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2023:PHHC:110142

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-33630-2019
DECIDED ON: 23rd AUGUST, 2023

MUKAND LAL

.....PETITIONER

VERSUS

DAKSHIN HARYANA BIJLI VITRAN NIMGAM LTD. AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. B.S. Mittal, Advocate
for the petitioner.

Mr. Anil Chawla, Advocate for the respondents.

SANDEEP MOUDGIL, J (ORAL)

1. The jurisdiction of this Court under Article 226 of the Constitution of India has been invoked for issuance of a writ in the nature of *Certiorari* to quash the reply/order dated 01.05.2018 (Annexure P-5) passed by respondent No.4 whereby, the claim of the petitioner for refund of amount of Rs.1,67,878/- illegally deducted on account of shortage of oil and missing parts from the retiral benefits has been declined.

2. The petitioner has retired on 30.11.2005 after attaining the age of superannuation. On 14.07.2005 the petitioner was asked to deposit an amount of Rs.1,86,943, allegedly outstanding against him on account of shortage of oil and cost of missing parts of damaged transformers. Such amount has been withheld by the respondents without issuing any show cause notice to the petitioner. In the reply, it was pointed out that on the date of retirement, an amount of Rs.1,86,943/- was

recoverable from the petitioner on account of shortage of parts of damaged transformers and oil in the Distribution Transformers maintained by the petitioner. However, after adjusting an amount of Rs.75,678/-, still a sum of Rs.86,191/- is required to be recovered.

4. After hearing the learned counsel for the parties and having gone through record, this Court is of the opinion that the action of the respondents in withholding the aforesaid amount, without issuing any show cause notice / charge sheet, so as to impose a minor penalty of recovery for the loss suffered by the respondents, is not sustainable in law. This Court in ***Jagdish Prasad vs. UHBVNL and Other passed in CWP-8421-2015*** has held that:-

“It is a settled principle of law that no order which causes prejudice to an employee can be passed without giving an opportunity of hearing. Before the recovery order is passed, an employee is entitled to be told about the allegations alleged against him/her and after seeking his/her reply, an order needs to be passed giving the justification as to why the reply filed by an employee has not been found satisfactorily and an employee is liable to refund the amount. Admittedly, in the present case, the recovery has been done without following the due procedure of law, as envisaged under the rules and no notice whatsoever has been served upon the petitioner before effecting the recovery and rather, there is no order passed holding the petitioner liable for the recovery to the tune of `1,37,641/-. In the absence of any order, which makes the petitioner liable for the recovery, the recovery of the above said amount from the retiral benefits of the petitioner is without any justification and jurisdiction as well”.

5. The withholding of the amount from the retiral benefits in fact amounts to major penalty and such penalty cannot be imposed without adhering to the principle natural justice, as well as the service Rules. Since opportunity of hearing has not been granted before the order to withheld the amount was passed, the action of the respondents cannot be sustained.

6. **“A.J. Randhawa Supdg. Engineer ... vs State Of Punjab And Ors. on
16 May, 1997**

“Pension and gratuity are no longer any bounty to be distributed by the Government to its employees on their retirement but have become, valuable rights and property in their hands and any culpable delay in settlement and disbursement thereof must be visited with the penalty of payment of interest at the current market rate till actual payment.”

7. In view of the above, the present writ petition is allowed. The impugned order dated 01.05.2018 (Annexure P-5) is quashed. The respondents are directed to release the withheld amount along-with interest @12% per annum within three months from the date of receipt of certified copy of this order.

23rd AUGUST, 2023
Sham

(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned: *Yes/No*
Whether reportable : *Yes/No*