

CWP-16236-2021 (O&M) 1

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP-16236-2021 (O&M)
Date of Decision:28.08.2024

Sukhbir Singh

.....Petitioner

Versus

Uttar Haryana Bijli Vitran Nigam and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Ketan Antil, Advocate for the petitioner.

Mr. Bhupinder Kumar, Advocate for
Mr. Gursimran Singh, Advocate for the respondents.

JASGURPREET SINGH PURI J.(Oral)

1. The present writ petition has been filed under Articles 226/227 of Constitution of India seeking issuance of a writ of *mandamus* for directing the respondent No.1 to refund the deducted amount from the gratuity/retiral benefits of the petitioner alongwith interest.

2. Learned counsel for the petitioner submitted that the petitioner retired from the office of respondents-UHBVNL (hereinafter to be called as 'Nigam') on 30.06.2018 as AFM which falls in Category 'C'. He submitted that at the time of the retirement of the petitioner, neither any chargesheet, nor any judicial proceeding or any notice was pending against the petitioner but it was only after the retirement of the petitioner, that an amount of Rs.10,63,774/- was recovered from the retiral benefits

**CWP-16236-2021 (O&M) 2**

of the petitioner without any authority of law and therefore directions may be issued to the respondents-Nigam to refund the aforesaid amount alongwith the interest.

3. On the other hand, learned counsel appearing for the respondents-Nigam while referring to para 4 of the reply filed by the respondents, submitted that after the retirement of the petitioner, an amount of Rs.6,20,000/- has been recovered from the retiral benefits of the petitioner on account of non-return of damaged transformers to the store, which caused financial loss to the respondents-Nigam and therefore the aforesaid amount has been recovered from the petitioner even after his retirement. He submitted that Rs.2,04,381/-, Rs.1,50,000/- of HBA and Rs.89,393/- on account of interest on the aforesaid amount were also outstanding against the petitioner and the same were also recovered from the petitioner. He further submitted that in view of the aforesaid factual position, there was no option but to recover the aforesaid amount from the retiral benefits of the petitioner.

4. I have heard learned counsels for the parties.

5. The petitioner retired on 30.06.2018 and at the time of his retirement, there was neither any chargesheet, nor any judicial proceeding or any notice pending against the petitioner which is an undisputed position. However, after the retirement when the master and servant relationship ceased to operate, the aforesaid amount of Rs.6,20,000/- was recovered from the retiral benefits of the petitioner because of non-return of damaged transformers to the store, which has caused financial loss to the respondents-Nigam. However, in the absence of adoption of any

**CWP-16236-2021 (O&M) 3**

procedure prescribed under the law for the purpose of recovering of any amount, the same could not have been recovered from the petitioner by the respondents-Nigam. In case any amount was legally justifiable to have been recovered from the petitioner then the same could have been done only by following the due procedure, if any, under the Service Rules but there is neither any provision which has been so stated by the respondents-Nigam nor the same has been adhered to even as per the reply filed by the respondents. Similarly, an amount of Rs.2,04,381/- has also been recovered by stating that the same was outstanding, however, there is no reason or any ground mentioned in the reply as to on what ground the same has been recovered from the petitioner. On the top of it, even the interest has been charged on the aforesaid amount from the petitioner. It is a settled law that after the retirement of an employee, the master and servant relationship ceases to operate and in case any recovery needs to be effected from the retired employee, the same can be done only by authority of law and by adopting due procedure but in the present case straightaway the aforesaid amount had been recovered from the retiral benefits of the petitioner which was ex-facie without the authority of law.

6. Way back in the year 1971, a Constitutional Bench of Hon'ble Supreme Court in ***“Deokinandan Prasad Vs. State of Bihar”, 1971(2) SCC 330***, held that the pensionary benefits etc. are not the bounty of the State. Earlier Right to Property was a Fundamental Right under Article 31 of the Constitution of India, however, after 44th Amendment to the Constitution of India, Right to Property became a Constitutional Right under Article 300-A of the Constitution of India instead of a



CWP-16236-2021 (O&M) 4

Fundamental Right. The relevant portion of the aforesaid judgment is reproduced as under:-

*“31. The matter again came up before a Full Bench of the Punjab and Haryana High Court in **K.R. Erry v. The State of Punjab, ILR 1967 Punj & Har 278**. The High Court had to consider the nature of the right of an officer to get pension. The majority quoted with approval the principles laid down in the two earlier decisions of the same High Court, referred to above, and held that the pension is not to be treated as a bounty payable on the sweet-will and pleasure of the Government and the right to superannuation pension including its amount is a valuable right vesting in a Government servant. It was further held by the majority that even though an opportunity had already been afforded to the officer on an earlier occasion for showing cause against the imposition of penalty for lapse or misconduct on his part and he has been found guilty, nevertheless, when a cut is sought to be imposed in the quantum of pension payable to an officer on the basis of misconduct already proved against him, a further opportunity to show cause in that regard must be given to the officer. This view regarding the giving of further opportunity was expressed by the learned Judges on the basis of the relevant Punjab Civil Service Rules. But the learned Chief Justice in his dissenting judgment was not prepared to agree with the majority that under such circumstances a further opportunity should be given to an officer when a reduction in the amount of pension payable is made by the State. It is not necessary for us in the case on hand, to consider the question whether before taking action by way of reducing or denying the pension on the basis of disciplinary action already taken, a further notice to show cause should be given to an officer. That question does not*



arise for consideration before us. Nor are we concerned with the further question regarding the procedure, if any, to be adopted by the authorities before reducing or withholding the pension for the first time after the retirement of an officer. Hence we express no opinion regarding the views expressed by the majority and the minority Judges in the above Punjab High Court decision, on this aspect. But we agree with the view of the majority when it has approved its earlier decision that pension is not a bounty payable on the sweet-will and pleasure of the Government and that, on the other hand, the right to pension is a valuable right vesting in a government servant.

