

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(224)

CWP No. 11723 of 2018

Date of Decision : 14.03.2022

Sh. Ishwar Singh

...Petitioner

Versus

Uttar Haryana Bijli Vitran Nigam Limited and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Naveen Daryal, Advocate for the petitioner.

Mr. Charanjit Singh Bakhshi, Advocate for the respondents.

Harsimran Singh Sethi J. (Oral)

In the present petition, the challenge is to the order dated 02.09.2005 (Annexure P-1) by which, recovery of ₹64,551/- has been done from the pensionary benefits of the petitioner.

Learned counsel for the petitioner argues that the petitioner retired on attaining the age of superannuation on 31.03.2016 and at the time of calculating his pensionary benefits, the respondents recovered an amount of ₹64,551/- on account that certain transformers, which were under the supervision of the petitioner, were deposited by him with the store in a damaged condition, which act has caused loss to the respondent-Corporation to the tune of ₹64,551/-. Learned counsel for the petitioner argues that not only is the allegation factually incorrect but the respondents are at fault as without holding any enquiry into the allegations and proving

the allegations against the petitioner, the recovery was done from the retiral benefits of the petitioner and that too after his retirement, which is not permissible keeping in view the settled principle of law settled by Hon'ble Supreme Court of India in *State of Punjab and others Vs. Rafiq Masih (White Washer) etc., 2015(1) S.C.T., 195.*

Learned State counsel, on the other hand, submits that the recovery, which was done from the petitioner at the time of his retirement, has already been refunded to him and, therefore, no grievance can be raised by the petitioner and the present petition has been rendered infructuous and may be disposed of as such.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

It is a conceded position that a sum of ₹64,551/- was recovered by the respondents from the pensionary benefits admissible to the petitioner in the year 2016. The same was being done by alleging an allegation that the transformers, which were in possession of the petitioner while he was working in a particular area, were deposited in the store in a damaged condition, which act of the petitioner caused loss to the respondent-Corporation. The challenge of the petitioner to the said allegation is on two account, firstly that the area concerned, which is being alleged to be under the supervision of the petitioner from which the transformers were recovered, is factually incorrect and petitioner never deposited any faulty transformers with the store as being alleged.

Learned counsel for the petitioner submits that release of the withheld amount itself shows that the petitioner was not at fault and, therefore, though the amount has been released but as the same has been

retained by the respondents for a period of approximately five years, the petitioner is entitled for interest.

Learned State counsel has not been able to justify the action of the respondents in withholding the amount for the reason that before holding the petitioner liable for a recovery of Rs. 64,551/-, no enquiry was done so as to pin point that it was the act on the part of the petitioner, which had led to be loss sought to be recovered from him. That being so, the withholding of the amount was impermissible.

Even otherwise, keeping in view the judgment of the Hon'ble Supreme Court of India in *Rafiq Masih's case (supra)*, no recovery can be done from an employee after the retirement. Learned counsel has not been able to rebut both the arguments raised by learned counsel for the petitioner so as to justify the recovery even though, the same has already been released to him in the year 2021.

The question now to be decided in the present petition is whether withholding of an amount by the respondents would entitle the petitioner for interest over the same or not. A co-ordinate Bench while passing order in CWP-15867-2001 titled as “*J.S. Cheema Vs. State of Haryana and others*”, decided on 20.11.2013, held that even where an amount has been retained by a Government Department, which actually belonged to the employee, and has used the same to its benefit, and the employee has suffered prejudice due to the non-release of the said amount, the employee becomes entitled for the grant of interest, so as to compensate him for the said prejudice. The relevant paragraph No.5 of the judgment is as under:-

“ x -- x -- x

In my opinion, even if the assertion made in the written statement is presumed to be correct it would not disentitle the petitioner for claiming interest. The jurisprudential basis for grant of interest is the fact that one person's money has been used by somebody else. It is in that sense rent for the usage of money. If the user is compounded by any negligence on the part of the person with whom the money is laying it may result in higher rate because then it can also include the component of damages (in the form of interest). In the circumstances, even if there is no negligence on the part of the State it cannot be denied that money which rightly belonged to the petitioner was in the custody of the State and was being used by it.

x -- x -- x''

In the present case, the amount belonging to the petitioner was retained by the respondents and used and, therefore, the case of the petitioner is covered by the judgment in ***J.S. Cheema's case (supra)***.

In view of the above, the present petition is allowed qua the grant of interest. The petitioner is held entitled for interest @ 6% per annum from the date, the amount became due till the same was refunded back to him. Let the calculation of the interest under this order be done by the respondents within a period of two months and the amount so calculated be released to the petitioner within a period of four weeks thereafter.

Petition is allowed in above terms.

March 14, 2022
kanchan

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes

Whether reportable : No