

(1996) 07 P&H CK 0145
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 3643 of 1995

Gursharan Singh Ghai

APPELLANT

Vs

The Amritsar Central Cooperative Bank Limited and Others

RESPONDENT

Date of Decision : 19-07-1996

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 60

Citation : (1997) 1 ILR (P&H) 191 : (1996) 114 PLR 338

Hon'ble Judges : Sarojnei Saksena, J

Bench : Single Bench

Advocate : A.S. Jatana, for the Appellant; G.S. Bajwa, for the Respondent

Final Decision : Allowed

Judgement

Sarojnei Saksena, J.—The short point involved in this case is whether subsistence allowance paid to an employee of Amritsar Central Cooperative Bank Limited can be attached by the Court ?

2. Brief facts of the case are that the petitioner when he was working as Branch Manager in the Amritsar Central Cooperative Bank Limited (in short, the Bank), in May 1990 he was suspended. He remained under suspension from May 5, 1990, to February 3, 1995, the date on which he was dismissed from service. On October 15, 1994, a show cause notice was also given to him as to why his services be not terminated. Against this show cause notice he filed CWP No. 16511 of 1993 titled as Gurcharan Singh Ghai v. The Amritsar Central Cooperative Bank Limited and Ors.. In this writ petition he also assailed that despite passing suspension order the bank has not paid him subsistence allowance. Vide order dated November 21, 1994, a Division Bench of this Court directed the bank to examine the representations Annexures P-4 to P-7 filed by the petitioner for payment of subsistence allowance within a period of 15 days. As the respondent did not comply with the said order within the specified time, the petitioner filed COCP No. 144 of 1995 on January 31, 1995. The respondents filed reply stating that they have rejected the representations of the petitioner

Annexures P-4 to P-7. In view of this disclosure the contempt petition was dismissed and rule was discharged.

3. The petitioner challenged the termination order dated February 3, 1995, by filing CWP No. 2505 of 1995. In the reply the respondents submitted that subsistence allowance of Rs. 1,51,656/- for the period from May 5, 1990, to February 3, 1995, has been credited in the Saving Bank Account No. G-693 of the petitioner. They also averred that the petitioner could have withdrawn the said amount between March 29, 1995 and April 3, 1995, but the petitioner never bothered to withdraw the said amount. They also informed the petitioner that the above said amount has been attached on April 3, 1995, by the order of the Senior Subordinate Judge, Amritsar, in Execution No.56 of 1995.

4. The petitioner filed CM No. 4390 of 1995 in CWP No. 2505 of 1995 for the release of subsistence allowance which was attached by the said ex parte order of Amritsar Court. A Division Bench of this Court passed an order on May 22, 1995, reiterating their earlier order dated May 10, 1995, whereby they observed that the petitioner may move the court of Senior Subordinate Judge, Amritsar, for setting aside the said ex parte attachment order. They also directed the Senior Subordinate Judge, Amritsar, to dispose of the said matter on June 3, 1995, keeping in view the provisions of Section 60 of the Code of Civil Procedure. The petitioner filed a petition before the lower Court for setting aside the said ex parte order of attachment of his Saving Bank account wherein respondents deposited subsistence allowance of Rs. 1,51,656/- payable to him. By the impugned order the lower Court has dismissed his petition holding that the provisions of Section 60(1) of the CPC are inapplicable in his case as he is neither a Government servant nor an employee of Railway Company nor an employee of Local Body. He also relied on *Joseph Benjamin Bonjour (Insolvent) Vs. The Official Assignee of Madras*, a Full Bench decision, wherein it is held that where once the amount is paid to the person entitled to it, the exemption ceases and it can be attached in execution proceedings.

5. The petitioner's learned counsel/submitted that an award is passed against the petitioner by the competent officer for the alleged amount of embezzlement. The respondents have filed an execution to realise the said amount of the award. In that execution case the aforementioned amount of Rs. 1,51,656/- has been attached by the lower Court. He contended that subsistence allowance cannot be attached in execution of a decree. According to him the learned lower Court has fallen into an error in relying upon *Joseph Benjamin Bonjour's* case (supra), which is not applicable in this case. He also submitted that the provisions of Section 60 CPC are applicable in his case, which prohibit attachment of subsistence allowance in execution of any decree/order.

6. The respondent's learned counsel, supporting the impugned order, assiduously argued that an employee of Cooperative Bank is not a Government servant. In support of his contention he was relied on *State of Bank of India Vs. S. Vijaya Kumar*, . His another contention is that provisions of Section 60 CPC are

also not applicable because the petitioner is neither a Government servant nor servant of Railway Company nor of Local Body, as is mentioned in the said provision. He further submitted that once subsistence allowance is deposited in the Saving Bank account of the petitioner, it becomes an amount in his hand and is liable to attachment in execution of the said award. To substantiate this plea he has relied on Joseph Benjamin Bonjour's case (supra). Lastly, he contended that the service conditions of the petitioner are regulated by the Punjab Cooperative Financing Institutions Service Rules, 1958 (in short, Punjab Rules). These Rules are submitted for perusal.

