
(1993) 03 P&H CK 0016
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 2230 of 1982

Kaushal Kumar

APPELLANT

Vs

The State of Haryana and Others

RESPONDENT

Date of Decision : 22-03-1993

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Punjab Civil Services (Punishment and Appeal) Rules, 1952 — Rule 8

Citation : (1993) 104 PLR 640

Hon'ble Judges : Ashok Bhan, J

Bench : Single Bench

Advocate : Nemo, for the Appellant; Nemo, for the Respondent

Final Decision : Dismissed

Judgement

Ashok Bhan, J.—Petitioner who is an employee of State of Haryana has filed the present writ petition challenging the order Annexure P/14 vide which it had been decided to initiate action against the petitioner to recover the house building loan amount with penal interest.

2. Facts shortly stated are :-

Petitioner applied for the grant of house building loan for the purchase of a plot at Chandigarh. On the submission of the application, he was sanctioned loan of Rs. 14,040/- at the first instance and subsequently in the installments of Rs. 10,800/-, Rs. 10,160/- and Rs. 4,000/- the total of which comes to Rs. 39,000/-. First instalment was disbursed in the year 1968 and the last in the year 1974. Instead of purchasing residential plot at Chandigarh and making construction on the same, petitioner brought a shop-cum-residence at Inderpuri Extension New Delhi measuring 200 square yards This plot was mortgaged by the petitioner with the Governor of Haryana on 24-10-1969 Copy of the mortgage deed has been attached as Annexure P. 2 with the writ petition. In the mortgage deed, it is mentioned that the plot purchased was a shop-cum residential plot. A complaint

was made against the petitioner which was referred to the Vigilance Department for enquiry as the loan was taken for constructing the house at Chandigarh whereas the plot was purchased at Delhi without obtaining prior permission of the competent authority. In the year 1977, it was found that the petitioner had misutilised the advanced loan. Petitioner was proceeded under Rule 8 of the Punjab Civil Services (Punishment and Appeal) Rules, 1952 and a show cause notice was issued to him. The Director, Sahitya Academy Haryana, was asked to enquire into the allegations of misutilisation of the house building advance by the petitioner. In reply to the show cause notice, the petitioner did not submit the reply on merits and claimed that he be shown certain documents. The documents were not shown to the petitioner as the authorities thought that they were not of such a nature without which the petitioner could not submit his reply.

3. Government of Haryana issued instructions vide F D letter No. 4264. WM-(I) 73/33307 dated 27th August, 1973 for dealing with the Government employees misusing the house building advance laying down the procedure to be adopted for its recovery. The instructions reads as under: -

(i) recovery in the case of mis utilization of the House Building Loan etc, should be made at 50% of the gross emoluments of the employee concerned :

(ii) penal interest at 2 1/2 % over and above the normal rate of interest should be charged from the employee concerned from the date of drawal of loan till the entire principal has been recovered and ;

(iii) no second loan shall be sanctioned to the employee concerned. In case of a request being received from such an employee the matter may be referred to the Finance Department for consideration. In any case, such a request should not be entertained before the expiry of two years from the date full recovery of the loan and the interest accrued thereon.

But in case the loan is utilized by the employee either in speculation or in business, then the entire amount of loan can be recovered in lumpsum and if the recovery cannot be effected, then the maximum amount available should be recovered and the rest could be recovered by total stoppage of emoluments."

4. In the reply filed, the petitioner had taken the objections that the instructions issued in the year 1973, could not be made applicable to the petitioner as the house building loan had been advanced to him in the year 1968 Authorities rejected the contention of the petitioner on the ground that the instructions issued in the year 1973 could" be made applicable to the petitioner because the last installment of the loan was issued to the petitioner in the year 1974 and therefore the instructions issued in the year 1973 were applicable to his case Vide the impugned order Annexure P/14, it was decided to recover the loan amount in lumpsum with penal interest against which the present writ petition has been filed

5. I have gone through the writ petition, various annexure attached with it and

the written statement filed by the respondents.

6. The foremost contention raised in the writ petition is that the petitioner had mortgaged the plot with the State of Haryana giving full details and the then Director, Language Department Haryana signed the mortgage deed on behalf of the State of Haryana and that once the respondents had accepted the same and subsequently sanctioned and released the loan for the construction of the site, they were estopped by their own act and conduct to challenge the mis-utilization of the loan for the purchase of shop-cum residence at Delhi and the construction made thereon by the petitioner. I do not find any substance in this submission. The petitioner had made the application for the grant of a loan for the purchase of a residential lot at Chandigarh and for making construction thereon. The loan amount was certainly misutilized as the petitioner purchased a commercial plot with the advance taken by him which was meant for the purchase and construction of a residential house. Mortgaging of a plot in no way absolves the petitioner from the allegation of misutilization of Government money. Where the loan is granted, it was necessary for the government to get the property mortgaged in order to ensure the security of the Government money but this does not mean that the Government had in any way authorised the petitioner to utilise the advance taken by him for a purpose other than it was advanced to him.

7. The next emphasis of the petitioner is on the point that the instructions issued in the year 1973, could not be made applicable to the case of the petitioner as the first installment of Rs. 14040/- was drawn by the petitioner in the year 1968 for the purchase of the plot and the instructions issued subsequently could not be made applicable retrospectively. I do not find any substance in this submission as well. The last instalment of the loan was disbursed in the year 1974. No doubt, general instructions of the recovery of loan in lumpsum alongwith penal interest were issued by the Government in the year 1973, but even if these instructions had not been issued in case of misutilization of the loan, the Government was within its right to recover the amount in lumpsum. The loan had not been fully disbursed when the instructions became operative and, therefore, the instructions would be applicable.

8. Another point raised in the writ petition is that even 1973 instructions have not been followed by the respondents in its true spirits as in the case of misutilization of the house building loan, recovery at the rate of 50% of the gross emoluments of the employee concerned could be made whereas in the case of the petitioner, the entire amount of loan has been ordered to be recovered in lumpsum. This plea again cannot be accepted. It has been made clear in the instructions issued in the year 1973 that in case the loan is misutilized by the employee for the purpose of business then the entire amount of loan can be recovered in lumpsum. The petitioner utilised the amount for the commercial activity i.e construction of a shop-cum-residence. Raising a commercial complex with the money taken as advance for the construction of a residential building would be a commercial activity akin to business and, therefore, the amount of

loan could be recovered in lumpsum under the 1973 instructions.

9. For the reasons recorded above, I find no merit in this writ petition and the same is dismissed. No costs.