

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**CWP-15974-2021 (O&M)
Date of Decision:19.04.2024**

Balbir Singh

.....Petitioner

Versus

Uttar Haryana Bijli Vitran Nigam Limited and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Sushil Jain, Advocate for the petitioner.

Mr. Kapil Bansal, DAG, Haryana.

Mr. Rajesh Gaur, Advocate for respondents-UHBVNL.

JASGURPREET SINGH PURI J.(Oral)**CM-4308-CWP-2024**

Present application has been filed for placing on record certain documents.

Application is allowed as prayed for subject to all just exceptions.

The accompanying documents are taken on record as Annexures R-1 and R-2.

Main case

1. The present 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 show cause notice dated 15.10.2019 (Annexure P-3) issued by the respondent No.2.

2. Learned counsel for the petitioner submitted that the petitioner was initially appointed as a daily wager in the year 1988 in the

office of respondents-UHBVNL (hereinafter to be referred to as 'Nigam').

Thereafter he was regularised on the post of Regular T-mate in the year 1995. Learned counsel for the petitioner further submitted that the petitioner was promoted as Assistant Lineman in the year 1999, Lineman in the year 2008, Assistant Foreman in the year 2015 and Junior Engineer in the year 2016. He further submitted that the petitioner retired from the office of respondents-Nigam on 31.03.2019 after attaining the age of superannuation.

3. Learned counsel for the petitioner has made three prayers in the present petition; (i) The petitioner has not been granted his ACP; (ii) the period during which services were rendered by the petitioner in the office of respondents-Nigam as daily wager has not been counted for pensionary benefits despite the fact that although, he was appointed on daily wage basis but later on he was regularized by the respondents-Nigam itself and therefore his case is covered by a Full Bench judgment of this Court in ***Kesar Chand vs. State of Punjab, 1988 AIR (Punjab and Haryana) 265***; (iii) while the petitioner was in service, he was issued a show cause notice dated 03.07.2018 but no action was taken on the aforesaid show cause notice till the time the petitioner retired and after his retirement another show cause notice was issued to him dated 15.10.2019 vide Annexure P-3 by just making a reference to the aforesaid show cause notice and thereafter an order of punishment has been passed vide Annexure R-1 whereby an amount of Rs.5,75,564/-was ordered to be recovered from the pensionary benefits of the petitioner and also a cut of 10% in pension for two years has been imposed on him.

4. It is submitted by learned counsel for the petitioner that it is a case when the petitioner was in service although a notice was issued to

him but neither any disciplinary proceedings were initiated, nor any charge-sheet was issued or any order was passed against him for recovery of any amount from his pensionary benefits. After the retirement of the petitioner from service on 31.03.2019 the master and servant relationship ceased to operate and thereafter the respondents-Nigam could not have issued show cause notice to the petitioner and could not have passed any order of punishment because the same was without the authority of law. Therefore the aforesaid amount is liable to be refunded to the petitioner alongwith the interest.

5. On the other hand, learned counsel for the respondents-Nigam submitted that so far as the first two prayers of the petitioner are concerned, the same can be dealt with separately. He submitted that so far as the first prayer made by learned counsel for the petitioner is concerned, the petitioner has already been released the aforesaid amount of ACP i.e. Rs.71811/- by way of a cheque dated 16.11.2021 vide Annexure R-2 and therefore nothing would survive with regard to the first prayer made by learned counsel for the petitioner. So far as the second prayer with regard to counting of his service which has been rendered by the petitioner on daily wages is concerned, the same cannot be denied to the petitioner in view of the Full Bench judgment of this Court in ***Kesar Chand's case (supra)*** and therefore the pension and pensionary benefits of the petitioner will now be refixed after counting the aforesaid daily wages service and the arrears will thereafter be released to the petitioner within a period of three months from today and therefore nothing would survive qua the second prayer also.

6. He further submitted that so far as the third prayer with regard to the recovery of the aforesaid amount and 10% cut of in pension

for next two years is concerned, the same was decided on 07.06.2021 vide Annexure R-1 by the Chief Engineer, UHBVN, Panchkula, before filing of the present petition and the same has not been challenged by the petitioner and as such he cannot claim the refund of the aforesaid amount. He further contended that the aforesaid order pertains to recovery of an amount for which the petitioner had caused loss to the respondents-Nigam while he was in service pertaining to drawing of some materials forcefully from the store and some other allegations pertaining to some material in the store for which a show cause notice was issued to him and the same has been decided now. Therefore, no case is made out in assailing the aforesaid action of the respondents because the petitioner had caused loss to the respondents-Nigam.

