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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-22149-2023
Date of decision: 27.02.2024

NAVEEN

...Petitioner

VERSUS

STATE OF HARYANA AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Vijay Pal, Advocate and
Mr. Akash Lather, Advocate
for the petitioner.

Mr. Samarth Sagar, Addl. A.G., Haryana.

Mr. Sandeep Singh Mann, Advocate
for respondents No.2 to 8.

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 recovery notices/orders dated 16.08.2023 (Annexure P-11) and 31.08.2023 (Annexure P-12), whereby Rs.5,31,676/- is ordered to be recovered from the petitioner without issuing him any show cause notice and without giving any opportunity of hearing and further a writ in the nature of *mandamus* directing the respondent-Nigam to release full salary of the petitioner from 09.12.2019 to 25.03.2021 as he was already reinstated vide order dated 09.12.2019 (Annexure P-3) and also to regularize the aforesaid period from 09.12.2019 to 25.03.2021 and further to direct the respondent-

Nigam to release the educational allowance, electricity allowances and other allowances admissible to the petitioner from 09.12.2019 to 25.03.2021 as the petitioner was reinstated in service vide order dated 09.12.2019 (Annexure P-3).

2. Learned counsel for the petitioner submitted that it is a case where the petitioner is working as Junior Engineer (Electrical) in the respondent-Nigam and on 06.09.2019, he was suspended on the basis of some allegations against him, whereby a charge-sheet was also issued against him vide Annexure P-2 on 26.11.2019. He further submitted that thereafter, vide Annexure P-3 dated 09.12.2019, the petitioner was reinstated in service but the inquiry kept on going and ultimately as per the reply filed on behalf of the respondent-Nigam, the inquiry culminated into passing of a punishment order of minor penalty of stoppage of one annual increment without cumulative effect. He also submitted that however after the petitioner was reinstated in service by passing an order vide Annexure P-3, the same was never communicated to the petitioner and in this way, he presumed himself to be suspended since the aforesaid order was never communicated to him nor it was in the knowledge of the petitioner and he kept on receiving the subsistence allowance. He further submitted that thereafter, the respondent-Nigam started recovering the aforesaid subsistence allowance from the petitioner for the period from 09.12.2019 to 28.02.2021 and it was thereafter on 25.03.2021, when the petitioner came to know that his suspension has already been revoked and he has been reinstated in service that he was permitted to join again on being reinstated. He further submitted that the petitioner is aggrieved by two actions of the respondent-Nigam. Firstly, once the petitioner has been given his subsistence allowance which he otherwise is entitled to under the statutory provisions and has been paid to him from

09.12.2019 till 28.02.2021, the same at least could not have been recovered from the petitioner since otherwise also, if under the statutory rules assumingly he was under suspension, still he was entitled for the same. Secondly, the petitioner was in fact entitled to full salary in view of the order Annexure P-3 by which he was reinstated but never communicated to him and it was because of the fault of the respondents who have not communicated to anybody regarding the aforesaid order that he could not join the service and it was only when amount was to be recovered from the petitioner regarding subsistence allowance as aforesaid that he came to know about the same and he joined on 25.03.2021 and therefore, he is entitled for the payment of full salary from the order of his reinstatement till the time he joined in the month of March, 2021.

3. Learned counsel for the petitioner also submitted that in fact in this regard as to whether the petitioner was informed with regard to his reinstatement or not, a specific letter has been written by the Executive Engineer, S/U Divn., UHBVN, Sonipat to SE (OP) Circle, UHBVN, Sonipat vide Annexure P-6 on 06.04.2021, wherein it has been categorically pointed out that the petitioner was never informed with regard to the same and even it has also been so stated in the letter that it appears that the concerned dealing officer at the office of CE/OP, UHBVN, Panchkula failed to supply a copy of the reinstatement and further posting orders of the petitioner and even the petitioner was transferred to Kurukshetra and that order was also not supplied to the petitioner and in fact the Executive Engineer had requested the Superintendent Engineer to look into this issue of non-supplying of reinstatement and transfer/posting orders to the petitioner and responsibility in this regard may be fixed but despite the aforesaid specific detailed letter written in the year 2021,

no further inquiry was conducted for fixing of the responsibility as to who was responsible for non-supply of copy of reinstatement and transfer/posting orders to the petitioner and in this way, the rights of the petitioner have been prejudiced. He further submitted that once the petitioner was reinstated, he had a right to be informed and a right to discharge his duties and he has been wrongfully prevented by the respondent-Nigam from discharging his duties to which he was otherwise entitled to under the law and therefore, he is entitled for the grant of full salary from 09.12.2019 to 25.03.2021, when he was actually permitted to join.

