
(2009) 07 GAU CK 0025
In the Gauhati High Court
Case No : Writ Petition (C) No. 45 of 2008

Lianhnuni

APPELLANT

Vs

State of Mizoram and Others

RESPONDENT

Date of Decision : 30-07-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 360
Penal Code, 1860 (IPC) — Section 420, 468, 471

Citation : (2010) 1 GLR 376 : (2009) 5 GLT 220

Hon'ble Judges : H. Baruah, J

Bench : Single Bench

Advocate : P.C. Prusty, Joel J. Denga and Vanlalruata Khiangte, for the Appellant; Aldrin Lallawmzuala, for the Respondent

Judgement

H. Baruah, J.—Heard Mr. P.C. Prusty, Learned Counsel assisted by Mr. Joel J. Denga, Learned Counsel for the petitioner as well as Mr. Aldrin Lallawmzuala, learned Additional Advocate General for the respondent Nos. 1 to 9. None appears for and on behalf of private respondent No. 10.

2. This writ petition is filed for a direction from this Court to the respondents particularly respondent Nos. 1 to 8 to pay her entire sum credited to her GPF Account No. PH (MZ) 1183 along with interest calculated thereon from the time the amount fell due till realization.

3. Petitioner was appointed as Nurse under the Government of Mizoram in the year 1976. Vide Office order No. 977/95 dated 28.9.1995 (Annexure-1) she was promoted to the post of Sister and posted at Kawrthan, Mizoram in the Community Health Centre. On 1st October, 1995 she joined in her new post with an intimation to respondent No. 7. The petitioner retired from her service as Sister under the Health and Family Welfare Department, Government of Mizoram on 1st January, 1999 and thereupon made an application to the respondent No. 4 through respondent No. 6 for final withdrawal of her GPF amount credited to account No. PH (MZ) 1183. In pursuance of her application, respondent No. 6

was authorized to draw a sum of Rs. 1,11,151 with interest calculated thereon up to July, 1999 for payment to the petitioner. The aforesaid authorization was conveyed by the respondent No. 8 vide letter No. G.27015/11-521/PH-1183/99-DAT(F)/4 dated 8th October, 1999.

4. When the petitioner had been to the office of the respondent No. 6 to draw her GPF amount, it came to be discovered that her entire sum of Rs. 1,11,151 had been withdrawn by some unknown person(s) on 3rd November, 1999 by forging her signature. On account of illegal withdrawal of her GPF amount petitioner persuade the matter and ran from pillar to post but till date she was unable to recover the GPF Amount credited to her GPF Account. Being failed to have her due she had written to the Minister, Rural Development Department, Government of Mizoram requesting intervention in the matter. Respondent No. 3 in the meantime, wrote a letter to the petitioner dated 15th July, 2004 expressing their inability to resolve the matter and advised her to approach the Mamit Police Station to file a First Information Report. She accordingly filed an FIR on 25th August, 2004 with the respondent No. 9 stating the facts and accordingly respondent No. 9 registered a case being Mamit Police Station case No. 89 of 2004 under Sections 420, 468 and 471, IPC. Police after completion of the investigation submitted charge sheet against the respondent No. 10, an ex muster roll employee of the department of Health and Family Welfare for cheating and forgery and using a forged document as genuine. It was came to be known that respondent No. 10 was an ex muster roll employee was solely responsible for withdrawal of the GPF amount from the petitioners GPF account. Trial started against respondent No. 10 and ultimately he was convicted but released on probation u/s 360 of the Cr.PC. Against the judgment and order of the trial court, revision was filed. The revisional court dismissed the revision rather upheld judgment of the trial court.

5. It is the claim of the petitioner that the State respondents failed to discharge their obligation towards the petitioner in relation to payment of her provident fund amount since the amount had been credited to the GPF Account issued in the name of the petitioner. The petitioner, therefore, in view of the fact situation has sought for a direction to the State respondents to release the GPF amount credited to in favour of the petitioner.

