(2011) 09 DEL CK 0481

In the Delhi High Court

Case No : Writ Petition (C) 8975 of 2006

Leela Manchanda APPELLANT

Vs

State Bank of India and Others RESPONDENT

Date of Decision : 28-09-2011

Acts Referred:

Citation : (2011) 10 AD 609 : (2011) 183 DLT 531

Hon'ble Judges : Dr. S. Muralidhar, J

Bench : Single Bench

Advocate : R.K. Saini and Sitab Ali Chaudhary, for the Appellant; R.P. Kapur, for SBI and N.S. Dalal, for R4, for the Respondent

Final Decision : Allowed

Judgement

S. Muralidhar, J.—The Petitioner who is a widow, aged 77 years, is aggrieved by the action of Respondent No. 2 State Bank of India (''SBI'') in acting on some instructions issued by the Indian Agricultural Research Institute (''IARI''), Respondent No. 1 asking SBI to recover the alleged excess pension paid into her Savings Bank (''SB'') account with the SBI.

2. The Petitioner states that her late husband Shri Wazir Chand Manchanda worked in the IARI as a Senior Research Assistant. After his death, on 13th July 1990, the Petitioner as his widow was receiving the family pension. For this purpose, she was asked to open a SB account with the Tilak Nagar branch of the SBI into which the family pension paid by IARI was being credited every month.

3. The Petitioner states that as on 25th February 2006, there was a credit balance of Rs. 1,08,169.06 in the said account. However, a cheque issued by her on 1st March 2006 for an amount of Rs. 80,550/- was returned dishonoured by the SBI with remarks "Funds Insufficient". On inquiry by the Petitioner, she received a letter dated 28th March 2006 from the Chief Manager of SBI enclosing a copy of the letter dated 27th February 2006 issued by the IARI stating that excess family pension had been paid into the Petitioner''s account and drawn by

her. The SBI asked her to "deposit the excess payment within 100 days" failing which it would "recover the excess amount paid by debit to your savings bank account of FDR." In her reply dated 4th April 2006, the Petitioner pointed out that the SBI, could not at the instance of the IARI seek to recover the alleged excess family pension in that manner after a lapse of 11 years. She sent a legal notice dated 8th April 2006 to the SBI calling upon it to honour the cheque issued by her in the sum of Rs. 80,550/-. The drawee of the cheque was also advised to re-present the cheque to SBI for clearance. However, SBI again dishonoured the cheque with remarks "Refer to drawer". The stand of the SBI was that since the Petitioner had not complied with the directions of the SBI to deposit into the account the excess pension drawn by her, no transaction would be allowed on her account. It was also stated by SBI in a reply dated 24th April 2006 to her legal notice that the Petitioner had furnished an undertaking to the bank whereby she had undertaken to refund or make good to the bank any amount to which she was not entitled and had further agreed that the amount when demanded by the bank would be conclusive and binding on her.

4. In the reply filed by the SBI to the present petition, reliance is placed on the undertaking given by the Petitioner as regards refunding the excess amount received by her. It is admitted by the SBI that on receiving instructions from the IARI, it had written to the Petitioner asking her to deposit the excess amount credited to her account and stating that on her failure to do so, it would debit her account by the excess amount paid to her. It is stated that immediately after receiving IARI''s letter dated 27th February 2006, SBI telephonically informed the Petitioner that a sum of Rs. 3,06,262/- was paid as excess pension for the period between June 1995 and February 2006. It is stated that the Manager of SBI also made a personal visit to the Petitioner''s residence to apprise her of the said situation. It is stated that since the Petitioner failed to deposit the excess amount, the Bank imposed a lien on the excess amount.

5. In the counter affidavit of IARI, Respondent No. 4, it is stated that on the basis of the record, it was found that amounts in excess of the family pension due to her had been paid to the Petitioner and accordingly, a letter was written to the Manager of the SBI "for making recovery from her account and for sending the same to the Respondent as the amount belongs to the department which was wrongly paid or credited in the account of Smt. Leela Manchanda". It is stated that since "it is known to the Petitioner very well that she has been paid the excess amount or the excess amount has been credited in her account that is why, the recovery was sought to be done".

6. The counter affidavit filed by the SBI in reply to CM APPL No. 13610 of 2006 gives an even clearer account of what transpired. The SBI states that since the Petitioner failed to refund the excess amount of Rs. 3,06,262/- "the Respondent bank had kept the amount of Rs. 1,06,000/- in lien account and in order to avoid any hardships to the Petitioner the bank had decided to recover Rs. 2,000/- per month (instead of full amount)". The SBI stated that a sum of Rs. 3,230/- had

been credited in the account of the Petitioner on 2nd April 2006. This included, Rs. 1,779/- towards basic pension; Rs. 890/- towards 50% of merger DA; Rs. 561/- towards dearness allowance. Further, SBI decided to recover every month Rs. 2,000/- from the account of the Petitioner.

7. This Court has heard the submissions of Mr. R.K. Saini, Learned Counsel for the Petitioner, Mr. R.P. Kapur, Learned Counsel for the SBI and Mr. N.S. Dalal, Learned Counsel for the IARI.