4. On the other hand, learned counsel for respondents No.2 to 8 submitted on instructions that so far as the letter (Annexure P-6) as aforesaid is concerned, no further inquiry was conducted by any official. He further submitted that so far as the first prayer of the petitioner is concerned with regard to recovery of the suspension allowance which was given to him for the aforesaid period from 09.12.2019 till 28.02.2021 is concerned, now it has been so decided by the respondent-Nigam that the aforesaid recovery will not be made from the petitioner subject to the final outcome of the present petition. He also submitted that so far as the second grievance of the petitioner is concerned, once the petitioner has not worked on the post and was not even present in the office, then he is not entitled for full salary.

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

6. There are two fold prayers made in the present petition. The first prayer is that once the petitioner was reinstated in service vide order dated 09.12.2019 vide Annexure P-3, then thereafter it was a duty of the respondent-Nigam to have informed the petitioner with regard to the reinstatement order

but when the same came to the knowledge of the petitioner then he immediately joined. The petitioner was granted suspension allowance during the period he remained suspended. During the course of arguments, learned counsel for respondents No.2 to 8 submitted on instructions that it has been decided that no recovery will be made from the petitioner with regard to subsistence allowance, which otherwise has been granted to the petitioner, subject to the final outcome of the present petition. This Court is of the view that even if assumingly the petitioner was in the state of suspension, still he was entitled to get the suspension allowance and therefore, no recovery could have been effected from the petitioner. Therefore, it is held that with regard to the recovery which earlier was sought to be effected from the petitioner but now it has been decided not to be effected from the petitioner with regard to suspension allowance from 09.12.2019 to 28.02.2021, no such recovery can be effected from the petitioner.

7. So far as the second prayer of the petitioner is concerned that the reason as to why he could not join after reinstatement was that he was never informed with regard to his reinstatement order nor he was informed with regard to his transfer/posting order. A perusal of letter (Annexure P-6), which has been written by the Executive Engineer, S/U Divn., UHBVN, Sonipat to SE (OP) Circle, UHBVN, Sonipat makes it amply clear that it has been so opined by the Executive Engineer that it appears that the petitioner was not informed about his reinstatement and transfer/posting orders. However, it was also requested to the Superintendent Engineer to look into the matter as to whether such non-supply of the orders were intentional or not and also to fix responsibility. As per the learned counsel for the parties, no such inquiry has been conducted by the respondent-Nigam even though more than 3 years have

elapsed. The plea of the learned counsel for the petitioner is that when the petitioner was not even apprised of the reinstatement and transfer/posting orders, there was no occasion for him to have reported on duty, whereas it is the plea of learned counsel for respondent-Nigam that the petitioner was absent from duty even after his reinstatement, then he is not entitled to full salary. However, after perusing the aforesaid letter (Annexure P-6), this Court is of the view that the petitioner cannot be deprived of his rights of salary only on the basis of the fact that he did not join the duty after his reinstatement order was passed and it was the duty of the respondent-Nigam to have at least conducted an inquiry to this aspect particularly when the Executive Engineer has written to Superintendent Engineer by giving detailed reasons with regard to the same. Therefore, this Court is of the view that necessary directions may be issued to the respondent-Nigam in this regard without expressing anything on the merits with regard to the aforesaid grievance of the petitioner.

8. Consequently, the present writ petition is disposed of with a direction to respondent No.3-Chief Engineer, Operational, UHBVNL, Panchkula to conduct an inquiry on the aforesaid issue as to whether the petitioner was conveyed the order of his reinstatement and the order of his transfer/posting or not. In the aforesaid inquiry, the petitioner shall also be associated. The inquiry shall be completed within a period of two months from today and thereafter, a speaking order shall be passed by respondent No.3-Chief Engineer, Operational, UHBVNL, Panchkula in this regard. In case it is found that the petitioner was not conveyed/informed with regard to his reinstatement and transfer/posting orders, then the petitioner shall be released his entire salary for the aforesaid period i.e. from the date of his reinstatement till the date of his

joining, after adjusting the amount of subsistence allowance already paid to him within a period of next two months, along with interest @ 6% per annum. In case any adverse order is passed against the petitioner by respondent No.3- Chief Engineer, Operational, UHBVNL, Panchkula, then the petitioner shall be at liberty to challenge the same in accordance with law at an appropriate forum.

27.02.2024
Chetan Thakur

(JASGURPREET SINGH PURI)
JUDGE

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