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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-6852-2021 (O&M)
Date of decision: 19.01.2024

SURESH KUMAR CHHILLAR

...Petitioner

VERSUS

UTTAR HARYANA BIJLI VITRAN NIGAM LTD. AND ANR.

...Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. R. K. Malik, Senior Advocate with
Mr. Sandeep Dhull, Advocate
for the petitioner.

Mr. Satyam Tandon, 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 order dated 08.02.2021 (Annexure P-7), whereby earlier order dated 14.03.2014 (Annexure P-6) passed in favour of the petitioner has been cancelled without any show cause notice or without granting any opportunity of hearing to the petitioner and further a writ in the nature of mandamus directing the respondents to release all retiral benefits of the petitioner i.e. 100% pension, leave encashment, gratuity and commutation of pension with market rate interest forthwith.

2. Learned Senior Advocate appearing on behalf of the petitioner submitted that it is a case where the petitioner was serving with the respondent-

Nigam and he had applied for extraordinary leave in pursuance of the Policy of the respondent-Nigam dated 28.05.2008 (Annexure R-1) and he was granted extraordinary leave by the respondent-Nigam. Thereafter, he joined the duty and an order was passed by the competent authority vide Annexure P-6 dated 14.03.2014, whereby it was so decided that the extraordinary leave period from 07.08.2008 to 30.06.2013 was sanctioned in respect of the petitioner, who was at that point of time XEN and the aforesaid period is to be counted for the purpose of increment towards pay fixation for continuity of service and it was also directed that the above benefit will be given only for notional pay fixation/seniority benefits and the arrear is payable only from the date he actually assumed the charge as SE in the respondent-Nigam after availing the aforesaid leave. The said order Annexure P-6 was issued with the approval of the Managing Director, UHBVN, Panchkula, who was the competent authority qua the petitioner. He further submitted that thereafter, the aforesaid benefit was granted to the petitioner and his pay was also fixed accordingly and he continued in service till the time he attained the age of superannuation and he retired on 30.04.2020 from the respondent-Nigam as a Director. He also submitted that thereafter, suddenly a meeting of the Whole Time Directors was conducted and impugned order dated 08.02.2021 (Annexure P-7) was passed, which was almost after 10 months of the retirement of the petitioner, whereby the earlier order (Annexure P-6) was superseded and it was decided that the benefit of increment for the period on which the petitioner remained on extraordinary leave is not to be given to the petitioner since there was no provision for the same.

3. Learned Senior Advocate appearing on behalf of the petitioner further submitted that the aforesaid order Annexure P-7, which was passed on the basis of Whole Time Directors meeting was totally illegal and perverse and also in violation of the law laid down by the Hon'ble Supreme Court. He also submitted that the aforesaid impugned order Annexure P-7 visited the petitioner with civil consequences because his pensionary benefits were affected by withdrawing the increment, which was granted to him vide Annexure P-6 but no notice of any kind was issued to the petitioner before taking such a decision which prejudicially affected the rights of the petitioner and therefore, it was a clear cut case of violation of the rule of *audi altrem partem* and therefore, on this ground itself, the aforesaid decision Annexure P-7 is liable to be set aside and quashed. He further submitted that the aforesaid order Annexure P-7 has been passed after the retirement of the petitioner, whereby the master and servant relationship had ceased to exist and there was no authority with the Whole Time Directors to pass the aforesaid order and therefore, the order Annexure P-7 is also without the authority of law and without jurisdiction. He further submitted that the petitioner had retired as a Director and was falling in Class-I category but since he had retired, the action of the respondent-Nigam is passing of the impugned order Annexure P-7 was in total violation of the law laid down by the Hon'ble Supreme Court in ***State of Punjab and others etc. versus Rafiq Masih (White Washer) etc., 2015 (4) SCC 334***. He also submitted that in pursuance of the aforesaid authoritative judgement of the Hon'ble Supreme Court in ***Rafiq Masih's case (supra)*** rather the respondent-Nigam itself had issued instructions to comply with the aforesaid judgement vide Annexure P-15 and therefore, the respondent-Nigam was bound by the

aforesaid law laid down by the Hon'ble Supreme Court and also their own instructions and could not have withdrawn the benefit which was granted to the petitioner vide Annexure P-6, even if mistakenly. He further submitted that rather similarly situated person has been granted similar kind of benefit of grant of increment during his extraordinary leave period vide Annexure P-14 and till date such benefit has not been withdrawn from him.