8. It is an admitted position that the basis for the SBI to place a lien on the Petitioner''s SB account was the letter dated 27th February 2006 from the IARI which stated that the Petitioner had been drawing enhanced family pension of Rs. 3,507/- up to 6th June 1995 and that since the pension payable was only Rs. 1,779/- "necessary recovery may be made and remitted to this office". Admittedly, prior thereto the IARI never issued any show cause notice to the Petitioner informing her of the alleged excess pension paid to her and seeking her. The SBI on its part straightaway proceeded to place her account in the lien without even informing her. It was only after the Petitioner made inquiries as to why a cheque issued by her on 1st March 2006 in the sum of Rs. 80,550/- was dishonored by the SBI that the SBI wrote to the Petitioner on 28th March 2006 enclosing a copy of IARI''s letter dated 27th February 2006 and asked the Petitioner to deposit the excess payment within 100 days failing which it would to recover the excess amount.

9. The only justification given by SBI for its extraordinary action is an undertaking purportedly given by the Petitioner to it in the following terms:

(I) Undertake to refund or make good to the Bank any amount to which I am not entitled or any excess amount which may be credited to my account over that to which I am or would be entitled and agree that the amount of money when demanded by the Bank from me as due and payable to the Bank in respect thereof shall be conclusive as to the amount and shall be binding on me.

I also hereby so as bind myself and my heirs; executors and administrators agree and undertake to indemnify the Bank from against any loss, costs, charges, damage and expenses suffered to incurred by the Bank in so crediting my pension to my account under the scheme and to forthwith pay the same to the Bank and also irrevocably authorize the Bank to recover the amount in respect thereof by debit to my said account or any other deposit belonging to me in the hands of the Bank.

10. This Court finds the conduct of both the IARI, as well as the SBI which acted on the behest of the IARI, to be wholly contrary to law. SBI admits to having virtually become a recovery agent for IARI in the present case. Merely on the instructions of the IARI, the SBI straightaway proceeded to seize the entire balance in the SB account of the Petitioner. It dishonoured a cheque for Rs. 80,550/- issued by the Petitioner on 1st March 2006 although the balance in the account was Rs. 1,06,000/-. It was only after the Petitioner made enquires that

the SBI informed her of the letter dated 27th February 2006 from the IARI. The SBI did not bother to find out if the Petitioner had in fact been paid excess pension. The undertaking given by the Petitioner did not entitle the SBI to become a recovery agent of the IARI and seek refund of the alleged excess pension. Further, the stand of the IARI that the Petitioner knew that she was drawing the excess pension is wholly unsupported by any document. On the other hand, it appears that both the IARI, and on its instance the SBI, took the Petitioner by surprise in placing the entire balance of Rs. 1,06,000/- in her SB account under a lien. This was nothing short of appropriation of the Petitioner''s money in her SB account without the authority of law.

11. The proper course would have been for the IARI to first notify the Petitioner about the alleged excess payment of pension and seek her explanation. Thereafter, the IARI would have had to pass a reasoned order which should have been communicated to the Petitioner to enable her to challenge it, if needed, in accordance with law. Instead, the IARI straightaway wrote to the SBI to effect recoveries and the SBI also duly complied with such an illegal direction.

12. This Court has, therefore, no hesitation in declaring that the actions of both the IARI by its letter dated 27th February 2006 to the SBI and the consequential letter dated 28th March 2006 written by the SBI to the Petitioner, preceded by SBI''s freezing of the Petitioner''s entire balance of Rs. 1,06,000/- in her SB account and placing it under lien, to be wholly illegal and without the authority of law.

13. Consequently, it is directed that the SBI will immediately release the lien on the sum of Rs. 1,06,000/- and credit it back to the Petitioner''s SB account. If any recoveries, of Rs. 2,000/- per month or other sums, have been effected by the SBI from the Petitioner''s account, such recoveries also had to be illegal and the aggregate sum of all such deductions made so far will be credited back to the Petitioner''s account by the SBI forthwith. If such sums deducted have been further paid to the IARI, then SBI will seek their reimbursement by the IARI. These two steps shall be positively done within a period of two weeks from today. The IARI on its part will pay into the Petitioner''s SB account with the SBI an amount equivalent to 9% simple interest per annum on the sum of Rs. 1,06,000/-, as well as on the total amount of the recoveries made from her SB account, within a period of four weeks from today. After both the SBI and the IARI comply with the above directions it will be open to the IARI to proceed in accordance with law and issue a notice to the Petitioner to seek her explanation as to why the alleged excess pension paid to her should not be recovered. The said notice will be a detailed one explaining to the Petitioner the basis of which the IARI claims that excess pension has been paid to her. The Petitioner would be given sufficient time to reply to the notice. Thereafter, a reasoned order will be passed by the IARI and communicated to the Petitioner within a period of two weeks from the date of passing such order. If the Petitioner is aggrieved by such order, it will be open to the Petitioner to seek appropriate remedies as may be

available to her in accordance with law.

14. The writ petition is accordingly allowed with the above directions, with costs of Rs. 10,000/- to the Petitioner, out of which Rs. 5,000/- will be paid by IARI and Rs. 5,000/- by the SBI, within a period of four weeks from today.

