(2014) 08 JH CK 0026

In the Jharkhand High Court

Case No : Writ Petition (Civil) No. 5705 of 2012

Saroj Kumar — APPELLANT

Vs

Union of India — RESPONDENT

Date of Decision : 28-08-2014

Acts Referred:
Penal Code, 1860 (IPC) — Section 120B, 409, 467, 468, 471

Citation : (2014) 4 AJR 750

Hon'ble Judges : S. Chandrashekhar, J

Bench : Single Bench

Advocate : Deepak Kumar, Advocate for the Appellant; Mokhtar Khan, ASG, Advocate for the Respondent

Judgement

S. Chandrashekhar, J.—The petitioners who are son and wife of one Bhim Lal Sahu have approached this Court seeking a direction upon the respondent Nos. 4 and 5 for release of the maturity amount in Monthly Income Scheme, Recurring Deposit Account, Kisan Vikas Patra and National Saving Certificate which are not being released on account of pendency of a departmental proceeding against the said Bhim Lal Sahu.

2. The brief facts of the case are that, the petitioner No. 1 who is the son of Bhim Lal Sahu opened a joint account being S.B. A/c No. 90023032 with his father on 09.05.2002 under Monthly Income Scheme at Domchanch Bazar Sub-Post Office and deposited a sum of Rs. 66,000/-, the maturity date was 09.05.2008. The petitioner No. 1 opened three Recurring Deposit Accounts in the joint name with his mother-petitioner No. 2 and a separate Recurring Deposit Account bearing No. 402506 with his father at Domchanch Bazar, Sub-Post office. The petitioners also purchased Kisan Vikas Patra and National Saving Certificats in their name. The petitioner No. 2 also purchased Kisan Vikas Patra in her name and her husband. The necessary details are furnished by the petitioners in the writ petition. Although, all the deposits matured long back, the petitioners were not permitted to withdraw the maturity amount or even the monthly interest. The

reasons disclosed to the petitioners was that a criminal case being Koderma (Domchanch) PS. Case No. 409 of 2003 under Sections 409, 467, 468, 471 and 120B I.P.C. was registered against the Bhim Lal Sahu. The petitioner No. 2 moved this Court in W.P. (C) No. 4874 of 2006 seeking a direction upon the respondents to allow her to operate her account. The writ petition was disposed of on 11.09.2006 with a direction to the Superintendent of Post Offices, Hazaribagh Division to consider her representation and pass a reasoned order. However, by order dated 12.12.2006, the petitioner No. 2 was not permitted to operate her account and therefore, she again moved this Court in W.P. (C) No. 2040 of 2007. Vide order dated 11.08.2009 this Court quashed order dated 12.12.2006 and directed respondent No. 2 to consider the demand of petitioner No. 2 for release of the amount deposited under Monthly Income Schemes. Vide order dated 21.05.2010, the petitioner No. 2 was permitted to operate her Monthly Income Scheme accounts, however, the petitioners were not permitted to withdrew maturity amount from other deposits. In the meantime, Bhim Lal Sahu who was accused of misappropriation of money deposited in the Post Office was acquitted from the criminal charges vide order dated 08.05.2012 in G.R. Case No. 656 of 2003, T.R. No. 46 of 2012. The father of the petitioner No. 1, Bhim Lal Sahu superannuated from service and his retiral benefits which is more than 10 lakhs rupees has not been released by the respondents. The petitioner No. 2 is an old lady aged about 71 years and on the ground of pendency of departmental proceedings which was initiated on the eve of the superannuation of her husband from service, i.e. on 31.01.2008 which is still pending, the respondents have denied permission to the petitioners to withdraw their maturity amounts.

3. A counter-affidavit has been filed on behalf of the respondents stating that Bhim Lal Sahu in connivance with one Sri Ramdeo Ram, Gramin Dak Seva Branch Post Master misappropriated Rs. 3,53,153/- and therefore, the deposits made in the joint name of Bhim Lal Sahu were ordered to be freezed however, it is admitted that the Joint "B" type of accounts or NSC/KVP can be operated by either of the depositors. It is further stated that a departmental proceeding was initiated against Bhim Lal Sahu however, final order has not been passed as the matter is under process.

