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

CWP No. 4400 of 2017
Date of Decision: 28.02.2023

Subhash Chander Sharma

.....Petitioner

Vs

UHBVNL and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. R.K. Chaudhary, Advocate for
Mr. K.L. Dhingra, Advocate for the petitioner.

Mr. Padamkant Dwivedi, Advocate
for the respondents.

RAJ MOHAN SINGH, J.(Oral)

The petitioner has preferred this writ petition for the issuance of an appropriate writ in the nature of certiorari quashing the order dated 12.11.2010 to the extent of withholding the amount of Rs.1,55,451/- out of DCRG of the petitioner after retirement of the petitioner.

The petitioner was working as Junior Engineer in the respondent-Nigam and retired on 31.07.2007. At the time of retirement, no due certificate was duly issued by the respondent-Nigam. No departmental enquiry was pending at the time of retirement nor was any charge sheet issued by the competent authority. After retirement of the petitioner, the

aforesaid amount has been withheld under the garb of some show cause notice issued to the petitioner after his retirement.

The petitioner kept on filing representation against the aforesaid illegal exercise of the respondent-Nigam till the year 2016 and facing inaction on behalf of the respondent-authority, the petitioner ultimately ventured to file the present writ petition.

Notice of motion was issued on 06.03.2017

Learned counsel for the respondents submits that after issuance of show cause notice no reply was filed by the petitioner, therefore, the present writ petition is not maintainable.

Having heard learned counsel for the parties. I am of the view that at the time of retirement of the petitioner, no departmental proceedings were pending against him. The petitioner was never charged with any misconduct including a criminal misconduct. No objection certificate was duly issued to the petitioner. No charge was pending against the petitioner. The issuance of charge sheet is sine qua non for initiating any departmental proceedings even for recovery of dues.

Reference can be made to ***Hans Raj Sharma Vs. Utter Haryana Bijli Vitran Nigam Limited and Others***, (CWP No.152 of 2004, decided on 29.07.2004) by Division Bench, wherein action of the respondent-Nigam was deprecated on the

strength of finding of ***P.R. Naik Vs. Union of India, A.I.R. 1972 SC 554*** and directions were issued to the respondent-Nigam to release the remaining retiral dues along with interest. Admittedly, only a show cause notice has been issued without proposing to hold any such departmental enquiry. The issue as regards initiation of any such proceedings against the petitioner after his retirement is covered by the ratio of ***CWP No.8825 of 2015 titled Shamsher Singh Malik Vs. Haryana State Federation of Consumers'Co-operative Wholesale Stores Limited and Another*** decided on 18.05.2016.

Reference can be made to the ratio of ***Jogi Ram Vs. Haryana State Federation of Consumers Co-operative Wholesale Stores Limited and Another*** passed in CWP No.1873 of 2014 decided on 23.05.2014. Since the impugned action is not extended towards charge sheeting the retired petitioner and there is no specific rule framed by the respondent-Nigam except to allege that rule 2.2(b) of CSR is applicable, therefore, the judgment rendered on identical issue in Ranbir Singh Dahiya Vs. ***Haryana State Federation of Consumers'Co-operative Wholesale Stores Limited and Another*** in CWP No.31311 of 2018 decided on 23.02.2023, would be attracted wherein reference has been made to S.C. Jain Vs. Managing Director, ***the Haryana State Federation of***

Consumers'Co-operative Wholesale Stores Limited and Another in CWP No.15247 of 2011 decided on 22.05.2013 and ***Chandra Singh Vs. State of Rajasthan and Another, (2003) 6 SCC 545 and S.S. Arya Vs. Uttar Haryana Bijli Vitran Nigam, Panchkula and others, 2009(8) SLR 53.***

In view of the aforesaid authoritatively pronouncement, the impugned action in withholding the amount of gratuity to the extent of Rs. 1,55,451/- is illegal and the impugned order dated 12.11.2010 to the extent of withholding the aforesaid amount is hereby quashed. The petitioner is held entitled for the said amount along with interest @6% per annum from the date when the amount was withheld till final realization of the same. Let the amount along with interest be paid within a period of two months, failing which the interest components shall be paid @ 12% per month till final realization of the amount.

(RAJ MOHAN SINGH)
JUDGE

28^h February, 2023
sapna

Whether speaking/reasoned Yes/No

Whether reportable Yes/No