7. I have heard learned counsel for the parties.

8. So far as the first prayer of the petitioner is concerned, he has already been released the amount of ACP i.e. Rs.71811/- by way of a cheque dated 16.11.2021 vide Annexure R-2. So far as the second prayer is concerned, learned counsel for the respondents-Nigam has very candidly submitted that the service rendered by the petitioner on daily wage basis and subsequently regularized will be counted for the purpose of pensionary benefits and re-fixation of pension and retiral benefits will be done within a period of three months from today. In view of the statement made by learned counsel for the respondents-Nigam, the respondent-Nigam/competent authority is directed to do the needful within a period of three months from today.

9. The only issue which requires adjudication in the present petition is pertaining to the third prayer with regard to the recovery of Rs.5,75,564/- and 10% cut in the pension for two years as per the

punishment order dated 07.06.2021 vide Annexure R-1. It is an admitted position that when the petitioner was in service neither any chargesheet was issued nor any order has been passed against him for recovery of any amount from the petitioner. However vide Annexure P-3 a reference has been made to a show cause notice dated 03.07.2018 which was prior to the retirement of the petitioner. However, after the retirement of the petitioner another show cause notice dated 15.10.2019 vide Annexure P-3 was issued to him by giving the details of amount which are required to be recovered from the petitioner and some assessment of Rs.5,75,564/- has been made. The aforesaid show cause notice was decided on 07.06.2021 vide Annexure R-1 whereby the Chief Engineer, UHBVN, Panchkula has passed an order for recovery of the aforesaid amount alongwith penalty of 10% cut of in pension for 02 years. During the course of arguments, this Court raised a specific query to learned counsel for the respondents as to under what authority of law the aforesaid punishment order has been passed to which he submitted that there is nothing so stated in the reply nor he has any instructions with regard to the same since the petitioner already stood retired on 31.03.2019.

10. To test the action of respondents-Nigam in passing of the aforesaid punishment order, the same can be considered from two different angles. The first angle would be a bare perusal of the show cause notice vide Annexure P-3. A perusal of the same would show that when a show cause notice has been issued to the petitioner vide Annexure P-3 after his retirement, the Chief Engineer, UHBVN, Panchkula, has stated in so many words that earlier the petitioner was issued a show cause notice on 03.07.2018 and he has not submitted his reply and therefore it has been decided to recover an amount of Rs.5,75,564/- from

his pensionary benefits and a cut of 10% in his pension for two years be imposed on him and before inflicting the tentative punishment for the above lapses, he was given an opportunity to explain his position to show cause in writing within 30 days in this regard. The relevant portion of the aforesaid show cause notice is reproduced as under :

*“You did not bother to submit defence reply despite elapse of stipulated period, **therefore, it has been decided** to recover Rs.5,75,564/- from your pensionary benefits and a cut of 10% in pension for 2 years be imposed on you.*

But before inflicting the tentative punishment for the above lapse on your part, you are afforded an opportunity to explain your position to show cause in writing within 30-days from the reject of this communication as to why the proposed punishment should not be imposed upon you.”

(emphasis supplied)

11. A perusal of the aforesaid Annexure P-3 would show that it is in the nature of show cause notice issued by the Chief Engineer, UHBVN, Panchkula, to the petitioner. In the show cause notice the Chief Engineer has stated that it has been “decided” a recovery of an amount of Rs.5,75,564/- is to be made from the pensionary benefits and cut of 10% pension for two years be imposed upon the petitioner. It is not understandable as to what was the use of issuance of a show cause notice with a pre-determined mind, once Chief Engineer himself while issuing show cause notice, has come to the conclusion then **it has been decided**

“to recover an amount of Rs.5,75,564/- from the pensionary benefits of the petitioner”. The issuance of a show cause notice was a futile exercise and was of no use at all. It cannot be said to be compliance of principles of natural justice namely *audi alteram partem*. Thereafter, when the order dated 07.06.2021 at Annexure R1 was passed, the same punishment has been inflicted and the same as so stated to have been decided in the show cause notice vide Annexure P-3. Such kind of approach by the Chief Engineer, is deprecated by this Court and it is unfair on the part of the Chief Engineer concerned, to have issued show cause notice and that too after the retirement of the petitioner with a pre-determined mind. The show cause notice (Annexure P-3) as well as the order of punishment (Annexure R-1) gets vitiated on the ground of violation of principles of natural justice viz. *audi alteram partem* and also on the ground of having passed with pre-determined mind.

