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

**CWP-22384-2016
DECIDED ON: 22.08.2023**

RAMPHOOL SINGH

...PETITIONER

VERSUS

DAKSHIN HARYANA BIJLI VITRAN NIGAM LTD. AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Ms. Archana Chauhan, Advocate for
Mr. Sushil Jain, Advocate
for the petitioner.

Mr. Abhilaksh Grover, Advocate
for respondents.

SANDEEP MOUDGIL, J

1. The jurisdiction of this Court has been invoked under Article 226 of the Constitution of India for issuance of a writ in nature of certiorari for quashing the office order No. 268/SE/HR dated 02.05.2016 (Annexure P-6) whereby the respondents have deducted an amount of Rs.84,862/- from retiral benefits of the petitioner on account of shortage of oil and breakage of parts of transformer. A further direction is sought to direct the respondents to release the amount so deducted from the retiral benefits along with the interest @18% per annum from the date of retirement of the petitioner till its realisation along with full pension.

2. Learned counsel for the petitioner contended that the petitioner retired on 31.08.2012 on attaining the age of superannuation as an Assistant Foreman from the respondent-Nigam after completing 39 years of unblemished service and no charge-sheet/enquiry/complaint was pending against the petitioner at the time of his retirement, however, after the retirement, the petitioner was paid leave encashment/ GPF/GIS but the amount of gratuity and full pension amount was not

paid to the petitioner and thereafter, vide order dated 31.10.2012 (Annexure P3), the petitioner was granted provisional pension @ 75%.

3. It is averred that a charge sheet dated 02.03.2015 (Annexure P-4) was issued against the petitioner to which the petitioner has already submitted a detailed reply dated 22.05.2015 (Annexure P-5) and the respondent-authorities without conducting any departmental inquiry and without appointing any inquiry officer have illegally deducted the amount from the retiral benefits of the petitioner.

4. On the other hand, the learned counsel for the respondent contends that though the petitioner had retired on 31.08.2012, however during his service tenure, for the misconducts committed, an enquiry was pending which had subsequently culminated into charge-sheet dated 20.08.2014 (Annexure R-1), as a result, a punishment for recovery of Rs. 84862/- was imposed upon the petitioner from the gratuity amount vide office memo no. 268/SE/HR dated 02.05.2016 (Annexure P-6), after his retirement.

5. Heard learned counsel for the parties and gone through the record.

6. It is undeniable that the amount has been deducted from the gratuity payable to the petitioner and that the charge-sheet was issued only after the retirement of the petitioner. It is well-settled that an inquiry cannot be treated to have been initiated till the competent authority frames the charges and serves the charge-sheet upon the concerned employee. Reference can be made to ***Narinder Dev Sharma v. State of Punjab and Anr.*** ***[1996 (1) S.C.T. 623] and*** ***L.R. Dhawan v. State of Haryana and Ors.*** ***[1996 (3) S.C.T. 11 : 1995(8) SLR 3].***

7. Further, the deduction from the gratuity amount payable to the retiree on account of inquiry initiated after his retirement is liable to be set aside in view of

the decision in***Ram NarainDua v. Dakshin Haryana Bijli Vitran Nigam Ltd [2006 (3) PLR733]*** wherein the Division Bench of this Court held as under:

"The instant petition is directed against order dated March 1, 2005 (P-15) passed by respondents withholding 100% pension, arrears of pension, Rs. 2,25,000/- of Gratuity and Rs. 2,80,000/- of commutation of pension. The aforementioned amount has been withheld on the allegation that there were shortages pertaining to the period of 1998-2000 and 2001 which the petitioner ought to have applied for being written off during his tenure. It is claimed that after his retirement the amount of recovery cannot be written off. It is admitted position that all other retiral benefits have been paid to the petitioner which include G.P.F., G.I.S., leave encashment, commutation of pension, arrears of pension and about 50% of the amount of gratuity. However, ***an amount of Rs. 2,25,000/- in respect of gratuity and Rs. 2,80,000/- in respect of commutation of pension has been withheld on the allegation of shortage of oil and missing parts of transformer. It is admitted position that no show cause notice or charge-sheet/disciplinary proceedings have been initiated against the petitioner for making recovery of aforementioned amount before the date of his retirement on February 28, 2003. Even in the impugned order dated March 1, 2005, no such details are available showing that any notice was given.***

