IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CWP-27734-2018 (O&M)
Date of Decision:31.01.2024

Bimla

......Petitioner

versus

Dakshin Haryana Bijli Vitran Nigam Limited and others

......Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Sandeep Singal, Advocate for the petitioner.

Mr. Gagandeep Singh, Advocate for
Mr. C.S. Bakshi, Advocate for respondents.

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JASGURPREET SINGH PURI J.(Oral)

The present 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 the No Dues Certificate (NDC) dated 17.10.2013 (Annexure P-2) and the subsequent reply to legal notice dated 04.08.2018 (Annexure P-5) whereby the respondents have made a recovery of Rs.3,59,674/- from the gratuity amount of the husband of the petitioner.

2. The brief factual matrix of the present case is that the husband of the petitioner was working with the respondent-Nigam as Assistant Foreman and he retired on 30.11.2013 on attaining the age of superannuation. Thereafter the husband of the petitioner died on 07.04.2015. The petitioner is the widow of the aforesaid Assistant Foreman namely late Sh.Om Parkash. After the retirement of the husband of the petitioner although 100% provisional pension was sanctioned but an amount of Rs.4,35,868/- was shown to be outstanding against the husband of the petitioner on account of some audit objections at the time when he was in service and the aforesaid amount was withheld from the total

amount of gratuity. Thereafter, an amount of Rs.73,142/- was waived off and paid back to the petitioner in the year 2018. In this way a total amount of Rs.3,59,674/- has been withheld from the gratuity amount of the husband of the petitioner which is a subject matter of the present petition.

3. Learned counsel for the petitioner submitted that the aforesaid amount which has been withheld from the gratuity of the petitioner was without the authority of law and without any basis. He further submitted that at the time when the husband of the petitioner was in service and was working as Assistant Foreman then he was not the authority to have custody of any material because the Assistant Engineer of the department was incharge of the same. He further submitted that even otherwise also as per the affidavit filed by the Executive Engineer, OP. Division, DHBVN, Charkhi Dadri, it has been specifically stated that the aforesaid amount was pertaining to an amount regarding which the audit had raised the objections starting from the year 2008 till the year 2012 but on the basis of the aforesaid paras in the audit objections neither any notice was issued to the husband of the petitioner nor any charge-sheet was issued nor any kind of disciplinary proceedings were initiated against the husband of the petitioner and husband of the petitioner honourably retired on 30.11.2013. He further submitted that in the aforesaid affidavit it has also been stated that some memos were issued to the husband of the petitioner and first memo was issued on 12-11-2013 which was few days before the retirement of the husband of the petitioner and the remaining memos were issued after the retirement of the husband of the petitioner and therefore has no significance in the eyes of law. He further submitted that even otherwise also there was no ascertainment of any amount which was to be recovered by any competent authority by passing any appropriate order in this regard and in the absence of ascertainment of any amount, no amount could have been recovered from the gratuity of the husband

of the petitioner after his retirement without adopting any procedure prescribed under the law and therefore the petitioner being widow has suffered a financial loss because of the arbitrary action on the part of the respondents-Nigam and therefore was entitled for the aforesaid deducted amount of Rs.3,59,674/- alongwith interest.

4. On the other hand Mr. Gagandeep Singh, Advocate appearing for Mr. C.S.Bakshi, Advocate for the petitioner has submitted while referring to the reply as well as the additional affidavit filed by respondents-Nigam that at the time when the husband of the petitioner was in service there were some items which were either not returned by him or they were damaged regarding which specific objections were taken by the audit and thereafter it was lawful for the respondents-Nigam to have recovered the aforesaid amount from the pensionary benefits of the husband of the petitioner and therefore it cannot be said that the action of the respondents-Nigam was an arbitrary action. He also submitted while referring to the affidavit filed by the respondents-Nigam that it is not a case that no opportunity of hearing was given to the husband of the petitioner which is evident from the affidavit that various memos were issued/sent to him explaining for the recovery of the aforesaid amount and therefore the action of the Nigam was justifiable under the law.

