retiral pension and benefits both were released to him on 3.10.2016 whereas, the he had retired on 31.12.2015 for which no interest has been paid and neither there is any

explanation for the said delay.

Accordingly, the present petition is allowed and the order 26.9.2016 is set-aside. The gratuity amount so withheld be released to the petitioner alongwith 6% interest from the date he is entitled to the same till it is paid. The respondents are also directed to release the retiral benefits alongwith 6% interest. Needful be done within two months from the receipt of certified copy of this order.

February 26, 2020
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(NIRMALJIT KAUR)
JUDGE

Whether speaking/reasoned.	:	Yes/No
Whether Reportable.	:	Yes/No