

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CWP-15675-1999(O&M)
Date of Decision: 11.03.2024

Kesri Dass Rohilla

..... Petitioner

Versus

The Chairman, Haryana Vidyut Prasaran
Nigam Limited & ors.

..... Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Vikas Kumar, Advocate, for
Mr. T.C. Dhanwal, Advocate,
for the petitioner.

Ms. Nikita Goel, Advocate,
for the respondents.

JASGURPREET SINGH PURI, J. (ORAL)

1. The present petition has been filed under Articles 226/227 of the Constitution of India seeking issuance of a writ in the nature of certiorari to quash order dated 09.04.1999 (Annexure P-9) and also an appropriate writ, order or direction especially in the nature of mandamus directing the respondents to release pensionary benefits to the petitioner from the date of his retirement i.e. 31.01.1999 with 18% interest on all retiral benefits.

2. Learned counsel for the petitioner submitted that the petitioner was working as Junior Engineer in the respondent-Corporation and he retired on 31.01.1999 on attaining the age of superannuation. He submitted that while he was working in the aforesaid office, chargesheet was issued to him vide Annexure P-1 on the ground that he had released some connections, which were unjustified for Rs.12,253/- because he did not properly release the same.

unjustified amount. He submitted that thereafter since proposal was for imposition of a minor penalty and he had replied to the aforesaid charges vide Annexure P-3 and while considering the reply filed by the petitioner, punishment order was imposed upon the petitioner for minor penalty vide Annexure P-4, dated 15.07.1998 by which it was directed for stopping of one increment without future effect. He submitted that after the imposition of the aforesaid penalty, the same was not implemented by the respondent-Board, particularly in view of the fact that the petitioner was due to retire after few months and consequently on 20.01.1999 about 10 days prior to the retirement of the petitioner, the aforesaid order of punishment was withdrawn by the Nigam vide order 20.01.1999 (Annexure P-6) in which it was so directed that the punishment order dated 15.07.1998 (Annexure P-4) has been reviewed and it has been decided to withdraw the punishment order since the same could not be given effect. However, it was decided to recover the said loss and taken separately. He further submitted that on the same date i.e. 20.01.1999 vide Annexure P-5, a show cause notice was issued to the petitioner as to why the recovery of aforesaid amount of Rs.12,253/- be not recovered from him because of the aforesaid negligence. Learned counsel submitted that once a punishment order has been inflicted upon the petitioner and the same has been withdrawn by the Nigam then on the same date, a separate notice for the same cause of action would not have been issued to the petitioner since it was *double jeopardy*. He submitted that once there is a punishment order against the petitioner and the Nigam takes a decision to withdraw the same, for any reason whatsoever, then on the same cause of action second notice could not have been issued. He further submitted that thereafter, vide Annexure P-9, after the

of an amount of Rs.12,253/- from the petitioner. He submitted that the aforesaid show cause notice as well as the impugned order Annexure P-9 is liable to be set aside and quashed since on the same cause of action second notice could not have been issued and punishment order could not have been passed as a consequence of the same.

3. Learned counsel also submitted that after the petitioner's retirement on 31.01.1999, the aforesaid impugned order Annexure P-9 was passed on 09.04.1999. The pensionary benefits/retiral benefits were not released to the petitioner and it was thereafter only in March, 2000 i.e. after about one year that the pensionary benefits have been released and Rs.12,253/- has been recovered from the petitioner. He has submitted that he has two grievances to make. Firstly, the aforesaid order of punishment is liable to be quashed for the aforesaid reasons and secondly even otherwise also the aforesaid punishment order is of April 1999, whereas the pensionary benefits have been released to the petitioner in March 2000 and the aforesaid amount of Rs.12,253/- was recovered and there was no justification in delaying the pensionary benefits to the petitioner and therefore, direction may be issued to refund the aforesaid amount of Rs.12,253/- to the petitioner because the same was recovered in pursuance of an order which is an illegal order (Annexure P-9) and secondly, he is entitled for the grant of interest on the delayed payment of pensionary benefits.

4. He also submitted that the respondents have not even cared to file reply to the present petition despite the fact that the writ petition is of the year 1999 and 24 years have elapsed after filing of the present petition. Learned counsel also referred to an order passed by the Division Bench of this Court in

this case on 20.07.2001, wherein the counsel for the respondents had sought

time to file reply despite the fact that earlier also the Nigam was granted time and it was so directed that the reply be filed in the meantime, with a copy to the counsel for the petitioner, but subject to payment of Rs.5000/- as costs to be deposited with the Legal Aid Services Authority, Haryana and the receipt be produced in the Court. He submitted that thereafter, neither the reply was filed nor any receipt was so furnished as directed by this Court. He has submitted that in this way the petitioner has been deprived of not only the amount which has been illegally recovered from the petitioner in pursuance of an illegal order but also his retiral benefits have been delayed at the instance of the respondents.

5. On the other hand, learned counsel for the respondents has stated that so far as the disbursal of the retiral benefits of the petitioner is concerned, the same was done in March, 2000. She submitted that so far as the impugned order Annexure P-9 is concerned, whereby the punishment order was passed against the petitioner for stoppage of one increment with cumulative effect, since the same could not be implemented and petitioner was scheduled to retire on 31.01.1999, the order was withdrawn and the fresh notice was issued in accordance with law and therefore, no fault can be found in the aforesaid impugned order (Annexure P-9). So far as the deposit of the aforesaid costs of Rs.5000/- is concerned, she has expressed that she does not have the knowledge of the same since she was not counsel at that point of time. So far as the filing of the reply is concerned, she expressed that she has no knowledge of the same.

