

(1998) 05 RAJ CK 0022
In the Rajasthan High Court
Case No : Civil Writ Petition No. 59 of 1998

Anil Bhandari

APPELLANT

Vs

United India Insurance Co. and Others

RESPONDENT

Date of Decision : 27-05-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 60
General Insurance Business (Nationalisation) Act, 1972 — Section 17A
PENSIONS ACT, 1871 — Section 11

Citation : (1998) 3 RLW 1606 : (1999) 2 WLC 232 : (1998) 1 WLN 691

Hon'ble Judges : G.L. Gupta, J

Bench : Single Bench

Judgement

G.L. Gupta, J.—The petitioner was the employee of the respondent United Insurance Company. On the completion of qualifying service he gave notice of 90 days seeking voluntary retirement from service w.e.f. 19.11.1997. His request of voluntary retirement was accepted and he retired on 19.11.1997.

2. The petitioner's case is that he had submitted his papers for terminal benefits immediately after he gave notice seeking voluntary retirement, but he has not been given benefits as yet. It has been averred that the respondents are not correctly counting his length of service for calculating the pension and he has been deprived of his right of commutation of pension as well. It has been further averred that on the petitioner's making repeated requests to the respondents to give retiral benefits to him a cheque for Rs. 1,12,304/- as against gratuity amount was given to the petitioner but at the same time he was asked to make endorsement on the cheque in favour of the respondent-company as some amount was outstanding against him. It has been stated that income tax has been wrongly deducted from the amount payable to him on account of the gratuity and that the amount payable for the leave encashment has also not been correctly calculated as 22 days leave earned by him in 1997 have not been added to his account. It has further been stated that the amount of pension and gratuity could not be retained on account of dues against the petitioner. It has

been prayed that the respondents be directed (i) to reckon his 25 1/2 service for the purposes of pension instead of 25 years; (ii) to refund Rs. 2200/- recovered from the petitioner under the head income tax and (iii) to release his pension and gratuity without adjusting the amount of loan due against him.

3. In the reply filed by the respondents it has been averred that the petitioner has suppressed material facts and has made deliberate misstatements and therefore the writ petition should be dismissed on this ground alone. It has been further stated that even according to the petitioner some amount is outstanding against him on account of the scheme loan and supplementary loan and the respondents are, therefore, entitled to deduct that amount on account specific provision in para 48 of the General Insurance (Employees") Pension Scheme, 1995 and the document Anx. R/1 executed by the petitioner while taking loan. It has also been stated that the petitioner did not complete his pension papers and the matter could not be finalised because of the defects intimated to him time to time.

4. Mr. Lodha contended that even if any amount was outstanding against the petitioner the terminal benefits could not be denied to the petitioner. He pointed out that there was dispute with regard to the outstanding amount and therefore the disputed amount could not be recovered from the pension and gratuity amount. He submitted that the petitioner had served for twenty years and three months and therefore as per the Pension Scheme his qualifying service should be reckoned at 25 1/2 years as he has sought voluntary retirement. He pointed out that the petitioner's leave account has not been correctly maintained as the leave earned by him in the year of his retirement has not been credited to his account. He placed reliance on the cases of (i) State of Kerala and Others Vs. M. Padmanabhan Nair, (ii) Union of India (UOI) Vs. Jyoti Chit Fund and Finance and Others, (iii) Calcutta Dock Labour Board and Another Vs. Smt. Sandhya Mitra and Others, (iv) Union of India (UOI) and Another Vs. Wing Commander R.R. Hingorani (Retd.), (v) R. Kapur Vs. Director of Inspection (Painting and Publication) Income Tax and Another, (vi) Govind Ch. Mathur v. State and Ors. 1996 (1) RLR 144. (vii) Nihal Singh Gehlot v. UCO Bank and Anr. 1997 (2) WLC (Raj.) 596 (viii) Mohan Lal v. State of Raj. 1996 (1) WLC (Raj.) 193. and (ix) Motilal Sharma v. University of Rajasthan 1998 (1) WLC (Raj.) 441.

5. On the other hand, Mr. Gupta contended that it is because of the inaction and non-cooperation of the petitioner himself that the retiral benefits could not be given to him. He submitted that the mistake, if any, will be corrected by the respondents in the calculation of the leave encashment and the qualifying service but refund of the income tax deduced from the gratuity amount of the petitioner cannot be made as the amount has been deposited in the Income Tax Department. He pointed out that under the Pension Scheme and document Anx. R-1 executed by the petitioner while taking two housing loans amount due against the petitioner can be recovered from the retiral benefits. Distinguishing the rulings relied on by learned Counsel for the petitioner Mr. Gupta submitted

that in those cases the employee had not given in writing that the outstanding amount could be deducted from the retiral benefits.

