

(2013) 09 P&H CK 0115
In the Punjab And Haryana At Chandigarh
Case No : CWP-4684-2011 (O and M)

Balbir Singh

APPELLANT

Vs

Uttar Haryana Bijli Vitran Nigam Limited and Others

RESPONDENT

Date of Decision : 12-09-2013

Acts Referred:

Citation : (2014) 174 PLR 206

Hon'ble Judges : M.M. Singh Bedi, J

Bench : Single Bench

Judgement

M.M. Singh Bedi, J.—Petitioner has questioned the legality of the show cause notice dated January 18, 2010, Annexure P-4, and the office

order dated February 11, 2011, Annexure P-7, whereby the recovery has been imposed upon the petitioner. The petitioner also prays for a writ in

the nature of Mandamus directing the respondents to release the pensionary benefits along with interest from the date of retirement. The petitioner

joined Haryana State Electricity Board on December 24, 1968. Later on, after formation of Corporations relating to generation, transmission and

distribution of power, the petitioner after completing 36 years of service retired from the post of Assistant Foreman from Uttar Haryana Bijli Vitran

Nigam Limited (for short "the UHBVNL) from the office of Operation Sub Division No. 1 Pundri, on March 31, 2004. When the petitioner

retired, neither any departmental inquiry was pending nor he had been issued any show cause notice. The petitioner was allowed provisional

pension vide PPO No. 3301 dated February 25, 2005 on his basic salary as on January 1, 1996. The other retiral benefits including gratuity, leave

encashment and commuted pension was not released. The petitioner served a

legal notice dated February 9, 2007 on respondent No. 3 i.e. the Executive Engineer, Operation Division UHBVNL, Pundri. He also made a representation dated May 26, 2008 Annexure P-2. Petitioner had to file a writ petition in the High Court which was disposed of vide order Annexure P-3 on July 7, 2009, on the statement of the counsel for the respondent that a show cause notice will be issued to the petitioner and after hearing him the final decision would be taken within a period of four months and thereafter the retiral benefits would be released.

2. As no show cause notice was issued to the petitioner for six months, he filed a contempt petition in which notice of motion was issued. The respondents filed a reply in the contempt petition informing that a show cause notice has been issued to the petitioner on January 18, 2010. As per the show cause notice dated January 18, 2010 allegations were leveled against the petitioner that he had not submitted the account of transformers drawn from the store and that he did not submit the record of returned transformers to the store. As per the show cause notice it was informed that a Committee of three officers was constituted on August 21, 2008 and as per the report of the Committee, 123 damaged distribution transformers were found not to have been returned to the store/workshop and the cost of the transformers worked out to be at Rs. 13.28 lacs. Show cause notice was issued to him as to why action should not be taken against him for recovery of Rs. 13.28 lacs. Petitioner submitted a reply to the effect that he had already returned the damaged transformers in the store/workshop before retirement. He had given a detailed list of the damaged transformers returned to the store by giving the specific dates. Without holding any inquiry, order Annexure P-7 was passed ordering that Rs. 11.94 lacs should be recovered from the petitioner. Copy of the order dated February 11, 2011 has been placed on record as Annexure P-7.

3. The petitioner claims that in similar circumstances pensionary benefits of one Ram Bhagat had been with-held, but this Court vide order Annexure P-8 had ordered the release of retiral benefits.

4. The petitioner has challenged the action of the respondents claiming that the show cause notice issued to the petitioner is violative of Rule 2.2.

(b) of the Punjab Civil Service Rules, Volume II. The pensionary benefits have been with-held illegally. The retiral benefits have been withheld

without any departmental proceedings after a period of six years.

