(2012) 09 P&H CK 0407

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. No. 24295 of 2011

Ram Rati APPELLANT

Vs

Haryana Vidyut Parsaran Nigam Ltd. and Others RESPONDENT

Date of Decision : 07-09-2012

Acts Referred:

Citation : (2013) 3 SCT 640

Hon'ble Judges : Rakesh Kumar Garg, J

Bench : Single Bench

Advocate : Raman B. Garg, for the Appellant; Mohnish Sharma, for the Respondent

Judgement

Rakesh Kumar Garg, J.—The husband of the petitioner retired from service on attaining the age of superannuation on 31.12.2005. His retiral benefits were paid in the year 2006. The husband of the petitioner died on 13.2.2008. The petitioner approached the respondents for grant of family pension and other dues. According to the averments, during this process, she came know that a sum of Rs. 1,92,454/- was recovered illegally by the respondents from the retiral benefits of her husband at his back without affording any opportunity of hearing etc. After receiving information through RTI, the petitioner made a representation on 2.9.2009 against the aforesaid illegal recovery of Rs. 1,92,454/- from the retiral benefits of her husband. The representation on her behalf was rejected and she was informed by the department vide memo dated 26.4.2010 (Annexure P. 1) and thus, she has filed the present writ petition.

2. A perusal of the impugned order dated 26.4.2010 (Annexure P.1) shows that a recovery has been made from the pensionary benefits of her husband on account of excess withdrawal of pay made to him for the period 31.5.1982 to 31.12.2005 because of wrong fixation of pay.

3. Even in the reply filed on behalf of the respondents, the following averments have been made:--

That the contents of paras-2 to 9 of the writ petition are wrong and hence vehemently denied. In reply thereto it is submitted that the representation of the petitioner against deduction of Rs. 1,92,454/- was duly decided by the office of the respondent- Nigam vide office memo dated 23.10.2009 after going through the complete service record of the husband of the petitioner. In para-8 of this office letter it was clearly mentioned that after scrutiny of the pay by the office of Chief Accounts Officer (Pay Fixation), HVPNL, Panchkula on 28.12.2005, the pension case was submitted to Chief Accounts Officer (Pension), HVPNL, Panchkula where it was intimated in the No Demand Certificate that recovery of Rs. 1,92,454/- to be made on account of excess payment of pay made to the husband of the petitioner w.e.f. 31.05.1982 upto 31.12.2005. The true photocopy of the office memo dated 23.10.2009 is attached herewith as ANNEXURE R-1. The true photocopy of the arrear of basic pay and dearness allowance which were drawn in excess by the husband of the petitioner w.e.f. 31.05.1982 to 31.12.2005 inadvertently due to wrong fixation of pay is attached herewith as ANNEXURE R-3/2. The respondent- Nigam is entitled to recover the same. It is further submitted that it is completely wrong that the retiral benefits of the husband of the petitioner were withheld for a long time and the same were paid in the year of 2006. This is factually incorrect as the retiral benefits of the husband of the petitioner were paid within six months of his retirement on attaining the age of superannuation w.e.f. 31.12.1995.

4. At this stage, the office memo No. Ch-110/PFT-385 dated 23.10.2009 attached as Annexure R3/1 be also noticed which reads thus:--

HARYANA VIDYUT PRASARAN NIGAM LIMITED (Registered Office:- Sector-6, Shakti Bhawan, Panchkula)

From The Executive Engineer, Transmission System Division, HVPNL, Narwana.

To The Managing Director, HVPNL, Shakti Bhawan, Sector-6, Panchkula.

Memo No.:- CH-110/PFT-385 Dated: 23/10/09

Sub: Representation against deduction of Rs. 192454/- from Gratuity/Leave encashment of my (Smt. Ram Ratti) husband.

Please refer to representation of Smt. Ram Ratti W/o late Sh. Kali Ram, APD received vide letter No. Ch-22/SPL dated 02.09.2009 and Haryana Bijli Pensioners, Welfare Association letter Memo No. HBPWA-8/Narwana dated 05.10.2009 regarding subject-cited matter addressed to your good office with a copy to this office as well as to others.

As per record available in this office, the status position is submitted as under:--

1. Sh. Kali Ram, APD was transferred to this division w.e.f. 01.04.2001 from XEN/ Op. Division, UHBVNL, Narwana while the administrative control of 132/220 KV S/ Stn. came under HVPNL. The pay was claimed and disbursed by this office to Sh. Kali Ram, APD as per Last Pay Certificate (LPC) received from XEN/Op. Division,

UHBVNL, Narwana. Sh. Kali Ram APD retired from Nigam service on superannuation on 31.12.2005 and later on expired on 13.02.2008.

