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

**CWP No.31300 of 2019 (O&M)
Date of Decision: 05.05.2023**

GURCHARAN SINGH

.....Petitioner

Vs

STATE OF HARYANA AND OTHERS

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:Mr. A.K. Viridi, Advocate
for the petitioner.

Mr. Naveen Singh Panwar, D.A.G., Haryana.

Mr. Gagandeep Singh, Advocate for
Mr. Charanjit Singh Bakshi, Advocate
for the respondents No.2 to 5.

RAJ MOHAN SINGH, J.(Oral)

[1]. The petitioner has preferred this writ petition for the issuance of an appropriate writ, order or directions, in the nature of certiorari for quashing and setting aside the show cause notice dated 22.02.2019 issued after retirement of the petitioner i.e. on 31.12.2018.

[2]. There was no relationship of employer and employee after the retirement of the petitioner and the issuance of the aforesaid show cause notice for recovery of an amount of

Rs.12,16,601/- is claimed to be illegal and not legally sustainable.

[3]. The petitioner remained posted as Junior Engineer under the respondent No.7 for the period from 03.01.2006 to 31.12.2014 and in the capacity of the Sub-Divisional Officer/AE/(CDC) from 01.01.2015 to 31.12.2018 in various offices of the respondent-Nigam. The petitioner attained the age of superannuation on 31.12.2018. The impugned show cause notice came to be issued on 22.02.2019, requiring the petitioner to deposit an amount of Rs.7,96,137/- on account of shortage of missing parts and oil.

[4]. Learned counsel for the petitioner submits that an amount of Rs.6,78,218/- was recovered upto 31.12.2018 and thereafter remaining amount of Rs.5,38,383/- was also recovered from the commuted pension as well as from the gratuity amount of the petitioner.

[5]. With reference to the Dakshin Haryana Bijli Vitran Nigam Employees (Punishment and Appeal) Regulations, 2006 learned counsel for the petitioner further submits that the penalties can only be inflicted on an employee if he is in service. After retirement of the petitioner, the petitioner ceased to be the employee of the department and the recovery from pay or part of any pecuniary loss caused by the alleged negligence

of the petitioner could have been recovered during currency of his service after establishing the factum of loss caused to the respondent-Nigam on account of negligence of the petitioner. The negligence of the petitioner has to be established before effecting any recovery from the petitioner and that too while in service.

[6]. The recoveries as per Regulation 4-A falls under minor penalties and Regulation 8 of Procedure for Inflicting Minor Penalties provides that the recoveries cannot be inflicted on an employee unless a show cause notice is given and a reasonable opportunity of making representation against the said notice is also provided. The issuance of show cause notice after retirement of the petitioner is wholly unsustainable in law.

[7]. Per contra, learned counsel for the respondents No.2 to 5 relies upon intra-departmental communication as shown in para No.5 of the reply.

[8]. Evidently, these communications were never translated into issuance of any show cause notice to the petitioner.

[9]. Learned counsel for the petitioner further submits that the aforesaid communications as shown in para No.5 of the reply were duly replied by the Sub-Divisional Officer, who was immediate authority of the petitioner, explaining that the petitioner was never at fault.

[10]. Firstly, no enquiry was held. The factum of negligence of the petitioner was never established. Without ascertaining the negligence of the petitioner, the show cause notice has been issued and that too after retirement of the petitioner.

[11]. In my considered opinion, the issuance of the show cause notice to the petitioner after his retirement is not legally sustainable. The amount recovered in pursuance of the aforesaid show cause notice has to be restored to the petitioner.

[12]. In view of aforesaid, this writ petition is allowed. The impugned show cause notice dated 22.02.2019 is set aside. The petitioner shall be refunded the entire amount recovered from him under the garb of show cause notice and on the basis of unverified negligence of the petitioner. Normal consequences to follow.

May 05, 2023

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Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No