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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-24956-2015
Date of decision: 19.04.2024

JOHRI RAM

...Petitioner

VERSUS

STATE OF HARYANA AND ORS.

...Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Ms. Anjali, Advocate for
Mr. Devender Arya, Advocate
for the petitioner.

Mr. Kapil Bansal, DAG, Haryana.

Mr. Abhishek Singla, Advocate
for respondents No.2 to 5.

JASGURPREET SINGH PURI, J. (Oral)

1. The present writ petition has been filed under Articles 226/227 of the Constitution of India seeking issuance of a writ in the nature of *certiorari* for quashing impugned order dated 13.03.2005 (Annexure P-1) issued by the respondents after the retirement of the petitioner and also for quashing the impugned order dated 18.03.2005 (Office order No.208) Annexure P-2 and further to issue a writ in the nature of *mandamus* directing the respondents to release the complete amount of gratuity to the petitioner along with interest.

2. The brief facts of the present case are that the petitioner was working as a Lineman in respondent-Dakshin Haryana Bijli Vitran Nigam and retired on 31.01.2005 on attaining the age of superannuation. When the pension

order was made after the retirement of the petitioner, then vide Annexure P-1, it was so reflected in the calculation of the Senior Accounts Officer that an amount of Rs.1,70,466/- is to be recovered from the gratuity of the petitioner and the same in fact has been recovered from the gratuity of the petitioner. The aforesaid amount included two heads as per the reply filed on behalf of respondents No.2 to 5. The first head was due to some alleged show cause notice issued to the petitioner on 08.07.2004 that was few months before his retirement for an amount of Rs. 1,18,389/- on account of shortage/breakage of missing parts of damaged transformers and Annexure R-1 is stated to be a show cause notice, although which is not a part of the present paper-book but during the course of arguments, learned counsel for respondents No.2 to 5 has supplied the copy of the same. The aforesaid show cause notice would show that the XEN/Op. Divn., Mohindergarh had so stated that if the petitioner wishes to consult the record, the same may be seen in the office of the XEN/Op. Divn., Mohindergarh within seven days. However, after the aforesaid show cause notice was issued to the petitioner, no order was passed by any authority nor any charge-sheet was issued nor the competent authority deemed it fit to pass any order for recovery from the petitioner. Thereafter, the petitioner retired on 31.01.2005. After the retirement of the petitioner, there was another charge-sheet issued to the petitioner dated 18.03.2005, which constituted another head for which ultimately an amount of Rs.33,124/- was recovered from the gratuity of the petitioner. The reason for the aforesaid charge-sheet was that in the year 1997, one accident had taken place due to the negligence of the petitioner, in which one Omkar Singh had died, for which an FIR was registered against the petitioner and now after his retirement, charge-sheet was issued to him but in

that FIR, the petitioner has already been acquitted. So far as the aforesaid amount of Rs.33,124/-, which was to be recovered from the gratuity of the petitioner after the retirement is concerned, the same has also been recovered from the gratuity of the petitioner and in this way, the total amount recovered was stated to be Rs.1,70,466/-. However, in the reply which has been filed on behalf of respondents No.2 to 5, it has been so stated that in the year 2009, some of the amount has been written off by the respondents to the extent of Rs.47,954/- and the same has been paid back to the petitioner and now the balance amount recovered was stated to be Rs.1,22,512/-. The prayer in the present writ petition is for refund for the aforesaid amount, which has been recovered from the gratuity of the petitioner.

3. Learned counsel appearing on behalf of the petitioner submitted that the entire action of the respondent-Nigam was without the authority of law. She submitted that so far as the recovery of Rs.33,124/- in pursuance of the charge-sheet dated 18.03.2005 is concerned, the same is on the face of it without the authority of law because after the retirement, no such charge-sheet could have been issued and especially for an event which took place in the year 1997, which was much more than 4 years old and even otherwise also, the petitioner was acquitted in the aforesaid FIR.

4. At this stage, learned counsel for respondents No.2 to 5 submitted that so far as the recovery of the recovery of aforesaid amount of Rs.33,124/- in pursuance of the aforesaid charge-sheet issued after the retirement of the petitioner is concerned, the same could not have been issued and therefore, the same will be refunded to the petitioner. So far as the second head, i.e. in pursuance of show cause notice issued to the petitioner dated 08.07.2004 is

concerned, the same was although issued to the petitioner prior to his retirement but the aforesaid amount i.e. Rs.1,22,512/- has been recovered from the gratuity of the petitioner.

5. Learned counsel for respondents No.2 to 5 submitted that since the loss was caused to the respondent-Nigam because of shortage/breakage of missing parts of damaged transformers, it was within the rights of the respondent-Nigam to have recovered the aforesaid amount from the petitioner in accordance with the instructions. He further submitted that there is a delay in the filing of the present writ petition and therefore, the present writ petition is liable to be dismissed on the ground of delay and laches.

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

7. So far as the amount of Rs.33,124/- pertaining to the charge-sheet issued to the petitioner on 18.03.2005 i.e. after his retirement is concerned, learned counsel for respondents No.2 to 5 submitted that the same could not have been recovered from the petitioner because the charge-sheet was issued after the retirement of an incident pertaining to the year 1997 and therefore, no such adjudication is required under this head because the respondent-Nigam will certainly be bound to refund the aforesaid amount to the petitioner along with interest.

