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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-5835-2021 (O&M)
Date of Decision: 08.02.2024

Balwan Singh

....Petitioner(s)

Versus

Dakshin Haryana Bijli Vitran Nigam Ltd. and others

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Naveen Daryal, Advocate, for the petitioner.

Mr. Satyam Tandon, Advocate and
Ms. Nisha Kanojia, 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 *certiorari* for quashing the impugned instruction dated 01.01.2003 (Annexure P-1) only to the extent by which the benefit of breakage/shortage has been restricted to 5% of the existing cost of transformer oil and 20% of the total cost of transformer oil and also quashing of impugned action of the respondents by which an amount of Rs. 1,81,908/- has been debited from the account of the petitioner on the ground of shortage of oil and cost of missing parts of damaged transformer.

2. Learned counsel appearing on behalf of the petitioner submitted that he wishes to press his prayer impugning the action of the respondents by which an amount of Rs. 1,81,908/- vide Annexure P-2 has been deducted

from the gratuity and his prayer is only to the extent that the aforesaid action was unwarranted and bad in law and he does not press his first prayer with regard to challenging the instructions (Annexure P-1).

3. The brief facts of the present case are that the petitioner was working as a Lineman in the respondent-Nigam and he retired on attaining the age of superannuation on 31.05.2016. After he retired, the respondents withheld an amount of Rs. 1,81,908/- from his gratuity on the ground that vide Annexure P-2 an assessment was made in accordance with instructions (Annexure P-1) on account of some shortages/breakages of distribution transformer's oil and parts and because of that reason the aforesaid amount was deducted from the gratuity of the petitioner and the remaining gratuity was paid. The challenge in the present petition is to the deductions of the aforesaid amount from the gratuity after the retirement of the petitioner.

4. Learned counsel appearing on behalf of the petitioner submitted that the petitioner had served with the Nigam with an unblemished record and there had been no disciplinary proceedings nor any enquiry nor any charge-sheet against the petitioner and he attained the age of superannuation and retired on 31.05.2016. He submitted that after his retirement, vide Annexure P-2, an amount of Rs. 1,81,908/- has been deducted from his gratuity without any provision or authority of law. He submitted that the only reason which has now been given in the reply which has been filed by the respondent-Nigam is that there are instructions of the year 2003 Annexure P-1 which deals with the writing off shortage/breakage including oil found in damaged distribution transformers. By way of the aforesaid administrative instructions issued by the Chief Engineer it has been so mentioned that the actual shortage/breakage in distribution transformers

returned to the store/workshop be allowed to be written off in the line with the power delegated under Sr. No.53 of Delegation of Power as modified subject to the condition that the competent authority may write off shortage/breakage upto maximum of 5% of the existing cost of the transformer and in case of the shortage of transformer oil, the competent authority may write off upto 20% of the total cost of transformer oil as found short at the time of receipt of transformer in the store.

5. Learned counsel further submitted that at that time when the petitioner was in service no notice etc. or any kind of proceedings were initiated against the petitioner and as per the reply which has been filed by the Nigam it has been so specifically stated in para No.2 of the preliminary submissions that the aforesaid alleged shortage was pertaining to the year starting from 04.12.2013 till 04.10.2016 which are as follows:

04.12.2013, 20.01.2014, 20.06.2014, 11.08.2014, 10.10.2014, 10.12.2014, 06.05.2015, 30.10.2015, 15.01.2016 & 04.10.2016

6. He submitted that all the events as so stated by the respondents themselves were at the time when the petitioner was in service except for one last event of 04.10.2016 and while he was in service the respondent-Nigam did not think it proper to issue any notice or to even assess or impose any kind of liability upon the petitioner even assumingly the instructions (Annexure P-1) were to be adhered to. It was only after the retirement of petitioner that the aforesaid process was undertaken and now the aforesaid deduction has been made from the gratuity on the basis of Annexure P-2. He submitted that no procedure was followed for the purpose of assessment as to how the aforesaid amount is calculated and therefore,

the entire process for fixing of the liability on the petitioner started after the retirement of the petitioner which is not permissible under the law and especially in view of the fact that after retirement, the master and servant relationship ceased to operate. He also submitted that once an employee has retired, then he can be fastened with any kind of liability only when there is any express authority of law under any statutory provision but there is no such statutory provision under Haryana Civil Services (Pension), Rules, 2016 which are applicable to the Nigam and therefore, the action of the respondent-Nigam in deducting a part of gratuity was without jurisdiction and without the authority of law and a direction may be issued to the respondent-Nigam to release the aforesaid withheld gratuity.

