

(2009) 03 GAU CK 0015

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 6531 of 2003

Shri Laqljit Paswan

APPELLANT

Vs

Assam Agricultural University and Others

RESPONDENT

Date of Decision : 24-03-2009

Acts Referred:

Assam Agricultural University Loans and Advance Rules, 1979 — Rule 7

Citation : (2009) 2 GLD 99 : (2009) 4 GLT 835

Hon'ble Judges : Biplab Kumar Sharma, J

Bench : Single Bench

Advocate : B.D. Das and H.K. Sarma, for the Appellant; P. Kataki, SC, for the Respondent

Final Decision : Allowed

Judgement

B.K. Sarma, J.—The petitioner, a Professor in the Department of Horticulture, Assam Agricultural University (AAU), is aggrieved by Annexure-9 letter dated 8.7.2003 by which he has been directed to refund an amount of Rs. 1,19,506/- stated to be the outstanding balance amount of the House Building Advance (HBA) he had obtained in the year 1999. The petitioner is aggrieved by the calculation of the amount taking into account the interest @ 13.5% and penal house rent @ 30% of pay.

2. The petitioner applied for HBA and his prayer was acceded to by Annexure-I order passed on 16.10.1998. The HBA was to the tune of Rs. 1,25,000/- payable in two installments of Rs. 62,000/- and Rs. 63,000/-. The terms and conditions of the HBA were incorporated in the order itself of which Clauses iv, v and vi which have been referred to by Mr. B.D. Das, learned Counsel for the petitioner are quoted below:

(iv) Interest of the rate of 9 (nine) per cent per annum will be charged. Calculation of interest will be made in accordance with any one of the formula provided under rule of the Assam Agricultural University Loans and Advance

Rule, 1979.

(v) The advance sanctioned subject to compliance with requirement specially mentioned above of the rules regulating grant of such advances. Failure to comply with the terms and conditions laid down in the Assam Agricultural University Loans and Advance Rules, 1979 as amended upto date will be treated as serious misdemeanour in addition to any other penalty to which the employee may be liable (such as immediate recovery of the advance with interest accrued thereon on the balance (thereof) as directed by the Authority.

(vi) In a case of default in payment of regular instalments as at para-2 above and non-compliance of other formalities as laid down in para-3 above a penal rate of compound interest shall be charged as decided by the Governing Body on all overdue instalments on principal and interest or on the entire advance as the case may be outstanding against the employee concerned.

This sanction will expire if the 1st instalment of advance is not drawn within 45 days from the date of receipt of issue of this sanction.

3. After the aforesaid order, the petitioner was provided with 1st installment of Rs. 62,000/- by Annexure-2 letter dated 23.2.1999, followed by 2nd installment of Rs. 63,000/- by Annexure-3 letter dated 17.3.1999. According to the petitioner, although he took the HBA, he could not construct the house because of various reasons. However, the respondents have denied the same in their counter affidavit. In the meantime, Annexure-4 Regulation for allotment and vacation of residential house, AAU as amended upto 3.9.2001 came in to being. Clause 6 of the said Regulation provides thus:

6. Application for allotment:

An employee shall have to apply to the Secretary of the concerned House Allotment Committee for allotment of a house on the prescribed form. In the form the applicant should mention whether he/she has a house of his/her own or is availing House Building Loan from the University and constructed house within 15 km from the place of posting.

4. Clause 7 (iii) of the said Regulation provides that the allotment of house to an employee be made subject to furnishing undertaking one in the manner as prescribed in Annexure-A and the other to the effect that if he avails of any financial aid/loan from AAU, for purpose of building advance and for construction of house within 15 km from the place of posting, he shall vacate the allotted quarter within 60 days of drawl of the final instalments of the loan/assistance from the University.

5. In the aforesaid Regulation provision for penal rent has been made under Clause 16 in terms of which an employee who fails to vacate the house within the time stipulated shall have to pay a penal rent which should be 30% of the total emoluments last drawn by him till he actually vacates the quarter. During the period of penal rent the occupants will be declared unauthorised occupants of

the University quarter.

6. The penal rent will be applicable to all persons including heirs of deceased persons/retired and all other persons as defined under Clause 9(f) as unauthorised occupants.

7. By Annexure-5 notification dated 7.10.2002, it was notified as follows:

NOTIFICATION

It is notified for information of all the campus dwellers of the Jorhat campus of AAU that as per Rule 7 (Clause vi) of the Regulations for allotment and vacation of residential houses, Assam Agril. University, "an University employee having house within 15 km from the place of posting either in his own name or in the name of the family (family means husband and wife) will not be eligible for allotment of quarter in the campus. If they possess their own house within 15 km, occupation of the University quarter will be treated as unauthorised. It is therefore, requested the campus dwellers to fill up the enclosed undertaking in the format and submit the same through their controlling officers within 15 days from the receipt of this notification.

8. By Annexure-6 letter dated 20.1.2003 upon a reference to the HBA obtained by the petitioner, he was intimated that he was to vacate the quarter allotted to him within 60 days upon construction of the house within 15 km. radius of AAU campus. He was directed to vacate the quarter within one month. In response to the said direction, the petitioner made Annexure-7 representation dated 18.2.2003 intimating that the new regulation would not be applicable to him as he had obtained the loan prior to introduction of the said Regulation. He also intimated that the terms and conditions contained in the order of allotment would govern the case of the petitioner. By Annexure-8 order dated 24.6.2003, AAU authority appointed an Enquiry Officer to enquire into the affairs relating to the matter. It appears that the enquiry was preliminary in nature and not a regular enquiry. The preliminary enquiry was to verify authority of the utilisation certificate produced by the petitioner for drawl of the 2nd installment of the HBA and also to verify whether any wrong procedure was adopted by the person concerned in the office, while sanctioning the 2nd installment of HBA.

