

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

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CWP-19580-2017

Date of Decision : March 02, 2020

DHARAM PAL GAUTAM

.....Petitioner

VERSUS

UTTAR HARYANA BIJLI VITRAN NIGAM LTD & ORS

.....Respondents

CORAM: HON'BLE MS. JUSTICE NIRMALJIT KAUR

Present : Mr. Jasmer Singh Rozera, Advocate for the petitioner.

Mr. C.S.Bakhshi, Addl. Advocate General, Haryana
for the respondents.

NIRMALJIT KAUR, J. (Oral)

The prayer in the present petition is for quashing of the orders dated 20.10.2015 and 25.10.2015 whereby the recovery from the salary has been made as also for quashing of the order dated 22.3.2016 directing the recovery of Rs.74,984/-. It is further stated that the retiral benefits were not released within the stipulated period and, therefore, the interest on the delayed payment be also paid.

Reply has been filed. As per the reply, no due certificate and an amount of Rs.43,113/- was recoverable from the petitioner. In addition to this, a balance amount of Rs.31,871/- was also recoverable on account of wrong fixation of pay, as J.E. Rs.40,000/- on this account were already recovered during the month of 10/2015 and 11/2015 after intimation to the petitioner vide this office memo no.CH-61/EP-3143 dated 20.10.2015. Rs.74,984/- was also deducted from the DCRG of the petitioner.

Heard.

It is a settled proposition of law that although the respondents have a right to carry out the necessary correction in the order granting benefits, in case, it is wrongly granted for its application in future but the excess amount so granted cannot be recovered, in case, the petitioner is due to retire within one year of the order of recovery or has already retired as per the judgment rendered by the Hon'ble Apex Court 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.”

In the present case, both the amounts are ordered to be recovered after the retirement of the petitioner. The argument that show cause notices were issued to the petitioner for the recovery does not help. No charge-sheet and no enquiry in pursuance to the show cause notice was issued. The second argument that first part of the recovery is towards shortage too does not help. There is nothing in the order or on record to show the period to which the said loss occurred and whether the show cause notice or any charge-sheet was issued within four years of such a loss. In any case, as observed above, no charge-sheet was issued for any loss. No loss has been ascertained. Straightway, the respondents proceeded to pass an order of recovery. In these circumstances, the order issuing recovery on the basis of the loss too has no basis.

In view of the above, the writ petition is allowed and the impugned orders dated 20.10.2015, 25.10.2015 and 22.3.2016 are set-aside. The respondents are directed to refund the amount if already recovered from the date of recovery till it is paid alongwith 6% interest within two months from the receipt of certified copy of this order. In case, the said amount is not paid alongwith the interest, the respondents

shall be liable to pay the same alongwith 12% interest from the expiry of period of two months.

With respect to the relief of interest, the petitioner may file a representation within two months which shall be decided in accordance with law as per well settled proposition of law rendered in the case of A.J.Randhawa, Supdg. Engineer (Retd.) Vs. State of Punjab 1997(3) RSJ 318 decided on 16.5.1997. In case, the petitioner is entitled to the interest, the same shall also be paid forthwith, otherwise speaking order shall be passed.

March 02, 2020
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(NIRMALJIT KAUR)
JUDGE

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