(1997) 09 RAJ CK 0008

In the Rajasthan High Court

Case No : C.W.P. No. 6359 of 1991

Moti Lal Sharma — APPELLANT

Vs

University of Rajasthan and Another — RESPONDENT

Date of Decision : 11-09-1997

Acts Referred:
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 10

Citation : (1998) 2 LLJ 1021 : (1998) 1 WLC 441

Hon'ble Judges : Arun Madan, J

Bench : Single Bench

Advocate : G.G. Sharma and R.P. Pawa, for the Appellant; D.K. Soral, for the Respondent

Final Decision : Allowed

Judgement

Arun Madan, J.—The short question which arises for consideration of this Court in this writ petition is as to whether consequent upon the retirement of the petitioner from services of the respondent University, whether it was open to the respondent university to withhold the post retiral statutory ,benefits as admissible to the petitioner on attaining the age of superannuation, i.e., provident fund and gratuity and such other consequential benefits to which he was entitled in accordance with law?

2. The facts giving rise to the filing of this writ petition briefly stated are that the petitioner was appointed as stenographer in the University of Rajasthan, Jaipur on September 3, 1966 and was allotted a residential quarter bearing No. M-7 by the Rajasthan University in the University, Campus and resided in the said quarter from 1979 to 1989- He retired from the services of the respondent-university on attaining the age of superannuation on September 30, 2989.

3. The grievance of the petitioner is that after his retirement from service of the University he was not given his post retiral benefits, namely, provident fund and gratuity. The petitioner''s contribution towards provident fund was 50%. as

employee''s contribution, while the contribution of the University in the said account as an employer was also to the extent of 50 %. The total amount of provident fund which had thus accumulated in favour of the petitioner as on the date of his superannuation was Rs. 45,000.00 in accordance with the Rules. The petitioner rendered his. services for a period of more than 24 years in the University and hence in accordance with the Provident Fund Rules he was entitled for 12 months salary as gratuity benefits amounting to Rs. 30,000.00 which have not been paid to the petitioner till date. The amount of provident fund and gratuity as admissible to the petitioner had been thus illegally withheld by the University on the pretext that certain rental dues were outstanding against him for his occupation of the quarter allotted to him for his residence.

4. The petitioner''s contention is that the University had no jurisdiction to withhold the amount of provident fund and gratuity on the ground of any other dues outstanding against him. Section 10 of the Employees'' Provident Funds and Miscllaneous Provisions Act, 1952 (for short ''the Act'') envisages that the amount of provident fund is not subject to any attachment and the employer has no right and jurisdiction to withhold the same and hence the employer or no other authority had the jurisdiction to withhold the same. Section 10 of the Act reads as under:

"Section 10-Protection against attachment -

(1) The amount standing to the credit of any member in the Fund (or of any exempted employee in a provident fund) shall not in any way be capable of being assigned or charged and shail not be liable to attachment under any decree or order of any Court in respect of any debt or liability incurred by the member (or the exempted employee), and neither the official assignee appointed under the Presidency-towns Insolvency Act, 1909, nor any receiver appointed under the Provincial Insolvency Act, 1920, shall be entitled to, or have a claim on, any such amount."

5. During the tenure of the petitioner''s services with the University, he was allotted residential quarter No. M-7 as an employee and monthly rent was being deducted from the salary of the petitioner at the rate of Rs. 60/- per month which was subsequently enhanced to Rs. 90/- per month. The petitioner was directed by the University to pay the penal rent at the rate of Rs. 370.00 per month vide their letter dated September 14, 1982 vide Annexure 1. The aforesaid communication was absolutely illegal and without any jurisdiction and hence the petitioner filed a suit for permanent injunction in the Court of Munsiff (East), Jaipur City, Jaipur wherein the petitioner prayed that the University may be restrained not to realise penal rent from the petitioner. The petitioner had further sought a direction against the University from the trial Court not to dispossess him from the residential quarter. The learned Munsiff was pleased to restrain the University from dispossessing the petitioner forcibly and further not to realise the penal rent from the petitioner. Thereafter, the petitioner entered into negotiations with the respondent University and a settlement was arrived at

