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

**CWP No.2536 of 2018
Date of Decision: 12.01.2023**

CHOTTE LAL ......Petitioner
Vs
A.G.M., D.H.B.V.N LTD AND OTHERS .....Respondents

CORAM: ***HON'BLE MR. JUSTICE RAJ MOHAN SINGH***

Present: Mr. Jagjeet Beniwal, Advocate
for the petitioner.

Ms. Aditi Sharma, Advocate for
Mr. C.S. Bakshi, Advocate
for the respondents.

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RAJ MOHAN SINGH, J.(Oral)

[1]. The petitioner has preferred this writ petition for the issuance of an appropriate writ in the nature of certiorari, quashing the order dated 18.01.2018 passed by the respondent No.4 whereby the respondent No.4 withheld the amount of Rs.40,632/- of the retiral benefits of the petitioner on account of shortage of oil and breakage of parts of the transformers. The petitioner has also claimed interest over the withheld amount. The respondents have released an amount of Rs.4,91,550/- towards pensionary benefits after a period of about three years.

[2]. The petitioner was retired on 30.06.2014 from the service of the respondent-Nigam. An amount of Rs.40,632/- has been recovered by the respondents from the pensionary

benefits of the petitioner in pursuance of alleged show cause notice.

[3]. Admittedly, no departmental or judicial proceedings were pending at the time of retirement of the petitioner on 30.06.2014. The recovery of amount was on account of shortage of oil and breakage of parts of the transformers for which no proceedings were initiated by the respondent-Nigam. Even the show cause notice dated 22.12.2014 (Annexure R-2 attached with the written statement) was issued after six months of the retirement of the petitioner. Even thereafter, no action was contemplated in the event of not filing any response to the show cause notice by the petitioner.

[4]. For the alleged loss caused to the Department, the competent authority was required to act as per instructions and guidelines for bringing out uniformity in audit practices and fixation of responsibility of the officers/officials by the audit parties in UHBVN and DHBVN. According to the works audit, the matter of loss due to theft of material and inventory in stores was to be taken up by the SDO within 24 hours with the Police authority for lodging the FIR. After seven days, he was required to write to the Station House Officer under registered cover with a copy to the XEN. Within seven days, the concerned XEN was to take up the matter with the SHO/DSP with a copy to the SE concerned who was to pursue the matter further.

[5]. The aforesaid procedure was required to be followed strictly. In case of non-registration of FIR, the responsibility of the officer in hierarchy was to the tune of 10% qua XEN, 40% qua SDO and 50% qua JE/AFM.

[6]. As regards the loss due to theft of inventory, the FIR was to be lodged in all the cases and the responsibility should have been fixed despite lodging of FIR and extent of responsibility fixed by the competent authority as per investigation report. Qua the missing parts and shortage of oil of the transformers, the XEN shall investigate the shortage within 6 months and amount waived as per existing DOP and the balance amount recovered from the concerned JE/AFM. If the amount is not recovered from the responsible officers/officials by the XEN within 6 months of intimation, loss of interest shall be recovered from the XEN/Accountant/HC in equal proportions.

[7]. Admittedly, the aforesaid guidelines have not been followed. No FIR was lodged nor was the petitioner ever proceeded against in terms of departmental proceedings. Even after retirement of the petitioner on 30.06.2014, a show cause notice dated 22.12.2014 was issued to the petitioner proposing to initiate departmental proceeding under Regulation-8 read with Regulation-4 of HSEB Employees (P&A) Regulation 1990 duly adopted by the Nigam.

[8]. According to show cause notice, the petitioner was

afforded an opportunity to explain his position and show cause in writing within 7 days from the date of receipt of the communication as to why the proposed action be not taken against him. The petitioner was also given opportunity to inspect the relevant record in the office of XEN on any working day. It was also mentioned that in case of no response from the petitioner, it will be presumed that the petitioner has nothing to say in his defence. The reply filed by the respondents is conspicuously silent in respect of subsequent action taken by the respondent-Nigam in pursuance of show cause notice dated 22.12.2014.

[9]. Learned counsel for the petitioner has referred to the ***Civil Appeal No.7113 of 2014*** (arising out of SLP(C) No.25015 of 2011) titled ***'D.D. Tiwari (D) Thr. LRs. vs. Uttar Haryana Bijli Vitran Nigam Ltd. & others',*** decided on 01.08.2014 to contend that the loss towards the alleged shortage of oil and breakage of parts of the transformers has been erroneously debited to the account of the petitioner without there being any determination and fixing liability on account of any departmental proceedings or lodging of FIR. No disciplinary proceedings were pending against the petitioner at the time before his retirement. An amount of Rs.40,623/- has been wrongly recovered from the pensionary benefits of the petitioner. Solely on this ground, the

payment of retiral dues to the tune of Rs.4,91,550/- was further delayed by three years.

[10]. Learned counsel for the petitioner with reference to ***State of Kerala & Ors. vs. M. Padmanabhan Nair, (1985) 1 SCC 429*** further submits that the pension and gratuity are no longer any bounty to be distributed by the Government to its employees on their retirement, rather these are valuable rights and earned properties of the employees and release of the same cannot be delayed. The delay, if any has to be dealt with the penalty of payment of interest till actual payment thereof.

[11]. In view of aforesaid factual position of the case, I deem it appropriate to set aside the order dated 18.01.2018 passed by the respondent No.4. The amount of Rs.40,632/- as deducted from the pensionary benefits of the petitioner is ordered to be restored to the petitioner along with interest @ 9% per annum from the date of its recovery till actual payment thereof. The delay in releasing the pensionary benefits has also been dealt with in terms of payment of interest @ 9% per annum from the due date till actual payment.

[12]. With the aforesaid directions, this writ petition is allowed.

(RAJ MOHAN SINGH)
JUDGE

January 12, 2023
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Whether speaking/reasoned Yes/No
Whether reportable Yes/No