236

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-4278-2020
Date of decision: 23.04.2024

CHANDER PRAKASH (DECEASED) THROUGH HIS LRs
...Petitioner

VERSUS

DAKSHIN HARYANA BIJLI VITRAN NIGAM LTD AND OTHERS
...Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Shvetanshu Goel, Advocate for the petitioner.

Mr. Vivek Saini, Advocate for the respondents.

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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 orders dated 04.07.2008 (Annexure P-9) and 09.01.2020 (Annexure P-19) passed by the respondent-DHBVNL being illegal and arbitrary and further to issue a writ in the nature of *mandamus* directing the respondent-DHBVNL to release an amount of Rs.2,13,611/- along with interest @ 18% per annum to the petitioner within a stipulated time period.

FACTS OF THE CASE

2. Present is a sixth round of litigation filed by the petitioner for seeking part of his retiral benefits. The petitioner was working as a Junior Engineer in the respondent-Dakshin Haryana Bijli Vitran Nigam Limited (hereinafter referred to as DHBVNL) and on 26.11.1999, he was compulsorily

retired from service. During the pendency of the present writ petition, the petitioner died on 28.08.2020 and now he is being represented through his four legal representatives, out of which two are his sons and two are daughters. One of the daughters, namely, Ritu Ray was a minor at the time of retirement of the petitioner. When the petitioner was alive, he filed two writ petitions before this Court bearing Nos.CWP-573-2006 and CWP-531-2006. In one of the writ petitions i.e. CWP-573-2006, the relief claimed by the petitioner was that before he was compulsorily retired from service on 26.11.1999, his one increment was stopped by the competent authority with effect from 01.08.1998, which was to be restored on 01.08.1999. Thereafter, in pursuance of another charge-sheet, two increments without future effect were also stopped vide order dated 18.02.1998 and he was compulsorily retired on 26.11.1999. The effect of stoppage of one increment as aforesaid stood automatically expired on 01.08.1999 but so far as stoppage of two increments is concerned, since he already stood compulsorily retired, it could not have been given effect to for any recovery to be made from his pensionary benefits. In CWP-531-2006, the relief claimed was with regard to an amount of Rs.2,25,887/-, which was sought to be recovered from the pensionary benefits of the petitioner on account of shortage of material and transformer missing parts and oil. This Court disposed of the aforesaid two writ petitions with a direction to the respondents to decide the representation of the petitioner. Vide Annexure P-1, an order was passed in pursuance of directions issued by this Court to decide representation in the first writ petition i.e. CWP-573-2006 and it was directed that an amount equal to two annual increments without future effect be recovered from the pensionary benefits of the petitioner. So far as the second writ petition i.e. CWP-531-2006

is concerned, in pursuance of the directions issued by this Court, an order was passed vide Annexure P-2 that since there was shortage of material and transformer missing parts and oil, recovery of Rs.2,16,492/- was to be recovered from the petitioner from his pensionary benefits. There was no disciplinary enquiry or any charge-sheet or any kind of order against the petitioner at the time when he was in service nor any such charge-sheet was issued to the petitioner even after that.

3. The petitioner then for the third time again came to this Court and assailed the aforesaid orders i.e. Annexure P-1 and Annexure P-2 by filing CWP-18012-2006, in which a Division Bench of this Court disposed of the aforesaid petition vide Annexure P-4 and again directed the respondents to decide the legal notice of the petitioner within a period of two months. Thereafter, vide Annexure P-5, the respondents decided the legal notice of the petitioner and passed an order dated 09.02.2007, whereby with regard to the claim of the petitioner pertaining to two increments, it was re-affirmed by directing that an amount equal to two increments of the retiree was required to be recovered from his pensionary benefits and the claim pertaining to the second ground with regard to recovery of an amount of Rs.2,13,611/-, it was reiterated that the same was recoverable from the petitioner and it was decided that the aforesaid amount was also recoverable from the pensionary benefits of the petitioner.

4. Thereafter, the petitioner again approached this Court for the fourth time by filing CWP-5988-2007 and vide Annexure P-6 dated 11.04.2008, a Division Bench of this Court set aside the recovery from the retiral benefits of the petitioner pertaining to the two increments and also recovery of an amount

of Rs.2,16,492/- from the retiral benefits of the petitioner as being wholly unjustified. In this way, the claim of the petitioner qua both the heads i.e. for an amount equal to two increments to be recovered from his pensionary benefits and an amount of Rs.2,16,492/- on account of shortage of material and transformer missing parts and oil from his retiral benefits were set aside by a Division Bench of this Court. The relevant portion of the aforesaid order passed by a Division Bench of this Court is reproduced as under:-

