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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CWP-21563-2016
Date of Decision: 02.08.2024

Gulshan Kumar Dhamija
..... Petitioner

Versus

Uttri Haryana Bijli Vitran Nigam Limited and others
..... Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Ms. Sheena Dahiya, Legal Aid Counsel,
for the petitioner.

Mr. S.K. Mahajan, Advocate
for the respondents.

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

1. The present writ petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of *mandamus* directing the respondents to grant interest at the rate of 18% on the delayed payment of retiral benefits like leave encashment, pension, gratuity and commutation of pension etc. from the date of retirement till the date of disbursement.

2. Learned Legal Aid Counsel appearing for the petitioner submitted that it is a case where the petitioner was appointed on the post of Assistant Lineman on 31.01.1973 in the respondent-Nigam and thereafter, he was promoted to the post of Lineman on 11.02.1981 and thereafter, again he was promoted to the post of Assistant Foreman on 18.06.2004 and was further promoted to the post of Foreman. Thereafter, the petitioner retired on

31.03.2007 on attaining the age of superannuation. She further submitted that after the retirement, the respondents illegally withheld all the retiral benefits of the petitioner and did not pay anything to him after his retirement. It was only in the year 2009-2010 after a lapse of 2-3 years that the retiral benefits have been paid. She has referred to the chart which has been so given in Para No.1 of the reply filed by the respondents wherein the dates of the delayed payments have been given. She further submitted that as per the reply which has been filed by the respondents, the reason for the delay was that after the retirement of the petitioner, he was served a charge-sheet dated 15.05.2008 vide Annexure R-2, regarding which, a punishment order dated 19.03.2009 has also been passed vide Annexure R-3, in which, it was ordered that 4% amount be deducted from the pension of the petitioner for a period of one year for the purpose of recovery. She also submitted that the allegations in the charge-sheet were that while the petitioner was in service, a person had suffered accidental injuries and the son of the aforesaid injured person had claimed an amount of Rs.2 lacs as compensation and Rs.62,000/- as expenditure incurred on the treatment and now by way of the aforesaid punishment order, it has been so stated that 4% amount be deducted from the pension of the petitioner. She further submitted that there is nothing on the record to show that the aforesaid amount so claimed have been given by the respondents-Nigam to the injured person or not but the pensionary benefits of the petitioner have been curtailed because of the aforesaid.

3. Learned Legal Aid Counsel further submitted that after the retirement of the petitioner, the employer and employee relationship ceases

to operate and the respondents have not been able to show anything on the record as to how the charge-sheet could have been issued to the petitioner after his retirement. She also submitted that a reference has been made to Rule 2.2 of the Punjab Civil Services Rules in the reply but there is nothing on record to show as to how the aforesaid Punjab Civil Services Rules as applicable to the State of Haryana were also made applicable to the respondents-UHBVNL. She referred to the judgment passed by a Divsion Bench of this Court in ***CWP-7949-2005*** titled as "***Ashok Kumar Dhamija Versus Dakshin Haryana Bijli Vitran Nigam Limited and others***" ***decided on 21.09.2006*** and also the judgment passed by a Co-ordinate Bench of this Court in ***CWP No.12171 of 2010*** titled as "***Ajit Singh Vs. Uttar Haryana Bijli Vitran Nigam Limited***" ***decided on 19.01.2012*** in this regard wherein it was held that the aforesaid Haryana Civil Services Rules were not applicable to the UHBVNL and submitted that therefore, the action of the respondents in delaying the retiral benefits was without the authority of law. She also submitted that after the retirement of the petitioner, no order was passed by the respondents for withholding the gratuity, leave encashment, pension and commutation of pension etc. and in the absence of any order to that effect by exercising any power, retiral benefits could not be withheld. She also submitted that permission may be granted to the petitioner to challenge punishment order by separate proceedings.

4. On the other hand, Mr. S.K. Mahajan, learned counsel for the respondents-UHBVNL, while referring to the reply by the respondents submitted that the reason for delay in disbursal of the retiral benefits was only due to the fact that a charge-sheet was pending against the petitioner in

which ultimately a punishment order has been passed and therefore, it cannot be said that the delay is unjustified delay.

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

6. It is a case where the prayer of the petitioner is only to the extent that the interest be paid to the petitioner on delayed payment of retiral benefits. However, there is no challenge to the punishment order which has been passed against the petitioner regarding which liberty has been sought by learned counsel for the petitioner to challenge the same by separate proceedings. Therefore, dealing with the only prayer which is for grant of interest, it would be necessary to see as to what was the reason for delay. As per the learned counsels for the parties and the reply, a charge-sheet has been issued to the petitioner after his retirement in which a punishment order has also been passed. A perusal of the charge-sheet would also show that the allegations were that one person had suffered accidental injuries at the time when the petitioner was posted there and was in service and the son of the injured person had claimed an amount of Rs.2 lacs as compensation and Rs.62,000/- as expenditure incurred on treatment, but there is nothing on record to show that the aforesaid amount was ever paid to the injured person or not. Even otherwise also assumingly there was any power with the respondents to have withheld the retiral benefits then the same could have been done only to the aforesaid extent of money, but in the present case an amount of Rs.7-8 lacs was withheld after the retirement of the petitioner. A Division Bench of this Court in ***Ashok Kumar Dhamija's case (supra)*** and a Co-ordinate Bench of this Court in ***Ajit Singh's case (supra)*** observed that a charge-sheet cannot be issued to an employee after his retirement under the

UHBVN. The relevant portion of the aforesaid judgment of ***Ashok Kumar Dhamija's case (supra)*** is reproduced as under:-

> *"2. 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, Civil 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."*

7. 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. There is nothing on record to show as to how the Haryana Civil Services Rules were applicable to the respondent-Nigam and therefore, this Court is of the considered view that no such charge-sheet could have been

issued to the petitioner after his retirement. Apart from the above, no order was passed after retirement of the petitioner for withholding or denying the pensionary benefits, in case, the respondents wanted to withhold the benefits, then at least it has to be done by way of application of mind by passing an order but the same has not been done in the present case. It is a settled law that grant of pension and pensionary benefits is not a charity of the State or its instrumentalities but it is a Right which flows from the Statutory Rules and also as a Right of Property under Article 300-A of the Constitution of India.

9. In view of the aforesaid facts and circumstances, the present petition is allowed. The respondents-Nigam are directed to calculate the interest on the delayed payment of pensionary benefits @6% per annum (simple) and pay to the petitioner within a period of 4 months from today.

10. Liberty is granted to the petitioner to seek any other remedy available to him in accordance with law to challenge the punishment order.

02.08.2024 **(JASGURPREET SINGH PURI)**
Bhumika **JUDGE**

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