

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

234

CWP-6862-2020 (O&M)

Date of Decision:16.04.2024

Jaswant Singh

.....Petitioner

Versus

Dakshin Haryana Bijli Vitran Nigam and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Devender Arya, Advocate for the petitioner.

Mr. R.S. Longia, Advocate for 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* for quashing the impugned orders dated 11.06.2019 (Annexure P-5) and order dated 22.01.2020 (Annexure P-7) passed by the respondents.

2. In pursuance of the order passed by this Court on 09.4.2023 learned counsel for the respondents has produced the record and officers are also present in Court alongwith the record today.

3. The brief facts of the present case are that the petitioner was working as Junior Engineer in the department of respondents-Dakshin Haryana Bijli Vitran Nigam (hereinafter to be referred to as 'Nigam') and he retired on 30.11.2014 after attaining the age of superannuation. While he was in service and discharging his duties as Junior Engineer there were allegedly

some short falls in the transformer parts and oil from the year 2001 onwards to

which he had been signing the relevant Store Return Warrants. Some show cause notices were issued to the petitioner when he was in service but neither any action was taken on the aforesaid show cause notices nor any chargesheet was issued or any order was passed in this regard. However, after the retirement of the petitioner vide Annexures P-1 and P-2 an amount of Rs.6,14,626/- was recovered from the gratuity of the petitioner. Thereafter the petitioner filed a writ petition before this Court bearing CWP No.8733 of 2016 which was disposed of by a Coordinate Bench of this Court vide Annexure P-4 on 19.03.2019. During the pendency of the aforesaid petition, respondents-Nigam issued a show cause notice dated 18.09.2018 to the petitioner vide Annexure P-3 and Coordinate Bench of this Court was apprised about the aforesaid position and therefore the petition was disposed of with a direction to the respondents-Nigam to decide the show cause notice dated 18.09.2018 within a period of two months after giving an opportunity of personal hearing to the petitioner. Thereafter, vide Annexure P-5, the respondents-Nigam on 11.06.2019 directed to effect recovery of an amount of Rs.6,14,626/- from the pensionary benefits of the petitioner and petitioner is aggrieved of the aforesaid action of the respondents-Nigam

4. Learned counsel for the petitioner submitted that it is a case that while the petitioner was in service, there were certain allegations of short falls of transformer oil and some parts of the transformer which began from the year 2001 and the petitioner had been providing the entire information to the respondents-Nigam during his service and the respondent-Nigam was satisfied with regard to the aforesaid explanation at every point of time right from the year 2001 till his retirement. He further submitted that during the course of

issued to him which have been attached by the respondents in their reply and the last show cause notice (Annexure R-5) was issued on 30.12.2013. He further submitted that thereafter no order has been passed by the respondents-Nigam nor any chargesheet has been issued at any point of time and therefore no disciplinary proceedings had commenced during the time when the petitioner was in service. However, when the petitioner approached this Court by filing the aforesaid writ petition bearing No.CWP No.8733 of 2016 then the respondents-Nigam issued a fresh show cause notice to the petitioner vide Annexure P-3 under Regulation 8 read with Regulation 4(A) of the DHBVN Employees (P&A) Regulation 2006 (hereinafter to be referred to as 'Regulation 2006').

5. He further submitted that the respondent-Nigam has even attached some of the documents and signature of the petitioners are there on those documents as an acknowledgment. He further submitted that the aforesaid starts from the year 2001 till the time of his retirement and every time the petitioner satisfied the respondents-Nigam with regard to the short falls and that was the reason as to why no order was passed pertaining to the same and no disciplinary proceedings were initiated against the petitioner and he retired in the year 2014. He further submitted that it was only because of the writ petition which had earlier been filed as aforesaid that the respondents issued a fresh show cause notice to the petitioner vide Annexure P-3. He further contended that the aforesaid show cause notice even otherwise was also not sustainable in view of the fact that even assumingly for the sake of arguments the provision of Rule 12.2 (b) of the Haryana Civil Services (Pension) Rules, 2016 and Rule 2.2 (b) of Punjab Civil Services Rules as applicable to the State of Haryana applies to the respondents-Nigam the same

could not have been done because the period preceding the issuance of show cause notice was more than 04 years. To substantiate his argument, he submitted that the aforesaid show cause notice was issued on 18.09.2018 and the last show cause notice issued to the petitioner while he was in service on 30.12.2013 vide Annexure R-5 i.e. more than 04 years preceding the aforesaid show cause notice.