> *xxx-xxx-xxx-xxx*
>
> *We are of the opinion that the action of the respondents in recovering the said amount of annual increments is wholly illegal. The punishment was of stoppage of two annual increments. If the said order could not be given effect to on account of compulsory retirement of the petitioner, the respondents cannot recover the cash equivalent to the increments on account of retirement of the petitioner.* ***The punishment of stoppage of annual increments has in fact become redundant. Consequently, the said stand of the respondents is wholly unjustified.***
>
> *In respect of recovery of Rs.2,16,492/- on account of shortages, the learned counsel for the respondents could not refer to any show cause notice so as to impose a punishment of the recovery of the loss suffered.* ***Since no proceedings have been taken to recover the aforesaid amount, we are of the opinion that the withholding of the retiral benefits to the said extent are wholly unjustified.***
>
> ***Consequently, we allow the present writ petition and direct the respondents to release the withheld amount to the petitioner within a period of three months. However, it shall be open to the respondents to take appropriate action in accordance with law to recover the shortages, if any, and the said process shall be completed by the respondents within a period of two months.***
>
> *(emphasis supplied)*

5. In this way, both the aforesaid recoveries were directed to be set aside by a Division Bench of this Court. However, the Division Bench also

observed that it shall be open to the respondents to take appropriate action in accordance with law to recover the shortages, if any, and the said process shall be completed by the respondents within a period of two months. On the basis of the aforesaid liberty granted to the respondents, the General Manager/OP, Circle, DHBVNL, Narnaul issued a show cause notice to the petitioner vide Annexure P-7 on 22.05.2008 by stating that while he was in service, his material account was checked and it was found that there was a shortage of some material and the petitioner has failed to submit the account of the aforesaid shortage and therefore, it has been decided by the competent authority to recover the amount from his retiral benefits. The aforesaid show cause notice dated 22.05.2008 (Annexure P-7) is reproduced as under:-

DAKSHINI HARYANA BIJLI VITRAN NIGAM

From

General Manager/OP.
Circle, DHBVN, Narnaul.

To

Sh. ChanderParkesh JE/F (Retd)
C/o DGM/OP. Division, DHBVN, Rewari

Memo No. Ch. 246/ EP-437
Dated:- 22/05/2008

Sub:-Show cause notice

While you were posted as JE-I under OP. Divn, Rewari you had drawn the material from store. While you material account was checked it was found that there is shortage of material worth Rs.101902.00. You failed to submit your account of above shortage. ***It has been decided by the competent authority to/recover the above amount from your retiral benefits.*** *Similarly below mentioned amount is outstanding against you as intimated by the various offices where you had worked before joining the OP. Division, DHBVN, Rewari*

1. XEB S/U. Divn.No.11, UHBVN,Karnal on A/C of MISC= 2061.00 Adavance due to non depositing of estimated amount from the consumer.
2. XEB S/U. Divn, UHBVN, Panipat on A/C of material = 75075.00 account found shortage at site.
3. XEB S/U. Divn.No.11, UHBVN,Karnal on A/C of =34573.00 energy, pending investigationT/F missing parts and oil.

It has been decided by the competent authority to recover the above amount i.e. 213611.00 from your pensionary benefit.

It has therefore, tentatively been decided to recover Rs.213611.00 From the retiral benefits of Shri Chander Parkash. JE-I/F (Retired)

But before proceeding further in the matter you are afforded an opportunity to explain your position to show cause in writing within 15 days from the receipt of this communication as to why the proposed action may not be taken against you.

If you wish to consult the relevant official record for prepararing defence reply. You may consult the same in the officer of DGM/OP.Divn, Reward on any working day, travelling a your own expenses.

In case nothing is heard from your end within the stipulated period. It will be presumed that you have nothing to explain in your defence and further action will be taken against you on the basis of material available on the record of this office.

The receipt of this communication be acknowledged.

GM/OP.Circle, DHBVN, Narnaul.

(emphasis supplied)

6. The petitioner thereafter filed a detailed reply to the aforesaid show cause notice vide Annexure P-8 by taking all the grounds especially that in view of Rule 2.2(b) of C.S.R., Volume-II, no disciplinary action can be taken against an employee, if the event is more than four years old and no such recovery can be effected and even no show cause notice could have been issued. However,

vide impugned Annexure P-9 dated 04.07.2008, the Superintending Engineer/Op. Circle, DHBVN, Narnaul decided the show cause notice by observing that in view of the order dated 11.04.2008 (Annexure P-6) passed by this Court, the office is bound to take appropriate action in accordance with law and in this way, the petitioner was given personal hearing and it was decided that the appeal/personal hearing was considered and rejected being not found feasible and recovery as shown of Rs.2,13,611/- is recoverable from the petitioner and it was ordered to be recovered from the petitioner. The petitioner thereafter, filed an appeal against the aforesaid order vide Annexure P-10 by again stating that no such recovery could have been effected from him after his retirement and he rather explained that from his retiral benefits, no recovery can be made.