6. This writ petition is strongly resisted by the respondent Nos. 1 to 9 contending inter alia that respondent No. 10, a muster roll employee did not function as cashier during the relevant period while one Sh. Lalremsawma, LDC presently working under the Directorate of Hospital and Medical Education was the cashier during the relevant point of time. He availed casual leave for five days and in his absence respondent No. 10 was not entrusted with the duty of Cashier. Since the trial court did record a finding of guilt against respondent No. 10, the State respondents do not have any liability for loss of sum from the GPF account of the petitioner. The petitioner herself being aware of the fact that respondent No. 10 took the wrongful gain, who is only responsible for such misappropriation of the

amount, the answering respondents, therefore, cannot be asked to refund the money to the petitioner. It is also the claim of the respondents that the petitioner having an alternative remedy ought not to have approached this Court by invoking writ jurisdiction. She could have approached the appropriate forum for realization of the amount so illegally withdrawn from her GPF account. The respondent Nos. 1 to 9 has prayed for disposal of the writ petition.

7. From the additional affidavit filed by the State respondents it has come to light that the trial court convicted respondent No. 10 but released on probation. While revision filed against the judgment and order of conviction, the revisional court too refused to interfere with the impugned judgment and order of conviction.

8. Now, the issue before us is whether in the facts and circumstances of the case the State respondents are liable to make payment of the credited amount in the GPF account of the petitioner with interest. It was argued by Mr. P.C. Prusty, Learned Counsel for the petitioner that since the amount has been credited from the pay bill of the petitioner towards her GPF account allotted to her by the department, even if fraudulently withdrawn of the same from the said account by someone else by forging her signature, she is entitled to have the refund of the amount credited towards the account with interest. The criminal court recorded a finding of guilt against the respondent No. 10 that he withdrew the money from the GPF account of the petitioner by forging her signature. The respondent No. 10 being an employee of the department, having had the wrongful gain by withdrawing the amount illegally from the GPF account of the petitioner, the petitioner cannot be deprived of having the credited amount with interest on the ground that the amount had been misappropriated by respondent No. 10. For any wrongful act one by a government servant, the Government is vicariously liable on account of the wrong committed by the servant. The Government cannot take recourse to the fact that the wrong was committed by its employee and, therefore, it is not vicariously liable. There is no dispute that the respondent No. 10 was not working under the respondent as muster roll employee. Therefore, wrong committed by him which effects the interest of the other employee, the employer is responsible for his acts. The plea raised by the respondents that the petitioner has alternative remedy and she has wrongly approached this Court will not hold good. The State respondents being vicariously liable for the wrong committed by the employee are bound to refund the GPF amount credited to the account of the petitioner with interest.

9. Mr. Joel J. Denga, Learned Counsel appearing for and on behalf of the petitioner also relying on the ratio laid down by the Apex Court and Delhi High Court put emphasis that the State respondents are liable to refund the GPF amount credited to the GPF account of the petitioner with interest. In support of his contention he relied in the cases between The State of Rajasthan Vs. Mst. Vidhyawati and Another, ; Kasturilal Ralia Ram Jain Vs. State of Uttar Pradesh, ; Lucknow Development Authority Vs. M.K. Gupta, ; N. Nagendra Rao and Co. Vs. State of Andhra Pradesh, and the case between Shri Krishan Kaushik Vs. Union

