HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
****
CWP-8047-2018 (O&M)
Decided on 13.09.2023
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Om Parkash ... Petitioner

VS.

State of Haryana & Anr. ... Respondents

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CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

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Present: Mr. Surender Pal, Advocate for the petitioner
Mr. BS Virk, Sr.DAG Haryana
Mr. Vikas Chatrath, Advocate for respondent No.2.
Mr. Vivek Chauhan, Advocate for respondent No.4.

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Sandeep Moudgil, J.

1. The petitioner has filed the present writ petition under Article 226 of the Constitution seeking a writ in the nature of certiorari for quashing the order dated 19.02.2018 (Annexure P11) vide which respondent No.2 has imposed recovery of Rs.12,23,584/- and notice of recovery dated 11.02.2016 (Annexure P7) wherein the petitioner was asked to deposit Rs.4,72,387/- along with interest @ 12% p.a. from 19.07.2003 i.e. the date of detection of alleged loss and to issue a direction to release the pensionary benefit to the petitioner along with interest from the date of retirement i.e. 31.05.2015.

2. Learned counsel for the petitioner submits that petitioner retired w.e.f. 31.05.2015 and the impugned notice of recovery in the name of show-cause notice was issued on 11.02.2016 after his retirement and the respondents have taken about four years time in deciding the charge-sheet dated 09.01.2012 as departmental inquiry with regard to the said chargesheet was conducted and the report was submitted by the Inquiry Officer on 02.09.2013 against the petitioner and thereafter, only a show-cause-notice with regard to withholding of one increment with cumulative effect was

issued to the petitioner and no notice of any recovery was made to the petitioner at that time and in the year 2016.

3. He further pleaded that the petitioner had been served with Memorandum dated 13.5.2004 for alleged less storage gain, which itself has been cited in the list of documents at Sr. No.9 which the petitioner explained vide reply dated 7-6-2004 which was duly received in the office of MD, HARCOFED, however, nothing adverse was conveyed to him during the last more than 8 years after receipt of his explanation dated 7.6.2004.

4. It is vehemently contended that as far as question of recovery of amount of Rs.12,23,584/- from the petitioner is concerned, the said amount has been calculated by imposing interest @ 12% w.e.f. 19.07.2003, however, the same should have been calculated from the date of show-cause-notice or notice of recovery i.e. 11.02.2016(Annexure P-7) as it is clearly mentioned in the impugned order dated 19.02.2018 passed by the respondent no.2 that "*respondent no.4 i.e. HAFED vide letter no.Hafed/Admn/A7/2430 dated 10.06.2011 has intimated that while taking over the charge of stock on 19.07.2003 from you, a less gain/shortage of stock to the tune of Rs.472,387/- is detected. HAFED directed the HARCOFED to recover the amount from you alongwith interest @ 12% from the date, the less-gain/shortage is detected*" which itself shows that respondent No.4 directed the respondent No.2 to recover the amount from the petitioner vide order dated 10.06.2011, i.e. after about 8 years from the alleged detection of loss.

5. Learned counsel for respondent No.2 while vehemently opposing the prayer of the petitioner has placed reliance on the undertaking given by the petitioner, on the basis of which, the order dated 08.01.2018 was

passed in CWP No.16379 of 2016. It is further argued by learned counsel for respondent No.2 that in fact, the petitioner has to pay more amount as the interest on the amount of Rs.4,72,387/- has to be paid from the date when the loss was suffered by respondent No.2/department, which is of the year 2003.

6. It has been further submitted that in compliance of order passed by this Court in CWP No. 16379 of 2016, the respondent No. 2 (HARCOFED) was requested by answering respondent No. 4 on 31/10/2018 (Annexure R-4/1) that the above stated amount of Rs. 4,72,387/- alongwith interest @ 12% be calculated upto 08/01/2018 and deposited in Hafed's bank account so that the amount of Rs.21,272/- i.e. leave salary and pension contribution, gratuity EDLI for the period from 27/03/2002 upto 31/08/2003 may be paid to the petitioner and in reply thereto, it was informed that since the matter is *sub judice*, further action will be taken after final disposal of the said petition.

7. Since as per the order dated 08.01.2018 there was no date mentioned from which the interest has to be levied but respondent No.2 suo-motu has arbitrarily proceeded to levy the interest from the date of the incident i.e. of the year 2003, whereas, the show cause notice for recovery of the amount was issued to the petitioner for the first time on 11.02.2016, this Court vide order dated 10.02.2020 directed respondent No.2 to come present and explain the as to why the petitioner has been deprived of his balance gratuity after deducting Rs.4,72,387/-.