2. Sh. Kali Ram, APD was working in Work Charged capacity and his services as APD were regularized on 31.05.1982.

3. The pay of Sh. Kali Ram, APD was fixed/re-fixed by the following offices as per detail given below.

(i) As on 01.04.79 as W/C SDO/Op.S/D UHBVNL, Kaithal

(ii) As on 31.5.82 as regular XEN/Op. Divn. UHBVNL, Kaithal APD

(iii) As on 01.01.86 XEN/Op. Divn. UHBVNL, Kaithal

(iv) As on 01.01.96 XEN/Op. Divn. UHBVNL, Narwana

4. As the official was going to retire on 31.12.2005, the service book of the official was sent to CAO (Pay Fixation), HVPNL, Panchkula on 26.09.2005 for pay verification.

5. The CAO (Pay Fixation), HVPNL, Panchkula vide his office Memo No. 1627 dated 29.09.2005 pointed out that the pay of the official re-fixed at P-14 of Service Book has not been followed on regularisation of service as APD as on 31.05.1982. As such the same may be reviewed and pay may be fixed time to time so as to pre-audit the pay accordingly.

6. The pay on regularisation from Work Charged to regular APD on 31.05.1982 was brought forwarded inadvertently by XEN/Op. Division, UHBVNL, Kaithal @ Rs. 540/- instead of Rs. 400/- admissible to the official at that time as re-fixed by SDO/Op S/D, Kaithal as per CAO (Pay Fixation), Panchkula Memo No. 179/ST/AO/PF dated 26.08.83 on Page No. 14 of service book of the official.

7. As per observation of office of CAO (Pay Fixation), HVPNL, Panchkula Memo No. 1627 dated 29.09.2005, the pay was re-fixed and the difference of the excess pay made to Sh. Kali Ram, APD w.e.f. 31.05.1982 up to 31.12.2005 was calculated and worked out to be Rs. 1,92,454/-.

8. After scrutiny of the pay by office of CAO (Pay Fixation), HVPNL, Panchkula on 28.12.2005, the pension case was submitted to CAO/Pension, HVPNL, Panchkula intimating in the No demand Certificate for recovery of Rs. 192454/- to be made on account of excess payment of pay made to Sh. Kali Ram, APD w.e.f. 31.05.82 upto 31.12.05.

9. The CAO/Pension, HVPNL, Panchkula recovered the whole amount of Rs. 1,92,454/- from DCRG of Rs. 95,974/- and balance amount R.96,480/- was recovered from amount payable to official on account of commutation of pay.

10. The recovery of Rs. 1,92,454/- was made from the pensionary benefits of the retiree on account of excess payment of pay made to Sh. Kali Ram, APD for the period 31.05.1982 to 31.12.2005 and not on account of any recovery of advance

like house building or built up house advance or any recovery on account of theft/ shortage of material or embezzlement or reversion.

11. As the pensionary benefits has already been made to retiree as per rules and regulations during 2006 and intimation of the same and recovery of? 1,92,454/- made on account of excess payment of pay drawn by the official has also already been given to Smt. Ram Ratti W/o Sh. Kali Ram vide this office memo No. Ch-47/ PFT-385 dated 04.11.2008.

12. As per record Sh. Kali Ram, APD or his wife Smt. Ram Ratti had never objected for recovery of Rs. 1,92,454/- on account of excess pay, The copies of sanction of PPO/GPO/Commutation/DCRG are also endorsed to Sh. Kali Ram, APD.

This is for your information and further necessary action please.

Sd/- Executive Engineer, Transmission System Division, HVPNL, Narwana

5. Thus, there is no dispute that before making the aforesaid recovery from the retiral benefits of the petitioner''s husband, no notice etc. was given to him. It is again not in dispute that the payment so made (allegedly the excess payment) was not made on account of any misrepresentation on the part of the petitioner''s husband.

6. In view of the aforesaid facts, counsel appearing for the respondents could not dispute that the instant case is covered by the judgments in Budh Ram and others v. State of Haryana and others, 2009 (3) S.C.T. 333, Syed Abdul Qadir and Others Vs. State of Bihar and Others, and Registrar, Co-operative Societies Haryana Vs. Israil Khan and Others, . Thus, in view of the aforesaid, order dated 26.4.2010 (Annexure P.1) and Memo No. Ch-110/PFT-385 dated 23.10.2009 attached as Annexure R3/1 are quashed. The action of the respondents in recovering the amount of Rs. 1,92,454/- from the retiral benefits of the husband of the petitioner is held to be illegal and quashed. Resultantly, this petition is allowed with a direction to the respondents to make payment of the aforesaid amount of Rs. 1,92,454/- to the petitioner within a period of two months from today along with interest at the rate of 6% with effect from 1.1.2006 till its realisation.