4. Mr. Deepak Kumar, the learned counsel appearing for the petitioners has submitted that under the provisions of CCSA (Pension) Rules 1972 the respondent-authority can pass an order only with respect to denial of the pension, in part or in full to an employee. Moreover, the proceeding initiated against Bhim Lal Sahu has yet not culminated into award of punishment and therefore, action on the part of the respondents in withholding the amount deposited by the petitioners either in their name or in the joint name with Bhim Lal Sahu is illegal and arbitrary and it cannot be withheld by the respondents.

5. Mr. Md. Mokhtar Khan, the learned Assistant Solicitor General of India submitted that since Bhim Lal Sahu was found guilty of misappropriating public

fund, though he has been acquitted from the criminal charges, a departmental proceeding has been initiated and unless he is exonerated in the departmental proceeding the amount deposited by the petitioners cannot be released. It is further submitted that the claim of the petitioner No. 2 which was found genuine has been allowed and she has been permitted to operate 3 accounts of Monthly Income Schemes.

6. I have considered the submissions of the learned counsel appearing for the parties and perused the documents on records.

7. From the records of the case, it appears that the father of the petitioner No. 1 namely, Bhim Lal Sahu was made an accused in Koderma (Domchanch) PS. Case No. 409 of 2003 and vide order dated 08.05.2012 he has been acquitted from the criminal charges. The order passed in G.R. Case No. 656 of 2003, T.R. No. 46 of 2012 indicates that 3 witnesses were examined on behalf of the prosecution and the learned Trial Court has recorded a findings that even if the evidence of the prosecution is accepted to be true and correct, the accused person cannot be said to have committed offence of either forgery or the criminal breach of trust. The order dated 08.05.2012 in G.R. Case No. 656 of 2003, T.R. No. 46 of 2012 is an order on the merits of the case and the accused Bhim Lal Sahu has honourably been acquitted of the criminal charges. A departmental proceedings was also initiated against the said Bhim Lal Sahu in which memorandum of charge was served on 30.01.2008. Annexure-II of the Memorandum contains statement of imputation of misconduct or misbehavior in support of the Articles of Charge framed against Bhim Lal Sahu the then Sub-Postmaster of the post office-Domchanch Bazar. It states that the said Bhim Lal Sahu received the warrant of payment by hand from Ram Deo Ram GDSBPM Taronakho without pass book. Bhim Lal Sahu passed sanction warrants for final closure of the accounts without obtaining the passbooks and made over TD passed warrants directly to GDSBPM Taranakho. It is alleged that Ram Deo Ram GDSBPM did not make payment to the depositors concerned and himself withdrew the amount by forging the signature/LTI of the depositors. It thus appears, that Bhim Lal Sahu has been charged with violation of certain departmental rules. Specific allegation of forging signature and withdrawing amount has been levelled against the Ram Deo Ram GDSBPM. It is stated that the departmental proceeding against Bhim Lal Sahu has though completed, the final order has not been passed. The departmental proceedings against Bhim Lal Sahu has been initiated under CCS Rules, 1964 for violating Rule 134(a) and 134(c) read with Rule 33(6)(iii) and 43(6)(b)(ii) of the P.O.S.B. Manual volume-1.

8. It is well settled that an employee who was proceeded against under the Pension Rules can be deprived of his pension, in part or full. In the present case there is no order of recovery of an amount from Bhim Lal Sahu. Admittedly, the amount claimed by the petitioner were deposited in their names except, the amount in 2 accounts. Even the maturity amount from the joint account in the name of one of the petitioner and Bhim Lal Sahu cannot be lawfully withheld by

the respondents in the absence of any specific order of recovery of a quantified amount from Bhim Lal Sahu. I do not find any justification in the action of the respondents in withholding the amounts deposited with the respondents mentioned in paragraph -1 of the writ petition.

9. In the result, the writ petition is allowed and respondents are directed to release the amounts specified in paragraph No. 1 of the writ petition within a period of two weeks from the date of communication of a copy of the order.

10. The writ petition stands allowed in the aforesaid terms.

