(2015) 04 RAJ CK 0167

In the Rajasthan High Court

Case No : Civil Writ Petition No. 1243 of 2005

D.R. Dayama — APPELLANT

Vs

The New India Assurance Company Ltd. and Others — RESPONDENT

Date of Decision : 22-04-2015

Acts Referred:

Citation : (2015) 04 RAJ CK 0167

Hon'ble Judges : Sandeep Mehta, J

Bench : Single Bench

Advocate : Anil Bhandari, for the Appellant; Anil Bachhawat, Advocates for the Respondent

Final Decision : Allowed

Judgement

Sandeep Mehta, J.—By way of the instant writ petition, the petitioner has approached this Court with a prayer for directing the respondents to release his post retiral benefits viz. monthly pension, commutation of pension, gratuity, provident fund and G.S.L.I. etc. with interest and for restraining the respondents from making any recovery from the retiral benefits of the petitioner.

2. Briefly stated the facts necessary and relevant for deciding the controversy at hand are that the petitioner was appointed as Apprentice Officer in the respondent company on 1.9.1977. Upon completing one year''s training, the petitioner was appointed as Assistant Administrative Officer on probation vide order dated 1.8.1978. The Government of India floated a scheme named as General Insurance (Officers) Special Voluntary Retirement Scheme, 2004 (hereinafter referred to as SVRS) for all permanent full time officers who had attained the age of 40 years and had completed 10 years of qualifying service. The petitioner opted for SVRS on 12.1.2004 and agreed to vacate the Company owned residential accommodation/leased accommodation within two months from the date of being relieved. The petitioner also authorized the Company to recover and adjust all loans/dues etc. payable by him to the Company from his terminal benefits including ex-gratia. The petitioner claims that he was informed

by the General Manager regarding the acceptance of his application for SVRS after office hours on 12.3.2004 through an order Annexure-3. By the said order, the petitioner was directed to surrender all the material assets/documents received from the Company. The petitioner was relieved and handed over charge on 12.3.2004 after office hours. The petitioner has asserted in the instant writ petition that as per S.V.R.S, the petitioner is entitled to ex-gratia i.e. salary for the number of months of remaining service, provident fund, gratuity as per Payment of Gratuity Act or the gratuity payable under the Rationalisation Scheme or pension (including the commuted value of pension) as per General Insurance (Employees) Pension Scheme, 1995 and leave encashment. It is further mentioned in the writ petition that a portion of the ex-gratia and leave encashment amounts were paid to the petitioner after some time of his retirement but approximately Rs. 16.50 lacs falling due to the petitioner towards arrears of pension, provident fund, gratuity, leave encashment, ex-gratia payment, GSLI and regular monthly pension have been withheld by the Company without any justification. The petitioner submitted a representation Annexure-5 dated 5.8.2004 to the authorities requesting them to release his withheld retiral benefits. The petitioner was informed by a communication dated 30.11.2004 that he had not submitted the requisite original documents for GSLI (Group Saving Link Insurance) claim and for this reason the GSLI claim could not be released in his favour. However, regarding the remaining retiral dues of the petitioner, the communication was absolutely silent. The petitioner again sent a reminder dated 27.2.2005 requesting the respondents to release all his retiral benefits i.e. Gratuity, Provident Fund, GSLI and Pension etc. but the same was not responded to. Feeling aggrieved, the petitioner has approached this Court by way of the instant writ petition praying for the above mentioned relief.

3. The respondents have filed a reply to the writ petition wherein it is asserted that the claim of the petitioner that he applied for voluntary retirement under the SVRS in a bonafide manner is absolutely false and frivolous. When the petitioner sought SVRS, he was aware that certain audit queries were outstanding against him and that is why, a part of the retiral dues of the petitioner were withheld. The audit queries were communicated to the petitioner but the petitioner has deliberately concealed these facts while filing this writ petition. Reliance is placed in the reply upon general condition 8(ix) of the SVRS and it is asserted that as per the said condition, all payments under this scheme and any other benefits payable to an officer are subject to prior settlements or repayment or adjustment in full, of loans, advances, return of company''s property and any other outstanding dues against him/her and payable by him or her to the company. It is submitted in the reply that the remaining payment of the petitioner''s terminal benefits are pending against the non personal audit recoveries pointed out by the comptroller and auditor general (CAG audit). It is further asserted that a huge sum in relation to short collection of premium, irregular settlement of motor claim etc. is outstanding against the petitioner which are in the nature of his personal liabilities and thus are required to be settled and recovered from his

retiral dues as per Clause 8(ix) of the SVRS. The action of the respondents in withholding further terminal benefits of the petitioner has been further justified with reference to the provisions of Chapter IX of General Insurance Employees Pension Scheme, 1995. Along with the reply, certain documents including communication dated 13.11.1998 (Annex.R/2) have been annexed, more particularly the audit report of the year 1997, as per which numerous shortfalls in various cases of different parties insured with the Company have been pointed out. These short falls have been attributed to the petitioner.

