

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(209)

CWP No. 22332 of 2016

Date of Decision : 20.07.2022

Prem Chand

...Petitioner

Versus

Dakshin Haryana Bijli Vitran Nigam Limited and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Sushil Jain, Advocate for the petitioner.

Mr. Dhruv Sood, Advocate for
Mr. Abhilaksh Grover, Advocate for the respondents.

Harsimran Singh Sethi J. (Oral)

1. The present petition has been filed with a prayer that a sum of ₹53,207/- has been recovered from the pensionary benefits of the petitioner, which action of the respondents is totally arbitrary and illegal and not in consonance with the settled principle of law as well as the rule governing the service.

2. The petitioner, who was working as Assistant Foreman, retired on attaining the age of superannuation on 30.04.2011. After the retirement, the respondents computed the benefits for which the petitioner became entitled for but the pensionary benefits were not released to the petitioner immediately upon retirement. Two years after the retirement, the petitioner was given a show cause notice on 24.09.2013 (Annexure P-2) that while the

petitioner was posted in Division No. 1, Jind as Assistant Foreman, there was a shortage of material detected amounting to ₹53,207/- and why the said recovery be not made from the petitioner. It is the case of the petitioner that though show cause notice was issued to him but no order directing the recovery to be made from the petitioner was passed by the respondent-Corporation but still amount of alleged loss has been recovered from the pensionary benefits of the petitioner.

3. Learned counsel submits that the said recovery, which has been effected from the pensionary benefits of the petitioner, is arbitrary and illegal on the ground that firstly there is no order, pin-pointing the said shortage upon the petitioner so as to make him liable for the said recovery and further, the show cause notice was served after the retirement relating to an allegation, which was much beyond the period of four years on the date of the issuance of the said notice hence, the respondents were not having jurisdiction to recover the said amount only by issuance of the show cause notice as proper procedure has been envisaged under the rule governing the service including the service of the charge-sheet along with the approval from the competent authority, which procedure has not been followed before the recovery of the amount from the retiral benefits.

4. After notice of motion, the respondents have filed the reply. In the reply, the respondents have reiterated their stand to submit that in fact, the petitioner was responsible for shortage of material and vide Annexure R-2, while extending the gratuity to the petitioner, a sum of ₹70,993/- has been recovered from the gratuity. The reply is silent as to whether any order has been passed holding the petitioner liable for the said recovery and

whether, any procedure as envisaged under law was followed for imposing the said recovery upon the petitioner. Learned counsel for the respondents submits that once a show cause notice was given to the petitioner and the petitioner did not file any reply, there was no need of passing any order holding the petitioner liable for the said recovery and the recovery can be done straightway.

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

6. It is a settled principle of law that any action of the respondents, which causes prejudice to an employee, the rules of natural justice needs to be followed. Rules of natural justice are not limited to issuance of a show cause notice but also extent to passing an order giving the reasons for holding an employee liable for the recovery.

7. In the present case, it has been conceded before this Court that no order has been passed holding the petitioner liable for the recovery of an amount, which has been done from the petitioner as described in Annexure R-2 amounting to ₹70,993/- . That being so, the said recovery cannot be permitted.

8. Further, the process of even issuance of show cause notice was initiated by the respondents after the retirement. Learned counsel for the respondents has not been able to rebut the contention of learned counsel for the petitioner that as per Rules, in case authorities need to proceed against an employee after the retirement, a specific procedure needs to be followed for holding a departmental proceedings, which include the issuance of a charge-sheet, approval of a competent authority and proving the charge

before effecting recovery of any amount. This process has not been followed, which fact has been conceded by the learned counsel for the respondents.

9. In the present case, the recovery, which has been done from the petitioner, is beyond the jurisdiction of the respondents and accordingly, held to be bad in law being against the rule governing the service as well.

10. Keeping in view the above, the claim of the petitioner is allowed. The actual recovery, which has been done from the petitioner amounting to ₹70,993/- as depicted by the respondents in their reply in Annexure R-2 be refunded back to the petitioner within a period of two months from the receipt of copy of this order.

July 20, 2022
kanchan

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes

Whether reportable : Yes