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2023:PHHC:119099

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CWP-18490-2023 (O&M)  
DECIDED ON: 12.09.2023

PAWAN KUMAR AND OTHERS

.....PETITIONERS

VERSUS

UTTAR HARYANA BIJLI VITRAN NIGAM LTD. AND ANR.

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. R.K. Malik, Sr. Advocate with  
Mr. Kartikey Chaudhary, Advocate  
for the petitioners.

Mr. Jagbir Malik, Advocate for respondents.

**SANDEEP MOUDGIL, J (ORAL)**

The petitioners have approached this Court invoking the jurisdiction under Article 226 of the Constitution of India for issuance of a writ in the nature of *certiorari* to quash the order dated 26.05.2023 (Annexure P-8) as well as show cause notice of even date i.e., 26.05.2023 (Annexure P-9) in which the pay of the petitioners has been reduced and recoveries on account of alleged excess payment has been ordered without following due procedure of law.

Mr. R.K. Malik, learned Sr. Advocate appearing on behalf of the petitioners vehemently contended that after issuance of show cause notice dated 26.05.2023 (Annexure P-9), the 30 days' period stipulated therein to make reply, in fact no occasion whatsoever was left with the petitioners as on that day itself i.e., 26.05.2023, the final order for withdrawing the benefit of notional pay was withdrawn and further enhanced amount was ordered to be recovered, as is placed before this Court at Annexure P-8. He further submits that out of total 10 petitioners, 7 have already retired and in the light of judgment rendered in *State of*



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*Punjab vs. Rafiq Masih, (2015) 4 SCC 334*, recoveries cannot be effected once an employee has retired from the services and particularly in the light of the fact when the payment alleged to have been paid was not on account of any mis-representation or fraud on the part of employee. The 3<sup>rd</sup> and last contention of the petitioners is that even the opinion given by the Accountant General, Haryana with regard to the fact that the petitioners have been rightly granted the benefit of notional pay has been ignored and above all the petitioners have not been given any opportunity whatsoever to put up their case before the Competent Authority in pursuance to the show cause notice dated 26.05.2023.

Notice of motion.

Mr. Jagbir Malik, Advocate having been served with an advance copy accepts notice on the asking of Court, who faced with the aforesaid contentions and particularly to the fact that admittedly the show cause notice was issued on 26.05.2023 and before the 30 days' period granted in the said show cause notice for submission of any reply by the petitioners, passed the final order dated 26.05.2023 (Annexure P-8) on the same day, practically left the representation-reply or any kind of defence on behalf of the petitioners to be an eyewash and of no use. He faced with the situation having no explanation to the said fact, on instructions from Ms. Riya, UDC of CE/Admn, UHBVNL, Panchkula makes a statement before this Court that the final order dated 26.05.2023 (Annexure P-8) stands withdrawn and formal order to that effect will be passed within a period of three days from today.

In the light of above, this Court makes it further clear that the period of 30 days to submit any reply or representation to the show cause notice dated 26.05.2023 (Annexure P-9) would start from the date a communication with regard to the withdrawal of final order dated 26.05.2023 (Annexure P-8) to the petitioners is made by UHBVNL. Thereafter, on receipt of said reply, if any filed by the

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petitioners, the Competent Authority shall consider the same and decide the matter after following due procedure of law including opportunity of personal hearing and if need be, after conducting a regular inquiry in the matter.

Learned Sr. counsel appearing for the petitioners is satisfied with the aforesaid statement made by Mr. Jagbir Malik, Advocate for respondents and, therefore, does not want to press the instant petition at this stage.

Petition stands disposed of in the aforesaid terms.

**(SANDEEP MOUDGIL)**  
**JUDGE**

**12.09.2023***Meenu*

*Whether speaking/reasoned*      *Yes/No*  
*Whether reportable*              *Yes/No*