7. However, the aforesaid appeal was not decided by the appellate authority and in this way, the petitioner was again constrained to file a writ petition before this Court, which was a fifth round of litigation vide CWP-17382-2015, which was again disposed of by this Court on 15.10.2019 vide Annexure P-18 in view of the statement made by the learned counsel for the respondent-DHBVNL that the appeal will be decided within a period of three months. Thereafter, vide impugned order dated 09.01.2020 (Annexure P-19), the appeal was decided and it was rejected by the Chief Engineer/Op., DHBVN, Delhi. The appellate authority referred to Rule 2.2(b) of C.S.R. since it was so referred by the petitioner in the grounds of appeal but observed that it does not advance the case of the petitioner because the show cause notice dated 22.05.2008 was issued to him within the directions issued by this Court vide order dated 11.04.2008 (Annexure P-6), wherein it was ordered that it shall be

open to the respondents to take appropriate action in accordance with law to recover the shortages, if any and hence, the plea of the petitioner cannot be considered. The present writ petition has been filed seeking quashing of impugned orders dated 04.07.2008 (Annexure P-9) and dated 09.01.2020 (Annexure P-19) and also to release the withheld amount of Rs.2,13,611/- along with interest @ 18% per annum to the petitioner and costs as well.

SUBMISSIONS MADE BY LEARNED COUNSEL FOR THE PETITIONER

8. Mr. Shvetanshu Goel, learned counsel for the petitioner submitted that the petitioner has been constrained to file present sixth successive writ petition before this Court for enforcement of his Constitutional and Statutory Rights. While referring to the aforesaid facts and orders passed by this Court as aforesaid, he submitted that there were two recoveries which were to be made from the petitioner. First was with regard to two increments which were stopped at the time when the petitioner was in service but was directed to be recovered from his pensionary benefits and second was with regard to an amount of Rs.2,16,492/-, which was pertaining to shortage of material and transformer missing parts and oil at the time when he was in service and was sought to be recovered from his retiral benefits including the gratuity. Both the aforesaid issues were decided by a Division Bench of this Court vide Annexure P-6 dated 11.04.2008 and the Division Bench set aside both the aforesaid recoveries, which were sought to be made from the petitioner. Direction was issued to release the withheld amount within three months. He further submitted that although there was an observation of the Division Bench of this Court in the aforesaid order Annexure P-6 that it will be open to the respondents to take

appropriate action in accordance with law to recover the shortages, if any, and the said process shall be completed by the respondents within a period of two months and in this way, the respondents were granted liberty to proceed in accordance with law to recover the shortages, if any, but the respondents instead of proceeding in accordance with law have thereafter issued a fresh show cause notice to the petitioner vide Annexure P-7 with a pre-determined mind, without any authority of law and without any provision of law.

9. Learned counsel for the petitioner also submitted that the petitioner had retired in the year 1999 and the aforesaid show cause notice has been issued to him in the year 2008, which is about 9 years after his retirement and without even specifying as to what was the date when the event took place at the time when he was in service. He further submitted that firstly the provisions of Rule 2.2(b) of the Punjab Civil Services Rules, as applicable to the State of Haryana were not even applicable to the respondenet-DHBVNL and even if assumingly the same were applicable, then rather no such action could have been taken against the petitioner after his retirement for an event which was more than 4 years old, whereas the show cause notice was issued to him about 9 years after his retirement and therefore, on the face of it, such kind of show cause notice could not have been issued because there was no provision and there was no authority of law with the respondent-DHBVNL to have issued such a show cause notice to the petitioner. He further submitted that a Division Bench of this Court had only granted liberty to the respondents to ‘proceed in accordance with law’ but the respondents with a view to circumvent the orders passed by the Division Bench issued such a show cause notice by violating the provisions of law and with a pre-determined mind.

10. Learned counsel for the petitioner referred to the language which has been used in the aforesaid show cause notice (Annexure P-7), wherein it has been so stated not only once but twice that it has been decided by the competent authority to recover the aforesaid amount and when the petitioner filed reply to the aforesaid show cause notice vide Annexure P-8 by stating that the respondents have no authority of law and they cannot issue show cause notice or recover the amount under any provision of law, the same was not even considered while passing the impugned order Annexure P-9. He further submitted that a perusal of Annexure P-9 would show that not even a single reason has been mentioned and the order is ***ipse dixit*** of the officer to pass the order for recovery of Rs.2,13,611/-. He further submitted that still when the petitioner filed an appeal, the respondent-DHBVNL did not even consider the appeal and he was again constrained to file a writ petition before this Court and again with a direction of this Court for the fifth time when he filed the petition that the appeal was decided and when the appeal was decided vide Annexure P-19, again in order to circumvent the order passed by a Division Bench of this Court vide Annexure P-6 and even by noting that liberty was only to take appropriate action in accordance with law, again an order was passed by rejecting the appeal of the petitioner and the said appeal was decided after a period of about 12 years.

