2024:PHHC:063714

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP-15453-2021 (O&M)
Date of Decision:30.04.2024

Surjeet Singh

......Petitioner

Versus

Dakshin Haryana Bijli Vitran Nigam Limited and others

......Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Ajay Kamboj, Advocate for the petitioner.

Mr. Bhupinder Gupta, Advocate for
Mr. Gursimran Singh, Advocate for respondents.

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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/setting aside the impugned letter dated 10.01.2011 (Annexure P-2).

2. The brief facts of the present case are that the petitioner was working as a Junior Engineer in the department of respondent-Nigam and he retired on 30.09.2014 after attaining the age of superannuation. While he was in service, some notices were issued to him with regard to some shortage of transformer oil and missing parts from the year 2006 onwards till his retirement. Even after retirement of the petitioner one show cause notice was issued to him with regard to the aforesaid transformer oil and missing parts. As per the policy of the respondent-Nigam, there is formula being derived out for waiving of some of the amounts and from time to time some amounts

were being deducted but neither any notice has been issued nor any enquiry was conducted nor any disciplinary proceedings were initiated against the petitioner with regard to the same by the competent authority However, during his service, some amount was deducted in the form of recovery pertaining to the aforesaid show cause notice but no order was passed for the recovery of the same.

3. The petitioner retired on 30.09.2014 and after his retirement from his gratuity an amount of Rs.3,34,942/- after making adjustments has been recovered. The prayer in the petition is for assailing the aforesaid action of the respondent-Nigam by which respondent-Nigam recovered the aforesaid amount from the gratuity of the petitioner and also the amount which has been recovered while he was in service.

4. Learned counsel for the petitioner stated that so far as his prayer with regard to the amount which has been recovered during the service of the petitioner from the salary is concerned, he does not wish to press the same and wishes to press his prayer only with regard to his grievance that after his retirement no amount could have been recovered from the gratuity of the petitioner because the recovery of the aforesaid amount of Rs.3,34,942/- was without the authority of law and any provision of law. He further submitted that in the absence of any enquiry or disciplinary proceedings or any kind of order by any competent authority, the aforesaid amount could not have been recovered from the gratuity of the petitioner because gratuity is a part of the retirement benefits and it is not only a Statutory Right but also a Constitutional Right under Article 300-A of the Constitution of India because

pension and pensionary benefits are Right to Property and no employee can be deprived of his right to property except with the authority of law.

5. Learned counsel for the petitioner further asserted that in the reply filed by the respondent-Nigam, it has been so mentioned that the petitioner had furnished an affidavit dated 01.06.2015 wherein he has stated that for an amount of Rs.4,63,545/-the petitioner was made liable by the department, which he is unable to refund and that can be deducted from his gratuity.

6. The aforesaid Annexure R-1 dated 01.06.2015 although is stated to be attached along-with the reply filed by the Nigam but the same does not find mention in the paper-book. However, during the course of arguments today, learned counsel for the respondent-Nigam has supplied a vernacular copy of aforesaid Annexure R-1 which is now taken on record as Annexure Mark 'X'. Learned counsel for petitioner further submitted that such kind of affidavit is not enforceable under the law. He submitted that the petitioner had a mentally retarded daughter and her marriage was fixed in the month of December 2015 and the petitioner did not have sufficient fund to get her proper medical treatment and to further make arrangements for marriage and the aforesaid amount i.e. Rs.3,34,942/- was a substantial amount for the petitioner in this regard and because of the aforesaid reason, the marriage could not be conducted in December 2015 and later on marriage of the daughter of petitioner was solemnized on 30.09.2017. He further submitted that thereafter the daughter of the petitioner being mentally retarded unfortunately passed away in the year 2021.

7. On the other hand, learned counsel for the respondents-Nigam while referring to the reply filed by the respondent-Nigam, has submitted that neither any enquiry was conducted, nor any charge-sheet nor disciplinary proceedings were initiated for recovery of the aforesaid amount from the gratuity of the petitioner but in view of the aforesaid affidavit furnished by the petitioner himself, the department was entitled to make the aforesaid deduction from the gratuity of the petitioner. He further submitted that there is nothing on record to show that there was any kind of coercion or pressure exerted upon the petitioner for furnishing of the affidavit because he furnished the same voluntarily and submitted that the aforesaid amount was recovered because it could have affected the State exchequer and that is why the aforesaid amount was deducted from the gratuity of the petitioner.

