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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-14977-2017 (O&M)
Date of decision: 01.10.2024

Inder Singh (since deceased through LRs)
...Petitioner

VERSUS

Uttar Haryana Bijli Vitran Nigam and others

...Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. R.S.Malik, Advocate, for the petitioner.

Mr. Pradeep Rajput, Advocate, for the respondents.

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JASGURPREET SINGH PURI, J. (Oral)

CM-16025-CWP-2024

The present application has been filed under Order 22 Rule 3 read with Section 151 of CPC for bringing on record the legal heirs of the petitioner as mentioned in para No.2 of the application.

Notice in the application.

Mr. Pradeep Rajput, learned counsel accepts notice on behalf of the respondents and states that he has no objection in case the present application is allowed.

In view of the above, the present application is allowed. LRs of the petitioner as mentioned in para No.2 of the application are permitted to be impleaded as party to this petition, subject to all just exceptions. Amended memo of parties is taken on record. Registry to tag the same at an appropriate place in the file.

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 charge-sheet dated 03.07.2013 (Annexure P-2), impugned order dated 14.08.2013 (Annexure P-4) and charge-sheet dated 21.03.2014 (Annexure P-7), with a further prayer to direct the respondents to release an amount of Rs. 3,95,533/- alongwith interest @ 18% per annum which has been illegally retained by the respondents.

2. Learned counsel appearing on behalf of the petitioner submitted that the petitioner was working as a Head Clerk in the respondent-Nigam and he retired on 31.07.2012 on attaining the age of superannuation. He submitted that after the retirement of the petitioner, he was served with a charge-sheet under Rule 7 and 8 of the P &T Rules, 1952/Regulations 7 and 8 of the HSEB Regulations, 1990 vide Annexure P-2 dated 03.07.2013. Thereafter, he was served with another charge-sheet vide Annexure P-7 dated 21.03.2014 which was served upon the petitioner after his retirement. He submitted that firstly after the retirement of the petitioner the master and servant relationship ceased to operate and there was no authority with the respondents to have issued a charge-sheet against the petitioner or to have initiated any disciplinary proceeding against the petitioner in absence of any specific provision and secondly, even otherwise also the aforesaid charge-sheets have been issued on the allegations that while the petitioner was in service, he did not attend the Court cases properly which resulted in the Nigam suffering some losses. Learned counsel submitted that the aforesaid charge-sheet (Annexure P-2)

pertains to the cause of action of the year 2006 and so far as the charge-sheet (Annexure P-7) is concerned, it pertains to the cause of action of the year 2009 and the petitioner retired on 31.07.2012 and during his service, neither any show-cause notice was issued to the petitioner nor any charge-sheet was issued nor any enquiry was initiated against the petitioner and after his retirement, the respondent-Nigam has no jurisdiction to issue such charge-sheets. He submitted that had there been any case against the petitioner, the respondents could have proceeded against the petitioner while he was in service but the same could not have been done. He submitted that in this way, the respondents have withheld a total amount of Rs.3,95,533/- from the gratuity and leave encashment of the petitioner pertaining to the aforesaid two charge-sheets wrongfully and a direction may be issued to the respondents to refund the aforesaid amount to the petitioner alongwith interest. He submitted that rather during the pendency of the present petition the petitioner has died and his LRs are already on record. He also referred to a judgment of a Co-ordinate Bench of this Court in ***Ajit Singh versus Uttar Haryana Bijli Vitran Nigam and others, 2012(3) SCT 140***, a Division Bench judgment of this Court in ***Superintendent Engineer, Administration, DHBVNL Versus Karam Singh and another, LPA No.597 of 2011, Decided on 29.03.2021*** and also referred to judgments of 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 Ashok Kumar Dhamija Versus Dakshin Haryana Bijli Vitran Nigam Limited and others, CWP-7949-2005, decided on 21.09.2006.***

3. On the other hand, learned counsel appearing on behalf of the respondent-Nigam submitted that although the aforesaid charge-sheets have been issued after the retirement of the petitioner but since the petitioner had

caused loss to the Nigam, the same was recovered from gratuity and leave encashment of the petitioner in accordance with law.

