

270

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP-2261-2020 (O&M)
Date of Decision: 03.04.2024

Vishawpal Taneja through his LRs

..... Petitioner

Versus

State of Haryana and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. P.K. Garg, Advocate,
for the petitioner.

Mr. Kapil Bansal, DAG, Haryana.

Mr. P.S. Chauhan, Advocate,
for respondent No.3.

JASGURPREET SINGH PURI, J. (ORAL)

1. The present writ petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of *certiorari* for quashing the impugned order dated 14.06.2017 (Annexure P-4) partly whereby the instructions have been issued to effect recovery from the retiral benefits of the petitioner wrongly and illegally and also for quashing the impugned letter dated 27.06.2019 (Annexure P-7) being patently wrong, illegal and arbitrary and in utter violation of the statutory provisions of the Punishment and Appeal Rules with further prayer in the nature of *mandamus* for directing the respondents to release the wrongly deducted amount from the retiral benefits of the petitioner along with interest.

2. In pursuance of the orders passed by this Court on 13.03.2024, Mr.

Mohan Lal, Secretary, M.C., Pehowa and Mr. Sultan Singh, Assistant, M.C., Pehowa are present in Court.

3. Mr. P.S. Chauhan, Advocate has caused appearance on behalf of respondent No.3-Municipal Committee and stated that after receiving an information with regard to the pendency of the present case, the Dealing Assistant could not inform the Secretary with regard to same because of some medical emergency in his home. He further submitted that there is no Executive Officer in the Municipal Committee and the Secretary, who is present in the Court, has tendered unconditional apology in this regard.

4. This Court is of the view that considering the aforesaid submissions made by the learned counsel for respondent No.3-Municipal Committee, the unconditional apology of the Secretary is accepted.

5. The brief facts of the present case are that the petitioner was appointed as a Clerk in the respondent-Committee in the year 1981. While he was in service, a charge-sheet dated 19.06.2015 was issued against him vide Annexure P-1 with regard to the allegation of misappropriation of money. Thereafter, an enquiry officer was appointed and the petitioner as well as his wife submitted a letter dated 29.04.2016 to the Committee in which it was stated that the petitioner is suffering from some mental condition and the alleged amount is Rs.28,610/- and after assessing interest the total comes out to be Rs.4,90,831/- regarding which the allegation has been made against him and in view of his mental condition he will deposit Rs.28,610/- in the letter written by the petitioner which is although not on record in the present case but the learned counsel for the respondents has referred to the record by which he

stated that the petitioner had himself volunteered to pay whatever amount is due against him and thereafter the Committee recommended to the Deputy Commissioner that only principal amount along with 12% interest be recovered from the petitioner. However, no order was passed with regard to any recovery to be effected from the petitioner on the basis of his own letter. Thereafter, vide Annexure P-3, an order was passed on the charge-sheet wherein it has been so stated that the charges have been found to be proved against the petitioner but taking a sympathetic view due to his poor physical, mental and financial condition, he was warned to remain vigilant in future and in this way, the charge-sheet under Rule 7 of the Haryana Civil Services (Punishment and Appeal) Rules, 1987 was converted to Rule 8. On the same date i.e. on 14.06.2017, the aforesaid order of warning was passed against the petitioner vide Annexure P-3 and vide order dated 14.06.2017 (Annexure P-4), the petitioner was directed to be retired voluntarily w.e.f. 30.06.2017 (afternoon). In this way, the petitioner stood retired on 30.06.2017.

6. Thereafter, when the retiral benefits were to be paid to the petitioner, the respondent-Committee recovered the total amount of Rs.4,90,831/- from his Gratuity. This was done on the basis of a note which was appended with the aforesaid order dated 14.06.2017 (Annexure P-4) and as per the aforesaid note, it was instructed by the Committee to make sure that the recovery of recoverable amount is made in advance from the petitioner before the payment of retiral benefits is made to him. The present writ petition has been filed challenging the action of the respondent-Committee in recovering the aforesaid amount of Rs.4,90,831/- from the Gratuity of the petitioner.