8. I have heard learned counsels for the parties.

9. The present is a case where an amount of Rs.3,34,942/- has been deducted and recovered from the gratuity amount of the petitioner. Admittedly, neither any charge-sheet was issued nor any disciplinary proceedings nor any kind of order was passed by any authority at any stage for recovery of any amount pertaining to the allegations in the show cause notices issued to him. A Division Bench of this Court in the case of ***Hans Raj Sharma Vs. Uttar Haryana Bijli Vitran Nigam Limited and others*** in ***CWP No.152 of 2004 decided on 29.07.2004*** while dealing with a similar question as to whether there was any authority with the Nigam to have recovered any amount in the absence of any charge-sheet or disciplinary proceedings has been laid down by this Court. The aforesaid judgment was

passed much prior to the retirement of the present petitioner. After the aforesaid judgment in **Hans Raj Sharma (supra)** a number of cases have come before this Court which have been decided**.** Reference in this regard can be made to the cases of ***Ashok Kumar Dhamija Vs.Dakshin Haryana Bijli Vitran Nigam Limited and others,*** **CWP No.7949 of 2005,** ***Ram Narain Dua Versus Dakhin Haryana Bijli Vitran Nigam Ltd. and others bearing CWP No.8095-2005 decided on 21.09.2006***, **Suraj Mal vs. Uttar Haryana Bijli vitran Nigam Ltd. and others bearing CWP No.12036 of 2008** decided on **11.09.2008** and **Ram Dass vs. Uttar Haryana Bijli Vitran Nigam Ltd. and another bearing CWP No.16997-2006** decided on **25.02.2008.**

10. It is very strange that despite a proposition of law being adjudicated by a Division Bench of this Court way back in the year 2004, the concerned authorities did not know what was the law governing them. An officer of the State or instrumentality of the State is supposed to know the law of land and particularly the law governing their own institution. There is nothing on record to show as to under what authority of law the amount was deducted from the gratuity of the petitioner. Not only this, there is no order by any competent authority by which the aforesaid amount has been ordered to be recovered and it appears that the accounts department may have adjusted the aforesaid amount of their own which is not permissible under the law.

11. A Division Bench of this Court in ***Hans Raj Sharma Versus Uttar Haryana Bijli Vitran Nigam Limited (supra),*** decided on 29.07.2004

held as under:-

> *"5. It has been settled by the Supreme Court in case of P.R. Nayak vs. Union of India, AIR 1972 Supreme Court 554 that issuance of a charge-sheet is sine-qua-non for initiation of departmental enquiry. Till date, no charge-sheet has been issued. There is no justification for withholding the pension of the petitioner".*

12. A Division Bench of this Court ***Ashok Kumar Dhamija Versus Dakshin Haryana Bijli Vitran Nigam Limited and others (supra)*** held as under:-

> *"Having heard the learned counsel for the parties, we are of the considered view that the respondents could not have withheld any amount of gratuity payable to the petitioner on account of allegations which have emanated after the date of his retirement. Such a course is not available to the respondents. In some what similar circumstances, this Court has earlier also in the case of Hans Raj Sharma vs. Uttar Haryana Bijli Vitran Nigam Limited and others 9Civil Writ Petition No.152 of 2004, decided on October 29, 2004) has allowed the writ petition by following the judgment of Hon'ble Supreme Court in P.R. Naik vs. Union of India, AIR 1972 SC 554. It has been laid down in the aforementioned judgment that issuance of charge-sheet for initiation of departmental enquiry is a sine qua non."*

13. From the aforesaid settled proposition of law, it is abundantly

clear that the respondent-Nigam has not only acted in an arbitrary and perverse manner but has also acted contrary to the settled law especially pertaining to their own institution i.e.DHVBNL.