6. He further submitted that the first argument is that the respondents-Nigam could not have issued any show cause notice to the petitioner after his retirement because the master and servant relationship ceased to exist and Rule 8 under which the same was issued could not have been applied to the petitioner because the petitioner and the respondents do not have the fiduciary relationship of master servant after retirement.

7. Secondly, he submitted that the same could have been done at the most in case there is a specific provision for continuing any show cause notice or initiating any disciplinary proceedings after the retirement under any provision of law. In this regard he submitted that earlier the State of Haryana adopted the State of Punjab Rules vis. Rule 2.2(b) and thereafter in the year 2016, the Haryana Civil Services (Pension) Rules had come into force and similar provision was inserted as Rule 12.2(b) of 2016 Rules. As per the aforesaid provisions even after the retirement of an employee the disciplinary proceedings if any instituted can continue or may be instituted in case the event is less than 04 years preceding the issuance of any disciplinary proceedings but here in the present case even if the aforesaid Rule applies to the present respondents-Nigam, the last event is more than about 05 years and therefore even by applying Rule 2.2(b) of the Punjab Civil Services Rules

which are applicable to the State of Haryana or Rule 12.2 (b) of 2016 Rules,

the issuance of the show cause notice was bad in law since it has been issued without the authority of law and there is no provision with regard to the same. He further submitted that it is not a case of the respondents-Nigam that the show cause notice (Annexure R-5) has been decided or has been enforced against the petitioner but it is a case of the respondents themselves that a fresh show cause notice has been issued vide Annexure P-3 which was beyond four years of retirement and after the retirement of the petitioner, therefore could not have been initiated against the petitioner.

8. The learned counsel has also submitted that the proposition of law in this regard has already been settled by a Division Bench of this Court in ***Ashok Kumar Dhamija Vs. Dakshin Haryana Bijli Vitran Nigam Ltd. and others, CWP No.7949-2005*** and submitted that in fact in the aforesaid judgment, the present respondents-Nigam i.e. DHBVNL was the contesting party and the aforesaid judgment is of the year 2006. He further submitted that it was obligatory upon the respondents-Nigam to have known as to what is the law of the land and therefore, the respondents have wrongly recovered the aforesaid amount of Rs.6,14,626/- from the gratuity of the petitioner which was without the authority law.

9. On the other hand, learned counsel appearing for the respondents-Nigam submitted that when the petitioner was in service, he had been repeatedly acknowledged the short falls and he was also issued some show cause notices. He further submitted that once the petitioner himself had acknowledged the short falls then the petitioner is now estopped from saying that he will not pay the short falls of the transformer oil and parts even if he has retired. He also submitted that in pursuance of the orders passed by a

Coordinate Bench of this Court (Annexure P-4), the petitioner was granted

personal hearing and after granting personal hearing to him, present impugned order (Annexure P-5) has been passed. He further submitted that so far as the plea taken by learned counsel for the petitioner that at the time when the petitioner was in service, neither any charge-sheet nor any disciplinary proceeding or any order was passed for recovery, the same is correct and not disputed. He submitted that he has confirmed the same from the officers who are present in the Court alongwith the record.

10. I have heard learned counsel for the parties.

11. The present is the case where the petitioner has filed the present petition on the ground that an amount of Rs.6,14,626/- has been recovered by the respondents-Nigam from his gratuity without any authority of law which is not only his statutory right but also his Constitutional Right. From the facts of the case, it is clear and it is also an admitted position that at the time when the petitioner was in service, neither any disciplinary proceedings were initiated nor any chargesheet was issued against the petitioner for the recovery of any amount pertaining to the subject matter which is now recovered after his retirement. However, a plea has been taken by the learned counsel for the respondents-State that at the time when the petitioner was in service, he himself had acknowledged the short falls in view of the aforesaid store return warrants and therefore it is the duty of the petitioner to have deposited the amount. However, during the course of arguments, it has also come to the light that in fact there was a total amount of Rs.12,00,000/- due against the petitioner out of which about half of the amount was waived off in accordance with the policy of the Government/Nigam. The argument raised by learned counsel for the respondents-Nigam is totally unsustainable in view of the fact