7. Learned counsel for the petitioner submitted that once when the petitioner was in service and a charge-sheet was issued against him and enquiry was also instituted and the same culminated into an order vide Annexure P-3 whereby only a warning was issued and there is no order passed by any competent authority to recover any amount from the petitioner, the same could not have been recovered after his retirement. He submitted that in other words there is no punishment order against the petitioner pertaining to any recovery of any amount and only warning was issued to the petitioner. He further submitted that even if during the course of enquiry, he and his wife represented to the respondents that due to his poor physical, mental and financial condition, he will pay the alleged recoverable amount, would not mean that a recovery can be effected from him without passing any order because of the aforesaid letter, if any, would not be enforceable in law and submitted that the aforesaid recovery of Rs.4,90,831/- was without the authority of law which has been recovered from the Gratuity of the petitioner and therefore, a direction may be issued to refund the aforesaid amount along with interest.

8. On the other hand, Mr. P.S. Chauhan, learned counsel for respondent No.3-Municipal Committee submitted that when an enquiry was initiated against the petitioner on the basis of the charge-sheet then he himself volunteered to deposit the amount but he did not deposit the same and by taking a lenient view on the basis of his poor physical, mental and financial condition, a warning was issued and this was on the basis of the fact that he himself volunteered to deposit the aforesaid amount but he did not deposit the same and that was the reason as to why when the order of voluntary retirement

was passed vide Annexure P-4, a note was appended that the amount be recovered from him.

9. I have heard the learned counsel for the petitioner.

10. It is a case that when the petitioner was in service, a charge-sheet was issued against him vide Annexure P-1 and thereafter, during the course of enquiry, as per the learned counsel for respondent No.3, he had written a letter to the concerned authorities that he will voluntarily deposit the amount and even the wife of the petitioner had stated that the principal amount will be deposited. Thereafter, the enquiry culminated into an order of warning only on 14.06.2017 vide Annexure P-3. The aforesaid order of warning is reproduced as under:-

“Order

Annexure P-3

Sh. Vishawpal Taneja, Clerk, office of Municipal Committee, Pehowa was issued charge sheet under Rule 7 of the Haryana Civil Services (Punishment and Appeal) Rules, 1987 vide this office letter no. 3523/LFA dated 19.06.2015 on the basis of report of the Sub-Divisional Officer (MC), Pehowa and Secretary, Municipal Committee, Pehowa and all the charges are found to have been proved against the employee as per Inquiry report sent by Sub-Divisional Officer (MC), Pehowa sent vide his office letter no. 1736/Steno.

Hence, in view of the representation of Sh. Vishawpal Taneja, Clerk, office of Municipal Committee and sympathetically considering his poor physical, mental and financial condition, taking sympathetic view, converting this charge sheet under Rule 7 of the Haryana Civil Services (Punishment and Appeal) Rules, 1987

against the employee to under Rule 8, Sh. Vishawpal Taneja, Clerk, office of Municipal Committee, Pehowa is warned to remain vigilant in future.

*Sd/-
Deputy Commissioner,
Kurukshetra*

Letter No. 1372-74/LFA dated 14.06.2017

Copy is sent to the following for information and further necessary action:-

- 1. Sub-Divisional Officer, Pehowa.*
- 2. Secretary, Municipal Committee, Pehowa.*
- 3. Sh. Vishawpal Taneja, Clerk, Municipal Committee, Pehowa.*

*Sd/-
Deputy Commissioner,
Kurukshetra”*

11. On the same date i.e. on 14.06.2017, the petitioner was directed to be retired voluntarily w.e.f. 30.06.2017 (afternoon) without any other condition. When the retiral benefits were to be paid to the petitioner, then from his Gratuity an amount of Rs.4,90,831/- has been recovered. The petitioner by way of the present petition has challenged the recovery of the aforesaid amount from his retiral benefits being made without the authority of law. A perusal of aforesaid order of warning would show that there is no mention of any undertaking given by the petitioner that he will pay any money.