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

5. It is a case where the petitioner who was working as a Head Clerk has retired on attaining the age of superannuation on 31.07.2012. After the retirement of the petitioner, he has been subjected to two charge-sheets which are Annexure P-2 and P-7. The allegation in the charge-sheet dated 03.07.2013 (Annexure P-2) was that the petitioner while he was in service, he did not properly monitor the Court case pertaining to some suit filed by one Ved Parkash Paliwal and he did not file the written statement despite opportunity being granted by the Civil Court and the defence was struck off and thereafter, the Nigam has suffered a financial loss of Rs. 1,34,425/- for non-filing of written statement and the allegations contained in the second charge-sheet dated 21.03.2014 (Annexure P-7) are that when there was a judgment passed by the Civil Court in the case of Smt. Veena Makkar Versus UHBVN on 06.08.2009 and the appeal was to be filed within the period of limitation but the appeal was filed on 01.06.2011 with a delay of approximately 665 days and consequently due to non-filing of appeal within limited period, the Nigam has suffered a loss of Rs. 3,28,533/-

6. The issue involved in the present case is as to whether after the retirement of the petitioner when the master and servant relationship ceased to exist, there was any authority with the respondent-Nigam to have issued the charge-sheet. It is a settled law that after an employee is retired, then the disciplinary proceedings can only be initiated against a retired employee when there is an express provision of law. The respondent-Nigam undoubtedly did not proceed against the petitioner and even did not issue a show-cause notice to

the petitioner when he was in service, although the aforesaid allegations were pertaining to events which were prior to the retirement of the petitioner but it was only after the retirement of the petitioner that the aforesaid two charge-sheets were issued to the petitioner and thereafter, the aforesaid recovery order has been passed.

7. During the course of arguments, this Court has raised a specific query to the learned counsel for the respondents as to under what provision of law the aforesaid two charge-sheets have been issued to the petitioner to which the learned counsel for the respondents was not able to reply nor was he able to refer to any provision of law in this regard. Rather on the other hand, the learned counsel for the petitioner has relied upon a judgment of a Co-ordinate Bench of this Court in ***Ajit Singh's case (Supra)*** which is the same Nigam as that of the present petition in which it was held that the charge-sheet issued after the retirement was impermissible because there is no provision anywhere under the relevant Rules under which a charge-sheet could have been issued subsequent to retirement of an employee. A Co-ordinate Bench of this Court in ***Ajit Singh's case (Supra)*** held as under:-

> *"3. If the charge-sheet had been established and if there was any charge-sheet which could be said to be lawfully instituted subsequent to the retirement, then it is possible to sustain the defence. The charge-sheets issued on 23.08.2006 and 27.10.2006 had been dropped even before his retirement. The charge-sheet issued in 2009 was per se impermissible, for, there is no provision anywhere under the relevant rules under which a charge-sheet could have been issued subsequent to his retirement. A show cause notice of the year 2007 cannot also be said to cause any impediment for payment of retiral dues, so long as there was no charge-sheet framed subsequent to the show cause notice before his retirement. None of the actions which*

the respondents had against the petitioner really afforded a ground for denying to the petitioner the retiral dues.

4. There have been ample authorities from this Court as well as from the Hon'ble Supreme Court that the retirement dues are no bounty for an employer to give to his employee. On the other hand, it is an earned wage during the service but staggered for disbursal by terms of employment. The employer ought to know that a person that makes way for a whole new crop to come on his superannuation, ought to go with his head held high and not feel burdened to frustration by how the employer treats him. The delay caused to more than two years, in my view, was not justified at all and in terms of the judgments which this Court as well as the Hon'ble Supreme Court have held, the retiral dues which had been paid subsequently in September to November 2009 shall also been mulcted with interest at 18% per annum on the amount ascertained with effect from 2 months from the date of superannuation till date of payment. This ought to sound a ring of caution to the respondents that they treat their employees, who go out of retirement, with respect that they deserve. Any contumacious default or excuses by pendency of charge-sheets which are no longer continued at the time of retirement or which are initiated subsequent to retirement against the rules must be visited with serious consequences for the establishment. I will reject the contention that there was no justification for delayed payment for the retiral dues".

8. A Division Bench of this Court in ***Hans Raj Sharma's case (supra)*** 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".

9. A Division Bench of this Court ***Ashok Kumar Dhamija's case(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 aofrementioned judgment that issuance of charge-sheet for initiation of departmental enquiry is a sine qua non."*

10. In view of the aforesaid facts and circumstances, the present petition is allowed. The charge-sheet dated 03.07.2013 (Annexure P-2), impugned order dated 14.08.2013 (Annexure P-4) and charge-sheet dated 21.03.2014 (Annexure P-7) are hereby set aside. The respondent-Nigam is directed to refund the amount of Rs. 3,95,533/- to the widow of Late inder Singh who is now the LR on record alongwith interest @ 6% per annum (simple) from the date of the retirement of Inder Singh (deceased) plus two months till the date of its disbursement within a period of three months from today. In case the aforesaid amount is not paid to the widow of Late Inder Singh within a period of aforesaid three months, then widow of Late Inder Singh shall be entitled for future interest @ 9% per annum (simple).

(JASGURPREET SINGH PURI)
JUDGE

01.10.2024
rakesh

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