between the parties, that in case the petitioner withdraws the aforesaid suit his matter will be sympathetically considered and he also received a letter in this regard from the respondent-university, dated October 19, 1989 vide Annexure 2 by which a request was made by the University to the petitioner that in case he is willing to withdraw the said suit at the first instance, then the University may be prepared to consider his case sympathetically but not otherwise. Thereafter the petitioner by acceding to the University''s request as aforesaid withdrew the suit from the concerned Court and also intimated the University in this regard by furnishing the relevant proof to the University vide Annexure 3 dated December 23, 1989.

6. Simultaneously the petitioner also made a request that he should be issued ''No Dues Certificate'' by the University at the earliest. Inspite of the above no action was taken at the behest of the respondent-university and the petitioner retired from the services of the respondent-university on attaining the age of superannuation without issuance of ''No Dues Certificate''. Thereafter, the respondent unlawfully withheld the provident fund and gratuity amount, which under the law they were not supposed to deduct and it was expected of them that they should have paid the same at the earliest and particularly on the eve of retirement of the petitioner but the same was not done to the detriment of the petitioner thereby causing him substantial loss and monetary burden.

7. During the course of hearing learned counsel for the respondent-university contended at the bar that the respondent- university was justified in withholding the above amount for the reason that No Dues Certificate could not be issued to the petitioner, since he had not cleared the rent due from him on account of residential quarter allotted to him by the university including the penal rent which was earlier at the rate of Rs. 370.00 per month and subsequently enhanced to Rs. 900.00 per month.

8. I have heard learned counsel for the parties at length, examined their rival claims and contentions as well as the legal position on the subject.

9. Prima facie I am of the considered opinion that there was no justification for the respondent-university to have unlawfully withheld either the provident fund or the gratuity amount admissible to the petitioner, since an employee of the statutory body like the University as well as the Central and the State Government employees are fully protected under the Employees'' Provident Funds and Misc. Provisions Act, 1952 (Act No. 19 of 1952). I am further of the considered opinion that keeping in view the beneficial nature of the said Act the payment of the contributory fund which is deducted from the salary of an employee and which is payable to said employee when he leaves the service of the said institution either by way of seeking voluntary retirement after having rendered the qualifying period of service in accordance with the Rules or when he retires from service of the said institution on attaining the age of superannuation, he is entitled as a statutory right for payment of both the provident fund as well as the gratuity amount and also the pensionary and other consequential benefits

which cannot be withheld by an institution which is an instrumentality of the State and discharging the functions of ''Sovereign'' within the ambit of Article 12 of the Constitution. If this protection is not granted to the employees, no employee would be free to render his services to an institution as he would always be entertaining apprehension of arbitrariness on the part of the institution in which he is gainfully employed. I am further of the view that the payment of provident fund and gratuity dues to an employee on his retirement from services is not only a statutory right of an employee but alongwith it there is statutory obligation imposed on the employer as per the scheme of the Act to regularly deduct permissible amount from his salary/wages at the rate specified under the Act towards the employee''s contribution as well as the employer''s contribution and the employee is entitled as a matter of legal right to the payment of entire amount on account of P.P. and gratuity, pension and other consequential benefits which may have legitimately accrued to him in accordance with law as on the date when he retires from service on attaining the age of superannuation and the fact that the employer has failed to credit the said amount to the account of the employee is no defence to the employer since it is the settled law that the amount admissible to the employee on account of provident fund is deemed to have been credited in his account and there is no escape route for an employer to take contrary view of the matter even if any irregularity has been illegally committed by the employee such as withholding of residential premises beyond the specified period for which other alternative remedial course is available to the Employer by invoking the jurisdiction of appropriate Forum in accordance with law and which admittedly the employer i.e. the University has failed to invoke in the instant case.

