

(2022-3)207 PLR 032
V.K. MOHINDRU v. PUNJAB STATE POWER CORPORATION LTD
PUNJAB AND HARYANA HIGH COURT
Before: Mr. Justice Fateh Deep Singh.
V.K. MOHINDRU – Petitioner,
Versus
PUNJAB STATE POWER CORPORATION LTD. and another – Respondents.
CWP 6698 of 2021 (O&M)

Service Matter - Recovery - Whether any show cause notice was ever issued to the petitioner prior to the passing of the order of recovery and the initiation of process of deduction and if the petitioner was given an opportunity of hearing - Respondent clearly accepts as to none and does not put forth any excuse - The principle of administrative law enjoins of giving of fair opportunity to a person before passing an order adverse to his interest - It is with the aim and object that no one is condemned unheard and he has reasonable opportunity to meet the accusations against him and having afforded an opportunity to him to put-forth his defence - No doubt this Court is fully aware that a massive financial loss has accrued to the department authorities as a consequence of connivance of the consumer with the other officers including the petitioner for which criminal act the petitioner alongwith other accused has been found guilty and convicted but at the same time this Court cannot wish away that the cannons of jurisprudence is thrown off to the winds to ensure that there is due abidement of the law and none of the parties is caused any material prejudice - Quashing the orders of deduction of pension and pensionary benefits alongwith recovery at this juncture - Electricity Act, 1910 (9 of 1910) Section 39, 39-A - Prevention of Corruption Act, 1947 (2 of 1947) Section 5(2).

Mr. Manu K. Bhandari, for the petitioner. Mr. Abhilaksh Gaiind, for the respondents.

Fateh Deep Singh, J. (Oral) -(9th March, 2022) - The matter has been taken up through Video conferencing on account of outbreak of pandemic COVID-19.

2. Petitioner V.K. Mohindru now retired engineer-in-chief of then Punjab State Electricity Board (now Punjab State Power Corporation Limited, in short 'the Corporation') was initially appointed as Apprentice Engineer on 01.03.1966. During his posting as Executive Engineer on deputation with the U.T. Electricity Department Chandigarh on the allegations of having committed misconduct, malfeasance that commercial consumer had caused theft of electricity and thereby caused huge financial loss running into crores of rupees FIR No. RC-32/93-CHD dated 14.12.1993 under Sections 120-B of Indian Penal Code and Sections 5(1)(d) read with Section 5(2) of the Prevention of Corruption Act, 1947 under Section 39 and 39-A of the Indian Electricity Act, 1910, Police Station, SPE/CBI Chandigarh was got registered against the petitioner alongwith others and thereafter he was found guilty and convicted by the Court of learned Special Judge, CBI Court, Chandigarh vide judgment and order dated 02.09.2016.

3. Though, it is not displaced that upon appeal before this Court the order of conviction was stayed which is in this background the petitioner has come up before this Court seeking release of his pension and outstanding pensionary benefits due to him.

4. Besides raking up the pleas to the effect conviction having been stayed by this Court in the appeal has put up the plea that the Haryana Viduyat Prasaran Nigam Limited has sought recovery and the loss on account of theft of electricity and are trying to recover the amount

though the electricity department now Union Territory of Chandigarh have not initiated any recovery proceedings against the principal accused M/s Bhushan Industrial Company. The primary grouse that being an employee he cannot be proceeded with on such a accusation and that too in the absence of any departmental inquiry or having violating the principle of 'audi alteram partem' and, thus, not affording reasonable opportunity to show cause and defend himself claiming that there is no grave or serious act of misconduct/negligence against him. The petitioner has sought to challenge withholding of his pension and pensionary benefits as a consequence of passing of judgment Annexure P-3 by the Special Judge terming it to be wholly illegal and malafide.

5. The respondent/Corporation in their stand reiterated that the FIR in question was got registered against the petitioner and the principal accused M/s Bhushan Industrial Company for fraud and theft of electricity. During the period 1985 to 1990 when the criminal proceedings were pending, the petitioner had been paid provisional pension and leave encashment were also released while other retirement benefits were withheld. It was categorical stand of the respondents that to facilitate commission of cheating and fraud the petitioner alongwith co-accused hatched a criminal conspiracy during 1984 to 1990 and provided independent electric energy through feeder D-3 by installing a meter at BBMB Sub-Station Chandigarh and not at the premises of the consumer and in which the petitioner was one of the conspirators and thereby allowed higher load to the consumer deliberately much more higher than the sanctioned load and, therefore, resulted in pilferage of supply of energy to the consumer and claimed that financial loss of around 19 crores was caused between 1985 to 1990 and sought to justify the claim of recovery for this financial loss to instrumentalities to the State.

6. Heard Mr. Manu K. Bhandari, Advocate for the petitioner and Mr. Abhilaksh Gaiind, Advocate for the respondents and perused the records.

7. Appreciating the submissions, the factum of registration of an FIR, the suspension of sentence by this Court vide order dated 05.10.2016 (Annexure P-4) and staying of the sentence of conviction vide order dated 09.11.2020 (Annexure P-12) are not at all displaced. No doubt it is there on the records and is own stand of the respondents that process of deduction of 50% cut in pension and recovery of Rs. 24,660/- has been initiated vide order dated 02.04.2019 (Annexure P-7) and which stood confirmed vide order dated 16.04.2019 (Annexure P-8) but a material question arises if such a recovery could be effected in the manner in which it is stated to be made. No doubt the petitioner had retired on 31.12.2002 and during the proceedings of the criminal trial he has been paid provisional pension. Thus, the claim that there has been denial of subsistence allowance ceases to hold good. To the specific query of this Court if any show cause notice was ever issued to the petitioner prior to the passing of the order of recovery and the initiation of process of deduction and if the petitioner was given an opportunity of hearing Shri Abhilaksh Gaiind Advocate for the respondents clearly accepts as to none and does not put forth any excuse. The principle of administrative law enjoins of giving of fair opportunity to a person before passing an order adverse to his interest. It is with the aim and object that no one is condemned unheard and he has reasonable opportunity to meet the accusations against him and having afforded an opportunity to him to put-forth his defence. No doubt this Court is fully aware that a massive financial loss has accrued to the department authorities as a consequence of connivance of the consumer with the other officers including the petitioner for which criminal act the petitioner alongwith other accused has been found guilty and convicted but at the same time this Court cannot wish away that the cannons of jurisprudence is thrown off to the winds to ensure that there is due abidement of the law and none of the parties is

caused any material prejudice. It is not a case where the petitioner has been left in a lurch though he has been paid provisional pension throughout the trial and allowing him full pension and pensionary benefits as per the claim might result in an innocuous situation where the State in spite of having suffered financial loss would not be able to retrieve their loss. This Court in the fitness of the things in its earnest urge to do justice to the parties holds quashing the orders of deduction of pension and pensionary benefits alongwith recovery at this juncture and at the same time directing the respondents to release provisional pension as earlier being done during the criminal trial and in the meanwhile to issue show cause notice for this recovery and carry on administrative action fully in accordance with law.

Keeping in view that the petitioner has already retired and matter is also very old and the petitioner being a senior citizen necessitates that the respondents accomplish the task of this administrative act as per law at the earliest preferably within one month from the date of receipt of copy of this order.

In the light of the same the instant petition is disposed off relegating the parties to appear before the authorities of the respondents for further action.

Disposed off.

R.M.S. - Petition disposed of.