4. Learned Senior Advocate appearing on behalf of the petitioner also submitted that the wrongful action of the respondent-Nigam did not stop here only and rather they did not release full pension to the petitioner and had given only 90% and that too a provisional pension and no other pensionary benefits including gratuity or leave encashment etc. have been given to the petitioner only because of this reason. He further submitted that there was no authority with the respondent-Nigam to have stopped the pension and pensionary benefits of the petitioner since such stopping of pension and pensionary benefits was not under any provision of law since there was neither any charge-sheet nor any criminal case or FIR against the petitioner at all nor any disciplinary proceedings against the petitioner at the time when he had retired. Therefore, the action of the respondent-Nigam was totally contrary to the provisions of law including the service regulations.

5. On the other hand, Mr. Satyam Tandon, learned counsel appearing on behalf of respondent-Nigam submitted that so far as the factual position as so stated by the learned Senior Advocate appearing on behalf of the petitioner that no notice or show cause notice was given to the petitioner before passing of order dated 08.02.2021 (Annexure P-7) is concerned, the same is correct. He has however submitted that since the Whole Time Directors had taken a

conscious decision even after the retirement of the petitioner, the same would be considered to be in accordance with law. He further submitted that so far as the stopping of the pension and pensionary benefits of the petitioner is concerned, although there is no disciplinary proceedings or criminal proceedings against the petitioner but the pension and pensionary benefits could not have been passed because there was an amount due from the petitioner and therefore, the respondent-Nigam has rightly withheld the pension and pensionary benefits of the petitioner till the time there was a recovery of the amount of the increments which were granted to the petitioner vide Annexure P-6. He also submitted that so far as the recovery aspect is concerned, undoubtedly the case of petitioner would be covered by the aforesaid judgment of the Hon'ble Supreme Court because no recovery after retirement could have been effected but for the purpose of pension and pensionary benefits, the aforesaid order could have been passed. He further submitted that the benefit of increments could not have been granted when it was a case of grant of extraordinary leave in pursuance of Rule 8.16 in HCS (Pay) Rules, 2016 and it was incorrectly granted to the petitioner vide Annexure P-6.

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

7. The controversy involved in the present case pertains to withdrawal of the benefit of increments which were granted to the petitioner when he was on extraordinary leave. It is not in dispute that the petitioner was granted sanction by the competent authority i.e. the Managing Director, UHBVN, Panchkula vide Annexure P-6 with regard to grant of increments for the time during which he was holding extraordinary leave. Thereafter, the petitioner retired on 30.04.2020 and vide Annexure P-7 dated 08.02.2021 i.e.

after 10 months, the Whole Time Directors of the respondent-Nigam conducted a meeting and they took a U-turn and the aforesaid order Annexure P-6 to the extent of grant of increment was withdrawn and consequently, as per the learned counsel for the parties, recovery is sought to be effected from the petitioner with regard to the same. When notice of motion was issued by this Court on 24.03.2021, it was directed that till the next date of hearing, the operation of the impugned order dated 08.02.2021 shall remain stayed. Both the learned counsel for the parties have informed this Court that till date recovery has not been effected from the petitioner. Vide order dated 14.03.2014 (Annexure P-6), the competent authority granted the benefit to the petitioner by counting the extraordinary leave period for the purpose of increments towards pay fixation for continuity of service. The same is reproduced as under:-

> *"The extraordinary leave period from 7.8.08 to 30.6.13 sanctioned vide office order no. 363/A/UH/HR-II/EBG-1812 dated 23.7.08 and vide office order no. 307/UH/HR-II/EBG-1812 dated 17.8.11 in respect of Sh. S.K. Chillar, XEN now CE is hereby counted for the purpose of increment towards pay fixation for continuity of service.*
>
> *The above benefit will be given only for notional pay fixation/seniority benefits and the arrear is payable only from the date he actually assumed the charge as SE in the Nigam i.e. on 1.7.13 after availing the above said leave.*
>
> *This issues with the approval of Managing Director, UHBVN, Panchkula.*
>
> *Sd/- Under Secy./HR-II*
> *For GM/Admn., UHBVN, Panchkula*

8. Thereafter, the aforesaid benefit (Annexure P-6) was withdrawn vide order dated 08.02.2021 (Annexure P-7) by the Whole Time Directors. The same is reproduced as under:-

"In supersession of earlier office order no. 91/UH/HR-II/EBG-1812 dated 14.3.2014 vide which the period of extraordinary leave (EOL) w.e.f. 7.8.08 to 30.6.13 of Sh. S.K. Chillar, XEN now Director retired was counted for the purpose of increment towards pay fixation for continuity of service.