2. Having heard the learned counsel for the parties, we are of the considered view that the respondents could not have withheld any amount of gratuity payable to the petitioner on account of allegation which have emanated after the date of his retirement. Such a course is not available to the respondents. In somewhat similar circumstances, this Court has earlier also in the case of Hans Raj Sharma v. Uttar Haryana Bijli Vitran Nigam Limited and others, 2004(4) SCT 117 (P&H) : Civil Writ Petition No. 152 of 2004, decided on October 28, 2004, had allowed the writ petition by following the judgment of Hon'ble the Supreme Court in P.R. Naik v. Union of India, AIR 1972 Supreme Court 554. It has been laid down in the aforementioned judgment that ***issuance of charge sheet for initiation of departmental enquiry is a sine qua non****.*

In view of the above, we allow the writ petition and quash the impugned order dated March 1, 2005 (P-15). We further direct the *respondents to release the 100% pension, arrears of pension, gratuity and commutation of pension amount to the petitioner within a period of one month from the date a certified copy of this order is presented to the respondents. In case, the needful is not within one month, then the petitioner shall be entitled to interest at the rate of 6% per annum from the date the amount is payable till its actual payment."*

The aforesaid judgment was also relied in the case of***Amarjit Singh v. Punjab State Civil Supplies Corporation Limited &Anr.*** ***[2016 (4) PLR 2016]*** while making the following observation:

"2. To the extent gratuity is claimed by the petitioner, this petition must succeed. To claim such benefit, learned counsel for the petitioner relies appropriately on the case law in Narinder Dev Sharma v. State of Punjab & another, 1996 (1) SCT 623; L.R. Dhawan v. State of Haryana & others, 1996 (3) SCT 11 and Ram NarainDua v. Dakshin Haryana Bijli Vitran Nigam Ltd. & others, 2007 (1) SCT 161. ***This is because the respondents admit that no charge-sheet was served on the petitioner prior to his retirement and therefore, gratuity could not have been withheld. Neither can gratuity be withheld by initiating inquiry under Rule 2.2(b) of the Punjab Civil Services Rules, Volume II after employee retires and departmental proceeding were not contemplated during service. This is for the reason that gratuity is a one-time payment which falls due and payable on the date of retirement and is not a recurring right like pension.*** *However, an enquiry based on a charge-sheet issued after retirement under Rule 2.2(b) can be conducted and concluded. The charge-sheet was issued in this case on 02.04.2013 for an incident of alleged misconduct which occurred during the period 2009-10, while the petitioner retired from service on 30.04.2011. To that extent no court directions are called for in this petition to draw the curtains on the departmental proceedings.*

3. For the foregoing reasons, this petition is allowed while setting aside the impugned decision withholding gratuity for no rhyme or reason*. Since the amount of gratuity has been withheld for the wrong reason, the petitioner would be entitled to interest on delayed payment @ 8.7% p.a. i.e. the rate payable on long term fixed deposits sitting invested in nationalised Banks."*

8. The petitioner has also rightly placed reliance on the decision of this Court in the case of ***Jagmohan Vs. Uttar Haryana Bijli Vitran Nigam Limited &Ors.*** ***[CWP-24750-2013 (O&M), Decided on 13.07.2016]*** wherein under identical facts and circumstances, this Court had set-aside the recovery affected by the respondent-Nigam as well as the order vide which the provisional pension was being paid to the petitioner.

9. In view of the above detailed discussion, this writ petition is allowed and the order dated 02.05.2016 (Annexure P6) is set aside and the respondents are directed to release all the retiral benefits that the petitioner is entitled to including gratuity along with interest @ 9% per annum from the date the benefit accrued till the actual payment of the same, within a period of *one month* from the receipt of certified copy of this order.

22.08.2023
V.Vishal/er

(Sandeep Moudgil)
Judge

1. Whether speaking/reasoned? ***Yes/No***
2. Whether reportable? *Yes/No*