11. Learned counsel for the petitioner also referred to the judgments of Division Bench of this Court in ***Hans Raj Sharma versus Uttar Haryana Bijli Vitran Nigam Limited, CWP-152-2004, decided on 29.07.2004, Ashok Kumar Dhamija Versus Dakshin Haryana Bijli Vitran Nigam Limited and others, CWP-7949-2005, decided on 21.09.2006, Ram Narain Dua versus Dakshin***

Haryana Bijli Vitran Nigam Limited and others, CWP-8095-2005, decided on 21.09.2006 and ***Suraj Mal versus Uttar Haryana Bijli Vitran Nigam Limited and others, CWP-12036-2008, decided on 11.09.2008*** to contend that in the absence of any show cause notice or enquiry or disciplinary proceedings, no recovery can be effected on the ground of shortage of material and transformer missing parts and oil. He further submitted that in one of the aforesaid cases, the present respondent-Nigam i.e. Dakshin Haryana Bijli Vitran Nigam Limited was a party and it was obligatory upon the officers of the respondent-Nigam to have known the law of the land that in the absence of any disciplinary proceedings etc., no recovery can be effected and the aforesaid law is no longer *res integra.*

SUBMISSIONS MADE BY LEARNED COUNSEL FOR THE RESPONDENTS

12. On the other hand, learned counsel for the respondents submitted that the aforesaid impugned orders i.e. Annexure P-9 and Annexure P-19 have been passed by the respondent-DHBVNL in view of the liberty granted by a Division Bench of this Court as aforesaid.

ANALYSIS OF SUBMISSIONS OF LEARNED COUNSEL FOR THE PARTIES

13. I have heard the learned counsels for the parties.

14. It is a typical case where the petitioner, who was an employee of the respondent-DHBVNL had to knock the doors of this Court for the sixth time for redressal of his grievances pertaining to his Statutory and Constitutional Rights. Pension and pensionary benefits is a Constitutional Right since it is Right to Property and Article 300-A of the Constitution of India provides that no person shall be deprived of his Right to Property except by the authority of

law. The petitioner was compulsorily retired from service on 26.11.1999 and thereafter, he filed number of petitions before this Court as aforesaid and the present is a writ petition of the year 2020 which is his sixth petition and during the pendency of the present writ petition, the petitioner unfortunately died on 28.08.2020 and he could not get his grievances redressed from the respondent-DHBVNL. In this way, there is a long drawn litigation for redressal of grievances pertaining to Right to Property for a period of about 24 years. Now the petitioner is represented through his four legal representatives, two of whom are his sons and two are his daughters and as per the age given in the memo of parties, one of the legal representatives, namely, Ritu Ray, who is the daughter of the petitioner was minor at the time of the retirement of the petitioner when he was deprived of part of his retiral benefits.

15. When earlier the petitioner was inflicted with punishment of stoppage of two annual increments and recovery was also effected from his retiral benefits on account of shortage of material and transformer missing parts and oil, he had been agitating as aforesaid through various writ petitions before this Court and ultimately vide Annexure P-6, a Division Bench of this Court set aside both the actions of the respondent-DHBVNL. Rather a direction was issued to release the withheld amount within three months. However, liberty was granted to the respondent-DHBVNL to take appropriate action in accordance with law to recover the shortages, if any. Had there been any provision of law or any authority of law or any procedure for recovery of any amount after a lapse of so many years, then certainly the respondent-DHBVNL could have considered and decided to proceed for making recovery in accordance with law. However, under the garb of the aforesaid liberty granted,

which was subject to the condition that it has to be in accordance with law, a show cause notice was issued vide Annexure P-7 to the petitioner.

16. The aforesaid show cause notice has to be analysed also from two perspectives. Firstly, a perusal of the aforesaid show cause notice as reproduced above would show that it has been issued by stating in so many words and by repeating the same that it has been '**decided**' by the competent authority to recover the amount from the retiral benefits of the petitioner. It is very strange that a show cause notice was issued for grant of opportunity of hearing, wherein it was already decided to recover the amount and therefore, clearly it was a case of a pre-determined mind and issuance of show cause notice was merely an empty formality and therefore, not only that it was ***non-est*** and ***void ab initio*** being issued with a pre-determined mind but was also contrary and violative of the order passed by a Division Bench of this Court vide Annexure P-6, wherein it was so observed that liberty is granted to the respondent-DHBVNL **to proceed in accordance with law**. Issuance of a show cause notice with a pre-existent decision to recover the amount cannot be said to be in accordance with law and is violative of rule of ***audi alteram partem***. Secondly, show cause notice has been issued in the year 2008, whereas the petitioner was compulsorily retired in the year 1999 and after about 9 years, the show cause notice was issued to a retired employee after the master and servant relationship had already ceased to exist. This Court need not go into the issue as to whether Rule 2.2(b) of the Punjab Civil Services Rules, as applicable to the State of Haryana was applicable to the respondent-DHBVNL or not because even if assumingly it was so applicable, no notice or charge-sheet could have been issued to a retired employee for an event which took place more than four years