A memorandum was placed before the Whole Time Director's UHBVN, Panchkula and it has been decided by the WTDs in the meeting held on 7.1.2021 is as under:-

"The memorandum was considered and after due deliberations the whole Time Directors decided that in line with the advice of Finance Department of the State Government and opinion of DSK, Legal, the benefit of increment to the official during the period of EOL was not admissible."

Accordingly earlier office order no. 91/UH/HR-II/EBG-1812 dated 14.3.2014 is hereby cancelled and the EOL period w.e.f. 7.8.08 to 30.6.13 in respect of Sh. S.K. Chillar, XEN (now Director retired) shall not be countable for the purpose of increment.

This issues with the approval of the Managing Director, UHBVN, Panchkula.

Sd/- Jiwan Kumar
Under Secy./HR-II
For CE/Admn., UHBVN, Panchkula"

9. Admittedly, the petitioner had retired on 30.04.2020. The Hon'ble Supreme Court in ***Rafiq Masih's case (supra)*** dealt with this issue exhaustively pertaining to the right to recover. The relevant part of the aforesaid judgment is reproduced as under:-

"18. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to hereinabove, we may, as a ready

reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from employees belonging to Class-III and Class IV service (or Group 'C' and Group 'D' service).

(ii) Recovery from retired employees, or the employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."

10. A perusal of Clause (ii) of para No.18 of the aforesaid judgment would show that from an retired employee, recovery cannot be effected. Even otherwise also during the course of arguments, the learned counsel for the respondent-Nigam has stated that so as far as the recovery aspect is concerned, the recovery now cannot be effected from the petitioner in view of the aforesaid judgment of the Hon'ble Supreme Court and also the instructions issued by the respondent-Nigam vide Annexure P-15.

11. Therefore, one of the issues involved in the present case is as to whether after the retirement of the petitioner such a U-turn could have been taken by the respondent-Nigam by superseding the earlier order Annexure P-6 pertaining to increments or not. This Court is of the view that once the petitioner has already retired from service on attaining the age of superannuation then master and servant relationship between the parties would

cease to exist. Apart from the above, Annexure P-6 has been passed in the year 2014 and after a period of about 7 years, Annexure P-7 has been passed after retirement of the petitioner and during this time, the respondent-Nigam had remained silent and suddenly without even issuing notice to the petitioner and by violating the principles of natural justice, the aforesaid impugned order Annexure P-7 was passed by the Whole Time Directors notwithstanding the fact that earlier order Annexure P-6 was passed by the competent authority even if it is mistakenly passed. But now after the retirement of the petitioner since the master and servant relationship ceased to exist, no such order could have been passed affecting the rights of the petitioner especially by violating the principle of natural justice.

12. This Court is of the view that the impugned order dated 08.02.2021 (Annexure P-7) cannot sustain in view of the two reasons. Firstly, it is *ex facie* violation of rule of *audi alterm partem* and on this basis itself, the order Annexure P-7 is liable to be set aside. Secondly, after the master and servant relationship ceased to exist, such an order could not have been passed after the period of about 7 years and especially after retirement of the petitioner and therefore, on this ground as well order Annexure P-7 cannot sustain.

13. Another grievance of the petitioner is that due to the aforesaid reason, the petitioner has not been granted full pension and has been given only 90% of the pension that too provisionally and all the retiral benefits have not been paid to the petitioner. However, during the course of arguments, the learned counsel for the respondent-Nigam has submitted that so far as leave encashment is concerned, the same has been given to the petitioner. However, there is nothing brought on the record or according to the learned counsel for

the respondent-Nigam to show that there was any disciplinary proceedings or criminal proceedings against the petitioner. Therefore, the respondent-Nigam had no authority of law to have stopped the pension and pensionary benefits, which is a Constitutional Right guaranteed under Article 300-A of the Constitution of India.

14. In view of the aforesaid position, the present writ petition is allowed. The impugned order dated 08.02.2021 (Annexure P-7) is hereby set aside and quashed. It is directed that no recovery can be effected from the petitioner in pursuance of order Annexure P-7. So far as the grant of pension and pensionary benefits of the petitioner is concerned, the learned counsel for the respondent-Nigam has so apprised this Court that the leave encashment has been granted to the petitioner. It is directed that the petitioner shall be paid all the pension and pensionary benefits, if not earlier paid as of today, after calculating the arrears of the same within a period of three months from today along with interest @ 6% per annum from the date of accrual. In case the aforesaid amount is not paid to the petitioner within the period of three months from today, then the petitioner shall be entitled for future rate of interest @ 9% per annum.

(JASGURPREET SINGH PURI)
JUDGE

19.01.2024
Chetan Thakur

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