4. However, it is relevant to note here that the document Annexure R/2 appears to be in relation to three persons viz. present petitioner herein, Shri A.K. Jain and Shri R.K. Purohit. It is not clear from the document as to which portion of the alleged shortfalls is attributable to the petitioner. It is further relevant to mention here that the respondents have themselves filed a document Annexure R/6 with the reply, wherein answering to personal audit queries regarding the petitioner, the Regional Manager Mrs. Kamlesh Vashist was informed that she had attributed personal responsibility of Mr. Dayama in some of the audit queries and absolved his personal responsibility in other audit queries. She was directed to give a specific and unequivocal confirmation after thorough examination of all the facts and circumstances of the case as to whether personal responsibility could be attributed to Mr. Dayama for the above non personal underwritten audit query. In turn, the Regional Manager mentioned in the letter Annexure R/7 that she was constrained to personalize the query in the name of Mr. D.R. Dayama. However, the reasons for the personalization of the query in the petitioner''s name has not been clarified.

5. The petitioner has filed a rejoinder to the reply pleading that the audit queries have already been dropped and the letters Annexure R/6 and R/7 have been issued malafide in order to harass the petitioner after his voluntary retirement.

6. While admitting the writ petition, this Court by an interim order dated 19.9.2005 directed the respondents to make the payment of commutation of pension, gratuity, provident fund and GSLI and also the monthly pension to the petitioner for which he is entitled. The petitioner was directed to submit a bond with the respondents that in the event he is found guilty of the objections pointed out in the Audit Report he will refund the amount.

7. I have heard learned counsel for the parties and have gone through the material available on record.

8. The question regarding recovery from retiral benefits was examined by the Hon''ble Apex Court in the case of State of Jharkhand Vs. Uma Prasad, (2009) 8 SCALE 774 wherein it was held that in absence of any departmental/disciplinary action, recovery/withholding of retiral benefits of the employee is impermissible.

9. It is not in dispute that despite the audit queries allegedly raised against the petitioner, no disciplinary action was ever initiated against him. As per general condition 8(ix) of the Scheme, all payments under the scheme and any other

benefits payable to an officer are subject to prior settlements or re-payment or adjustment in full, of loans, advances, returning of Company''s property and any other outstanding dues against him/her and payable by him or her to the Company. Thus, it is to be assumed that before extending the benefit of Special Voluntary Retirement Scheme, 2004 the Company was under an obligation to assess and deduct any such amounts if due and then only, the employee could be given voluntary retirement. No sooner, the application for voluntary retirement was accepted, it has to be assumed that the requirement of general condition 8(ix) was complied with in its entirety. The order Annexure-3 dated 12.3.2004, whereby the petitioner was relieved from the Company''s service does not mention that any amount remained due to the Company from the petitioner. The order Annexure-4, whereby the application preferred by the petitioner was accepted of course mentions that other amounts due from the petitioner to the company, if any, shall be deducted from the ex-gratia if not recovered from other terminal benefits payable/settled to him in the meantime. It appears that pursuant to the said letter, the officers of the Company unilaterally withheld the post retiral/terminal benefits of the petitioner without giving him any opportunity to show cause whatsoever. All that is mentioned in the reply submitted on behalf of the respondents is that certain audit objections were noted against the petitioner and that is why his retiral benefits were withheld. The General Insurance Officers'' Special Voluntary Retirement Scheme, 2004 as it stands, clearly stipulated that all permanent full time officers who had completed 10 years of qualifying service and had attained the age of 40 years would be eligible to seek special voluntary retirement under the Scheme. The officers who were under suspension or against whom disciplinary proceedings were pending or contemplated were prohibited to opt for voluntary retirement under the Scheme. Under Clause 6 of the Scheme, the Officer opting under the Scheme was entitled to ex gratia and in addition thereto, provident fund, gratuity, pension (including commuted value of pension), if eligible as per General Insurance (Employees'') Pension Scheme, 1995 and leave encashment. Clause 8 stipulated the general conditions for the officers opting for voluntary retirement under the Scheme. Sub-clause (ix) of Clause 8 clearly postulates that payments under the Scheme could be subjected to prior settlements or repayment or adjustment in full, of loans, advances, returning of Company''s property and any other outstanding dues against him/her and payable by him or her to the Company. Thus, before extending the benefit of the Scheme, the officers of the company were required to assess the financial status of the officer vis-a-vis the company to adjust the company''s dues, if any, from his accrued amount. Having failed to do so, the subsequent action of the respondent Company in withholding the terminal benefits of the petitioner employee is unacceptable. The Hon''ble Apex Court in the case of State of Jharkhand Vs. Uma Prasad (supra) examined a similar controversy and held as below:-

1. This appeal is directed against the judgment and order dated 13-12-2005 whereby the Division Bench of the Jharkhand High Court, dismissed the letters

patent appeal filed by the appellant.