preceding the issuance of a charge-sheet and therefore, ***ex-facie*** such a notice was not in accordance with law. When the petitioner submitted reply to the aforesaid show cause notice vide Annexure P-8, he took up all these issues that no such recovery could be effected from him in the aforesaid facts and circumstances but strangely enough when the impugned order Annexure P-9 was passed, the Superintending Engineer/Op. Circle, DHBVN, Narnaul, who passed the order has not even given a single reason whatsoever as to why and how such recovery of Rs.2,13,611/- is to be effected from the petitioner. Although he referred to the order passed by a Division Bench of this Court, wherein liberty was granted to the respondent-DHBVNL to take an appropriate action in accordance with law but when order was passed, it was without assigning any reason especially with regard to the lack of authority of law. Annexure P-9 was ***ipse dixit*** of the aforesaid officer. Not only this, even otherwise also no recovery could have been effected from the petitioner on account of shortage of material and transformer missing parts and oil in view of the settled law.

17. A Division Bench of this Court in ***Hans Raj Sharma's case (supra)*** held as under:-

> *"5. It has been settled by the Supreme Court in case of P.R. Nayak vs. Union of India, AIR 1972 Supreme Court 554 that issuance of a charge-sheet is sine-qua-non for initiation of departmental enquiry. Till date, no charge-sheet has been issued. There is no justification for withholding the pension of the petitioner".*

18. A Division Bench of this Court ***Ashok Kumar Dhamija's case (supra)*** held as under:-

> *"2. Having heard the learned counsel for the parties, we are of the considered view that the respondents could not have withheld any amount of gratuity payable to the petitioner on account of allegations which have emanated after the date of his retirement. Such a course is not available to the respondents. In some what similar circumstances, this Court has earlier also in the case of Hans Raj Sharma vs. Uttar Haryana Bijli Vitran Nigam Limited and others 9Civil Writ Petition No.152 of 2004, decided on October 29, 2004) has allowed the writ petition by following the judgment of Hon'ble Supreme Court in P. R. Naik vs. Union of India, AIR 1972 SC 554. It has been laid down in the aforementioned judgment that issuance of charge-sheet for initiation of departmental enquiry is a sine qua non."*

19. A Constitution Bench of Hon'ble Supreme Court in ***Deokinandan Prasad versus State of Bihar and others, 1971(2) SCC 330***, held that pension is not a bounty of the State and is rather a valuable right. The relevant portion of the aforesaid judgment is reproduced as under:-

> *"31. The matter again came up before a Full Bench of the Punjab and Haryana High Court in* ***K.R. Erry v. The State of Punjab, ILR (1967) Punj & Har 278****. The High Court had to consider the nature of the right of an officer to get pension. The majority quoted with approval the principles laid down in the two earlier decisions of the same High Court, referred to above, and held that the pension is not to be treated as a bounty payable on the sweet-will and pleasure of the Government and the right to superannuation pension including its amount is a valuable right vesting in a Government servant. It was further held by the majority that even though an opportunity had already been afforded to the officer on an earlier occasion for showing cause against the imposition of penalty for lapse or misconduct on his part and he has been*

found guilty, nevertheless, when a cut is sought to be imposed in the quantum of pension payable to an officer on the basis of misconduct already proved against him, a further opportunity to show cause in that regard must be given to the officer. This view regarding the giving of further opportunity was expressed by the learned Judges on the basis of the relevant Punjab Civil Service Rules. But the learned Chief Justice in his dissenting judgment was not prepared to agree with the majority that under such circumstances a further opportunity should be given to an officer when a reduction in the amount of pension payable is made by the State. It is not necessary for us in the case on hand, to consider the question whether before taking action by way of reducing or denying the pension on the basis of disciplinary action already taken, a further notice to show cause should be given to an officer. That question does not arise for consideration before us. Nor are we concerned with the further question regarding the procedure, if any, to be adopted by the authorities before reducing or withholding the pension for the first time after the retirement of an officer. Hence we express no opinion regarding the views expressed by the majority and the minority Judges in the above Punjab High Court decision, on this aspect. But we agree with the view of the majority when it has approved its earlier decision that pension is not a bounty payable on the sweet-will and pleasure of the Government and that, on the other hand, the right to pension is a valuable right vesting in a government servant.

32. This Court in State of **Madhya Pradesh v. Ranojirao Shinde and another, AIR 1968 SC 1053** had to consider the question whether a "cash grant" is "property" within the meaning of that expression in Articles 19(1)(f) and 31(1) of the Constitution. This Court held that it was property, observing "it is obvious that a right to sum of money is property".

