

IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH

2023:PHHC:166867

206

CWP-29708-2018

DECIDED ON: 02.12.2023

VISHVAKANT GUPTA

... PETITIONER

VERSUS

HARYANA SHAHRI VIKAS PRADHIKARAN AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

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

Mr. Sanjeev Majra, Advocate
for respondents No.1 to 3.

SANDEEP MOUDGIL, J.

1. The jurisdiction of this Court under Articles 226 and 227 of the Constitution of India has been invoked for issuance of a writ in the nature of *Mandamus* directing the respondents to release the retiral benefits of the petitioner including leave encashment, gratuity etc. along-with interest with further prayer seeking quashing of the communication dated 02.05.2018 (Annexure P-10) vide which the release of retiral dues are being forestalled by the respondents.

2. The facts in brief are that the petitioner joined the respondent authority as Junior Engineer 10.03.1978 and he was supposed to retire on attaining the age of superannuation on 31.12.2016. The petitioner was promoted to the post of Sub-Divisional Engineer on 31.10.2012 (Annexure P-2) and he took the charge as SDE in the office of Haryana Shahri Vikas Pradhikaran (HSVP), Division Bahadurgarh on 05.11.2012. The petitioner was

served upon a notice for premature retirement on 30.01.2014. Aggrieved of the same, the petitioner filed a CWP-12648-2015 but the said writ petition was dismissed as withdrawn vide order dated 16.09.2015 passed by this Court. Subsequent thereto, the petitioner filed a civil suit on the same cause of action but the same was dismissed in default on 17.05.2017, as the petitioner stood retired on 15.12.2015. Accordingly, office order was passed on 15.12.2015 relieving the petitioner. Though the respondents released the retiral benefits of the petitioner but in piecemeal at a very belated stage. For the non-release of gratuity as well as leave encashment and interest on delayed payment of GPF, pension and other retiral benefits the petitioner approached the respondents. Accordingly, vide communication dated 22.03.2016, it was intimated that the petitioner stood retired on 15.12.2015 and his DCRG and leave encashment has been calculated by the office. The petitioner has submitted various requests for the release of DCRG and leave encashment but to no vain. Thereafter vide memos dated 11.05.2017 and 06.06.2017, the alleged recovery of Rs.32,53,861/- with regard to non-handing over of charge of Sector 11 Bahadurgarh has been made against the petitioner and the officer issued the letters dated 11.05.2017 and 06.06.2017 is the same officer who initially calculated the retiral dues and had sent the same to the Chief Administrator on 22.03.2016.

3. Learned counsel for the petitioner has contended that the petitioner had an unblemished service record and has served the respondent authority for about 38 years. The petitioner was promoted to the post of SDE vide office order dated 31.10.2012 with a condition that he will be reverted to his original post without assigning any reason in case any adverse remarks regarding integrity are received in his awaited ACRs. The petitioner has never had any

adverse remarks or any adverse annual confidential report against him, therefore, the notice of premature retirement was *ex-facie*. The petitioner stood retired on 15.12.2015 but the retiral dues accrued to him has not been released so far. The contention of learned counsel for the petitioner is that he was given 'No due Certificate' for the release of his pensionary benefits, vide order dated 01.12.2017 (Annexure P-8). Further when the petitioner has started demanding to release of the pensionary benefits, again now, the respondents have raised the issue of non-completion of work, which matter had already been closed by the respondents themselves.

4. Respondents have filed their written statement raising preliminary objection that the petitioner was appointed as Sectional Officer in HSVP on 10.03.1978 and vide order dated 31.10.2012, he was promoted to the post of SDE. As per promotional order dated 31.10.2012, he was required to clear department test failing which annual increment was to be withheld. The petitioner failed to clear the departmental examination due to which he was held not entitled for any annual increment. On account of the said fact alone, the petitioner was compulsorily retired on 15.12.2015. Thereafter vide memo dated 11.05.2017, the petitioner was informed that work for construction of internal road of Sector 11 Bahadurgarh was allotted to M/s Mahashiv Promoters Rohtak on 01.10.2013 under his supervision. The petitioner was directed to visit respondent No.3, as the payment made against the supply of material was not found upto the mark and the material was not traceable being unutilized, failing which the case for recovery from retiral benefits was to be recommended. When the petitioner failed to appear, respondent No. 3 vide letter dated 06.06.2017 requested the Chief Administrator, HSVP, Panchkula to recover 50% loss from the petitioner. However, vide letter dated 01.12.2017 the