2. The writ petition was filed by the respondent claiming herself to be the widow of late Birendra Prasad with a further prayer for releasing the death-cum-retiral benefits of her husband, who died in harness on 8-10-2004, while working as an Assistant in the Secretariat, Department of Art, Culture, Sports and Youth Affairs, Jharkhand. The writ petition was disposed of by the learned Single Judge on 27-4-2005, directing for release of the death-cum-retiral benefits and also the salary, if any due, together with interest.

3. The appellant aggrieved by the said order filed a letters patent appeal before the Division Bench of the High Court, which was dismissed by the order dated 30-12-2005, as against which this appeal is filed. The learned counsel appearing for the appellant has submitted before us that there are certain claims of the Department against the deceased arising out of appropriation by him of some amount belonging to the Government.

4. However, on consideration of the records, we find that late Birendra Prasad, the deceased was put under suspension on 26-9-1998 on the order of the Commissioner, Chhotanagar Division, Ranchi, and by another order dated 16-6-2000, his suspension was revoked. Thereafter, he died on 8-10-2004 in harness while working as an Assistant in the Secretariat, Department of Art, Culture, Sports and Youth Affairs, Jharkhand. That being the position and since the learned counsel for the respondent is unable to show us any order passed by the competent authority issuing any charge-sheet against the said deceased, there could be no recovery of any amount from the retiral benefits of the deceased Birendra Prasad. There is no record to show that any departmental proceeding was drawn up by the Department against the deceased before his death.

5. We find no error in the judgments passed by the Division Bench and by the learned Single Judge of the Jharkhand High Court. There is no merit in this appeal and the same is dismissed.

6. We are informed that during the pendency of the present appeal the respondent was paid an amount of Rs 1,00,000 (Rupees one lakh) which shall now be adjusted against the dues payable to the respondent. All the service benefits and other dues which are required to be paid to the respondent here shall be paid within a period of two months from the date of receipt of a copy of this order.

10. In view of the above proposition expounded by the Hon''ble Apex Court in the case of Uma Prasad (supra), It is evident that the recovery, if any, from the terminal benefits of an employee after his retirement is only permissible if the employee is held guilty in departmental proceedings. The audit queries in relation where to the petitioner''s terminal benefits were withheld are also vague and non specific. The audit queries were raised way back in the year 1998 and as such it was expected from the officers to deal with the petitioner''s application under the

Scheme of 2004 keeping in mind the said audit queries. Having accepted the petitioner''s application for SVRS, it did not lie in the mouth of the authorities to claim that recoveries remained to be effected from the petitioner''s terminal benefits in light of the audit queries. Even while arguing the matter before this Court, counsel for the respondent was not in a position to point out as to which portion of the amount of deficit and shortfalls, determined in the audit queries Annexure R/1, can be attributed specifically to the petitioner. In the letter Annexure R/4 which was addressed by the Audit Incharge to the Regional Manager on 24.2.2004, the auditor has written about the audit queries described in audit report Annexure R/1. As has been mentioned above, the audit queries pertain to three officers viz. present petitioner, Shri A.K. Jain and Shri R.K. Purohit. The issue, as a matter of fact, assumed the role of a football and was shifted between the headquarter and the Regional office for personalizing the queries against the present petitioner and ultimately it is in the year 2005 that the Regional Manager wrote a letter Annexure R/7, mentioning that she was constrained to personalize the audit queries against the petitioner. The reason for the constrained personalization is not clear from the order. If the Regional Manager had been pressurized and was thus constrained to take the action then obviously, such action is tainted with bias. The said action too came around after about more than a year of petitioner''s voluntary retirement and thus the recovery pursuant to such action cannot be carried out from the petitioner''s post retiral benefits in light of the ratio of the Supreme Court judgment in the case of State of Jharkhand Vs. Uma Prasad (supra).

11. Accordingly, the writ petition deserves to be and is hereby allowed. The ad-interim order dated 19.9.2005 is made absolute. The post retiral benefits of the petitioner which have already been released to him in pursuance of the interim order dated 19.9.2005 shall not be recovered. The indemnity bond which the petitioner was required to execute in terms of this Court''s order dated 19.9.2005 is discharged. Furthermore for the delay in payment of the retiral dues, the petitioner shall be entitled to interest @ 9% per annum from the date of accrual till the date of actual payment in light of the judgment rendered by the Apex Court in the case of S.K. Dua Vs. State of Haryana and Another, AIR 2008 SC 1077 : (2008) 1 CLT 701 : (2008) 116 FLR 636 : (2008) 1 JT 331 : (2008) 1 SCALE 284 : (2008) 3 SCC 44 : (2008) 1 SCC(L&S) 563 : (2008) 3 SLJ 104 : (2008) AIRSCW 689 : (2008) 1 Supreme 95 .

12. No order as to cost.