2024:PHHC:120593

257

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-28956-2022(O&M)
Date of Decision: 11.09.2024

(I)
Ram Mehar

....Petitioner(s)

Versus

Uttar Haryana Bijli Vitran Nigam Ltd. and another

.....Respondent(s)

CWP-14077-2018 (O&M)

(II)

Ram Mehar

....Petitioner(s)

Versus

Uttar Haryana Bijli Vitran Nigam Ltd. and another

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. R.K. Chaudhary, Advocate, for the petitioner.

Mr. Piyush Bansal, Advocate, for the respondents.

****

JASGURPREET SINGH PURI, J. (Oral)

1. Both the petitions have been filed under Articles 226/227 of the Constitution of India and are being taken up together for final disposal with the consent of learned counsels for the parties.

2. CWP No.28956 of 2022 has been filed seeking issuance of a writ in the nature of certiorari for quashing the charge-sheets dated 20.02.2018 (Annexure P-2), 17.05.2018 (Annexure P-3), 11.07.2018

(Annexure P-4), 18.07.2018 (Annexure P-5) and impugned order dated 31.05.2022 (Annexure P-9), with a further prayer to direct the respondents to release the withheld amount of DCRG alongwith interest @ 12 % per annum.

3. CWP No.14077 of 2018 has been filed seeking issuance of a writ in the nature of mandamus directing the respondents to release 100% provisional pension and other retiral benefits i.e commutation, leave encashment etc. to the petitioner.

4. At the outset, learned counsel appearing on behalf of the respondents have stated on instructions from Mr. Ashwani Kumar, XEN and Mr. Ranbir Deshwal, XEN who are present in the Court that Annexure P-2 and P-3 will be withdrawn by the XEN City Division. UHBVN, Sonepat and Annexure P-4 will be withdrawn separately by the competent officer in view of the letter bearing memo No.Ch-71/EPF-13078 dated 11.09.2024 and separate orders will be passed in that regard. Annexure P-6 and P-9 will be withdrawn by the XEN Sub Urban Division, Sonepat and has supplied a photocopy of letter dated 11.09.2024 which is taken on record as mark-'X'.

5. Learned counsel for the respondent-Nigam further submitted on specific instructions that in view of withdrawing and dropping of the aforesaid charge-sheets, all the pensionary benefits will be released to the petitioner within a period of 10 days. He submitted that however he has no instructions with regard to whether the interest will be paid to the petitioner or not, even after asking from the officers who are present in the Court.

6. Learned counsel for the petitioner has submitted that the petitioner retired in the year 2017 and almost 7 years have elapsed after the

retirement and the pensionary benefits have been wrongly withheld by the respondent-Nigam and today the learned counsel for the respondent-Nigam has stated on instructions that all the charge-sheets will be withdrawn and dropped and the retiral benefits will be released to the petitioner and in this way, the negligence committed by the respondent-Nigam is writ large. The petitioner is entitled for the grant of interest because the amount was illegally kept by the respondent-Nigam for a period of 7 years and the petitioner who had retired from the post of JE has been deprived of his retiral benefits which is not only a Statutory Right but it is also a Constitutional Right under Article 300-A of the Constitution of India and the petitioner is not only entitled for the grant of interest but he is also entitled to exemplary costs.

7. Today, learned counsel for the respondent-Nigam on the basis of the instructions from the officers who are present in the Court has stated that now the respondent-Nigam has decided to drop all the charge-sheets against the petitioner and to release the retiral benefits within a period of 10 days. Admittedly, the petitioner retired in the year 2017 which is almost 7 years ago. However, the interest on the aforesaid has been denied by the respondent-Nigam since a specific query was put to the learned counsel for the respondent-Nigam to take specific instructions as to whether they will be paying interest or not. However, the officers who are present in the Court have stated that they have no instructions nor they can give any statement in this regard. The aforesaid officers are of the rank of XEN.

8. Way Back in the year 1971, a Constitution Bench of Hon'ble Supreme Court in "***Deokinandan Prasad Vs. State of Bihar and others***",

1971(2) SCC 330, laid down the law and observed that the pension and pensionary benefits are not a bounty of the State and and is rather a valuable right.