respondent No.3 intimated the answering respondent that his office has no objection in release of retiral benefits to the petitioner. Vide imugned letter dated 02.05.2018 (Annexure P-10), respondent No.3 intimated the Superintending Engineer, HSVP Circle, Rohtak with regard to misconduct on the part of the petitioner regarding construction work of road of sector 11 Bahadurgarh and other works mentioned therein. It has been stated by respondent No. 3 that NOC cannot be issued till the submissions of charge by the petitioner to access the discrepancies like the works relating to road sector 11. Since, NOC has not been received the payment of gratuity and leave encashment 2016 has been withheld. Thus, he prays for dismissal of the present petition.

5. No other argument has been raised by either of the parties.
6. Heard learned counsel for the respective parties.
7. Admittedly, the petitioner was appointed as JE in the office of HSVP on 10.03.1978 and was promoted to the post of SDE on 31.10.2012. The promotional order of the petitioner reads as under:-

“In pursuance of decision taken by the Personnel Committee in its meeting held on 04.07.2012, the following Junior Engineers (Civil) working in the various offices of HUDA are hereby promoted to the post of Sub Divisional Engineer (Civil) on regular basis under diploma/degree holder quota in the pay scale of Rs. 9300-34800+5400/- GP and usual allowances as are admissible to the employees of HUDA with effect from the date they assume the charge of the post of Sub Divisional Engineer (Civil) subject to the outcome of civil writ petitions pending in the Hon'ble Punjab and Haryana High Court, Chandigarh.

DIPLOMA HOLDER

Sh. Jaspal Singh (Sr.No.09)

Sh. Hawa Singh (Sr. No. 10)

Sh. Lakhwinder Singh (Sr. No. 11)

Sh. Vashavkant (Sr. No. 12)

Sh. Kanwal Pal (Sr. No. 13)

DEGREE HOLDER

1. Sh. Kumar Chand Beniwal (Sr. No. 10)

2. Sh. Bhani Dutt (Sr. No. 11)

3. Sh. Suresh Kumar Rana (Sr. No. 12)

These promotions are made with the condition that they will be reverted to their original post without assigning any reason in case any adverse remarks regarding integrity are received in their awaited ACRs.

They will be on probation for a period of one year, which can be extended upto two years. During the period of probation, they can be reverted as such at any time, without any notice and without assigning any reason thereof.

They will be required to pass the departmental professional examination as prescribed by the Authority within three years from the date of their joining to the post of Sub Divisional Engineer failing which they shall not be allowed annual increment. The annual increment (s) shall accrue to them from the date they pass the examination but they will not be allowed arrears for the period during which they are unable to clear the prescribed departmental examination. On promotion, their posting is made in the offices mentioned against each”.

8. From the afore-said promotional order, it is crystal clear that the petitioner was compulsorily retired on 15.12.2015 on account of the fact that he failed to clear the departmental examination within the stipulated time. However, the petitioner has already been issued ‘No due Certificate’ for the release of his pensionary benefits, vide order dated 01.12.2017 (Annexure P-8), meaning thereby, nothing was due against the petitioner. Subsequent to the issuance of letter dated 11.05.2017 for the alleged recovery of Rs.32,53,861/-, from the petitioner, no objection in releasing of retirement benefits to the petitioner has been issued vide letter dated 01.12.2017 (Annexure P-8).

9. In view of the discussions made hereinabove, the present petition is allowed and respondents are directed to release the retiral benefits of the petitioner from the date it became due till its actual realization.

10. Ordered accordingly.

02.12.2023
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(SANDEEP MOUDGIL)
JUDGE

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