are stated to be of an acknowledgment would not mean that the respondents-Nigam were having any right to have recovered the aforesaid amount from the petitioner at the time when he was in service. There is no justification for the respondents-Nigam to have waited till the petitioner to have retired after attaining the age of superannuation and then again slept over for another 04 years. If recovery is to be effected from any employee for any reason then a procedure has to be followed in accordance with service regulations. Although it appears from Annexure R-5 that show cause notices were issued to the petitioner while he was in service but as per the learned counsel for the parties neither any order was passed, nor any recovery was effected. Therefore, it is totally unsustainable that the mere fact that the petitioner had signed some documents then he could have automatically deposited the aforesaid amount. Even otherwise also a perusal of the documents which have been attached alongwith the reply would show that the aforesaid so stated acknowledgments started from the year 2001 onwards which means that for long 14 years despite the fact that the petitioner had been acknowledging the short falls then why no recovery was effected from the petitioner while he was in service. It was only after the petitioner retired and the master and servant relationship ceased to operate and again for a further period of 03 to 04 years the respondents-Nigam kept their eyes closed and did not take any action against the petitioner. It was only when the writ petition was filed by the petitioner then the respondents-Nigam issued a show cause notice for recovery. Such kind of procedure adopted by the respondents-Nigam is absolutely against the law.

12. A Division Bench of this Court in ***Ashok Kumar Dhamija's case***

(*supra*) dealt with this issue and in that case as well the issue was with regard

to short falls and during the service of the petitioner, disciplinary proceedings were not initiated and the same was done only after retirement. The aforesaid Division Bench of this Court relied upon an earlier judgment of this court in ***Hans Raj Sharma v. Uttar Haryana Bijli Vitran Nigam Limited and others, CWP No.152-2004*** and ***P.R. Naik v. Union of India, AIR 1972 SC 554*** observed that the issuance of chargesheet for initiation of the departmental enquiry is a *sine-qua-non* and the writ petition was allowed. The aforesaid writ petition was allowed in the year 2006 and the respondents in the aforesaid writ petition and in the present writ petition are same i.e. DHBVNL, therefore the aforesaid proposition of law ought to have been known to the respondents-Nigam at the time when the aforesaid amount was deducted from the gratuity of the petitioner.

13. Apart from the above, even assumingly for the sake of arguments, the proceedings are required to be initiated against the petitioner even after his retirement then such initiation would also be hit by Rule 12.2 (b) of the Rules 2016 if at all applicable to the present respondents-Nigam. The last show cause notice was issued to the petitioner while he was in service in the year 2013 which means that the events are of much earlier point of time and rather they start from the year 2001 even as per the documents attached with the reply. However, the show cause notice had been issued vide Annexure P-3 on 18.09.2018 and therefore on the face of it the events are of more than 04 years preceding the aforesaid show cause notice and therefore even otherwise also the respondents could not have issued any such such show cause notice for an event which was more than 04 years preceding the issuance of show cause notice. Therefore, in either way the aforesaid recovery from the petitioner was

ex-facie without the authority of law.

14. Against the aforesaid impugned order (Annexure P-5), the petitioner also filed an appeal which was dismissed vide Annexure P-7. A perusal of the same would show that not a single reason has been mentioned by rejecting the appeal and therefore on the face of it, the aforesaid order Annexure P-7 was an unreasoned order.

15. In view of the aforesaid facts and circumstances of the present case, the present petition is allowed. The impugned orders (Annexure P-5 and P-7) are hereby quashed and set aside. The respondents-Nigam are directed to refund an amount of Rs.6,16,626/- which has been recovered from the gratuity of the petitioner alongwith interest @6% per annum (simple) within a period of three months from today.

16. In case the aforesaid amount is not paid to the petitioner within the stipulated time frame, the petitioner shall be entitled for future rate of interest @9% per annum (simple).

(JASGURPREET SINGH PURI)
JUDGE

16.04.2024
shweta

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