9. Thereafter, in ***"State of Kerala Vs. M. Padmanabhan Nair", AIR 1985 Supreme Court 356***, the Hon'ble Supreme Court observed that pension and gratuity are no longer any bounty to be distributed by the Government to its employees on their retirement but are valuable rights and property, in their hands. The aforesaid authoritative law was thereafter reiterated by the Hon'ble Supreme Court in ***"Dr. Uma Agrawal Vs. State of U.P. and another", 1999(2) SCT 347 (SC).***

10. Thereafter, Hon'ble Supreme Court in another authoritative judgment passed in ***"State of Jharkhand and others Vs. Jitendra Kumar Srivastava and another", 2013(12) SCC 210*** again discussed the entire law pertaining to the valuable rights pertaining to the grant of pensionary benefits and was held that the grant of pension is not a charity which is to be done by the State but it is a Statutory and Constitutional Right. It is a settled law that right to pension and pensionary benefits is a right to property. Earlier it was a Fundamental Right under Article 31(1) of the Constitution of India but thereafter with the 44th amendment of the Constitution of India, it became a Constitutional Right incorporated in Article 300-A of the Constitution of India and repeatedly it has been so held by the Hon'ble Supreme Court in number of judgments including Constitution Benches that a person cannot be deprived of pensionary benefits being covered under right to property without the authority of law. Article 300-A of the Constitution of India so provides that no person can be deprived of his

right to property except by the authority of law. Thereafter, a Constitution Bench of Hon'ble Supreme Court in ***Olga Tellis and others Vs. Bombay Municipal Corporation and others, (1985) 3 SCC 545*** held that right to life includes right to livelihood. This Court is of the view that when an employee is retired he is entitled for the grant of pensionary benefits upon which he sustains his livelihood and, therefore, if there is any infraction of the right of grant of pension and pensionary benefits, it is also infraction of Article 21 of the Constitution of India. In the present case, the respondent-Nigam after realizing their mistake have now decided to drop all the charge-sheets against the petitioner because they were issued without the authority of law but they have specifically denied interest to the petitioner.

11. A Full Bench judgment of this Court in ***A.S. Randhawa Versus State of Punjab and others, 1997(3) SCT 468*** while dealing with the right to get interest also held that even a separate writ petition would lie for the purpose of seeking interest on the delayed retiral/pensionary benefits.

10. A Co-ordinate Bench of this Court in ***J.S. Cheema Versus State of Haryana and others, 2014 (1) SCT 782*** held that when delayed payment of pensionary benefits etc. is made to an employee, then it has to be accompanied with interest because the interest component is not by way of damages or by way of compensation but it is that amount which has been kept by the respondents without any justification and is being used by them and therefore, that interest component has to be given alongwith the withheld amount.

12. In view of the aforesaid facts and circumstances, both the

petitions are disposed of. The respondent-Nigam is directed to grant interest to the petitioner on all the retiral/pensionary benefits from the date of the retirement of the petitioner plus two months till the date of its actual disbursement @ 6% per annum (simple) within a period of two months from today. In case the aforesaid amount is not paid to the petitioner within a period of aforesaid two months, then the petitioner shall be entitled for future interest @ 9% per annum (simple).

13. Since the petitioner has been deprived of his Statutory and Constitutional Rights and now after realizing the mistake, the respondents have decided to withdraw all the charge-sheets against the petitioner and also to pay the retiral/pensionary benefits and have specifically denied the interest which they could not have denied under the settled law, the petitioner shall also be entitled for costs, which are assessed as Rs.25,000/- (Twenty Five Thousands), which shall also be paid to him within a period of aforesaid two months.

14. The Managing Director of the respondent-Nigam is directed to fix the accountability of the officer(s) concerned in accordance with law who have withheld the retiral/pensionary benefits of the petitioner and who issued the charge-sheets which have now been withdrawn. The aforesaid costs shall be paid by the respondent-Nigam at the first instance and thereafter, it shall be recovered from the officer(s) held accountable from personal pocket.

11.09.2024 **(JASGURPREET SINGH PURI)**
rakesh **JUDGE**

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