8. So far as the second head pertaining to recovery of an amount of Rs.1,22,512/- is concerned, the same was on the allegations that there had been shortage/breakage of missing parts of damaged transformers while the petitioner was in service is concerned, show cause notice was issued to the petitioner vide Annexure R-1, although not attached with the present writ petition but shown to this Court at the time of arguments would show that seven

days time was given to the petitioner. However, there is nothing on the record to show that thereafter, any such order has been passed by any competent authority to recover the same while the petitioner was in service. Thereafter, the petitioner retired from service on 31.01.2005 and thereafter, the master and servant relationship ceased to operate. However, recovery was sought to be effected vide Annexure P-1, which is a letter of the Senior Accounts Officer from the gratuity of the petitioner. Neither any charge-sheet nor any order has been passed prior to the retirement of the petitioner. There is no order shown to this Court to show that any competent authority of the petitioner has applied its mind by passing any specific order for making recovery from the gratuity of the petitioner. It appears to have been left open to the Accounts Department to recover the same, which cannot be done in the absence of any order passed by the competent authority.

9. Even otherwise also, the law in this regard is well settled. 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** dealt with the similar issue, wherein a show cause notice was issued to the petitioner of that case prior to his retirement, but no order was passed and no disciplinary proceedings were initiated against him while he was in service. In that case as well, no final decision on the show cause notice was made. It was held that after the retirement, no such recovery could have been made. In the present case as well, there is no order of any competent authority to show that any order has been passed for the recovery of the aforesaid amount especially when the petitioner has already retired. Thereafter, in **Ram Narain Dua versus Dakshin Haryana Bijli Vitran Nigam Limited and others, CWP-8095-2005, decided on**

21.09.2006 also a similar issue arose before a Division Bench of this Court in which it was held that initiation of charge-sheet for initiation of departmental enquiry is a *sine qua non* and in that case, although no show cause notice was issued to the petitioner of that case prior to his retirement but it was held that in view of the aforesaid judgment in **Hans Raj Sharma's case (supra)**, no such recovery could have been made from the gratuity of the petitioner of that case. In another judgment passed by a Division Bench of this Court in **Ashok Kumar Dhamija Versus Dakshin Haryana Bijli Vitran Nigam Limited and others, CWP-7949-2005, decided on 21.09.2006**, similar order was passed relying upon the aforesaid judgments. Similarly, number of other petitions have been decided by this Court pertaining to the same Organization i.e. Dakshin Haryana Bijli Vitran Nigam Limited, which is Organization in the present case as well.

10. A perusal of the reply filed by XEN/OP Divison, DHBVN, Mohindergarh on behalf of respondents No.2 to 5 would show that in so many words, preliminary objection has been taken that the present writ petition has been filed with a delay and it cannot be said that a citizen has a right to approach the Court as and when he chooses. However, on the other hand, a deduction has been made from the gratuity of the petitioner, which is a part of the pension and which is Right to Property under Article 300-A of the Constitution of India. Way back in the year 1971, a Constitutional Bench judgment of Hon'ble Supreme Court in **Deokinandan Prasad versus State of Bihar, 1971(2) SCC 330** observed that pension and pensionary benefits are not the bounty of the State. It is a duty of the State or its instrumentality to pay the due pension and pensionary benefits well in time.

11. Thereafter, Hon'ble Supreme Court in another authoritative judgment passed in *State of Jharkhand and others versus 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 to an employee.

12. The Hon'ble Supreme Court in *Tukaram Kana Joshi and others through Power of Attorney Holder versus M.I.D.C. and others*", 2013(1) SCC 353, observed that Right to Property is now considered to be not only a Constitutional or a Statutory Right, but also a Human Right.

13. This Court is of the considered view that taking such an objection that the petitioner did not have a right to approach the Court as and when he chooses is not sustainable and could not have been even taken by the respondent-Nigam in view of the fact that rather it was incumbent upon the respondent-Nigam and a duty was cast upon them being obligatory in nature to have known the law of the land and to have given the benefits to the petitioner in accordance with law. It is not a case that a fresh proposition of law has arisen for the first time in the present case. There are number of judgments for the last more than 10 years where the relief has been granted to similarly situated persons and it was a duty of the XEN/OP Divison, DHBVN, Mohindergarh, who has filed the reply on behalf of the respondent-Nigam in the present case to have known the law of the land and especially the law regulating the respondent-Nigam. It appears that the petitioner has been compelled to file the present writ petition after waiting for a long time. Not only this, it is a case where the amount has been deducted from the gratuity of the petitioner and

without passing of any order by any competent authority, which is totally without the authority of law and the action is without jurisdiction.

14. In view of the above, the present writ petition is allowed. The respondent-Nigam is directed to refund the entire amount, which has been deducted from the gratuity of the petitioner, along with interest @ 6% per annum (simple), from the date of retirement of the petitioner till the time it is refunded to the petitioner, within a period of three months from today. In case the aforesaid amount is not refunded to the petitioner within a period of aforesaid three months, then the petitioner shall be entitled for future rate of interest @ 9% per annum.

15. Considering the aforesaid objection raised by the XEN/OP Divison, DHBVN, Mohindergarh without knowing the law of the land and the law applicable to the respondent-Nigam, this Court deems it fit and proper to impose exemplary costs on the respondent-Nigam. The costs are assessed as Rs.20,000/-, which shall be paid to the petitioner by the respondent-Nigam at the first instance, within a period of three months from today. Thereafter, the respondent-Nigam shall recover the aforesaid amount from the XEN/OP Divison, DHBVN, Mohindergarh, who has filed the reply on behalf of respondents No.2 to 5 in the present case.

19.04.2024
Chetan Thakur

(JASGURPREET SINGH PURI)
JUDGE

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