14. Learned counsel for the respondent-Nigam, has, however, raised a plea referring to the reply filed by the respondent-Nigam by submitting that the petitioner himself had furnished an affidavit Annexure R-1 by stating that he does not have any money to pay and therefore, the amount may be deducted from his gratuity. The learned counsel for the petitioner has, however, submitted before this court that the petitioner had a mentally retarded daughter and was scheduled to be married in December 2015 but because of paucity of money, she could not be married and ultimately her marriage was solemnized on 30.09.2017 and thereafter unfortunately she was passed away in the year 2021. This Court would not go into the fact as to whether the aforesaid affidavit was furnished by way of coercion or undue influence because there is no need to adjudicate upon the aforesaid issue. This Court is of a considered view that the respondent-Nigam deducted the aforesaid amount from the gratuity of the petitioner only on the basis of affidavit that was furnished by the petitioner which is absolutely unfortunate and is neither enforceable nor it could have been relied upon by the respondents-Nigam. Such kind of affidavits even if furnished by any employee assumingly by his voluntarily act cannot become a ground for getting his rights relinquished. Right to Pension and retiral benefits is a Right to Property under Article 300-A of the Constitution of India There can be no waiver or relinquishment of such right. An employee can be deprived

of his right only with an authority of law but not by way of such affidavits. Such kind of affidavit is not only unenforceable but is also against the public policy and in violation of Section 25 of the Indian Contract Act. Such affidavit is *void ab-initio* and cannot be enforced.

15. There is another serious issue involved in the present case. A perusal of the reply filed by the respondent-Executive engineer would show that in the preliminary objections, he has so stated that filing of the present writ petition is abuse of the process of law and has been filed with an ulterior motive to accede his illegal demand, which are not sustainable in the eyes of law. Para No.2 of the preliminary objections is reproduced as under:-

> "*That the writ petition filed by the Petitioner is abuse of process of law and has been filed with an ulterior motive to accede his illegal demand, which otherwise do not sustain in the eyes of law.*"

16. The Executive Engineer who filed the aforesaid reply, himself did not know what was the law governing the Nigam and rather he took a preliminary objection that the petitioner has abused the process of law by filing a writ petition. The Executive Engineer further stated in the preliminary objection that the petitioner has filed the present petition with ulterior motive to seek illegal demand. Such kind of practice of taking such kind of illegal and preliminary objections is highly deprecable. This Court condemns the stand of the respondents-Nigam whereby they have relied upon the affidavit of the petitioner (Annexure R-1) and have taken such kind of preliminary objections.

17. The officers of the State and instrumentality of the State are bound to be sensitive to the human values and also to the law of the land. It is a clear cut case where the petitioner was constrained to file the present writ petition for enforcement of his Statutory and Constitutional Rights.

18. In view of the aforesaid facts and circumstances, the present petition is allowed. The respondents-Nigam are directed to refund the aforesaid amount of Rs.3,34,942/- to the petitioner alongwith interest @ 6% per annum (simple) from the date of his retirement plus two months till the date of its actual disbursement within a period of three months from today. In case the aforesaid amount is not paid within the aforesaid time period then the petitioner will be entitled for future rate of interest @ 9% per annum (simple).

19. Considering the aforesaid peculiar facts and circumstances of the present case, this Court is of the considered view that it is a fit case for imposing exemplary costs upon the respondents-Nigam. The conduct of the respondent-Nigam has already been condemned by this court as aforesaid. The costs are assessed as Rs.2,00,000/- (Rupess Two Lacs only) which shall be paid to the petitioner at the first instance by the Nigam within the aforesaid period of three months from today. Thereafter the Managing Director of the Nigam is directed to conduct an enquiry on the aforesaid two issues i.e. firstly who was responsible for with-holding and recovering the aforesaid amount from the gratuity of the petitioner despite the fact that the law has been settled pertaining to the respondent-Nigam and secondly as to who was responsible for procuring the affidavit from the petitioner. After the

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accountability of the officer concerned is fixed then the costs shall be recovered from its official(s) in accordance with law.

20. Such kind of cases of insensitiveness towards ex-employees of the respondent-Nigam are coming to the notice of this Court frequently. The Managing Director of the respondent-Nigam is also directed to look into this issue and to sensitize his officers including the legal department of the Nigam by giving them appropriate training and will acquaint them on the law on every subject. The Managing Director will also seek the explanation from the legal department of the Nigam as to how and under what circumstances the aforesaid preliminary objections were taken which were ex-facie illegal and frivolous.

21. The Managing Director shall undergo the aforesaid exercise and complete the same within a period of three months from today

22. List this case after a period of three months for compliance and for awaiting report from respondent No.6/Managing Director.

23. Registry shall tag Annexure Mark 'X' with the paper-book and paginate the same.

(JASGURPREET SINGH PURI)
JUDGE

30.04.2024
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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No