10. In view of the aforesaid position, I am accordingly of the opinion that the petitioner is as a matter of statutory right entitled to the payment of his provident fund and gratuity dues from the respondent-university notwithstanding issuance of ''No Dues Certificate'' by the respondent-university. In this regard I may point out that in case any rent dues were recoverable from the petitioner on account of allotment of the residential quarter which was in his use and occupation during the period of his tenure in service of the respondent-university, nothing prevented the respondent-university from recovering the amount of rent due by instituting separate proceeding against him in accordance with law which includes the institution of eviction proceedings before the Estate Officer under the Rajasthan Public Premises (Eviction of Unauthorised Occupants) Act, 1964 and also the recovery of the penal rent if admissible to the University in accordance with law. The approach adopted by the University is obviously arbitrary and wholly unjust since I am of the considered opinion that the university is not authorised to unlawfully withhold any amount which may be admissible to its employee either on account of Provident Fund, Gratuity or Pension etc. on his retirement from services of the University. The contention of the petitioner in this regard is that he is protected under the provisions of Section 6 of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 and

having been lawfully allotted residential accommodation by the university for his occupation during his tenure of service, the university was not authorised to arbitrarily enhance the rental dues without prior notice to the petitioner. I am of the view that it is open to the petitioner to advance all such pleas which are available to him under the Act in accordance with law if the appropriate proceedings are instituted against him for the recovery of the said amount before an appropriate authority.

11. From the perusal of the reply filed by the respondent- university to the writ petition it is apparent that the petitioner''s contribution to provident fund account comes to Rs. 22,544.00, while the University''s contribution conies to Rs. 21,790 totalling to Rs. 44,334.00.They have further stated that standard rent at the rate of Rs. 370.00 p.m. was demanded from the petitioner for three months and penal rent at the rate of the Rs. 740.00 p.m. as per Rule 32 of the Residential Rules of the Rajasthan University of 1982.

12. Learned counsel for the respondent-university informed that the petitioner was allotted residential quarter in the discretionary quota of the Vice-Chancellor of 10% under Rule 9 of the Residential Accommodation Rules of 1978 and he had taken over the possession of the premises w.e.f. September 3, 1979 for the academic session 1997-98 and the said period having expired he should have vacated the quarter which he did not vacate nor any extension was given to him to stay in the said premises beyond the specified contractual period of two years which expired on September 2, 1981. In this regard it shall be appropriate to refer to the provision of Section 10 of the Act of 1952 which envisages protection to an employee against attachment of his provident fund and gratuity amount. From the perusal of Sub-section (1) of Section 10 of the Act it is clear that if an amount on account of provident fund dues is outstanding to the credit of an employee as against the employer of a statutory body or any other organisation shall not, in any way, be capable of being assigned or charged and shall not be liable to any attachment under the decree or order of any Court and the said employee shall be entitled to the payment of the same irrespective of any dues which may be recovered from him and due to the employer. An employee''s provident fund in deposit with: the employer and not paid over to the employee even after his retirement it does not become the property of the employer and is exempted from attachment. The law is so well settled on the subject that the amount admissible to an employee on account of provident fund dues is not a part of remuneration or wages arising out of the contract of employment but is a liability imposed on the employer by virtue of the beneficial nature of the said enactment and the scheme envisaged thereunder. The respondent-university has further contended that while the case of the petitioner was pending consideration before the Committee constituted by the University, he had filed the present writ petition in this Court prematurely as on November 1, 1991.

13. In my view the aforesaid contentions of respondent-university was wholly untenable and devoid of merit.

14. In the light of the above discussion the writ petition is allowed with a direction to the respondent-university to release the aforesaid provident fund and gratuity amount due to the petitioner from due date positively within a period of eight weeks from today. The petitioner shall further be entitled to payment of interest on the amount due at the rate of 12% per annum from due date till payment. As regards the recovery of loan due to the University including the recovery of penal rent on account of allotment of residential quarter to the petitioner, the University will be tree to take necessary action against the petitioner by instituting appropriate proceeding against him before the appropriate authority in accordance with law. There will be no order as to costs.