7. Learned counsel further submitted that there is no order of any kind passed by the Nigam by which a part of gratuity has been withheld. He submitted that in case at all the gratuity which is a part of the pension is to be withheld by any authority under any provision of law, then at least some conscious decision has to be taken by passing an appropriate order but there is no such order and the only document which is available is Annexure P-2 which is only an assessment with regard to the loss which has been calculated in pursuance of Annexure P-1.

8. On the other hand, Mr. Satyam Tandon, learned counsel appearing on behalf the respondent-Nigam submitted that while the petitioner was in service, then there were shortages and breakages of distribution transformer's oil etc. and in pursuance of instructions (Annexure P-1), the aforesaid Annexure P-2 was passed whereby an amount of Rs. 1,81,908/- has been quantified. He also submitted that so far as the argument which has been raised by the learned counsel for the

petitioner that there is no provision of law available, the same is not the actual position under the law. He referred to Rule 11 of the Haryana Civil Services (Pension) Rules, 2016 and submitted that in the present case Rule 11 will apply to the present petitioner. He categorically submitted on instructions that so far as Rule 12 which deals with right of Appointing Authority to withhold or withdraw pension is concerned, the same does not apply to the present petitioner because there was no charge-sheet etc. against the petitioner. He submitted that he has also instructions to state that at the time when the petitioner was in service, there was no charge-sheet or any show-cause notice etc. pertaining to the present subject matter against him. He submitted that however the respondent-Nigam was within its rights to have recovered the aforesaid amount of Rs. 1,81,908/- by virtue of Rule 11. While referring to the aforesaid Rule 11, he submitted that as per the aforesaid Rule, the claim and recovery from a Government employee can be done from his pension and pension includes gratuity under the definition. While referring to Rule 11(2) (a), he submitted that the claim and recovery shall be one or other of the categories whereby recovery as a punitive measure can be made in order to make good loss caused to Government as a result of negligence or fraud on the part of the person concerned while he was in service and this Rule can be pressed into service for the purpose of making recovery from an employee who is even a retired employee because pension would include gratuity as well.

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

10. The present is a case where the petitioner worked as Lineman and as per learned counsel for the parties, he was having an unblemished record with no charge-sheet, no show-cause notice or any disciplinary

proceeding against him till the date of his retirement. He retired on 31.05.2016 and after his retirement vide Annexure P-2 an amount of Rs. 1,81,908/- has been quantified to be recovered from the petitioner in pursuance of some administrative instructions issued by the Chief Engineer vide Annexure P-1. It is a settled law that when an employee retires, then master and servant relationship ceases to operate. However for the purpose of taking any action against a retired employee there are certain exceptions. Those exceptions are always contained under the relevant Statutory Rules and an authority of law is conferred upon the competent authority to invoke the relevant provisions and then to recover any amount or take any action against an employee who has already retired. A perusal of Annexure P-2 would show that it is an order which has been passed by the Executive Engineer whereby it has been so stated that a sanction has been granted with regard to quantification of an amount of Rs. 1,81,908/-. The aforesaid quantification is stated to have been done in pursuance of Annexure P-1 which are the instructions issued by the Chief Engineer. A perusal of the reply which has been filed by the Nigam would show that in para No.2 the events on the basis of which the amount has been quantified pertain to the period which was prior to the retirement of the petitioner starting from the year 2013. However with regard to one event i.e. of 04.10.2016 the petitioner cannot be made liable because after his retirement he was not holding any charge of any post. In other words, the events on the basis of which the quantification has been done by the Executive Engineer pertain to the aforesaid period from 04.12.2013 to 15.01.2016 and he retired on 31.05.2016 but neither any notice nor any quantification process in pursuance of Annexure P-1 nor any kind of action was taken by the respondent-Nigam before his retirement. It was only after his retirement that the aforesaid quantification has been done by the Executive Engineer vide impugned Annexure P-2. After the quantification was done, the aforesaid amount was deducted from the gratuity of the petitioner. However, there is nothing on record to show as to whether any order has been passed by any competent authority after application of mind and under any provision of law for the deduction or withholding of the gratuity. In case any amount out of the gratuity was to be deducted or withheld, then the competent authority was required to pass an order as to how and under which provision of law such a deduction or withholding has been done but nothing has been done in the present case. The mere fact that one Executive Engineer has quantified some amount qua the petitioner would not mean that on the basis of such quantification the respondent-Nigam can recover an amount from the gratuity which is a part of the retiral benefits and also which is a right to property under Article 300A of the Constitution of India. No person can be deprived of his right to property without the authority of law.

