(2007) 01 P&H CK 0036

In the Punjab And Haryana At Chandigarh

Punjab and Sind Bank APPELLANT

Vs

Regional Labour Commissioner (Central), Kendriya Sadan and Others RESPONDENT

Date of Decision : 08-01-2007

Acts Referred:
Constitution of India, 1950 — Article 226, 227

Citation : (2008) 117 FLR 710

Hon'ble Judges : Mohinder Pal, J;Hemant Gupta, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Mohinder Pal, J.—The short question raised in this writ petition is -whether the petitioner-Bank is entitled to adjust the gratuity amount of Rs. 1,61,700/- towards the outstanding housing loan amount of approximately Rs. 6,00,000/-of Amardeep Singh (respondent No. 3), who was an officer of the petitioner-Bank and was compulsorily retired after having been found guilty of causing loss to the petitioner-Bank to the tune of Rs. 7,90,366/-.

2. Respondent No. 3 was in the employment of the petitioner-Bank. Disciplinary proceedings were initiated against him, which culminated into passing of the order dated July 23, 2001 (Annexure P-1), whereby he was compulsorily retired from service. The petitioner-Bank adjusted the gratuity amount of respondent No. 3 towards the housing loan taken by respondent No. 3. He filed an application before the Controlling Authority Under the Payment of Gratuity Act, 1972 and Assistant Labour Commissioner (Central) (hereinafter referred to as `the Controlling Authority'') for directing the petitioner-Bank to release the gratuity amount withheld by it. The petitioner-Bank, in the written statement filed before the Controlling Authority, took the stand that it was within its competence to deduct the dues towards the housing loan from the gratuity amount. The Controlling Authority, vide its order dated August 30, 2004 (Annexure P-6) directed the petitioner-Bank to pay a sum of Rs. 1,61,700/-as

gratuity and Rs. 50193/-as interest for delayed payment. Against this order, the petitioner-Bank went in appeal before the Appellate Authority under the Payment of Gratuity Act, 1972 and Regional Labour Commissioner (Central), (hereinafter referred to as `the Appellate Authority''. Vide order dated January 06, 2006 (Annexure P-7), the Appellate Authority confirmed the decision dated August 30, 2004 (Annexure P-4). In this petition filed under Articles 226/227 of the Constitution of India, the petitioner-Bank has prayed for issuance of a writ in the nature of certiorari quashing the orders dated August 30, 2004 (Annexure P-4) passed by the Controlling Authority and dated January 06, 2006 (Annexure P-7) passed by the Appellate Authority on the ground that the petitioner-Bank is entitled to recover the amount due to it from respondent No. 3 and that the gratuity amount was adjusted towards the outstanding housing loan of respondent No. 3 on his own request made vide application dated May 07, 2004 (Annexure P-3).

3. Respondent No. 3 did not choose to file any written statement.

4. We have heard the learned Counsel for the parties.

5. On August 28, 2007, this Court had passed the following order:

After hearing the counsel at some length, the controversy is narrowed down to the outstanding amount of housing loan due from respondent No. 3 Amardeep Singh.

Counsel for respondent No. 3 states that he needs time to calculate the outstanding housing loan which is due as, according to him, the amount is not Rs. 5,88,377/-as mentioned in Annexure P3.

6. On October 29, 2007, the following order was passed by this Court:

Counsel for the petitioner states that except the gratuity amount, all the other service benefits have been paid to respondent No. 3. Counsel for respondent No. 3 disputes this fact and states that no amount has been paid to respondent No. 3 till date. Counsel for the petitioner is directed to file affidavit, after verifying this fact from the records of the petitioner-Bank.

7. In compliance with this order, Mr.Jagjit Singh Puri, Senior Manager of the petitioner-Bank, has filed affidavit wherein it has been stated that as per record, all the terminal dues of respondent No. 3 were released by the bank as per his entitlement. Provident Fund amount of Rs. 77,200/-was sent to the Punjab and Sind Bank, RCC Service Branch, Amritsar, where the petitioner was last working, vide IBR No. 521716/1/02 dated January 02, 2003 and gratuity amount of Rs. 1,61,712/-was sent vide IBR No. 990841 dated May 18, 2004. It has been further stated that Provident Fund amount of Rs. 77,200/-was received by respondent No. 3 and the gratuity amount of Rs. 1,61,712/- was appropriated towards partial satisfaction of the outstanding housing loan. Liabilities of respondent No. 3 have also been mentioned in the affidavit. It has been stated that the liabilities of respondent No. 3 were much more than the terminal

benefits released by the Bank and he is liable to pay the same. The pension is being released regularly as per his entitlement. Lastly, it has been stated that in the present writ petition there is no dispute regarding any terminal benefits except the appropriation of the amount of gratuity of Rs. 1,61,712/-towards the partial satisfaction of housing loan of respondent No. 3.

