

22.05.2024
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WPCT 54 of 2018
Union of India & Others
- Versus -
Saila Nath Choudhary

Mr. Debapriya Gupta
... for the Petitioners.

Mr. Chiradip Sinha,
Mr. Siddhartha Sankar Mandal,
Ms. Arunima Sharma
...for the Respondent.

The present writ petition has been filed challenging the order dated 16th February, 2018 passed by the learned Tribunal in the original application (hereinafter referred to as the OA), being OA 189 of 2013 preferred by the original applicant/respondent herein challenging two memoranda dated 19th October, 2012 and 18th December, 2012 whereby he was intimated about shortage of stores reflected in the stock sheets and in connection therewith it was decided to recovery an amount of Rs.30,34,855/- towards stores debit from his salary at the rate of Rs.19,000/- per month with effect from November, 2012.

Mr. Gupta, learned advocate appearing for the petitioners submits that it would be evident from the memoranda under challenge in the OA 189 of 2013 that

the authorities took steps for recovery of an amount of Rs.30,34,855/- towards store debits. In view of the interim order passed in the said OA, the authorities could realize only an amount of Rs.38,000/- and the rest amount is still due and payable by the respondent.

He submits that Rule 15 of the Railway Services (Pension) Rules, 1993 (hereinafter referred to as the 1993 Rules) provides *inter alia* that the railway or Government dues as ascertained and assessed, which remain outstanding till the date of retirement or death of the railway servant, shall be adjusted against the amount of the retirement gratuity or death gratuity or terminal gratuity. Estt. Srl. No. 170/98 dated 12th August, 1998 also confers authority upon the petitioners to withhold gratuity of railway staff holding the charge of railway stores till issuance of clearance certificate by the Personnel Branch. The respondent was holding the post of SSE (P.Way) and while in charge of the unit, he was accountable for the loss of the materials which he had taken charge from his predecessor in office. Such shortage was discovered upon an inventory and the respondent was asked to explain the shortage and in reply, he stated that the deficiency might be due to mistake. In view thereof, the learned Tribunal erred in law in directing the petitioners to refund the recovered amount.

According to Mr. Gupta, the *sine qua non* towards initiation of a disciplinary proceeding is not for recovery of any dues. The fact that the disciplinary proceeding initiated by a charge sheet dated 29th June, 2017 has been dropped, would not be a hindrance towards recovery of the admitted amount of money due and payable by the respondent. Such arguments, as advanced, were glossed over by the learned Tribunal and no findings were returned on the same. Such infirmity warrants interference of this Court. In support of such contention reliance has been placed upon a judgment delivered in the case of *U.P. State Sugar Corporation Ltd. Vs. Kamal Swaroop Tondon*, reported in *AIR 2008 SC 1235*.

Mr. Sinha, learned advocate appearing for the respondent, however, denies and disputes the contention of the petitioners and submits that the instant writ petition has presently become infructuous inasmuch as the respondent has already retired from his service on 30th September, 2017. In view thereof, the question of any recovery from the '*salary of the respondent*' does not occasion in the changed facts and circumstances of the case.

He submits that the issue as urged by Mr. Gupta is pending consideration in an OA being OA 705 of 2023 preferred by the respondent praying for a direction upon

the petitioners to disburse DCRG along with interest. In support of such contention, he has drawn our attention to the averments made in the reply filed by the petitioners in the said OA.

We have heard the learned advocates appearing for the respective parties and considered the materials on record.

Records reveal that in the OA 189 of 2013 initially an interim order was passed on 26th March, 2013 and the same continued till the disposal of the OA by the order impugned in the present writ petition. In the midst thereof, the respondent retired from his service on 30th September, 2017 and prior thereto, a charge sheet was issued against the respondent on 29th June, 2017. The respondent thereafter filed one original application, being OA 133 of 2020 seeking a direction upon the petitioners to release the withheld DCRG, leave salary and commuted value of pension. He also filed another OA, being O.A. 1366 of 2021 challenging the disciplinary proceeding initiated by the charge sheet dated 29th June, 2017. Upon contested hearing, both the applications were disposed of by an order dated 20th May, 2022 with a direction upon the petitioners to pass a final order pertaining to the respondent's claim within a period of two months. However, in the midst thereof, *vide* memo dated 20th April, 2022 the competent

authority came to a conclusion that '*...the proved charges do not constitute grave misconduct and accordingly decided to drop the proceedings...*'. Subsequent thereto, the respondent preferred a fresh original application, being OA 705 of 2023 *inter alia* praying for disbursement of the DCRG benefits along with interest.

From the arguments, as advanced and the materials on record, it appears that there is no possibility for the petitioners to recover any amount from the '*salary of the respondent*' since he has already retired on 30th September, 2017 and as there had been a cessation of relationship with the employer on and from the said date. In view thereof, on the rudiments of the present writ petition, the issue as to whether the remaining dues can be recovered from the DCRG of the respondent, cannot be decided.

However, it is made clear that the issue urged before this Court as regards recovery dues from the DCRG of the respondent in terms of the provisions of Rule 15 of the 1993 Rules, 1993 read with Estt. Srl. No. 170/98 dated 12th August, 1998 is kept open to be decided by the learned Tribunal in the pending original application and the petitioners would be at liberty to take appropriate steps before the learned Tribunal.

With the above observations and directions, the writ petition is disposed of.

There shall, however, be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, upon compliance of all requisite formalities.

(Partha Sarathi Chatterjee,J.) (Tapabrata Chakraborty, J.)