

2023:PHHC:066525

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

201

CWP No.8687 of 2022

Date of decision: 09.05.2023

BAL SINGH CHAUHAN

...Petitioner

Versus

UTTAR HARYANA BIJLI VITRAN NIGAM AND ORS

...Respondents

CORAM : HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Kanwal Goyal, Advocate with
Mr. Paramjit Singh, Advocate and
Mr. Govind Tanwar, Advocate
for the petitioner.

Mr. Arvind Seth, Advocate
for the respondents.

RAJ MOHAN SINGH , J.(ORAL)

The petitioner has preferred this writ petition under Article 226 of the Constitution of India for the issuance of an appropriate writ in the nature of certiorari, quashing the show cause notice dated 17.11.2021/08.12.2021 proposing to recover an amount of Rs.33,42,307/- from the retiral benefits which have already been withheld including pension of the petitioner as well.

The petitioner was appointed as Lower Division Clerk(LDC) under sports quota for a period of 6 months vide

order dated 02.12.1987. The petitioner was an outstanding volley ball player. Subsequently the services of the petitioner were regularized vide order dated 09.05.1991 w.e.f. 30.04.1990. The petitioner had been performing his duties diligently and effectively to the satisfaction of the respondent-authority. The petitioner was granted the benefit of first ACP pay scale vide order dated 28.08.2003 w.e.f. 01.01.2001 on completion of 10 years of regular satisfactory service. Similarly the petitioner was also granted benefit of second ACP pay scale vide order dated 20.12.2012 w.e.f. 01.01.2011 on completion of 20 years of regular satisfactory service. The petitioner was also given benefits of increments etc. as per service rules from time to time.

In the year 2014, the petitioner suffered a paralytic attack while in service. His right side of the body was heavily affected by the stroke and consequently, the petitioner became permanently disabled to the extent of 55.%. Still the petitioner kept on performing his duties as Lower Division Clerk to the best of his capability. The petitioner applied for extension in service in view of Haryana Government Instructions dated 21.04.2008 as modified vide instructions dated 29.08.2014 providing for extension of age up to 60 years subject to fulfillment of conditions as mentioned in the instructions. The

condition of 70% disability was interpreted by the High Court in ***CWP No.3919 of 2015 titled Hardev Kaur vs. State of Haryana*** decided on 04.03.2015 whereby the provisions have been interpreted with reference to the “The Persons with Disabilities(Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, which defines a disabled person having disability more than 40%. Identical provisions have now been incorporated in “The Persons with Disabilities(Equal Opportunities, Protection of Rights and Full Participation) Act, 2016. Therefore the condition of 70% as mentioned in the instructions dated 21.04.2008 was ordered to be read in conjunction with the requirement under the aforesaid Act of 1995 and Act of 2016 i.e. disability more than 40%. On the basis of the disability of the petitioner, the petitioner also applied for extension in service on the basis of aforesaid instructions. The petitioner could not pursue his application with the department, owing to the situation arising out of Covid-19 for about two years. However, the case of the petitioner for grant of pension was delayed and finally vide order dated 30.06.2020, the Accounts Officer/respondent No.4 sent PPO No.14451 dated 29.06.2020 to XEN, OP Division, UHBVN, Kurukshetra, whereby the petitioner was granted only provisional pension in place of full pension and apart from that no other retiral benefits

vis. Death cum retirement gratuity, commuted value of pension, leave encashment etc. were released. The petitioner filed CWP No.22276 of 2020 which is now pending for 11.05.2023 after issuance of notice of motion to all the respondents. The petitioner stands retired on 31.03.2020. During the entire service of the petitioner, the petitioner was never charge-sheeted. No charge-sheet was pending at the time of retirement.

Learned counsel for the petitioner with reference to pleadings in para No.6 to para No.9 submits that due to filing of CWP No.22276 of 2020, impugned notice of recovery has been issued to the petitioner after his retirement on the ground that benefit of first ACP on 28.08.2003 and second ACP on 20.12.2012 were wrongly granted as the petitioner was not eligible to be promoted on account of his having not passed the type test after his appointment.

Learned counsel for the petitioner further submits that issuance of show cause notice is the result of *mala fide*. The petitioner was never promoted during his entire service tenure. From the date of joining of the petitioner until his retirement, the petitioner was never asked to clear the type test. No embargo was placed by the respondent for not clearing the type test rather the petitioner was allowed to retire without serving any

show cause notice while in service. During the service of the petitioner, even undertakings were taken from the petitioner on 23.05.2017. A perusal of the undertaking would show that the petitioner elected the revised pay structure w.e.f. 01.01.2016 and also elected to continue on the existing pay structure of pay. The benefit of increments was never given to the petitioner which the petitioner has already claimed in the pending writ petition i.e. CWP No.22276 of 2020. The petitioner also undertook that in the event of his pay having been fixed in a manner contrary to the provisions contained in UHBVNL(Revised Pay) Rules, 2017 as detected subsequently, the excess payment so made shall be refunded by him. The pay of the petitioner was never fixed in terms of aforesaid Rules of 2017, therefore the undertaking in question never created any impediment in granting lawful dues to the petitioner after retirement.

Per contra learned counsel for the respondents relied upon the aforesaid undertaking. The factual position of the case is not in dispute. Admittedly the petitioner was granted benefits of first and second ACPs on 28.08.2003 and 20.12.2012. Grant of the aforesaid ACPs on wrong premise was never raked up by the department till the date of retirement of the petitioner on 31.03.2020. Even the petitioner was granted benefits of

increments as per service Rules. During the entire service tenure of the petitioner since date of regularization on 09.05.1991, the petitioner was never asked to clear the type test. After retirement of the petitioner, the recovery is sought to be effected from the retiral dues on the premise that the petitioner was not eligible to be promoted and therefore grant of benefits of ACP was wrongly done in the year 2003 and 2012 respectively. After retirement of the petitioner, the proposed action is highly illegal and suffers from instinct of *mala fide*.

Learned counsel for the petitioner relies upon ***State of Punjab vs. Rafiq Masih 2015 4 SCC 334, Regional Cancer Centre vs. Ganga Devi.C, 2022(3) ILR Kerala 680 DB and Thomas Daniel vs. State of Kerala 2022 AIR (Supreme Court) 2153***. On the strength of the aforesaid precedents it can be appreciated that the proposed recovery against the petitioner after his retirement in the facts and circumstances of the present case is highly depreciable and the same is found to be totally illegal. The ratio of ***High Court of Punjab and Haryana and others vs. Jagdev Singh 2016 KHC 6515*** is not attracted as the undertaking was given not in the context of retiral dues, rather the same was given in respect of revised pay structure and the benefit of increment which was never given to the petitioner and the same did not affect the benefit of ACPs.

The petitioner was a Group C employee and his pay was never fixed in terms of UHBVNL(Revised Pay) Rules, 2017, therefore the undertaking in any eventuality cannot advance the case of the respondents in any manner.

For the reasons recorded hereinabove the proposed recovery vide impugned notice dated 17.11.2021 is totally illegal and the same is hereby quashed. Normal consequences to follow.

The withheld amount in question be paid to the petitioner along with interest at the rate of 6% per annum from the date of withholding of the amount till final realization of amount within a period of one month from the date of receipt of certified copy of this order.

In the event of not complying the order, the rate of interest shall be enhanced to 12% per annum from the date of accrual till final realization of amount.

Disposed of.

09.05.2023

P.Bhatt

**(RAJ MOHAN SINGH)
JUDGE**

Whether reasoned/speaking?
Whether reportable?

Yes/No
Yes/No