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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP-6941-2018 (O&M)
Date of Decision: 09.07.2024

Inder Singh

..... Petitioner

Versus

State of Haryana and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Narinder Singh Behgal, Advocate,
for the petitioner.

Mr. Gaurav Jindal, Addl. AG, Haryana.

Mr. S.K. Mahajan, Advocate,
for respondents-UHBVNL.

JASGURPREET SINGH PURI, J. (ORAL)

1. The present writ petition has been filed under Article 226 of the Constitution of India for issuance of a writ in the nature of *certiorari* for quashing the impugned orders dated 16.09.2015 (Annexure P-1) and 30.05.2016 (Annexure P-2) vide which the recovery of amount of Rs.12,634/- and Rs.1,20,305/- were ordered to be recovered from the petitioner on account of damage transformer oil and missing parts without issuing any charge-sheet and without providing any opportunity of hearing to him further for issuance of a writ in the nature of *mandamus* directing the respondents to release the illegal recovery of amount of Rs.12,634/- and Rs.1,20,305/- on account of shortage of oil and missing part of damaged transformer and also

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direct them to release the amount of Rs.44,000/- which has been deducted from the pensionary benefits of the petitioner on account of stoppage of two increments vide office order No.996/EPF-10240 dated 13.07.2016 (Annexure P-6) in charge-sheet dated 06.02.2014 as in the aforesaid charge-sheet the petitioner has been acquitted in case FIR No.140 dated 16.04.2013 and also to pay interest @ 18% p.a. on the delayed payment.

2. Learned counsel for the petitioner submitted that it is a case where the petitioner was appointed in the year 1987 on work-charge basis thereafter, his services were regularized on 08.05.1991 as ALM. He was thereafter promoted to the post of Lineman in the year 2005 and then again promoted to the post of AFM on 01.01.2011 and thereafter, he attained the age of superannuation on 31.01.2016 and was retired. He further submitted that in the present petition, the petitioner raised three fold grievances. Firstly, vide an order dated 16.09.2015 (Annexure P-1) recovery of an amount of Rs.12,634/- was ordered to be made from the petitioner with regard to some missing parts and shortage of transformer oil, which was passed prior to his retirement. The second grievance is pertaining to another order of recovery dated 30.05.2016 (Annexure P-2) passed after his retirement, which was again pertaining to missing parts of transformers and oil and the third grievance is with regard to a charge-sheet dated 06.02.2014 (Annexure P-3) issued to the petitioner regarding which a punishment order of stoppage of two increments was also passed. Learned counsel for the petitioner submitted that the petitioner restricts the scope of the present petition only with regard to the challenge to Annexure P-2 and he does not wish to press his challenge to the orders passed vide Annexures P-1 & P-3.



3. In this regard, learned counsel for the petitioner submitted that so far as the order of recovery passed vide Annexure P-2 is concerned, the same was passed without giving an opportunity of hearing to the petitioner and even otherwise also there was no power vested with the respondents to have recovered the aforesaid amount after the retirement of the petitioner by passing the aforesaid order. He further submitted that when an employee retires from service, then the master and servant relationship ceases to operate and there is no provision under which any such recovery could have been made. He also submitted that even otherwise also the aforesaid recovery could not have been made from the retiral benefits of the petitioner after his retirement and particularly in view of the fact that no show-cause notice at all has been given to the petitioner. He referred to the judgment passed a Division Bench of this Court in ***CWP-7949-2005*** titled as “***Ashok Kumar Dhamija Versus Dakshin Haryana Bijli Vitran Nigam Limited and others***” decided on ***21.09.2006*** and also the judgment passed by a Co-ordinate Bench of this Court in ***CWP No.12171 of 2010*** titled as “***Ajit Singh Vs. Uttar Haryana Bijli Vitran Nigam Limited***” decided on ***19.01.2012*** in this regard. He further submitted that it has been so held in the aforesaid judgments that the respondents do not have any authority of law to make any such kind of recovery of the missing parts of transformers/damage transformer oil after the retirement of an employee of the respondent-Nigam and in fact the aforesaid judgment also pertains to the same organization, who is the respondent in the present case.

4. On the other hand, Mr. S.K. Mahajan, learned counsel for the respondents-UHBVNL stated that so far as the prayer of the petitioner for



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challenging the action of the respondent vide Annexure P-2 is concerned, this was in pursuance of the Policy of the respondent that whenever there is a shortage of oil or damaged parts of the transformer, then recovery can be effected from the concerned employee and therefore, in line of the aforesaid powers being conferred in the Policy, the same was recovered from the petitioner. He further submitted that there is a Policy of the respondent that even some writing off can also be made which is attached as Annexure R-1 and in the present case some of the amount was written off from the total amount of about Rs.2 lacs and ultimately the petitioner was directed to deposit an amount of Rs.1,20,305/- vide Annexure P-2.

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

6. During the course of arguments, the learned counsel for the petitioner has specifically stated that the petitioner presses his claim only with regard to the order dated 30.05.2016 vide Annexure P-2 wherein an amount of Rs.1,20,305/- has been directed to be recovered from him after his retirement. A Division Bench of this Court in ***Ashok Kumar Dhamija's case (supra)*** observed that in such like cases of recovery from an employee after his retirement pertaining to shortage of oil or damaged parts of transformer, there is no power vested with the respondents to make such recovery. The relevant portion of the aforesaid judgment is reproduced as under:-

“2. 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, Civil 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 aforementioned judgment that issuance of charge-sheet for initiation of departmental enquiry is a sine qua non."

7. A Co-ordinate Bench of this Court in **Ajit Singh's case (supra)** 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 been 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”.

8. After hearing the learned counsels for the parties, this Court is of the considered view that the prayer of the petitioner is squarely covered by the aforesaid judgment passed by a Division Bench of this Court in **Ashok Kumar Dhamija’s case (supra)** and also by the judgment of a Co-ordinate Bench of this Court in **Ajit Singh’s case (supra)**. Consequently, the present petition is partly allowed. The impugned order dated 30.05.2016 (Annexure P-2) is hereby set aside and quashed. The respondents are directed to refund the amount of recovery, which has already been made from the petitioner, to the petitioner along with interest @6% per annum (simple) within a period of four months.

09.07.2024

Bhumika

(JASGURPREET SINGH PURI)

JUDGE

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| 1. Whether speaking/reasoned: | Yes/No |
| 2. Whether reportable: | Yes/No |