20. Thereafter, in ***State of Kerala versus M. Padmanabhan Nair, (1985) 1 SCC 429,*** 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. This authoritative law was thereafter again reiterated by the Hon'ble Supreme Court in ***Dr. Uma Agrawal Vs. State of U.P. and another, 1999(3) SCC 438.***

21. Thereafter, Hon'ble Supreme Court in another authoritative judgment passed in ***State of Jharkhand and others versus Jitendra Kumar Srivastava and another, 2013(12) SCC 210*** again discussed the entire law regarding valuable rights pertaining to the grant of pensionary benefits. Para Nos.8 and 16 of the aforesaid judgment is reproduced as under:-

> *"8. It is an accepted position that gratuity and pension are not the bounties. An employee earns these benefits by dint of his long, continuous, faithful and un-blemished service. Conceptually it is so lucidly described in D.S. Nakara and Ors. Vs. Union of India; (1983) 1 SCC 305 by Justice D.A. Desai, who spoke for the Bench, in his inimitable style, in the following words:*
>
> > *"18. The approach of the respondents raises a vital and none too easy of answer, question as to why pension is paid. And why was it required to be liberalised? Is the employer, which expression will include even the State, bound to pay pension? Is there any obligation on the employer to provide for the erstwhile employee even after the contract of employment has come to an end and the employee has ceased to render service?*
> >
> > *19. What is a pension? What are the goals of pension? What public interest or purpose, if any, it seeks to serve?*

If it does seek to serve some public purpose, is it thwarted by such artificial division of retirement pre and post a certain date? We need seek answer to these and incidental questions so as to render just justice between parties to this petition.

20. The antiquated notion of pension being a bounty a gratituous payment depending upon the sweet will or grace of the employer not claimable as a right and, therefore, no right to pension can be enforced through Court has been swept under the carpet by the decision of the Constitution Bench in Deokinandan Prasad v. State of Bihar and Ors. (1971) 2 SCC 330 wherein this Court authoritatively ruled that pension is a right and the payment of it does not depend upon the discretion of the Government but is governed by the rules and a Government servant coming within those rules is entitled to claim pension. It was further held that the grant of pension does not depend upon any one's discretion. It is only for the purpose of quantifying the amount having regard to service and other allied maters that it may be necessary for the authority to pass an order to that effect but the right to receive pension flows to the officer not because of any such order but by virtue of the rules. This view was reaffirmed in State of Punjab and Another Vs. Iqbal Singh(1976) 2 SCC 1".

It is thus hard earned benefit which accrues to an employee and is in the nature of "property". This right to property cannot be taken away without the due process of law as per the provisions of Article 300-A of the Constitution of India.

16. The fact remains that there is an imprimatur to the legal principle that the right to receive pension is recognized as a right in "property". Article 300-A of the Constitution of India reads as under:

> *"**300-A Persons not to be deprived of property save by authority of law**.- No person shall be deprived of his property save by authority of law."*
>
> *Once we proceed on that premise, the answer to the question posed by us in the beginning of this judgment becomes too obvious. A person cannot be deprived of this pension without the authority of law, which is the Constitutional mandate enshrined in Article 300-A of the Constitution. It follows that attempt of the appellant to take away a part of pension or gratuity or even leave encashment without any statutory provision and under the umbrage of administrative instruction cannot be countenanced."*

22. In ***Tukaram Kana Joshi and others through Power of Attorney Holder versus M.I.D.C. and others, 2013(1) SCC 353***, it was held by the Hon'ble Supreme Court that right to property is now considered to be not only a Constitutional or a Statutory Right but also a human right. Para 9 of the aforesaid judgment is reproduced as under:-

> "9. *The right to property is now considered to be not only a constitutional or a statutory right but also a human right. Though, it is not a basic feature of the Constitution or a fundamental right. Human rights are considered to be in realm of individual rights, such as the right to health, the right to livelihood, the right to shelter and employment etc. Now however, human rights are gaining an even greater multi faceted dimension. The right to property is considered very much to be a part of such new dimension. (Vide:* ***Lachhman Dass v. Jagat Ram, (2007) 10 SCC 448; Amarjit Singh v. State of Punjab, (2010)10 SCC 43; State of Madhya Pradesh v. Narmada Bachao Andolan, (2011)7 SCC 639, State of Haryana v. Mukesh Kumar, (2011)10 SCC 404 and Delhi Airtech Services (P) Ltd. v. State of U.P., (2011)9 SCC 354****.*

23. In the present case, it is *ex facie* clear that the respondent-DHBVNL while passing the impugned orders i.e. Annexure P-9 and Annexure P-19 has not only violated the statutory provisions but there has been a direct infraction of Articles 21 and 300-A of the Constitution of India. It is also a settled law that right to life guaranteed under Article 21 of the Constitution of India includes right to livelihood.