9. After the aforesaid developments, the authority issued Annexure-9 impugned order dated 8.7.2003 directing the petitioner to refund the amount of Rs. 1,19,506/- break of which is as follows:

10. The petitioner deposited the balance principal amount of HBA vide cheque dated 21.7.2003 amounting to Rs. 65,000/-. According to him he is not liable to pay the amount of Rs. 54,506/- which was calculated taking into account 13.5% interest in single instalment of HBA and 30% of pay w.e.f. date of completion of 24 months from the date of drawl of 2nd instalment of HBA, i.e. 1.10.2001.

11. It is the case of the petitioner that he is governed by the terms and conditions imposed while sanctioning the HBA and not by the terms and

conditions stipulated in the Annexure-4 Regulation. According to the petitioner the clause relating to 30% of the penal house rent being not their in the terms and conditions of Annexure-I order by which HBA was sanctioned, the respondent University could not have taken recourse to the subsequent clause relating to such penalty which was incorporated in Annexure-4 Regulation and which came into operation prospectively, i.e. much after loan was sanctioned and obtained by the petitioner.

12. It is the further case of the petitioner that since the petitioner could not construct the house, Annexure-6 letter dated 20.1.2003 directing the petitioner to vacate the quarter could not have been issued.

13. There is no dispute that although the petitioner obtained the HBA in the year 1999 (February and June) and he did not or could not construct the house. In the meantime the Annexure-4 Regulation came into being and the University Authority applied the same to the case of the petitioner. It appears that necessary deductions towards liquidation of HBA were made from the salary bills of the petitioner and eventually he was served with Annexure-9 impugned order dated 8.7.2003 incorporating therein the impugned amount of Rs. 54,506/- taking into account the provisions relating to the interest and penalty of 30% from the pay.

14. While Mr. Das, learned Counsel for the petitioner submits that the said amount of Rs. 54,506/- has been arbitrarily included while summing up the liability of the petitioner, Mr. Katakey, learned Standing counsel, AAU, submits that the petitioner himself has made him liable by his own conduct. He submits that the petitioner having obtained the loan for the particular purpose and having submitted the utilisation certificate falsely, was guilty of temporary misappropriation of the university money.

15. Mr. Das, learned Counsel for the petitioner submits that the issue relating to utilisation certificate and non-utilisation of the HBA for the purpose for which the same was obtained has already been taken up by the University and the petitioner has already been issued with the charge-sheet dated 17.4.2004 (Annexure-10) to Misc. Case No. 1333/04). He submits that while the disciplinary proceeding is on an independent footing, but charging the penalty on a wrong application of the aforesaid Regulation is altogether a different issue.

16. As to whether the petitioner is guilty of any misconduct or not, is not the issue in this proceeding. It appears that the petitioner is yet to respond to the charge-sheet dated 17.4.2004. It also appears that the University authority has not proceeded with the matter in view of the pendency of the instant writ petition. So far as the charge levelled against the petitioner is concerned, it will be open for the petitioner to furnish his reply and thereafter the disciplinary authority may proceed with the matter in accordance with law.

17. As regards the imposition of the penalty is concerned, I am of the considered opinion that the same is not applicable on two counts. Firstly, the penalty clause

was incorporated in Annexure-4 Regulation and the same was after the HBA was paid to the petitioner. While granting the HBA, certain terms and conditions were laid down which did not include any penalty clause as has been provided in Annexure-4 Regulation. Further the rate of interest indicated in Annexure-I order was 9% and not 13.5% indicated in the impugned letter dated 8.7.2003. Secondly, the penalty clause would be applicable only when the incumbent does not vacate the quarter even after construction of house within 15 km from the place of posting. Whatever may be the reason, the petitioner did not or could not construct the house and the same was made known to the authority. It is altogether a different thing to say that the petitioner deliberately did not construct the house, but made use of the HBA, but it is altogether a different thing to say that the deliberately did not vacate the quarter in spite of constructing the house taking the HBA.

18. There is another aspect of the matter. Before imposing the penalty clause of charging interest @ 13.5% and making calculation on that basis indicating the amount to be Rs. 54,506/-, the petitioner was not put to any kind of notice. Thus, there is gross violation of the principles of natural justice. Had the petitioner been given an opportunity of being heard, they could have explained the circumstances leading to the situation as to why he was not liable to pay the aforesaid amount of Rs. 54,506/-. So far as Annexure-6 letter dated 20.1.2003 is concerned, same is not at all tenable. The letter was issued on the presumption that the petitioner after obtaining the HBA and constructing the house did not vacate the quarter. It is an admitted position that he did not or could not construct the house. Thus he will be entitled to remain in the quarter, subject, however, to the order which might be passed by the disciplinary authority pursuant to the proceeding drawn against him.

19. For the aforesaid reasons I set aside and quash the Annexures-6 and 9 letters dated 20.1.2003 and 8.7.2003, which however, will be subject to the liberty granted to the respondents to proceed against the petitioner with the aforementioned departmental proceeding. As already observed, the petitioner shall now respond to the charge- sheet dated 17.4.2004 issued to him. Thereafter the matter shall proceed in accordance with law.

20. The writ petition is allowed to the extent indicated above. However, there shall be no order as to costs.