7. In my considered view, the contentions raised by the respondent's counsel are devoid of any force.

8. So far as Vijay Kumar's case (supra) is concerned, it is inapplicable in this case because in that case it was held that bank officers are not entitled to protection under Article 311(1) of the Constitution against dismissal as they are governed by statutory Regulations. So far as Joseph Benjamin Bonjour's case (supra) is concerned, a Full Bench of Madras High Court has held that the "immunity u/s 3(1) of the Provident Funds Act does not attach to moneys paid over to a subscriber or depositor from his provident fund. The season is that money thus paid over can no longer be described as compulsory deposit". Hence it was held that when such a money is paid to the depositor, it is liable to attachment and provisions of Section 60 CPC are inapplicable.

9. But in this case amount from the provident fund is not paid to the petitioner. When departmental proceedings were initiated against him, he remained under suspension from May 5, 1990, to February 3, 1995. Clauses (vi) and (vii) of Rule 9 of the Punjab Rules run as under:-

"(vi) No employee in any case shall be kept under suspension for a period exceeding 6 months at a time. The Board may, however, extend the period of suspension in special cases with the prior approval of the Registrar.

(vii) During the period of suspension, a member shall be paid suspension allowance equal to 50% of his salary along with full usual allowance."

10. Thus, under the orders of this Court the respondents surreptitiously deposited suspension allowance of the aforesaid period amounting to Rs. 1,51,656/- in petitioners saving Bank account without informing him and without seeking his instructions for depositing the said amount in his account. The respondents got it attached in execution proceedings which were pending in the court of the Senior Subordinate Judge, Amritsar. Thus, their mala fides are galore and need no further elucidation. From the documents produced by the petitioner along with this revision, it is evident that vide letter dated March 29, 1995, he was informed by the bank that an amount of Rs. 1,51,656/- is deposited in his saving Bank account. It is also not disputed that before that they wanted to know his Saving Bank account in their bank, but before he could reply to that query, the bank officials on their own deposited the said amount in his Saving

Bank account on March 29, 1995. These facts are borne out from the letter Annexure P-3. On April 8, 1995, the petitioner wrote letter Exhibit P-4 to the bank informing them that his cheque book has been lost and prayed that fresh cheque book be issued to him. Thus, it is obvious that before the petitioner had any opportunity to withdraw this amount, the respondents got it attached *ex parte* in execution proceedings.

11. Subsistence allowance is not defined in the CPC or in the aforesaid Rules. In Webster's Third New International Dictionary, page 2279, definition of "subsistence allowance" is given as under :-

"(1): money given in advance (as to a soldier or workman) to meet the needs of life while awaiting a pay day

(2) : an allowance for expenses incurred in performance of a duty while temporarily away from one's residence

(3) : a cash allowance to a member of a military organization given in lieu of food."

12. When an employee is suspended it is obvious that pay and allowances admissible to him are not paid. For his survival as well as for the survival of his family members, he is paid subsistence allowance under the service Rules. This subsistence allowance is meant for the subsistence of the said employee as well as that of his family members. It is required to be paid to the employee every month, so that he can keep his and dependents' body and souls together. It is not a profit or a gift which is paid/given to him. This amount is given to him to meet his bare necessities of life. Under the said Rules the bank was duty bound to pay him suspension allowance equal to 50 per cent of his salary along with his usual allowances. First of all it is evident that without any rhyme or reason of bank did not pay him subsistence allowance from May 5, 1990 to February 3, 1995. When under the orders of this Court the bank was compelled to pay him subsistence allowance, the respondents surreptitiously deposited this amount in his Saving Bank account. No prior intimation was given to him. His instructions were not sought that the said amount is going to be deposited in his Saving Bank account. The bank authorities were not knowing his Saving Bank account but as one of their employees told them the S/B account of the petitioner, secretly this amount was deposited in that account. Later on vide letter dated March 29, 1995, he was informed that this amount of Rs. 1,51,656/- is deposited in his S/B account. Vide letter Exhibit P-4 the petitioner made a request for issuance of another cheque book as he lost his cheque book, which was issued to him earlier. It does not lie in the mouth of the respondents to say that the petitioner had an opportunity to withdraw this amount from March 29, 1995, to April 3, 1995. On April 3, 1995, the respondents got this amount attached in the execution proceedings.

13. No doubt, the provisions of Section 60 CPC are not applicable in this case, but the general principle laid down therein is applicable in this case also.

Subsistence allowance is meant for the subsistence of the suspended employee and his family members. Thus, in my considered view, this amount of subsistence allowance was not liable to attachment in execution of the said award. The trial Court has fallen into an error in attaching this amount of subsistence allowance simply on the ground that amount of subsistence allowance is not attached but the amount lying in his Saving Bank account is attached. There is no other amount deposited in his Saving Bank account. Only this amount of Rs. 1,51,656/- is deposited in his Saving Bank account. Its character cannot be converted into any other amount. It was deposited as subsistence allowance and it will remain subsistence allowance. If the respondents would have paid subsistence allowance to the petitioner every month as per the aforementioned Rules, there would have been no such huge amount accumulated to be deposited like this.

14. Considering the above facts, not only the impugned order is set aside, but the order by which this amount of subsistence allowance is attached, is also set aside, while accepting this petition.