IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CWP-21525-2020 (O&M)
Date of Decision:13.02.2024

Som Nath

......Petitioner

versus

Uttar Haryana Bijli Vitran Nigam Limited and others

......Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Virender Kumar, Advocate for the petitioner.

Mr. Sunil Kumar Dhanda, Advocate for respondents.

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JASGURPREET SINGH PURI J.(Oral)

1. 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 impugned order dated 05.10.2018 (Annexure P-14) passed by respondent No.2 vide which payment of gratuity of the petitioner has been withheld.

2. Learned counsel for the petitioner submitted that the petitioner was working as Assistant Foreman in the office of respondent-Nigam and during the service an FIR bearing No.16 dated 27.11.2013 was registered against the petitioner under Sections 7 and 13 of Prevention of Corruption Act, 1988 (hereinafter to be referred to as “Act”). The petitioner faced the trial and thereafter he was acquitted by the Learned trial Court vide order dated 31.01.2015. However, after the lodging of the FIR the petitioner was suspended for certain period of time and thereafter an order dated 22.04.2018 (Annexure P-12) was passed for treating the period of suspension to be the

period of *"leave of kind due"*. He submitted that the aforesaid order was challenged by the petitioner in a separate writ petition bearing No.CWP-23713-2018 which was decided by a Coordinate Bench of this Court on 07.08.2023 and the same has been allowed. He further submitted that after lodging of the FIR, the petitioner retired on 31.10.2017 and after his retirement, his gratuity was with-held. He further submitted that in the reply that has been filed by respondent-Nigam in which it has been so stated that an amount of Rs.4,35,371/- has been deducted from the total amount of leave encashment and gratuity of the petitioner on account of some objections of the audit pertaining to damage of transformer. He further submitted that there is no detail as to how the aforesaid amount was ascertained and by what order or authority, any kind of liability was fixed upon the petitioner by issuance of any chargesheet or any proceedings against him. He further submitted that with regard to the aforesaid allegations of damage transformer etc., the petitioner was never issued any kind of notice nor any disciplinary proceedings were conducted against him. There is no order of any competent authority to show as how the aforesaid amount was due against the petitioner and merely by stating that such an amount was outstanding against the petitioner would not mean that the aforesaid amount of Rs.4,35,371/- could have been deducted from the gratuity and leave encashment of the petitioner. He further submitted that appropriate directions may be issued to the respondent-Nigam for the release of the same.

3. On the other hand, learned counsel appearing on behalf of respondent-Nigam submitted that at the time when the petitioner was in service due to leakage of oil from the transformer and regarding which the audit had raised an objection and because of that the aforesaid amount which was

outstanding against the petitioner, the same was deducted.

4. I have heard learned counsel for the parties.

5. It is a case where the petitioner stood retired on 31.10.2017. The para No. 4 of the reply filed by the respondent-Nigam is reproduced as under:-

> "*That, it is submitted that the respondent has paid the arrear of leave encashment and gratuity to the petitioner vide PPO NO.13433 dated 04.11.2019 and GPO No.14532 dated 04.11.2019 and CPO NO.11670 dated 04.11.2019. However, it is pertinent to mention here that an amount of Rs.4,35,371/- has been deducted from the total amount of leave encashment and gratuity of the petitioner on account of (Rs.87,091/- as outstanding NDC of XEN 'OP' Division Shahbad, Rs.2,84,863/- as damage transformer, Panchkula, Rs.63,417/- as revenue audit para). A copy of order attached herewith as Annexure R-1.*"

6. A bare perusal of the aforesaid would show that the only reason for deducting the amount of Rs.4,35,371/-from the petitioner was that there was some outstanding amount pertaining to damaged transformer and as per learned counsel for the petitioner, the same was because of some oil leakage from the transformer at the time when the petitioner was in service.

7. During the course of arguments, this Court has raised a specific query to learned counsel for the respondent-Nigam, as to whether with regard to aforesaid deduction of the outstanding amount, any kind of enquiry or notice or any disciplinary proceedings were conducted against the petitioner or whether any kind of order was passed for ascertaining the aforesaid amount by

any competent authority or not to which he stated that no such order has been passed nor it has been placed on record.

8. Another query raised by this Court was as to whether any competent authority passed any order for withholding or for deducting the aforesaid amount from the gratuity and leave encashment of the petitioner to which he also stated that there is no order on record in this regard.

9. It is a settled law that right to pension and pensionary benefits is a right to property under Article 300-A of the Constitution of India and no person can be deprived of the right to property except by the procedure established by law. However, in the present case there is nothing on record to show that how the liability of the petitioner has been fastened. The mere fact that the audit has raised objection but it did not result in any kind of order for ascertaining the liability of the petitioner, the same could not have been deducted from the gratuity of the petitioner.

10. In view of the aforesaid facts and circumstances that, the present petition is allowed. The respondent-Nigam is directed to release the deducted amount of Rs.4,35,371/- to the petitioner within a period of of three months from today alongwith interest @ 6% per annum. In case the aforesaid amount is not paid to the petitioner within the stipulated time, the petitioner shall be entitled for further rate of interest @ 9 per cent per annum.

(JASGURPREET SINGH PURI)
JUDGE

13.02.2024
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No