

216
IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-4689-2017(O&M)
Date of decision: 10.04.2024

Suraj Bhan

...Petitioners

VERSUS

Uttar Haryana Bijli Vitran Nigam Limited and others

...Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr.Shivam Malik, Advocate for
Ms. Santosh Malik, Advocate, for the petitioner.

Ms. Geeta Rani, Advocate, for the respondents.

JASGURPREET SINGH PURI, J. (Oral)

1. The present writ 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 action of the respondents by which the gratuity of the petitioner to the tune of Rs. 87,405/- has been withheld without passing any order to this effect and the amount of gratuity to the tune of Rs. 4,56,560/-, the arrears of pension to the tune of Rs. 3,86,400/- and the amount of commutation of pension to the tune of Rs. 3,86,041/- has been released on 12.10.2015 i.e. after a delay of more than 21 months without any interest on the delayed payments with a further prayer to direct the respondents to release the withheld amount of gratuity to the tune of Rs. 4,56,560/- alongwith interest @ 18% per annum.

2. Learned counsel appearing on behalf of the petitioner submitted that there are two fold grievances in the present case. Firstly, the retiral benefits were paid to the petitioner in the year 2015, whereas the petitioner retired on 31.12.2013 as Assistant Foreman. He submitted that there is no justification for the delayed payments of the retiral benefits. Secondly, the respondent-Nigam has deducted an amount of Rs. 87,405/- from the gratuity of the petitioner on the ground that before his retirement a charge-sheet was issued to him and after his retirement an order of punishment has been passed which has been annexed as Annexure R-1 with the reply dated 12.06.2014. He submitted that the aforesaid order has been passed by which it has been directed that an amount equivalent to one annual increment be recovered from the pensionary benefits of the petitioner. He submitted that the aforesaid order which is in the nature of an order of punishment on the basis of the charge-sheet issued to the petitioner prior to his retirement but the aforesaid order has been passed after his retirement without the authority of law. He submitted that although there is no specific challenge to the aforesaid order because the aforesaid order was not available with the petitioner but his prayer challenging the same may be considered under para No.16 (v) of the petition since the aforesaid order was not available with the petitioner. He submitted that the aforesaid order is without the authority of law in view of the fact that after the retirement of the petitioner the master and servant relationship ceased to exist. He submitted that no such order of punishment could have been passed against the petitioner unless it is so permitted under any law or any Statutory Rules etc. He submitted that Haryana State Electricity Board (HSEB) Employees (Punishment & Appeal) Regulations, 1990 are applicable to the petitioner since the charge-

sheet was issued to the petitioner under Rules 7 & 8 of the aforesaid Rules but there is no such provision under the aforesaid Rules to have proceeded with the charge-sheet after the retirement. He submitted that at the time when the punishment order was passed in the year 2014, there had been no adoption of the Punjab Civil Services Rules, by the respondent-Nigam and therefore, there was no question of applicability of Rule 2.2(b) of the Punjab Civil Services Rules. He submitted that Rule 2.2(b) of the Punjab Civil Services Rules as applicable to the State of Haryana can also apply to an instrumentality of the State only if the same are adopted but they were never adopted at the time when the order of punishment (Annexure R-1) was passed in year 2014 and therefore, such an order of punishment was without the authority of law since no power was vested with the respondent-Nigam to have passed such an order after the retirement of the petitioner. He submitted that so far as the delay in retiral benefits of the petitioner is concerned, the stand of the respondent-Nigam as per Annexure R-2 was that the petitioner did not provide some record which was in his possession before the retirement. He submitted that the stand taken by the respondent-Nigam was totally vague and no such letter could have even been issued and even the letter (Annexure R-2) issued was without the authority of law since this was issued on 03.09.2014 and the petitioner was not an employee of the respondent-Nigam and the master servant relationship did not exist at all and in this way, there is no justification at all to have withheld the retiral benefits of the petitioner for a period of two years.

3. On the other hand, learned counsel appearing on behalf of the respondent-Nigam submitted that the aforesaid order of punishment (Annexure R-1) has been passed in view of the provisions of Rule 2.2 (b) of the Punjab

Civil Services Rules as applicable to the State of Haryana and therefore, the respondent-Nigam could have continued the proceedings in the charge-sheet even after the retirement. With respect to delay in the retiral benefits, she submitted while referring to the reply filed by the respondent-Nigam that the petitioner did not submit the relevant record which was in his possession prior to his retirement and that was the reason as to why there had been a delay.