24. A Constitution Bench of Hon'ble Supreme Court in ***Olga Tellis and others versus Bombay Municipal Corporation and others, (1985) 3 SCC 545*** held that right to life includes right to livelihood. It was observed that an equally important facet of right to life is the right to livelihood because no person can live without the means of living, that is, the means of livelihood. If the right to livelihood is not treated as a part of the Constitutional Right of life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation.

25. When the petitioner filed an appeal against the aforesaid order, the respondent-DHBVNL did not decide the same for about 12 years and in the meanwhile, the petitioner had to again file a writ petition before this Court, wherein the learned counsel for the respondent-DHBVNL had stated that the appeal will be decided and in this way, vide impugned order dated 09.01.2020 (Annexure P-19), the appeal was rejected by the Chief Engineer/Op., DHBVN, Delhi.

26. A perusal of aforesaid impugned order Annexure P-19 would show that when the appellate authority rejected the appeal, it also stated that the plea of the petitioner for taking shelter of Rule 2.2(b) of C.S.R. cannot advance his case because the show cause notice was issued to the petitioner with the

directions of the High Court dated 11.04.2008 in CWP-5988-2007, wherein it was ordered that it shall be open to the respondent-DHBVNL to take appropriate action in accordance with law to recover the shortages, if any and hence, the plea of the petitioner cannot be considered. It is again very strange to see that the appellate authority of the level of a Chief Engineer/Op., DHBVN, Delhi also concurred with that of the order passed by the Superintending Engineer/Op. Circle, DHBVN, Narnaul and stated that since the High Court has so observed that it shall be open to the respondent-DHBVNL to take appropriate action in accordance with law to recover the shortages, if any, the same could have been taken. However, it is clear that the show cause notice (Annexure P-7) was neither 'appropriate' nor was it 'in accordance with law' and these two conditions were pre-requisite in the aforesaid order.

27. The present is a case which is based upon the principle of ***res ipsa loquitur*** i.e. when facts speak for themselves. Vide Annexure P-6, a Division Bench of this Court had set aside both the aforesaid actions of the respondent-DHBVNL and directed respondents to pay withheld amount within three months. But liberty was granted to the respondent-DHBVNL to take appropriate action in accordance with law for recovery of shortages, if any. The aforesaid action taken by the respondent-DHBVNL was neither appropriate nor in accordance with law. The officers of the respondent-DHBVNL, who passed the impugned orders i.e. Annexure P-9 and Annexure P-19 were supposed to know the law of the land and also they were supposed to know how the orders of the Courts are to be implemented. A Division Bench of this Court had only granted liberty to the respondent-DHBVNL to take appropriate action in accordance with law but the aforesaid action is absolutely contrary to law not

only on account of the fact that after the retirement of the petitioner, no such action could have been taken against him but also in view of the aforesaid settled law that for shortage of material and transformer missing parts and oil, no action can be taken in the absence of any enquiry or charge-sheet or any disciplinary proceedings. In the present case, it is an admitted position that no enquiry or charge-sheet or disciplinary proceedings were initiated against the petitioner at any stage.

28. As to how the respondent-DHBVNL has not only abused the process of law in a contemptuous manner but also made a mockery of law can be again summarized as follows:-

(i) When a Division Bench of this Court on 11.04.2008 after setting aside action of respondents withholding retiral benefits of petitioner allowed the petition and clearly directed the respondents to release the withheld amount to the petitioner within three months, the same has not been implemented till date i.e. 15 years have elapsed. Liberty granted to take appropriate action in accordance with law to recover the shortages, if any, was different from the direction made to release the amount. Both of the above observations could not have been integrated by respondents to suit their own convenience. Liberty granted was for a subsequent event but the respondents nullified the positive direction to release withheld amount under the garb of liberty.

(ii) In the impugned order, the Superintending Engineer/Op. Circle, DHBVN, Narnaul even after noting that he is bound to take ‘appropriate action’ and ‘in accordance with law’ rather acted

contrary to law. The petitioner retired in the year 1999. There was no enquiry, charge-sheet or any order of competent authority against the petitioner prior to his retirement. However, from his retiral benefits, an amount was withheld due to shortage of material and transformer missing parts and oil. This order and action was set aside by a Division Bench of this Court. Then in case in pursuance of liberty granted by this Court was to be availed of then it had to be in accordance with law. After 9 years of his retirement, a show cause notice was issued without there being any provision of law under any Rules. There is nothing on the record to show as to under what authority of law the show cause notice was issued. Only reference has been made in Rule 2.2(b) of C.S.R., in the order passed by Appellate Authority vide Annexure P-19, whereas such Rule does not apply to the present petitioner because there is nothing on the record to show any adoptation of Punjab Civil Services Rules (as applicable to the State of Haryana) to the respondent-Nigam. Even if assumingly they are so applicable, then otherwise also the aforesaid Rule could not be invoked because event, if any, was more than 9 years from date of issuance of show cause notice. Law in this regard has already been settled by plethora of judgments of this Court as have been described above in which even in some cases, present Nigam is a party.