12. The aforesaid action of the respondents-Nigam can be considered from second angle as well. While the petitioner was in service, neither any charge-sheet was issued to him nor any order was passed by any of the competent authority. As to whether any show cause notice issued to him or not, the same has not been attached with the reply filed by the respondents-Nigam. Although a reference has been made in the show cause notice dated 15.10.2019 (Annexure P-3) which was issued after the retirement of the petitioner pertaining to earlier show cause notice dated 03.07.2018 but there is nothing on record to show that such cause notice has been issued to the petitioner. Even assumingly for the sake of arguments, the aforesaid show cause notice was issued to the petitioner prior to his retirement but nothing prevented the respondents to have taken an action against the petitioner during his service since the

petitioner retired on 31.03.2019 which was after about 08 months but after the retirement of the petitioner when the master and servant relationship ceased to operate, another show cause notice (Annexure P-3) was issued to him and that too with a pre-determined mind. When a query was raised to learned counsel for the respondents as to under what authority of law and under which provision of law such a punishment order has been passed against a retired employee, he could not give any justification to the query raised by this Court.

13. This issue as to whether on the basis of merely issuance of show cause notice which does not amount to initiation of any disciplinary proceedings, any punishment order can be passed after retirement or not is no longer *res-integra*. A Division Bench of this Court while dealing with the same respondents-UHBVNL, in the year 2004 had decided this issue 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***. In the aforesaid case also, the petitioner of that petition was issued show cause notice prior to his retirement and no charge-sheet was issued against him. It was held that there was no justification for with-holding the pension of the 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*** bearing 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.

14. In view of the aforesaid law laid down by Division Bench of this Court, and particularly pertaining to the same respondent which is the respondent in the present case, it was not only the duty of the Chief Engineer but it was also obligatory upon the Chief Engineer to have known the law of the land and particularly the law which is governing the respondents-Nigam. The Chief Engineer, UHBVN, Panchkula, has not only violated the settled proposition of law but has further gone to the extent of issuance of show cause notice to the petitioner after his retirement with a pre-determined mind.

15. The arguments raised by learned counsel for the respondents-Nigam that order dated 07.06.2021 (Annexure R-1) has not been challenged is not sustainable in view of the fact that it is a case where the petitioner is seeking enforcement of his Constitutional Right under Article 300-A of the Constitution of India and the present petition has been filed in the year 2021. Once it is a clear cut case of infraction of Constitutional Rights of the petitioner by the respondents-Nigam, this Court will not non-suit the petitioner only on the ground that the petitioner has not challenged the aforesaid order. Rather this Court would deal with the prayer of the petitioner seeking enforcement of his Constitutional Rights by seeking a writ in the nature of *mandamus*.

16. Even otherwise also, learned counsel for the petitioner has also stated that in para No.26 (vii) of the petition, he has prayed to this Court to pass any other order, writ or direction, which this Court may deem fit. This Court is of the view that it is a fit case to grant relief to the petitioner in view of the aforesaid prayer mentioned in para 26 (vii) and

his prayer for quashing of the order dated 07.06.2021 (Annexure R-1) would fall within the ambit of the aforesaid prayer.

17. In view of the aforesaid facts and circumstances, the present petition is allowed. Order dated 07.06.2021 (Annexure R-1) is hereby set aside. The respondents-Nigam are directed to refund the entire amount of Rs.5,75,564 to the petitioner alongwith the interest @ 6% per annum (simple) from the date of his retirement till its actual disbursement within a period of three months from today. In case the aforesaid amount is not paid to the petitioner within the stipulated time frame then the petitioner shall be entitled for future rate of interest @9% per annum (simple).

18. In the facts and circumstances of the present case whereby the Chief Engineer, UHBVN, Panchkula, has illegally issued a show cause notice to the petitioner and thereafter passed a punishment order with a pre-determined mind as aforesaid, the petitioner shall also be entitled for costs which are assessed as Rs.25,000/-(Rupees Twenty Five Thousand only) and the same shall be paid by the respondents-Nigam within a period of three months from today at the first instance and thereafter the respondents-Nigam shall recover the aforesaid amount of costs from the Chief Engineer, who issued the aforesaid show cause notice with a pre-determined mind.

(JASGURPREET SINGH PURI)
JUDGE

19.04.2024

shweta

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