6. I have carefully considered the above arguments. It is no denying the legal position that the retiral benefits must be given to the employee immediately after his retirement. The Hon''ble Apex Court has held in the case of *State of Kerala v. M. Padmanabhan* (supra) that pensionary and gratuity are no longer bounty to be distributed by the Government to its employees on their retirement but are valuable rights and property in their hands and any culpable delay in settlement and disbursement thereof must be visited with the penalty of payment of interest at the current market rate till actual payment. In the other cases also it has been observed that the Government is trustee in respect of the sums of the pension and gratuity and therefore if payment is delayed the interest should be awarded in favour of the petitioner.

7. The important question that needs determination is whether the respondents are entitled to adjust the amount of the house building loans from the amount of pension and gratuity payable to the petitioner. Both the learned Counsel have relied on the provisions of General Insurance (Employees) Pension Scheme, 1995 formulated by the Central Government in exercise of the power conferred u/s 17A of the General Insurance Business (Nationalisation) Act, 1972. Para 48 of the Scheme reads as follows:

48. Recovery of dues of the Corporation or a Company: The Corporation or a Company shall be entitled to recover the dues to the Corporation or a Company on account of housing loans, advances, license fee, other recoveries and recoveries due to employees'' co-operative credit Societies from the commutation value of the pension or the pension or the family pension.

It is obvious that the Pension Scheme itself provides that the amount outstanding against an employee on account of housing loans can be recovered from the pensionary benefits. It is relevant to point out that the petitioner has not challenged the provisions of Para 48 of the Pension Scheme. That being so, there is no legal impediments in the recovery of the outstanding amount on account of housing loans from the pensionary benefits.

8. Further it has not been denied that the petitioner had executed the document Anx. R-1 dt. 17.3.1992 while taking housing loan wherein he had undertaken that in the event of his retirement from the services of the company, the company was authorised to adjust the outstanding dues from Provident Fund, Term Assurance, Insurance benefit payable on retirement, or any amounts that may be payable from the Company on termination of service from the Company and adjust the same towards loan and other dues payable to the Company. Such undertakings were given by the petitioner whenever he obtained loan from the Company. The undertakings have been placed at pages 80 and 81 of the paper book. It is evident that the petitioner had agreed while taking the loan that if any amount remained due at the time of retirement the same could be adjusted

towards his retiral benefits. It is not the case for the petitioner that the undertakings given by him were executed under duress and he did not give undertakings voluntarily.

9. Thus, both as per clause of the Pension Scheme as also the undertakings given by the petitioner, the respondents are entitled to adjust the housing loan amount from the retiral benefits of the petitioner.

10. Coming to the cases relied on by Mr. Lodha. it may be stated that none of the cases directly deal with the point in controversy. In the case of Union of India v. Jyoti Chit Fund (supra) the controversy involved was whether the amount lying in the Provident Fund Account of the government servant, who was entitled to the same on retirement could be attached in execution of a decree in favour of third party. It was held that the amount could not be attached in view of the provisions of Section 60 C.P.C. In the instant case, the amount has not been attached under any decree. Instead the amount is desired to be adjusted on account of the undertakings given by the petitioner himself, and in accordance with the provisions of the Pension Scheme.

11. So also in the case of Calcutta Dock Labour Board (supra) it was held that the gratuity payable to workman was not attachable for the satisfaction of a decree in favour of third party.

12. In the case of Union of India v. Wing Commander, R.R. Hingorani (supra) the facts were that the employee had not vacated the government house allotted to him and therefore the proceedings were initiated under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and a sum of Rs. 38,811,71 as damages were slapped on the government servant. The amount was deducted by the Government from the pensionary benefits. The Hon'ble Apex Court held that it could not be done in view of the provisions of Section 11 of the Pension Act, 1871 which exempts pension from attachment. It is to be noticed that in that case the amount was deducted from the commuted pension of the employee and the amount due was not in the nature of loan. It was an amount of damages imposed under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. In my opinion, on the basis of the observations of that case it cannot be held that the amount of house building loan cannot be recovered from the pensionary benefits, more so when the employee had himself agreed that such amount could be deducted from his pensionary benefits and Clause 48 of the Pension Policy also permits.

13. In the case of R. Kapur v. Director of Inspection (supra) the gratuity was withheld for not vacating the government accommodation by the government employee and not paying the damages under the relevant rules for over stay. It was held that the right of a retired employee to gratuity did not depend on vacating the government accommodation and therefore the gratuity was directed to be released. It is obvious that the case is distinguishable on facts.

14. In the case of Govind Ch. Mathur v. State and Ors. (supra) the deduction

from the pensionary benefits was made on account of the fact that the employee had not returned files. It is obvious that in that case the amount was deducted on account of alleged misconduct for which the employee was not charged. Therefore, the deduction was held to be without jurisdiction.

15. In the case of Nihal Singh Gehlot v. UCO Bank and Anr. (supra) it was held that the retiral benefits could not be withheld on the ground that there was some dispute regarding the outstanding amount. However, it is significant to point out that para no. 10 of the judgment indicates that the amount which was due against the petitioner was allowed to be adjusted from the amount payable to the employee.

