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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-20917-2022
Date of decision: 01.03.2024

AJAY KUMAR

...Petitioner

VERSUS

UTTAR HARYANA BIJLI VITRAN NIGAM LTD AND ORS.

...Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Gaurav Khera, Advocate for the petitioner.

Mr. Anil Chawla, Advocate for the respondents.

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 suitable writ, order or direction especially in the nature of *mandamus* directing the respondents to refund approximately an amount of Rs.1,50,000/- to the petitioner, which was deducted from his salary without issuing him any show cause notice.
2. The brief facts of the present case are that the petitioner was appointed as ALM by the respondent-Nigam on 30.10.2012 and thereafter, the respondent-Nigam promoted him as Lineman vide office order No.195 dated 19.05.2015 on the basis of District wise merit list. However, after a period of five years, the respondent-Nigam found that the petitioner was wrongly promoted because at that point, he was not in the merit list and therefore, issued him a notice as to why he should not be reverted. The show cause notice was

issued to the petitioner dated 16.01.2020 and on 29.01.2020, the petitioner vide Annexure R-1 was reverted back to the post of ALM. However, for the aforesaid period of five years, the petitioner kept on working on the post of Lineman. The grievance of the petitioner is that now after reverting him to the post of ALM, the respondent-Nigam has recovered the difference of salary of the post of ALM and that of Lineman by way of installments of Rs.10,000/- per month and entire amount of approximately Rs.1,50,000/- has been recovered from him.

3. Learned counsel for the petitioner submitted that it is a case where the petitioner was promoted as Lineman by the respondents themselves and not as a result of any fraud or misrepresentation on the part of the petitioner or any insistence made by the petitioner and after he was promoted, he discharged his duties on the post of Lineman for a period of five years and thereafter, he was issued a show cause notice as to why he should not be reverted, although that notice was not received by him. He further submitted that be that as it may, as a matter of fact the petitioner stood reverted to the post of ALM on 29.01.2020. He also submitted that in the present petition, the petitioner has not challenged the order of his reversion but the challenge laid in the present petition is only to the extent that once he was promoted by the respondents themselves to the post of Lineman and he discharged the duties of Lineman and thereafter he was reverted, then the period for which he worked as Lineman, no recovery could have been effected from the petitioner because he discharged his duties on the post of Lineman. He further submitted that even before effecting the recovery from the petitioner, no notice was issued to him and it was violative of the principles of natural justice.

4. On the other hand, learned counsel for the respondents submitted that as per the written statement filed by the respondents before the petitioner was reverted, a show cause notice was issued to him and once he was not entitled for being promoted to the post of Lineman, the salary which was paid to the petitioner on the post of Lineman was not due to him and it was not justified and therefore, recovery has been effected from the petitioner. He further submitted that after the entire amount was recovered from the petitioner till October, 2021, the present writ petition has been filed after a period of about one year.

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

6. The short controversy involved in the present case is that the petitioner, who was working as ALM was directed to be promoted to the post of Lineman by the respondents themselves in the year 2015. Thereafter, the petitioner discharged his duties and admittedly worked on the post of Lineman for a period of five years and he was thereafter, reverted to the post of ALM on 29.01.2020. The petitioner worked on the post of Lineman for five years. It is not the case of the respondent-Nigam that the promotion was a result of any fraud or any misrepresentation on the part of the petitioner and nothing has come up in the written statement to suggest anything with regard to the same. In other words, the petitioner was promoted by the respondents to the post of Lineman on their own and he remained on the said post and discharged his duties as Lineman for five years. Thereafter, after issuance of show cause notice to the petitioner for reversion, he was reverted. The petitioner has not challenged his reversion order in the present writ petition but the challenge is only to the fact that once he has been promoted by the respondents themselves

to the post of Lineman and he worked on that post, then if at all there was some mistake of promotion and he has been reverted, then now the difference of salary of the post of ALM and that of Lineman could not have been recovered from the petitioner because he has worked on that post. The argument which has been raised by the learned counsel for the respondents in this regard was that since the promotion of the petitioner was not justified because he was promoted against the merit, then recovery could be effected, is absolutely unsustainable and unfounded. Once the petitioner has worked on a particular post and without his own fault and on the orders passed by the respondent-Nigam, then such kind of plea is totally unsustainable. The other argument which has been raised by the learned counsel for the respondents was that there is a delay of about one year in filing of the present writ petition because recovery was effected from the petitioner till October, 2021 and the present petition has been filed in the year 2022. Again such kind of argument raised by learned counsel for the respondents is totally a frivolous argument. Delay of one year in challenging the action of the respondent-Nigam for illegally recovering the amount from the petitioner, which was part of his salary cannot be termed to be a delay and is not hit by *doctrine of laches*. Even otherwise also, respondent-Nigam is an instrumentality of the State and cannot be permitted to raise such kind of frivolous pleas of delay of one year in filing of the present writ petition with regard to the dispute of salary.

7. Over and above all, there is nothing on the record to suggest that before effecting any recovery any notice was issued to the petitioner and therefore, it is a clear cut violation of the principle of *audi alteram partem*.

8. Consequently, the present writ petition is allowed. The respondents is directed to refund the recovered amount to the petitioner, within a period of three months from today, along with interest @ 6% per annum. 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 a future rate of interest @ 9% per annum.

9. Considering the aforesaid facts and circumstances of the present case, this Court deems it to be a fit case to award costs to the petitioner. Costs are assessed as Rs.25,000/-, which shall be paid by the respondents to the petitioner, within a period of aforesaid three months.

01.03.2024
Chetan Thakur

(JASGURPREET SINGH PURI)
JUDGE

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