223

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CWP-11563-2016
Date of Decision: 01.04.2024

Jaibahgwan (through LRs)

..... Petitioner

Versus

Dakshin Haryana Bijli Vitran Nigam Ltd. and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Praveen Moudgil, Advocate for
Ms. Sunita Nain, Advocate,
for the petitioner.

Mr. Hitesh Pandit, Advocate,
for the respondents.

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<u>JASGURPREET SINGH PURI, J.</u> (ORAL)

1. The present writ petition has been filed under Article 226 of the Constitution of India for issuance of a writ in the nature of *certiorari* for quashing of impugned order dated 23.05.2016 (Annexure P-4) vide which the claim of the petitioner to release the withheld amount of Rs.2,33,852/- has been rejected with a further prayer in the nature of *mandamus* for directing the respondents to release the aforesaid withheld amount along with interest.

2. Learned counsel appearing on behalf of the petitioner submitted that the petitioner was working as AFM in the respondent-Nigam and he retired on 31.03.2008. He further submitted that after the retirement of the petitioner an amount of Rs.2,33,852/- has been withheld from his retiral benefits which was without any justification. He also submitted that at

the time when the petitioner retired, there were no disciplinary proceedings against him qua the aforesaid amount which is the subject matter of the present petition and the said amount has been unlawfully withheld from the retiral benefits of the petitioner and therefore, a direction may be issued to the respondents to refund the aforesaid amount along with interest.

3. On the other hand, Mr. Hitesh Pandit, learned counsel for the respondents, while referring to the reply filed by the respondent-Nigam, submitted that at the time when the petitioner was in service he was issued a show-cause notice dated 23.06.2004 vide Annexure R-3 with regard to some amount of shortage of spare parts of damaged transformers which was required to be recovered from him to which he filed a reply and thereafter, on the basis of reply filed by him, an order of recovery was passed by the Superintending Engineer vide Annexure R-4 wherein it was directed to recover an amount of Rs.43,378.15/- from the petitioner. He further submitted that the aforesaid order was of 26.03.2008 which was passed before his retirement and the petitioner has not even challenged the aforesaid order in the present petition and in the absence of any challenge to the aforesaid order, the same attained finality and the recovery was required to be made from his retiral benefits. He submitted that so far as the remaining amount is concerned, he referred to Annexure R-5, wherein the details have been mentioned and submitted that in fact on account of the aforesaid head, an amount of Rs.1,66,817/- has been shown pertaining to the missing parts of the damaged transformers, although in the order dated 26.03.2008 (Annexure R-4), the recovery was only for an amount of Rs.43,378.15/-. He further submitted that since the petitioner was the custodian of the aforesaid

material, he was required to keep it in safe condition and therefore, the total amount of Rs.1,66,817/- which included the aforesaid amount of Rs.43,378.15/- was depicted in Annexure R-5. He also submitted that another amount of Rs.67,862/- was also recovered from the petitioner under the head of theft of inventory and non-lodging of the FIR. He submitted that as per the instructions of the Nigam, in case, an officer does not lodge an FIR pertaining to the theft, then on the basis of the formula as so devised by the Nigam, a referential liability will be imposed upon the concerned employee and therefore, the aforesaid amount of Rs.67,862/- was recovered from the petitioner. To add up the aforesaid two figures, he submitted that the total amount came out to be Rs.2,34,680.50/- which was recovered from the retiral benefits of the petitioner.