6. I have heard learned counsel for the parties.

7. From the perusal of the paper book, it can be seen that no reply has been filed till date. Apart from the above, even no costs have been deposited till date as there is no receipt of the same on record in this regard.

8. The grievance of the petitioner is two-fold. Firstly, amount of Rs.12,253/- has been recovered from the petitioner in pursuance of the impugned order (Annexure P-9), which was an illegal order and second grievance is that after his retirement and after even passing of order (Annexure P-9) in April, 1999, the retiral benefits of the petitioner were delayed and for the delay of about one year, he is also entitled for the grant of retiral benefits

9. So far as the first grievance of the petitioner is concerned, a perusal of first punishment order dated 15.07.1998 would show that after issuance of show cause notice and after the reply was filed by the petitioner, punishment was inflicted upon him although in the nature of minor punishment for stopping of one increment without cumulative effect but thereafter, vide Annexure P-6, the aforesaid order was withdrawn on 20.01.1999, which was just about 10 days before the retirement of the petitioner and in this way, the punishment order which was inflicted upon the petitioner after considering his reply and in a due course and by following a proper procedure, was withdrawn by the Nigam themselves. However, on the same date, another show cause notice was issued on the same cause of action by realizing the mistake that earlier the punishment order cannot be implemented because of retirement of the petitioner after few months and now on the same cause of action notice was given as to why a penalty of recovery of Rs.12,253/- be not inflicted upon the petitioner. However, a perusal of the earlier chargesheet/show cause notice (Annexure P-1) would make it clear that in that show cause as well it was so alleged that there was a loss of Rs.12,253/- to the Nigam. Once the aforesaid amount pertaining to the alleged loss was the subject matter of the first show cause notice/allegations of the charges in the charge sheet and no order has been

second time on the same cause of action and on the same set of allegations, no second punishment order could have been passed. Once the Nigam has come to the conclusion and passed a punishment order of stoppage of increment and the same stands withdrawn by way of a conscious decision vide order Annexure P-6, then on the same cause of action, second show cause notice was not maintainable and therefore, the impugned order (Annexure P-9) for recovery of Rs.12253/- is *nonest* and is liable to be set aside.

10. In consequence of the aforesaid punishment order, as per learned counsel for the parties, the aforesaid amount was recovered from the petitioner and therefore, such recovery was also bad in law. Therefore, the respondents are directed to refund the amount of Rs.12,253/- to the petitioner along with interest @ 6% per annum (simple) to be paid within a period of 3 months from today.

11. So far as the second grievance of the petitioner with regard to delay in retiral benefits is concerned, Annexure P-9 would show that the same was passed on 09.04.1999 after about three months of the retirement of the petitioner. But as per the learned counsel for the respondents, retiral benefits have been paid in the month of March, 2000 and therefore, there is a delay with regard to the retiral benefits and for this, there is no justification. During the course of arguments, she also submitted that after retirement of the petitioner, there was another amount of Rs.7,618/- regarding which a separate notice was issued to the petitioner on 25.06.1998 (Annexure P-11) with regard to the allegation of shortage of material and that was also one of the reason for delay in the disbursal of the retiral amount. However, a perusal of the aforesaid Annexure P-11 would show that the same is in the nature of a notice which was

retirement of the petitioner. On specific query being raised to the counsel for the respondents, as to whether any specific order was passed for the recovery of Rs.7,618/- from the petitioner or not, to which she stated that there is nothing on the record to show the same. Even otherwise also it appears that even for that recovery as well no enquiry has been conducted.

12. Therefore, from the aforesaid, it is very clear that as far as the aforesaid notice pertaining to the recovery of Rs.7,618/- is concerned, no inquiry has been conducted nor any order has been passed for the aforesaid recovery in accordance with law and even otherwise also the aforesaid notice is prior to the retirement of the petitioner and therefore, that could not constitute a ground for delaying the retiral benefits. It has also been brought to the notice of this Court by learned counsel for the respondents that the aforesaid amount of Rs.7,618/- has also been recovered from the retiral benefits of the petitioner. Since the aforesaid recovery was also bad in law because there is no order of any competent authority on record nor any inquiry has been conducted, the same could not have been recovered, specially in view of the judgment of this Court in CWP No.8095 of 2005, titled Ram Narain Dua Vs. Dakshin Haryana Bijli Vitran Nigam Ltd. & ors. Therefore, it is also directed that the respondents shall refund the amount of Rs.7,618/- to the petitioner along with interest @ 6% per annum (simple) within a period of three months from today. So far as the delay in retiral benefits is concerned, no justification has come from the counsel for the respondents with regard to the delay in the retiral benefits except for the fact that in the month of April the impugned order Annexure P-9 was passed. Therefore, the petitioner shall be entitled for grant of interest from the month of May, 1999 till the actual date of disbursement

which shall also be paid to the petitioner along with interest @ 6% per annum (simple) within a period of three months from today.

13. In view of the above, the present petition is allowed.

11.03.2024

monika

(JASGURPREET SINGH PURI)
JUDGE

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