5. I have heard the learned counsel for the petitioner as well as the learned counsel for the respondents in order to determine the legality and

propriety of office order dated 11.2.2011 Annexure P7 directing recovery of a sum of Rs. 11.94 lacs from the petitioner after his retirement

without holding an enquiry. The said order was passed merely after issuing show cause notice to the petitioner. As per the written statement filed

by the respondents, the petitioner has been paid pension vide PPO dated 25.2.2005/14.2.2011 Annexure R1. Amount of gratuity has also been

paid to the petitioner vide order dated 14.2.2011. The gratuity and commutation of pension has also been released but it has been averred that

show cause notice was issued to the petitioner vide memo dated 18.1.2010 Annexure P4 on the basis of report of the Committee to the effect that

123 transformers were found to have not been returned to the store/workshop and a sum of Rs. 13.28 lacs was recoverable from the petitioner

and it has been decided by the Committee constituted for said purpose to recover a sum of Rs. 11.94 lacs from the petitioner who has already

been retired as Assistant Foreman from the service of the respondents on 31.3.2004. The decision to effect recovery from the petitioner has been

taken after a period of six years. The recovery has been ordered only after issuing a show cause notice after retirement. The respondents have not

effected the recovery on the basis of any cogent proof on record regarding misconduct of the petitioner.

6. No-doubt under Punjab Civil Services Rules, Volume II, Chapter II, Rule 2.2 (b) an employer has got a right to withhold or withdraw a pension

or any part thereof permanently or for a specific period in case of pension etc. on gross misconduct or negligence during period of the service. The

said rule has been considered by a Division Bench of this Court in case Dr. Inderjit Singh Wasu v. State of Punjab, 2007 (3) SCT 788. The

relevant part of the judgment is reproduced as under:--

There are omnibus principles deducible from the Punjab Civil Services Rules, Volume II (Part-I). Chapter 2, deals with general provisions relating

to grant of pension. Rule 2.2 specifically deals with recovery which could be effected from pension. According to Rule 2.2 (b), right of the

employer to withhold or withdraw a pension or any part thereof, whether

permanently or for a specified period has been reserved but with certain conditions. The right of ordering recovery from pension of whole or part of any pecuniary loss caused to the employer in a departmental or judicial proceeding if the pensioner is found guilty of gross misconduct or negligence during the period of his service then such recovery could be effected provided the departmental proceedings were instituted while the officer was in service. If such departmental proceedings are not instituted while the officer was not in service then the same cannot be instituted without the prior sanction of the superior authorities like the Government and in any case cannot be in respect of an event which has taken place more than four years before such institution. The explanation appended to Rule 2.2 (b) clarifies that the departmental proceedings would be deemed to be instituted only when the chargesheet is issued or if the officer was placed under suspension from an earlier date or in criminal proceedings the challan has been presented. These omnibus principles have been tested on the touchstone of the reasonableness and have stood the test all time. Therefore, we do not see any reason not to extend the same to the employees of the privately aided schools and colleges. If the aforementioned principles are applied to the facts of the present case, it would then become obvious that no inquiry has been instituted in respect of the events of 1999/2000 and a period of four years have already gone by, even the charge-sheet has not been issued. The so called show cause notice issued to the petitioner would not constitute the basis to conclude that charge-sheet has been issued and the departmental proceedings had commenced. This wholesome principles has been applied by Hon"ble Supreme Court in the case of Union of India Vs. K.V. Jankiraman, etc. etc., .

7. Rule 2.2 of the Punjab Civil Services Rules, Volume II (Part-I) and the principles enshrined under the rule is applicable to the petitioner. It is an admitted fact that there is no departmental proceedings having been initiated against the petitioner during the period he was in service. The allegations of non-receipt of transformers is more than four years before the issuance of show cause notice. The recovery has been effected merely after issuing show cause notice which is unfair and arbitrary. The petition is allowed. Order dated 11.2.2011, Annexure P7, is hereby set aside.

The respondents are directed to pay a sum of Rs. 11.94 lacs to the petitioner

within a period of two months after the receipt of certified copy of the order with interest @ 6 per cent per annum.