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

5. The aforesaid amount of Rs.2,34,680.50/- is the subject matter of the dispute in the present case. The bifurcation of the aforesaid amount is so provided in Annexure R-5 which is dated 13.05.2011 which was passed much after the retirement of the petitioner. Therefore, it is necessary to consider both the heads independently. The first head was pertaining to the total amount of Rs.1,66,817/-. A perusal of the order dated 26.03.2008 (Annexure R-4) would show that the aforesaid subject matter was on the basis of the shortage of the spare parts, the same was passed prior to the retirement of the petitioner for a recovery of Rs.43,378.15/-. Therefore, this order is not under challenge in the present petition. However, after the retirement of the petitioner, Annexure R-5 was passed instead of showing the recovery of aforesaid amount of Rs.43,378.15/- which was the order

passed by the competent authority, the aforesaid total amount of Rs.1,66,817/- has been shown. This amount appears to be unreasonable in view of the fact that the officer, who had passed the order vide Annexure R-5, could not have travelled beyond the order of recovery. Once the order of recovery of an amount of Rs.43,378.15/- has been passed, then there was no occasion for any other officer to have depicted some other amount after the retirement of the petitioner vide Annexure R-5. Therefore, at the most, the respondents could have recovered only an amount of Rs.43,378.15/- which was directed to be recovered from the petitioner vide Annexure R-4 before his retirement.

6. So far as the second head of Rs.67,862/- is concerned, the same was pertaining to the allegation that the petitioner did not lodge an FIR pertaining to the theft of inventory. However, on a query being raised to the learned counsel for the respondents, as to whether any notice or any proceeding or any kind of order was passed prior to the retirement of the petitioner to which he submitted on instructions that no such order has been passed prior to the retirement of the petitioner. However, the aforesaid amount is depicted vide Annexure R-5 which is only a recovery order passed by the Chief Auditor, who is not a competent authority and is only an officer of the Audit Department and therefore, even Annexure R-5 cannot be termed as an order which has not been passed by any competent authority. Therefore, clearly the aforesaid amount of Rs.67,862/- so depicted in Annexure R-5, was without any authority of law and particularly it was passed after the retirement of the petitioner.

7. At this stage, the learned counsel for the petitioner submitted

that so far as the aforesaid amount of Rs.43,378.15/- which was ordered to be recovered from the petitioner vide Annexure R-4 prior to the retirement of the petitioner is concerned, he has no objection in case an amount only to the aforesaid extent is recovered from the retiral benefits of the petitioner but with regard to the remaining amount, the respondents had no jurisdiction and no authority of law to have recovered the aforesaid amount from the petitioner and therefore, to that extent the recovery may be set aside.

8. In view of the aforesaid facts and circumstances, this Court is of the considered view that so far as the letter dated 13.05.2011 (Annexure R-5) is concerned, it is not passed by any competent authority and it is only a type of performa with regard to recovery of some amount from the petitioner. The amount of Rs.1,66,817/- depicted under the heads of missing parts of damaged transformers, the aforesaid figure was not in accordance with any order. At the most, an amount of Rs.43,378.15/- could have been recovered from the petitioner and regarding which even concession has been given by the learned counsel for the petitioner as well. Therefore, the remaining amount i.e. Rs.1,66,817–Rs.43,378.15/-=Rs.1,23,438.85/- was without the authority of law and without jurisdiction. So far as the amount of Rs.67,862/- as depicted in Annexure R-5 is concerned, even as per the learned counsel for the respondents there was no order or notice issued in this regard even at the time when the petitioner was in service and even after his retirement and therefore, the aforesaid amount also cannot be recovered from the petitioner, in the absence of any order with regard to the same by any competent authority by following the process of law. Therefore, the aforesaid amount of Rs.67,862/- cannot be recovered from the petitioner.

9. In view of the above, it is directed that out of the total amount of Rs.2,34,680.50/- which has been recovered from the retiral benefits of the petitioner, the recovery of only Rs.43,378.15/- could have been made from the petitioner and the remaining recovery is without jurisdiction and without the authority of law. Therefore, it is directed that the respondents shall refund the balance of Rs.1,91,302.35/- to the petitioner along with interest @6% per annum within a period of 3 months from today.

10. The present petition stands partly allowed.

01.04.2024 **(JASGURPREET SINGH PURI)**
Bhumika **JUDGE**

1. Whether speaking/reasoned: Yes/No
2. Whether reportable: Yes/No