16. In the case of Mohan Lal Bhatra v. State of Raj. (supra) the retiral benefits were denied to the government servant because he had not produced date of birth certificate. It was held that there was no requirement of birth certificate when retiral benefits are to be given and the birth certificate was required for the appointment only. The case is clearly distinguishable.

17. In the case of Motilal Sharma v. University of Raj. (supra), the University had withheld the amount of gratuity and provident fund on the ground that some amount of penal rent of residence occupied by the employee was outstanding against the him. It was held that on that ground pensionary benefits cannot be withheld. There cannot be any quarrel with this legal position.

18. The above discussion reveals that none of the cases deals with the situation where the employee had taken loan and outstanding amount was sought to be adjusted against the pensionary benefits. In my considered opinion, the respondents are within their rights to adjust the amount of housing loan outstanding against the petitioner from the retiral benefits.

19. There is merit in this contention of learned Counsel for the petitioner that for pension purposes the petitioner's qualifying service should be reckoned at 25 1/2 years. Qualifying service has been defined in Clause (S) of Para 2 of the Pension Scheme as the service rendered while on duty or otherwise which shall be taken into account for the purpose of pension under this Scheme. It has not been provided in the Scheme as to how the period of less than one year is to be counted for qualifying service but it has been provided that if the scheme is silent on the point, the Central Civil Services "Pension Rules", 1972 will apply. Under Sub-rule (3) of Rule 49 of the 1972 Rules, it has been provided that in calculating the length of qualifying service, fraction of a year equal to three months and above shall be treated as a completed one half year and reckoned as qualifying service. In the instant case it has not been disputed that the petitioner had served for 20 years and 3 months. As he had sought voluntary retirement, he will get the benefit of 5 years. The petitioner is entitled to the reckoning of his qualifying service for the purpose of pension at 25 1/2 years. The provision of Clause 18 in Chapter IV of the Pension Scheme pointed out by Mr. Gupta is obviously not applicable. It is not a case of break of service.

20. There is also merit in this contention of Mr. Lodha that 22 leave earned by the petitioner in the year 1997 should also be credited in the petitioner's leave account, in view of the example appeared at Page 31 under Rule 26 of the Central Civil Services (Leave) Rules, 1972 in the Book "Swamy's compilation of F.R.S.R. Part III, Leave Rules." It is obvious from the example that if an employee avails some days earned leave during first half of the year, earned leave so taken will be adjusted against 15 days earned leave kept separately in his account on the first day of the year and the balance brought forward from the earlier year will be kept intact. In the instant case, what has been done is that earned leave of the current year was credited in the account of the petitioner on the first day of the year and thereby the leave in excess of 240 days was considered as having lapsed on that day. The respondents have erred in calculating the leave in this manner. There is obvious error in the leave account which needs correction.

21. It may be that respondents have erred in deducting the income tax from the amount of gratuity but the amount has already been deposited in the Income tax Department. It is therefore not possible for the respondents to get back the amount. The petitioner should himself get the amount of income tax refunded on the basis of the certificate to be issued by the respondents or adjust the same towards the income tax payable by him.

22. The petitioner has also prayed for directing the respondents to consider about the commutation of the pension. Mr. Gupta learned Counsel for the respondents frankly conceded that the commutation will be accepted as per the rules.

23. It has to be accepted that the petitioner has unnecessarily objected to the adjustment of the loan amount outstanding against him from the pensionary benefits. At the same time, the respondents are also responsible for causing delay in giving retiral benefits to the petitioner. The letter Anx. 9 is glaring example of the same wherein a clarification has been sought from the petitioner regarding the pin code number. It is deplorable that such flimsy objections are raised by the Company which is a statutory body and instrumentality of the State.

24. Consequently, the writ petition is disposed of with the following directions (i) The petitioner shall intimate the respondents within two weeks from today as to what amount is outstanding against him in respect of the housing loans and interest thereon giving necessary particulars available with him. (ii) Thereafter the respondents shall decide the pension matter of the petitioner. They will be entitled to deduct the amount outstanding on account of house building loans and interest thereon from the retiral benefits. If they do not agree with the particulars furnished by the petitioner, they will pass speaking order in respect of each and every item as to why the contentions of the petitioner were not accepted and shall pay the remaining amount to the petitioner within four weeks. (iii) If the petitioner does not supply the particulars, as stated above, yet the respondents shall decide the matter and make payment within the aforesaid time

limit. (iv) If the retiral benefits payable to the petitioner were not paid to him within the aforesaid period, the petitioner shall be entitled to interest at the rate of 18 per cent annum from the date the amount fell due till the date of payment. (v) The petitioner's qualifying service for the purpose of pension shall be reckoned as 25 1/2 years. (vi) In the leave account of the petitioner 22 days earned leave in the year 1997 shall also be credited. (vii) The respondents shall order the commutation of pension as per Rules.