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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-28609-2019 (O&M)
Date of decision: 06.05.2024

Rajinder Pal Ahuja

...Petitioner

VERSUS

Uttar Haryana Bijli Vitran Nigam Limited and others

...Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Parmod Chauhan, Advocate, for
Mr. Sanjiv Kumar Yadav, Advocate, for the petitioner.

Ms. Aditi Sharma, Advocate for
Mr. C.S. Bakshi, 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 writ in the nature of *certiorari* for quashing the impugned order dated 29.09.2017 (Annexure P-2) passed by respondent No.5.

2. Learned counsel appearing on behalf of the petitioner submitted that it is a case where the petitioner retired on 17.06.2016 and prior to his retirement, in the year 2011, a show-cause notice dated 31.10.2011 was issued to him vide Annexure P-3 with the allegations that he failed to charge the Steel Arc Furnace Surcharge to M/s. Steel Auto Industry @ 15 paisa per unit and the

Nigam has suffered a loss. He submitted that after the issuance of show-cause notice, no action was taken against the petitioner and the aforesaid show-cause notice was not even served upon the petitioner nor it was within the knowledge of the petitioner. He referred to the reply filed by the Nigam in which in para No.1 it has been so stated that when the notice was issued to the petitioner, then he had already been transferred and the show-cause notice could not be served upon him and in this way, rather a categorical stand has been taken by the respondent-Nigam that the notice could not be served upon the petitioner. He submitted that the petitioner did not even have the knowledge of the show-cause notice and thereafter, he retired on 17.06.2016 and after his retirement vide Annexure P-2, a punishment order was passed by which it has been directed that an amount equal to two increments without future effect be recovered from the pensionary benefits and in this way, an amount of Rs. 56,000/- was recovered from his pensionary benefits. He submitted that the aforesaid impugned order is passed without the authority of law and without any power as the respondents could not have done so after the retirement of the petitioner. He submitted that even otherwise also, in the absence of any show-cause notice being served upon the petitioner and in the absence of any charge-sheet being issued against him or any departmental enquiry, no such order could have been passed against the petitioner after his retirement. He also submitted that even otherwise also, the punishment of recovery of an amount equal to two annual increments without future effect and such kind of punishment is not provided in the Rules itself because after the retirement, there can be no punishment pertaining to recovery of annual increment. He also referred to a Division Bench judgment of this Court in ***Ashok Kumar Dhamija Versus***

Dakshin Haryana Bijli Vitran Nigam Limited and others, CWP-7949-2005, decided on 21.09.2006 in this regard.

3. On the other hand, learned counsel appearing on behalf of the respondents submitted that it is correct position that the petitioner was never issued any charge-sheet nor any disciplinary proceedings were initiated against the petitioner and it is also admitted in the reply filed by the Nigam that even show-cause notice was not served upon the petitioner and after the retirement of the petitioner, the impugned punishment order has been passed. She has however submitted that once there was a loss to the Nigam, the same could have been recovered.

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

5. The facts of the case are not in dispute. While the petitioner was in service, a show-cause notice was issued to him in the year 2011 and thereafter no action was taken against him neither any charge-sheet was served upon him nor any disciplinary proceedings were initiated against him and even admittedly, the aforesaid show-cause notice was also not served upon the petitioner, even as per the reply filed by the Nigam. After the retirement of the petitioner on 17.06.2016, the impugned punishment order has been passed. The aforesaid proposition of law as to whether such kind of action can be taken by the respondents or not is no longer *res intergra*. A Division Bench of this Court ***Ashok Kumar Dhamija Versus Dakshin Haryana Bijli Vitran Nigam Limited and others (Supra)*** 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 (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 aofrementioned judgment that issuance of charge-sheet for initiation of departmental enquiry is a sine qua non.”

6. After hearing the learned counsel for the parties and considering the facts and circumstances of the present case, this Court is of the considered view that the case of the present petitioner is squarely covered by the aforesaid Division Bench judgment of this Court.

7. Consequently, the present petition is allowed. The impugned order Annexure P-2 is hereby set aside. It is directed that the respondents shall refund the aforesaid deducted amount of Rs. 56,000/- alongwith interest @ 6% per annum (simple) within a period of four months from today. In case, the aforesaid amount is not paid to the petitioner within a period of four months from today, then the petitioner shall be entitled for future interest @ 9% per annum (simple) instead of 6% per annum (simple).

(JASGURPREET SINGH PURI)
JUDGE

06.05.2024
rakesh

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