8. It may be mentioned here that vide letter dated May 07, 2004 (Annexure P-3) written by Amardeep Singh (respondent No. 3) to the Trustees, Punjab & Sind Bank, Head Office Provident Fund Department, Safdarjung Enclave, New Delhi, regarding settlement of Provident Fund/Gratuity, he submitted as under:

9. I have already submitted my application dated May 07, 2004 for settlement of my Provident Fund/Gratuity. The following loans/liabilities are outstanding in my name:

1.Housing Loan Rs. 5,58,377/- 7.5.2004. I authorize you to appropriate/set off the amount of these liabilities from the Provident Fund/Gratuity payable to me.

10. Thus, according to respondent No. 3 himself, housing loan of Rs. 5,58,377/- was outstanding against him as on May 07, 2004 whereas the gratuity amount was Rs. 1,61,712/-, which the petitioner-Bank adjusted towards the outstanding housing loan on the request of respondent No. 3. In his letter dated May 07, 2004, respondent No. 3 had even submitted that his liability be appropriated from the Provident Fund, but the petitioner- Bank disbursed the Provident Fund amount of Rs. 77,200/-to him. Thus, respondent No. 3 owed Rs. 5,58,377/-to the petitioner-Bank and after adjusting his gratuity amount of Rs. 1,61,712 towards outstanding loan amount, he still owes about Rs. 3,00,000/-without counting interest thereon. It is not the case of respondent No. 3 that he paid anything to the petitioner- Bank during the pendency of this writ petition or during the pendency of the matter before the Controlling Authority and the Appellate Authority. However, it is a matter between the petitioner-Bank and respondent No. 3 to settle the exact balance amount recoverable from him.

11. Keeping in view the facts and circumstances of the case and the circumstances under which respondent No. 3 was compulsirily retired from service, we have no hesitation to hold that the respondent-Bank was well within its right to adjust the amount of gratuity towards the outstanding house loan amount of respondent No. 3. An employee cannot enforce his right for post-retiral dues in writ jurisdiction in such circumstances. The conduct of respondent No. 3 was most reprehensible and unbecoming of an officer. Further, by his own act and conduct, respondent No. 3 has put his employer to an immense loss which may be far more commensurate to his own dues. Surely, he is not entitled to the discretionary relief from this Court under Articles 226/227 of the Constitution of India. Similar view was taken by this Court in Municipal Corporation, Amritsar v. Jagdamba Dutt (through L.Rs) 2000 Lab. I.C. 2526 where the respondent-employee had raised some illegal construction and had overstayed in the allotted quarter even after his superannuation and the

appellant-Corporation had withheld his provident fund, gratuity and encashment of earned leave on the plea of adjustment of the amount that the respondent had to pay by way of house rent/penalty.

12. The case reported as Gorakhpur University and Others Vs. Dr. Shitla Prasad Nagendra and Others, , relied upon by learned Counsel for respondent No. 3, is of no help to him. In that case, the view taken by Hon''ble Supreme Court that pension and gratuity are no longer matters of any bounty to be distributed by Government but are valuable rights acquired and property in their hands and any delay in settlement and disbursement whereof should be viewed seriously and dealt with severely by imposing penalty in the form of payment of interest, was taken under different circumstances. The respondent therein, who had over-stayed in the government quarter allotted to him after his retirement, had been paying normal rent and the University authorities had been regularly accepting the rent at normal rates every month from the respondent till the quarter was vacated. Further more, no decision had been taken by the University on the request made by the employee for the allotment of the said quarter in favour of his son, who was also in the service of the University. The Apex Court also observed that the facts disclosed resolutions of the University resolving to waive penal rent from all teachers as well as that of the Executive Council dated July 18, 1994 and the actual such waiver made in the case of several others cannot be easily ignored. It was further observed that the lethargy shown by the authorities in not taking any action according to law to enforce their right to recover possession of the quarter from the respondent or fix liability or determine the so-called penal rent after giving prior show cause notice or any opportunity to him before even proceeding to recover the same from the respondent renders the claim for penal rent not only a seriously disputed or contested claim but the University cannot be allowed to recover summarily the alleged due according to its whims in a vindictive manner by adopting different and discriminatory standards. As has been observed above, this case is on a altogether different footing.

13. Consequently, this writ petition is accepted and the orders dated August 30, 2004 (Annexure P-6) passed by the Controlling Authority and dated January 06, 2006 (Annexure P-7) passed by the Appellate Authority are quashed with no order as to costs.