of India (UOI) and Others, In the case between State of Rajasthan v. Mst. Vidhyawati and Anr. (supra) it was held by the Apex Court that tortuous act by servant of State done in course of employment but not in connection with sovereign powers of State, State like any other employer is vicariously liable. In the case the driver of a Jeep owned and maintained by the State of Rajasthan officially used by the Collector of the District, drove it rashly and negligently while bringing it back from the workshop after repairs and knocked down a pedestrian and fatally injured him. The deceased wife and the minor daughter, aged 3 years through her mother as next friend sued the driver and the State of Rajasthan for damages for the tort and claimed compensation of Rs. 25,000 from the driver and the State defendants. The suit proceeded ex-parte against the first defendant and the second defendant contested the suit on number of issues. The trial court decreed the suit against the first defendant ex parte and dismissed the same without cost against the second defendant. On appeal by the plaintiffs, the High Court of Rajasthan allowed the appeal and decreed the suit against second defendant also with cost in both the courts. Being aggrieved thereby the State of Rajasthan approached the Apex Court contending inter alia that State of Rajasthan is not liable for tortuous act of its employee. The Apex Court dismissed the appeal preferred by the State of Rajasthan holding that State should be as much liable for tort in respect of a tortuous act committed by its servant within the scope of his employment and functioning as such as any other employee. In the case between Krishan Kaushik (supra), the hon'ble Delhi High Court also held that the employer is vicariously liable for the tortuous act of its employee. The present case at our hand also squarely covered by the ratio of the judgment rendered by the Apex Court and the High Court, which relied by Learned Counsel for the petitioner. The amount credited towards the GPF account in the name of the petitioner at her superannuation applied for final withdrawal of the same and accordingly respondent No. 6 was entrusted to withdraw the same and handover the petitioner. But surprisingly it came to the knowledge of the petitioner that GPF amount accumulated had been illegally withdrawn by someone for which she was unable to get the money. She approached the appropriate authorities including a Minister but she was unable to get the GPF amount rather respondents expresses their inability to provide/pay the amount and suggested to lodge a complaint/FIR against the respondent No. 10, a muster roll employee was suspected to have hand in the withdrawal of the GPF amount from the account of the petitioner by forging her signature. The said respondent No. 10 was found guilty by criminal court and accordingly convicted but released on probation for good conduct. Respondent No. 10 was employed during the relevant point of time by the department concerned as Muster Roll Employee. During his employment did wrongfully withdrew the money from the GPF account of the petitioner for his wrongful gain. Therefore, for the wrong committed by respondent No. 10 during his employment, the State is vicariously liable and it cannot escape its liability for such wrong committed by him during service tenure under it. The ratio laid down in the cases (supra) can be aptly applied to this present case too.

10. Mr. Aldring Lallawmzuala, learned Additional Advocate General representing the State respondents laid much stress that for the acts committed by the respondent No. 10, the State respondents in other words the State cannot be held responsible/liable. The petitioner can realize the amount so withdrawn and misappropriated by filing a suit against the respondent No. 10. This remedy being available to the petitioner, invoking of writ jurisdiction by the writ petitioner is not entertainable and accordingly the writ petition is liable to be dismissed.

11. It is to be borne in mind that at the desire of the State, every employee under it, is to subscribe a portion of his/her salary towards the GPF account maintained by it. It is also to be borne in mind that unless the employee subscribes GPF amount towards account allotted by the State, the employee concerned is to face difficulty in getting his/her salary. The amount so deposited by each of the employees in their respective GPF account is utilized by the State Government. At superannuation such employee is entitled to have the credited amount towards the respective GPF account, however, with certain percentage of interest. Such amount can also be withdrawn from the GPF account of the respective employee on certain exigencies by following some procedures before retirement. Therefore, there is no doubt that the amount so credited towards GPF account of each of the employees is utilized by the Government at their own sweet will and the Government becomes the custodian of the amount. If by some illegal means the amount is withdrawn or taken out of the account of a certain employee the Government being the custodian is to compensate the amount credited to the account with interest thereon at least from the date of superannuation until realization. Here in this case the State of Mizoram being the custodian of the GPF account and the money credited to it, withdrawal of the amount illegally by one of its employee by illegal means, the Government cannot escape its liability from making payment of the amount credited to it to the concerned employee with interest.

12. In view of the facts pleaded and the law placed before this Court by the Counsel of the petitioner, this Court sees no good ground to accept the contention of Mr. Aldrin Lallawmzuala, learned Additional Advocate General representing the State respondents. Rather this Court finds force in the argument advanced by Mr. P.C. Prusty assisted by Mr. Joel J. Denga, Learned Counsel for the petitioner.

13. Taking into consideration of the matters in its entirety and the law laid down by the Apex Court and the High Court in the considered view this Court, the petitioner is entitled to have a direction to the State respondents directing them to make payment of the GPF amount accumulated/credited in her GPF account with interest applicable there to together with further interest at the rate of 6% at least from the date of due till realization. Accordingly, State respondents are directed to make payment of the GPF amount so credited with interest applicable thereto in addition to 6% interest on the amount so accumulated with interest from the date of due till realisation.

14. With this aforesaid direction, this petition is disposed of.

15. The State respondents would be at liberty to realize the concerned GPF amount from the respondent No. 10 by approaching appropriate forum, if so advised.