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

5. So far as the first grievance of the petitioner with regard to passing of the order of punishment (Annexure R-1) is concerned, the petitioner retired on 31.12.2013 as Assistant Foreman and prior to his retirement, one charge-sheet was issued against him but no final order was passed in this regard prior to his retirement. After his retirement, the order of punishment (Annexure R-1) has been passed whereby it has been directed that amount equivalent to one annual increment be recovered from the pensionary benefits of the petitioner. Learned counsel for the respondent-Nigam has stated that even after the retirement such an action could have been taken because of the applicability of Rule 2.2 of the Punjab Civil Services Rules as applicable to the State of Haryana. However, the stand of the learned counsel for the petitioner is that the aforesaid Rules were not applicable to the respondent-Nigam because they were never adopted by the respondent-Nigam at the time when the aforesaid order of punishment (Annexure R-1) was passed in the year 2014. The law in this regard is no longer *res integra*. A Co-ordinate Bench of this Court in ***Ajit Singh Vs. Uttar Haryana Bijli Vitran Nigam Limited, CWP No.12171 of 2010, decided on 19.01.2012*** 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 be 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”.

6. A Division Bench of this Court in ***Hans Raj Sharma Versus Uttar Haryana Bijli Vitran Nigam Limited, CWP-151-2004, decided on 29.07.2004***

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”.

7. A Division Bench of this Court ***Ashok Kumar Dhamija Versus Dakshin Haryana Bijli Vitran Nigam Limited and others, CWP-7949-2005, decided on 21.09.2006*** 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.”

8. There is nothing on record to show that in the year 2014 when the aforesaid order of punishment (Annexure R-1) was passed, the respondent-Nigam had adopted the provisions of the Punjab Civil Services, Rules as applicable to the State of Haryana since the respondent-Nigam is an instrumentality of the State and for the purpose of making applicability of the Rules, it has to be adopted. Rather, on the other hand, it has been specifically

observed by a Division Bench of this Court in *Kirat Gopal Versus Haryana Vidyut Parsaran Nigam Ltd. and others, CWP No.13039-1999, decided on 29.03.2000* that the aforesaid Rules were not adopted by the respondent-Nigam. Apart from the above, there is nothing in the Rules of 1990 to show that even after the retirement of an employee, an order of punishment can be passed in continuation of the charge-sheet issued to him prior to his retirement. Therefore, this Court is of the view that such an order (Annexure R-1) was without the authority of law and against the Rules of 1990. Therefore, no such order of recovery of any amount equivalent to one annual increment could have been recovered from the pensionary benefits of the petitioner.

9. So far as the second grievance of the petitioner with regard to delayed payment is concerned, the petitioner retired on 31.12.2013 and he has been paid retiral benefits after a period of two years. The only reason given by the learned counsel for the respondent-Nigam was because the petitioner did not hand over some official record or material while he was in service and after his retirement, he was responsible for the same and therefore, the delay has been caused in the disbursement of the retiral benefits. This Court is of the view that such kind of stand taken by the respondent-Nigam is not sustainable since the petitioner already stood retired on 31.12.2013 and thereafter, the master servant relationship ceased to exist. Such kind of letter (Annexure R-2) was also without the authority of law. There was no valid justification for delaying the retiral benefits to the petitioner. Therefore, in view of Full Bench judgment of this Court in *A.S. Randhawa Versus State of Punjab and others, 1997(3) SCT 468*, the petitioner is also entitled for interest on the delayed payments @ 6% per annum (simple).

10. In view of the aforesaid facts and circumstances, the present petition is allowed. The order dated 12.06.2014 (Annexure R-1) is set aside. The respondents are directed to pay the amount which has been withheld from the gratuity of the petitioner within a period of three months from today alongwith interest @ 6% per annum (simple). The interest on the retiral benefits as aforesaid shall also be paid within a period of three months from today alongwith interest @ 6% per annum (simple). In case the aforesaid amount is not paid within a period of three months from today, then the petitioner shall be entitled for a future rate of @ 9% per annum (simple).

11. Since the retiral benefits of the petitioner were delayed for no justifiable reason and order of punishment (Annexure R-1) was passed without the authority of law which affected the Constitutional Rights of the petitioner under Article 300A of the Constitution of India, the petitioner is also entitled for costs which are assessed as Rs. 10,000/-. The aforesaid costs shall also be paid to the petitioner within a period of three months from today.

(JASGURPREET SINGH PURI)
JUDGE

10.04.2024
rakesh

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