(iii) Show cause notice is clearly with a pre-determined mind, wherein twice it has been stated that it has been ‘decided’ to

recover from the petitioner. Therefore, it was a mere empty formality and violative of rule of ***audi alteram partem***.

(iv) Impugned order Annexure P-9 is *ex facie* un-reasoned order. Although petitioner raised various issues in reply to show cause notice vide Annexure P-8 but not even a single issue raised was discussed and not even single reason was mentioned in the order Annexure P-9.

(v) The appellate authority took 12 years in deciding the appeal and that too when directions were issued by this Court on filing of a writ petition by the petitioner for fifth time.

(vi) Present petition is a sixth petition filed by the petitioner and during pendency of this petition, he has died after struggling for his Statutory and Constitutional Rights for 21 years.

29. In view of the aforesaid facts and circumstances of the present case, the present writ petition is allowed. Both the impugned orders dated 04.07.2008 (Annexure P-9) and dated 09.01.2020 (Annexure P-19) are hereby set aside. Respondent-DHBVNL is directed to refund an amount of Rs.2,13,611/- to the petitioner, along with interest @ 6% per annum (simple), within a period of three months from today. In case the aforesaid amount is not refunded to the petitioner within a period of aforesaid three months, then the petitioner shall be entitled for future rate of interest @ 9% per annum.

30. Considering the aforesaid facts and circumstances, wherein the petitioner had not only knocked at the doors of this Court for six times but he also lost his battle of life while litigating before this Court for enforcement of

his Statutory and Constitutional Rights, this Court is therefore of the view that although the action of the aforesaid officers of the respondent-DHBVNL, who passed the aforesaid impugned orders was contemptuous in nature but considering the fact that the aforesaid orders were passed in the year 2008 and 2020, respectively, instead of proceeding against the aforesaid officers for contempt of Court, it will be just and proper and in the interest of justice to impose exemplary costs upon the respondent-DHBVNL in the present case. The aforesaid costs are assessed as Rs.8,00,000/- (Eight lacs) in the nature of compensation.

31. This Court is conscious of the fact with regard to the quantum of costs in the nature of compensation but considering the action of respondents to have caused gross abuse of process of law, the quantum of costs is well justified being in the interest of justice. The Hon'ble Supreme Court in ***D.K. Basu versus State of West Bengal, 1997 (1) SCC 416*** observed that grant of compensation in proceedings under Article 32 or 226 of the Constitution of India for the established violation of the Fundamental Rights guaranteed under Article 21 is an exercise of the Courts under the public law jurisdiction for penalising the wrong-doer and fixing the liability for the public wrong on the State which failed in the discharge of its public duty to protect the Fundamental Rights of the citizen. It was further observed that the Courts have the obligation to satisfy the social aspirations of the citizens because the Courts and the law are for the people and expected to respond to their aspirations and a Court of law cannot close its consciousness and aliveness to stark realities In the concluding part, it was further observed that it is a well accepted proposition in most of the jurisdictions that monetary or pecuniary compensation is an appropriate and

indeed an effective and sometimes perhaps the only suitable remedy for redressal of the established infringement of the Fundamental Right to life of a citizen by the public servants and the State is vicariously liable for their acts.

32. There are four legal representatives, who are representing the petitioner. Therefore, it is directed that out of the aforesaid costs of Rs.8,00,000/- (Eight lacs), Rs.4,00,000/- (Four lacs) shall be paid to all the four legal representatives of the petitioner proportionately by the respondent-DHBVNL at the first instance and the same be paid to them within the period of three months from today. With regard to the remaining costs of Rs.4,00,000/- (Four lacs), the same shall be paid by the respondent-DHBVNL to the High Court Legal Services Committee within the aforesaid period of three months as well. Thereafter, the aforesaid costs shall be recovered by the respondent-DHBVNL from the aforesaid officers, who have passed the impugned orders i.e. Annexure P-9 and Annexure P-19 proportionately, i.e. Rs.4,00,000/- (Four lacs) from the Superintending Engineer/Op. Circle, DHBVN, Narnaul and Rs.4,00,000/- (Four lacs) from the Chief Engineer/Op., DHBVN, Delhi. In case the aforesaid officers are already in service, then the aforesaid amount shall be recovered from them expeditiously in accordance with law and in case they have retired from service, then the same shall be recovered from them by filing a civil suit against them in accordance with law.

(JASGURPREET SINGH PURI)
JUDGE

23.04.2024
Chetan Thakur

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