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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-1763-2021 (O&M)
Date of Decision: 21.02.2024

Kitab Singh

....Petitioner(s)

Versus

Dakshin Haryana Bijli Vitran Nigam Ltd. and others

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

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

Mr. Rajesh Gaur, Advocate, for the respondents.

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JASGURPREET SINGH PURI, J. (Oral)

1. The present writ petition has been filed under Article 226 of the Constitution of India seeking issuance of a writ in the nature of *mandamus* directing the respondents to release the withheld amount of Rs. 2,20,370/- + Rs.39,953/-, total Rs. 2,60,323/- alongwith interest @ 18% per annum which was withheld from the retiral benefits of the petitioner on account of shortage of oil and missing parts of damaged transformer.

2. The short facts involved in the present case are that the petitioner was appointed as a T.Mate and after promotion, he worked as AFM and while he was working as an AFM in the respondent-department, he retired on 30.04.2019 on attaining the age of superannuation. After the retirement of the petitioner, the impugned order dated 20.05.2020 (Annexure P-1) was passed by which it was directed that the petitioner was allowed

100% regular pension and other retiral benefits after deducting the outstanding amount of Rs.2,20,370/- and other recovery/outstanding amount against the retiree, if any. The aforesaid order Annexure P-1 is reproduced as under:-

> "***DAKSHIN HARYANA BIJLI VITRAN NIGAM***
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> *OFFICE ORDER NO.357/SE/HR DATED : 20/05/2020*
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> *Sh. Kitab Singh, AFM S/o Sh. Ami Lal, retired on 30.04.2019, is hereby allowed 100% regular pension and other retiral benefits after deducting the outstanding amount to the tune of Rs.2,20,370/- (Rs. Two Lac Twenty Thousand Three Hundred Seventy Only) and other recovery/outstanding amount against the retiree, if any.*
>
> *This issues with the approval of SE/HR, DHBVN, Hisar.*
>
> *Sd/-*
> *Under Secretary/HR-III*
> *For SE/HR, DHBVN, Hisar"*

3. The petitioner has filed the present petition claiming that in addition to the aforesaid amount of Rs. 2,20,370/-, another amount of Rs.39,953/- and total amount of Rs. 2,60,323/- has been wrongly withheld by the respondents and therefore a direction be issued to the respondents to pay the aforesaid amount alongwith interest @ 18% per annum.

4. Learned counsel appearing on behalf of the petitioner submitted that at the time when the petitioner was in service, the respondents did not institute any disciplinary proceedings against the petitioner nor any charge-sheet was issued to the petitioner and now it is for the first time that in the reply a stand has been taken that while the petitioner was in service, then he was issued some notices dated 20.10.2015, 04.02.2016, 15.11.2016 and 28.09.2017 and since the petitioner did not file reply to the aforesaid notices, no further action was taken against him but since the notices were issued to

the petitioner on account of shortage of oil and missing parts of damaged transformer to which the petitioner was liable, the aforesaid amount has been deducted from the retiral benefits of the petitioner. He submitted that once the petitioner has already retired and at the time of his retirement, there was no disciplinary proceedings against the petitioner admittedly and thereafter the master and servant relationship ceased to operate and thereafter no recovery could have been effected from the petitioner except in accordance with law. He submitted that no process of law was adopted by following any procedure for ascertainment of the aforesaid amount and therefore, the aforesaid recovery was a wrongful recovery from the petitioner and direction may be issued in this regard. He also referred to a judgment of a Division Bench of this Court in ***Suraj Mal vs. Uttar Haryana Bijli Vitran Nigam Ltd. And others, CWP No.12036 of 2008, decided on 11.09.2008*** (Annexure P-5).

5. On the other hand, learned counsel appearing on behalf of the respondents submitted that it is not in dispute that while the petitioner was in service, there was no disciplinary proceedings against the petitioner nor any charge-sheet was issued against the petitioner. He submitted that vide Annexurea R-2 to R-5, four notices were issued to the petitioner in order to give him opportunity to reply within a period of seven days but no reply was given by the petitioner, although he has acknowledged the notices and therefore, the due amount was required to be recovered from the retiral benefits of the petitioner.

6. I have heard the learned counsel for the parties.

7. The only short controversy involved in the present case is that while the petitioner was in service, there was no disciplinary proceeding or

any kind of charge-sheet against the petitioner which is an admitted position. Learned counsel for the respondents while referring to the reply has only argued on the strength of some notices issued to the petitioner while he was in service. A perusal of the aforesaid notices would show that seven days time was given to the petitioner way back in the year 2015, 2016 and 2017. However, thereafter no action was taken against the petitioner in pursuance of the aforesaid notices. Now after the retirement of the petitioner, the department is seeking to recover the aforesaid amount of Rs. 2,60,323/- from the retiral benefits of the petitioner. While the petitioner was in service, there were no disciplinary proceedings or any kind of other charges against the petitioner under any criminal law and he was retired on 30.04.2019. Thereafter, the master and servant relationship between the petitioner and the respondents ceased to operate. However in exceptional circumstances in case the rule so permits, then proceedings could have been carried out against the petitioner in accordance with the rules and the law but in the present case no proceeding or any kind of further action was done by the respondents and even after the retirement also, there was no charge-sheet against the petitioner. The retiral benefits are a part of pensionary benefit and therefore it is a property under Article 300A of the Constitution of India and no person can be deprived of his right to property except by the procedure established by law. In the present case, no procedure has been followed at all and the petitioner has been deprived of his Constitutional Rights. The mere fact that the time when the petitioner was in service some notices were issued to the petitioner to show-cause within a period of seven days would not give any right to the respondents to deduct any retiral benefits merely on the strength of these notices because they are not a part of the disciplinary proceedings. The reliance placed by the learned counsel for the petitioner in the aforesaid Division Bench judgment (Annexure P-5) is well placed.

8. In view of the aforesaid facts and circumstances, the present petition is allowed. The order dated 20.05.2020 (Annexure P-1) to the extent that some outstanding amount is to be recovered from the petitioner is set aside. The respondents are directed to pay all the entire withheld amount to the petitioner alongwith interest @ 6% per annum to be calculated from the date of its accrual after his retirement till its disbursement and within a period of three months from today. In case the aforesaid amount is not paid to the petitioner within the aforesaid period of three months, then the petitioner shall be entitled for future rate of interest @ 9% per annum.

21.02.2024 **(JASGURPREET SINGH PURI)**
rakesh **JUDGE**

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