12. It is an admitted position that there is no order on record by the competent authority to show that a recovery can be made from the retiral benefits of the petitioner. During the course of arguments, the learned counsel for respondent No.3-Municipal Committee has shown some letters wherein various authorities have sought some information in the nature of inter-departmental communication as to whether the amount has been deposited by the petitioner or not. However, no order has been shown to this Court wherein

any authority has passed any specific order for the purpose of effecting recovery of the amount from the petitioner. Only emphasis has been laid by the learned counsel for the respondent-MC on the note which is appended with Annexure P-4, which is an order of voluntary retirement. The aforesaid order of retirement of the petitioner (Annexure P-4) is also reproduced as under:-

“Order

Annexure P-4

Keeping in view the representation dated 20.05.2017, Sh. Vishawpal Taneja, Clerk, Office of Municipal Committee, Pehowa is hereby granted Voluntary Retirement on 30.06.2017 afternoon.

Sd/-

*Deputy Commissioner,
Kurukshetra*

Letter No. 1369-71/LFA dated 14.06.2017

- 1. Director, Urban Local Bodies, Haryana, Panchkula.*
- 2. Secretary, Municipal Committee, Pehowa is instructed to make sure recovery of amount of committee from the employee given in advance and recoverable from the employee before payment of retiral benefits to the employee.*
- 3. Sh. Vishawpal Taneja, Clerk, Office of Municipal Committee, Pehowa.*

Sd/-

*Deputy Commissioner,
Kurukshetra”*

13. This Court is of the considered view that such kind of notes which are in the nature of forwarding notes cannot be termed as any order by the competent authority and therefore, such kind of note is not enforceable in law. When the petitioner retired, he retired voluntarily. With respect to his charge-sheet, which was served upon him when he was in service, an order was passed whereby he was given a warning. There is no order for recovery of any amount from him either before his retirement or after his retirement. In this way, there

is no order of punishment of recovery etc. from the petitioner at all.

14. It is a settled law that pension and retiral benefits are Right to Property under Article 300-A of the Constitution of India which is a Constitutional Right. Under Article 300-A of the Constitution of India, no person can be deprived of his Right to Property except with the authority of law. Here in the present case, there is a deprivation of Right to Property of gratuity without any authority of law. Had there been any order fixing any liability upon the petitioner, then situation would have been different but there is no such order. The mere fact that the petitioner or his wife during the course of enquiry had volunteered to deposit some amount by way of writing some letter cannot be enforced against the petitioner unless on the basis of that letter some order is passed by the competent authority. In other words, without any order passed by any authority for recovery of any amount either by way of a punishment or otherwise, no recovery could have been effected from the retiral benefits of the petitioner at all.

15. It is a settled law which has been laid down by a Constitutional Bench of Hon'ble Supreme Court in "**Deokinandan Prasad Vs. State of Bihar**", 1971(2) SCC 330, that the retiral benefits are not bounty of the State. This court is of the view that even the instrumentality of the State is not doing any charity by granting retiral benefits to its employees. The retiral benefits can be withheld or recovered only by due process of law by following a definite procedure and under a specific provision of law and it cannot be done on oral direction. Thereafter, Hon'ble Supreme Court in "**State of Kerala Vs. M. Padmanabhan Nair**", AIR 1985 Supreme Court 356 has discussed the same

issue and reiterated the proposition of law.

16. In view of the aforesaid facts and circumstances, the present petition is allowed and the impugned letter dated 27.06.2019 (Annexure P-7) is hereby set aside. The respondent-Committee is directed to refund an amount of Rs.4,90,831/- to the petitioner along with interest @ 6% per annum (simple) from the date of its accrual i.e. two months after the retirement of the petitioner till its actual disbursement within a period of three months from today.

17. In case, the aforesaid amount is not paid to the petitioner within a period of three months from today, then the petitioner shall be entitled to future interest @ 9% per annum (simple) instead of 6% per annum (simple).

18. Since the aforesaid amount deducted from the Gratuity was *ex facie*, illegal and arbitrary, the petitioner is also entitled for costs of Rs.10,000/- which shall be paid by the respondent-Committee within a period of three months from today.

03.04.2024

Bhumika

(JASGURPREET SINGH PURI)
JUDGE

1. Whether speaking/reasoned	Yes/No
2. Whether reportable:	Yes/No