8. On 26.02.2020, Mrs. Suman Salahara, Managing Director, came present, however, the Coordinate Bench having not been satisfied with the explanation, passed the following order:-

> *"Meanwhile, it is clarified that in case the order levying interest from the date of detection has been passed on the basis of an order passed by the HAFED-respondent No.4, respondent No.4 too shall file an explanation as to how can a direction be issued that the interest be paid from the date of detection when notice of recovery was sent much later.*
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> *However, at this stage, on a request made by learned counsel for the respondents, they are at liberty to re-visit the assessment and the rate of interest as well as the date from which it has to be paid, if so advised."*

9. In compliance to the above order dated 26.02.2020, an affidavit dated 16.03.2020 was filed by Rohit Yadav, Secretary, Hafed, Panchkula stating that punishment order has to be passed after following proper procedure as per rules and as such there is time gap between detection of the loss and the decision with regard to punishment order which is to be passed by the compentent authority. It is further explained that only draft charge sheet against the petitioner was prepared and provided to respondent No.2-HARCOFED, and thereafter final decision regarding awarding of punishment order dated 11.02.2016 has been taken by the respondent NO.2 at its own level.

10. Having heard learned counsel for the parties and after going through the record, this Court finds the action of the respondents to be arbitrary and mala fide and thus cannot sustain in the eyes of law.

11. A perusal of the order dated 08.01.2018 shows that there was no date mentioned from which the interest has to be levied but respondent No.2 suo-motu has arbitrarily proceeded to levy the interest from the date of the incident i.e. of the year 2003, whereas, the show cause notice for recovery

of the amount was issued to the petitioner for the first time on 11.02.2016. Only show cause notice of recovery was issued to the petitioner on 11.02.2016 and prior to which no notice of recovery was ever issued to the petitioner in last 13 years, which itself shows that respondents were themselves sitting quite for such a long time and now by calculating the interest from 19.07.2003, they are effecting recovery from the petitioner of an huge amount and at the verge of retirement by misinterpreting the order dated 08.01.2018 passed by this Court in CWP No.16379 of 2018 by presuming that interest on the amount of alleged loss is to be calculated from 19.07.2003 whereas, respondents are liable to pay interest at the rate 12% from the date of retirement i.e. 31.07.2015 to the petitioner on the amount of pensionary benefits.

12. Moreover, HAFED directed the HARCOFED to recover the amount from the petitioner along with interest @ 12% from the date the less-gain/shortage was detected which itself shows that respondent No.4 directed respondent No.2 to recover the amount from the petitioner vide order dated 10.06.2011, i.e. after about 8 years from the alleged detection of loss. Further, it is an admitted position that the petitioner had explained his position vide reply dated 7-6-2004 of in regard to the memorandum dated 13.5.2004, and thereafter, nothing was done by the respondent No.4 and respondent No.2 till 10.06.2011 to recover the said amount from the petitioner, which shows that respondents were satisfied with the reply filed by the petitioner in 2004, and as a result of which he was led to believe that the matter has been dropped.

13. The respondents cannot be allowed to take advantage of their own wrong inasmuch as despite the delay on their own part, the respondents

vide impugned order dated 19.02.2018 are recovering the amount of alleged loss caused to the respondent No.4 by imposing interest at the rate 12% p.a. w.e.f.19.07.2003. There cannot be another example of arbitrariness, high-handedness and taking advantage of the order dated 08.01.2018 to deprive the petitioner of his balanced gratuity after deducting Rs.4,72,387/- so that he may not claim the balance gratuity with the same amount of interest i.e.12%.

14. For the reasons mentioned above, this writ petition is allowed and order dated 19.02.2018 (Annexure P11) vide which respondent No.2 has imposed recovery of Rs.12,23,584/- and notice of recovery dated 11.02.2016 (Annexure P7) wherein the petitioner was asked to deposit Rs.4,74,387/- along with interest @ 12% p.a. from 19.07.2003 i.e. the date of detection of alleged loss is quashed. The respondents especially respondents No.2&4 are directed to release the pensionary benefit to the petitioner along with interest @ 6% p.a. from the date of retirement i.e. 31.05.2015, within a period of 2 months from the date of receipt of certified copy of this order and in default thereof, the petitioner shall be entitled to a further interest @ 12% p.a.

15. Miscellaneous applications, if any, also stand disposed of.

13.09.2023
V.Vishal

(Sandeep Moudgil)
Judge

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