32. This Court in State of Madhya Pradesh v. Ranojirao Shinde and another, 1968-3 SCR 489 had to consider the question whether a "cash grant" is "property" within the meaning of that expression in Articles 19(1)(f) and 31(1) of the Constitution. This Court held that it was property, observing "it is obvious that a right to sum of money is property".

7. Thereafter, Hon'ble Supreme Court in another authoritative judgment passed in ***"State of Jharkhand and others Vs. Jitendra Kumar Srivastava and another"***, 2013(12) SCC 210 again discussed the entire law pertaining to the valuable rights pertaining to the grant of pensionary benefits. Para Nos.8 and 16 of the aforesaid judgment is reproduced as under:-

"8. It is an accepted position that gratuity and pension are not the bounties. An employee earns these benefits by dint of his long, continuous, faithful and unblemished service. Conceptually it is so lucidly described in D.S. Nakara and



Ors. Vs. Union of India; (1983) 1 SCC 305 by Justice D.A. Desai, who spoke for the Bench, in his inimitable style, in the following words:

“18. The approach of the respondents raises a vital and none too easy of answer, question as to why pension is paid. And why was it required to be liberalised? Is the employer, which expression will include even the State, bound to pay pension? Is there any obligation on the employer to provide for the erstwhile employee even after the contract of employment has come to an end and the employee has ceased to render service?

19. What is a pension? What are the goals of pension? What public interest or purpose, if any, it seeks to serve? If it does seek to serve some public purpose, is it thwarted by such artificial division of retirement pre and post a certain date? We need seek answer to these and incidental questions so as to render just justice between parties to this petition.

*20. The antiquated notion of pension being a bounty a gratuitous payment depending upon the sweet will or grace of the employer not claimable as a right and, therefore, no right to pension can be enforced through Court has been swept under the carpet by the decision of the Constitution Bench in **Deoki Nandan Prasad v. State of Bihar and Ors. [1971] Su. S.C.R. 634** wherein this Court authoritatively ruled that pension is a right and the payment of it does not depend upon the discretion of the Government but is governed by the rules and a Government servant coming within those rules is entitled to claim pension. It was further held that the grant of pension does not depend upon any one’s discretion. It is only for the*



*purpose of quantifying the amount having regard to service and other allied matters that it may be necessary for the authority to pass an order to that effect but the right to receive pension flows to the officer not because of any such order but by virtue of the rules. This view was reaffirmed in **State of Punjab and Another Vs. Iqbal Singh(6)**”.*

It is thus hard earned benefit which accrues to an employee and is in the nature of “property”. This right to property cannot be taken away without the due process of law as per the provisions of Article 300-A of the Constitution of India.

16. The fact remains that there is an imprimatur to the legal principle that the right to receive pension is recognized as a right in “property”. Article 300-A of the Constitution of India reads as under:

“300-A Persons not to be deprived of property save by authority of law.- No person shall be deprived of his property save by authority of law.”

Once we proceed on that premise, the answer to the question posed by us in the beginning of this judgment becomes too obvious. A person cannot be deprived of this pension without the authority of law, which is the Constitutional mandate enshrined in Article 300-A of the Constitution. It follows that attempt of the appellant to take away a part of pension or gratuity or even leave encashment without any statutory provision and under the umbrage of administrative instruction cannot be countenanced.”

8. In view of the above, the aforesaid recovery made from the retiral benefits of the petitioner is not only in violation of the statutory



CWP-16236-2021 (O&M) 8

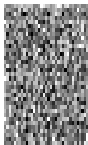
rights but it is also in violation of the Constitutional Right guaranteed under Article 300A of the Constitution of India.

9. Even otherwise also the aforesaid issue as to whether after the retirement of an employee, the recovery could have been effected on the basis of the non return of the damaged transformers to the store, is concerned, the same has also been settled by a Division Bench of this Court in *Hans Raj Sharma Versus Uttar Haryana Bijli Vitran Nigam Limited*, CWP-152-2004, decided on 29.07.2004 and in which it has been 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”.

10. A Division Bench of this Court *Ashok Kumar Dhamija Versus Dakshin Haryana Bijli Vitran Nigam Limited and others*, CWP-7949-2005, decided on 21.09.2006 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



CWP-16236-2021 (O&M) 9

1972 SC 554. It has been laid down in the aofrementioned judgment that issuance of charge-sheet for initiation of departmental enquiry is a sine qua non.”

11. In view of the facts and circumstances of the present case, the present petition is allowed. The respondents-Nigam are directed to refund the amount which has been recovered from the petitioner alongwith interest @ 6% per annum (simple) within a period of three months from today.

12. In case the aforesaid recovered amount is not refunded to the petitioner within the aforesaid time frame then the petitioner shall be entitled for future rate of interest @9% per annum (simple).

(JASGURPREET SINGH PURI)
JUDGE

28.08.2024
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Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No