5. I have heard learned counsel for the parties.

6. The issue involved in the present case is that as to whether the respondents-Nigam was within its rights to have recovered an amount of Rs.3,59,674/- from the gratuity of the husband of the petitioner after his retirement or not? The reason given by the respondents-Nigam in the reply and in the affidavit is that when the husband of the petitioner was in service then various objections were raised by the audit department and those were calculated to have come to Rs.4,35,868/- which was against some items which were not

returned by him or were damaged. However, a perusal of the affidavit of Executive Engineer,OP. Division, DHBVN, Charkhi Dadri, which has been filed in pursuance of the orders passed this Court, makes it very clear that the amount which is so sought to be recovered from the gratuity of the husband of the petitioner was pertaining to some objections in some paras of audit reports which started from the year 2008 till 2012. The aforesaid objections period etc. were in the tabulated form which has been so depicted in the affidavit filed by the Deputy Engineer is reproduced as under:-

Sr. No.	*IR No.*	*Period of Audit*	*Para No.*	*Name of Office*	*Amount*	*Recovery on A/C of*
1	*2210*	*04/08 to 03/09*	*5*	*DGM OP Division Rewari*	*2992*	*Missing parts and damage T/F of Oil*
2	*2210*	*04/08 to 03/09*	*9*	*-do-*	*177940*	*Retrieved Material not return to store*
3	*2345*	*04/10 to 03/11*	*19*	*DGM OP Division Charkhi Dadri*	*33364*	*Missing parts and damage T/F of Oil*
4	*2385*	*04/11 to 03/12*	*24*	*DGM OP Division Charkhi Dadri*	*123737*	*Missing parts and damage T/F of Oil*

7. A perusal of the aforesaid would show that the amount on the basis of which some gratuity was deducted from the husband of the petitioner pertains to some audit paras of the years 2008-09, 2010-11, 2011-12, which was during the service of the husband of the petitioner as he retired on 30.11.2013. However, no notice or any charge-sheet or any kind of disciplinary proceedings etc.were issued against the husband of the petitioner when he was in service or till the time he died. Not only this there is no order on the record to show as to how the aforesaid amount was ascertained by any competent authority or any order has

been passed. The mere fact that the audit has raised some objections would not per se mean that the same is automatically recoverable because the objections are meant only for the purpose of apprising the competent authority that regarding these objections further action may be undertaken but even as per learned counsel for the parties on the basis of the aforesaid objections, no action was taken against the petitioner at all. However, in the affidavit which has been so filed now by the Executive Engineer, it has been so stated that some memos were sent to the petitioner and the same are reproduced as under:

i. Memo No.1139 dated 12.11.2013;

ii. Memo No.2773 dated 12.03.2014;

iii. Memo No.5568 dated 23.05.2014

iv. Memo No.8785 dated 12.09.2014;

v. Memo No.10675 dated 22.10.2014

8. A perusal of the aforesaid would show that even the first memo appears to have been sent on 12.11.2013 i.e.only a few days before the retirement of the petitioner and remaining were sent after the retirement of the husband of the petitioner and therefore the aforesaid memos appear to be an eye wash and do not have any significance so far as the rights of the petitioner and her husband were concerned. Even otherwise also mere sending of the memos in the nature of any notice etc. again would not create any right in the respondents-Nigam to recover an amount from the gratuity unless a specific order is passed in this regard by following adequate procedure prescribed under the law either by way of a punishment or otherwise. The respondents have not even ascertained the amount by following any procedure at all.

9. Unfortunately the husband of the petitioner died in the year 2015 and now the widow is being deprived of part of the total gratuity because of the aforesaid reason, which is not justifiable under the law.

10. In view of the aforesaid facts and circumstances, the present petition is hereby allowed. The respondents-nigam are directed to pay the remaining amount of gratuity to the petitioner which was to be paid to the husband of the petitioner forthwith alongwith the interest @ 6% per annum. Since with-holding the gratuity amount was without the authority of law, the aforesaid amount shall be paid forthwith and before three months from today. In case the aforesaid amount is not paid within the aforesaid period to the petitioner, then the petitioner shall be entitled for the future rate of interest @ 9% per annum.

(JASGURPREET SINGH PURI)
JUDGE

31.01.2024
shweta

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