11. So far as the argument which has been raised by the learned counsel for the respondent-Nigam that recovery can be made by virtue of Rule 11(2) (a) is concerned, the aforesaid provision of Rule 11 is reproduced as under:-

> *"11. Recovery of Government dues or others from pension:-*
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> *(1) A claim against the Government employee shall become known and the question of making recovery shall arise.*
>
> *(i) when the calculation of pension is being made and before the pension is actually sanctioned; or*
>
> *(ii) after the pension has been sanctioned.*
>
> *(2) The claim and the recovery shall be one or other of the following categories:-*

(a) recovery as a punitive measure in order to make good loss caused to Government as a result of negligence or fraud on the part of the person concerned while he was in service;

(b) recovery of other Government dues such as over issues of pay, allowances or leave salary, or admitted and obvious dues such as house rent, travelling allowance, outstanding motor car, house building, or other loans and advances, licence fee, etc;

(c) Recovery of non-Government dues.

(3) Recoveries described in clause (2) (b) and (c) above shall be made from outstanding dues of the employee, such as arrears of pay and allowances, leave salary, leave encashment, death-cum-retirement gratuity, dearness relief on pension, etc., however, none of the above recoveries shall be affected by a reduction of the pension to be sanctioned or already sanctioned except with the written consent of the pensioner. If such consent is not given by the pensioner, a suit for recovery shall be filed in a court of law.

Note 1. Heads of offices shall ensure that all the outstanding sums against the employee are adjusted against the dues of the employee such as pay, leave salary or leave encashment, death-cum-retirement gratuity, etc. In case the outstanding sums are not feasible to be recovered fully then the retirement gratuity and if the recovery is to be effected from pension, it shall be clearly recorded on the last pay certificate itself that the request or express consent of the pensioner in writing to recover from his pension has been obtained.

Note 2. The recovery from pension is not permissible but if final recovery has been made it need not be refunded to the pensioner concerned."

12. A perusal of the aforesaid Rule 11(2) (a) would show that recovery can be made from the pension but as per Rule 11(2) (a), the recovery as a punitive measure can be made in order to make good loss caused to Government as a result of negligence or fraud on the part of the person concerned while he was in service. However, none of the aforesaid ingredients which are *sine qua non* and contained under the aforesaid clause

are satisfied in the present case. Firstly, the present recovery from the gratuity is on the face of it not a punitive measure and therefore, the first ingredient itself under Rule 11(2) (a) does not stand satisfy. There is no order of punishment and even there is no order at all for making recovery as aforesaid from the gratuity of the petitioner. Thereafter it has been so provided in Rule 11(2) (a) that it can be done only to make good loss caused to Government as a result of negligence or fraud on the part of a person concerned while he was in service. However, in the present case there is neither any enquiry nor any kind of show-cause notice nor any kind of application of mind as to how the petitioner was responsible for the negligence or a fraud caused by him. The only argument of the learned counsel for the respondent-Nigam in this direction was that once Annexure P-2 has been passed by the Executive Engineer, the loss stood quantified and recovery could be effected. The aforesaid argument of the learned counsel for the respondent-Nigam is not sustainable. The quantification of any loss by the Executive Engineer on his own and that too after the retirement of the petitioner cannot be said to be a finding of any fact on the basis of any enquiry or under any law pertaining to the negligence or fraud on the part of the petitioner. Therefore, the aforesaid Rule 11 (2) (a) is not applicable to the present petitioner and no recovery could have been effected from the petitioner in pursuance of the aforesaid Rule. So far as Rule 12 of the aforesaid Rule is concerned, learned counsel for the respondent-Nigam has already stated that the Nigam has not pressed into service the aforesaid Rule nor it could have been done because there was no charge-sheet or any disciplinary proceedings or criminal proceedings against the petitioner.

13. In view of the aforesaid facts and circumstances, the present

petition is allowed. The order Annexure P-2 qua the petitioner is set aside and quashed. It is directed that no recovery of the aforesaid amount of Rs. 1,81,908/- can be made from the petitioner. The respondent-Nigam is directed to pay the aforesaid amount of Rs.1,81,908/- to the petitioner alongwith interest @ 6% per annum from the date of 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.

14. At this stage, learned counsel for the petitioner has also stated that due to the aforesaid reason his pension has not been regularised and only provisional pension has been sanctioned. However, no justification has come forth as to why the petitioner was given only provisional pension and why his pension has not been regularised.

15. It is therefore directed that the respondent-Nigam shall also now regularise the pension of the petitioner in accordance with law.

08.02.2024 **(JASGURPREET SINGH PURI)**
rakesh **JUDGE**

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