(2013) 12 P&H CK 0116

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 8865 of 2012 (O&M)

Ram Pal APPELLANT

Vs

State Of Haryana RESPONDENT

Date of Decision : 03-12-2013

Acts Referred:

Citation : (2014) 2 PLR 608

Hon'ble Judges : Rajiv Narain Raina, J

Bench : Single Bench

Final Decision : Disposed Off

Judgement

Rajiv Narain Raina

1. The petitioner had taken an advance of Rs. 1,80,000/- from the government as a loan for purchase of a new car from an authorized dealer. As per the agreement, interest payable was at the rate of 9.5% per annum. However, it was later found that the petitioner had purchased a second hand Maruti Zen Car Model 2000 from one Mr. N.D. Sharma of Faridabad, Haryana. From this, it is taken that the petitioner has mis-utilized the loan. Relying upon the condition in the agreement advancing the loan, the amount has been recovered from the petitioner with penal interest of 10% per annum over and above the normal rate of interest @ 9.5 percent. Learned counsel for the petitioner submits that the price of the new car at the time of sanction of loan advance was much higher than the amount sanctioned by the department and due to shortage of funds the petitioner decided to purchase a second hand car to meet his immediate requirement and to cut his coat according to the cloth. He further submits that registration certificate in the name of the petitioner was submitted in the office of respondent No. 2 who never raised any objection with regard to the purchase of a used hand car instead of a brand new one. Learned counsel further submits that the purchase of old car instead of new car does not amount to misutilization of funds to give it the colour of a misdeed.

2. On the other hand, Ms. Kirti Singh, learned Deputy Advocate General, Haryana submits that the executive instructions dated 23.08.1993 issued by the Finance Department, Haryana clearly provides that when the amount has been utilized by a Government employee other than the purpose for which it is granted, the penal interest @ 10% (ten per cent) per annum over and above the normal rate of interest shall be charged from the date of drawl of the advance. She further submits that in the letter of sanction it was clearly stipulated that in case of misutilization of loan, penal interest @ 10% per annum will be charged over and above the normal rate of interest, thus, the action of the State is legal and justified.

3. No doubt, Para 5 of Annexure P-1, vide which the loan was sanctioned makes a provision that in case of misutilization of the loan, penal interest of 10% per annum over and above the normal rate of interest shall be charged from the date of drawl of the loan, but I find that this action on the part of the respondents is not fair. Even if it be construed that the petitioner has misutilized the loan, which is being inferred as such only from act of buying a second hand car, directing him to pay 10% interest per annum over and above the normal rate of interest then I think the course adopted is unreasonable and unfair. To balance the equities, the interest charged for misutilizing the amount even assuming it to be so in its pristine state is reduced from 10% to 2% to serve the ends of justice. Buying a new or old car from government loan is not the essence of the loan contract but returning it is and on time. The loan amount stands paid without dispute within the time frame. Levy of penal interest element is the lis here, I am not prepared to saddle the petitioner for utilizing the loan to purchase a used car instead of a new one with such oppressive condition which appears unconscionable to me when demanded by the employer/State department behaving like an ordinary commission agent in a market yard. Therefore, the respondents shall be at liberty save and limited to charge penal interest only at the rate of 2% per annum over and above the normal rate of interest as agreed to by the petitioner his for minor deviation and in case the amount has already been recovered then the excess amount so recovered shall be refunded to the petitioner within a period of two months from the date of receipt of a certified copy of this order after adding the 2% simple interest component. The writ petition is accordingly disposed of by modifying the impugned order as above.