(2010) 03 P&H CK 0277

In the Punjab And Haryana At Chandigarh

Mool Chand APPELLANT

Vs

Uttar Haryana Bijli Vitran Nigam Limited and Others RESPONDENT

Date of Decision : 15-03-2010

Acts Referred:

Citation : (2010) 03 P&H CK 0277

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

K. Kannan, J.—The grievance of the petitioner in the writ petition is that the respondents had subjected the retiral benefits to unjustified deductions and that the amount of Rs. 2,37,856.80 had been withheld from gratuity and monthly salary. The petitioner had retired on 31.01.2003 on his attaining the age of superannuation of 58 years. The petitioner contends that for any breakage/ shortages in distribution transformers returned to the stores/workshop, the employer could waive off upto 5% of the existing cost of the transformers and 20% of the total cost of transformer oil.

2. It is seen from the statement filed on behalf of the respondents that out of amount of Rs. 2,91,440/-, Rs. 1,08,302/- had been written off and with reference to the balance, the petitioner was facing a charge-sheet since the year 1998 when he was in service with reference to theft of certain energy of Atta Chakki and an amount of Rs. 25,038.25 had been ordered to be recovered from the pay of the petitioner in instalments. Yet another charge-sheet had been issued against the petitioner and recovery had also been ordered as per the order of a Civil Court by its order dated 08.11.2005. Apart from the above, there was yet another recovery that had been ordered on 09.10.2006 representing the value of the shortages. According to the respondents therefore, the amounts which had been deducted was perfectly justified.

3. The learned Counsel appearing for the petitioner would join issue on the

additional information which had been brought through with reference to the alleged charge-sheet that had been issued on 06.05.1999 and the other proceedings referred to above. According to him, apart from issuing a charge-sheet, no enquiry had been conducted and the alleged finding of guilt without any proper enquiry could not be a basis for deduction. Referring to the decision of the Civil Court dated 16.05.2005, the counsel points out that the suit was with reference to the inflicting the punishment of stoppage of one increment with future effect and the proceedings of the respondent dated 08.11.2005 would itself show that the punishment had been reduced and the liability had been fixed to Rs. 11,733/-. The proceedings dated 31.05.2006 deducting Rs. 3,000/- is purported to be pursuant to an order issued on 20.07.2000 and the last two orders, according to the learned Counsel appearing for the petitioner, relate to a period subsequent to his retirement and, therefore, the said amount cannot be deducted from his terminal benefits. Referring to the alleged loss caused by the petitioner on account of shortage of T/F oils and missing parts to the tune of Rs. 1,67,365.20, the contention is again that such a liability has been falsely cast on the petitioner on 06.10.2006 without any kind of enquiry and if the amount was being determined only on 09.10.2006, the said amount could not have been anticipated and withdrawn even at the time of his retirement in 2000.

4. The issue as to the extent of deduction that would be permissible and the manner of such deduction from the retiral benefits was considered by two Bench decisions of this Court. In its judgment in Suraj Mall v. Uttar Haryana Bijli Vitran Nigam Limited in Civil Writ Petition No. 12036 of 2008, dated 11.09.2008, the Division Bench was directing the release of the entire pension, when it held that issuance of a charge-sheet for initiation of departmental proceedings was a sine qua non and if no proceedings were pending on the date of retirement, there could be no deduction for future determination of liability. This view was reiterated in yet another judgment on 11.09.2008. This Court has also held in Ram Phal v. Uttar Haryana Bijli Vitran Nigam Limited and Ors. in Civil Writ Petition No. 1318 of 2008 by judgment dated 08.01.2010 that even a mere service of notice that did not culminate in an enquiry or a finding that the petitioner was liable for such a sum, could not be a justifiable cause to withhold the retrial benefits. The amounts withheld were directed to be paid with interest at 9%.

5. In this case, all the amounts that had been determined even subsequent to the retirement of the petitioner, except the proceedings dated 06.05.1999 where the respondents have determined an alleged liability of Rs. 25,038.25 viz. an amount of Rs. 11,733/- purporting to be the amount due by way of punishment for some other proceedings that resulted in an order in appeal by the Superintending Engineer, OP Circle, dated 23.01.1991 (R-2), Rs. 3,000/- purporting to be order of recovery issued on 20.07.2000 and a still further amount of Rs. 1,67,365.20 for alleged loss caused by the petitioner have all arisen subsequent to the retirement of the petitioner. The petitioner is entitled to be paid the entire amount which has been withheld except the amount of Rs.

25,038.25 which is withheld for the proceedings dated 06.05.1999. The amount that would remain payable shall be paid at 9%. Even while acceding to the petitioner''s entitlement of the amounts withheld, the respondents shall be entitled to enforce any Civil Court decree that has finally determined the liability of the petitioner by an independent process and cannot be a basis for withholding the terminal benefits.

6. The writ petition is allowed on the above terms.

