
(2015) 05 MP CK 0035
In the Madhya Pradesh High Court
Case No : Writ Petition No. 1220 of 2015

S.K. Garg

APPELLANT

Vs

Central Bank of India and Others

RESPONDENT

Date of Decision : 05-05-2015

Acts Referred:

Constitution of India, 1950 — Article 19, 19(1) (f), 19(1)(f), 226, 300 A

Citation : (2015) 05 MP CK 0035

Hon'ble Judges : Sujoy Paul, J

Bench : Single Bench

Advocate : S.K. Singh, for the Appellant; Manish Saxena, Advocates for the Respondent

Final Decision : Allowed

Judgement

Sujoy Paul, J.—The petitioner has invoked the jurisdiction of this Court under Article 226 of the Constitution to get his retiral dues.

2. Admitted facts are that the petitioner was an employee of respondent / Central Bank. He took voluntary retirement from service w.e.f. 31.08.2004. The respondent No. 3 obtained petitioner's signature on two receipts dated 06.09.2014 and 20.09.2014. Since all the retiral dues were not paid to the petitioner, he preferred a detailed representation on 07.10.2014 (Annexure P/3). Respondent No. 3 provided details of provident fund and shown certain amounts which were adjusted towards loans outstanding against the petitioner. The grievance of the petitioner is that respondents are required to pay the entire amount of gratuity, provident fund, leave encashment and group insurance amount with interest.

3. Respondents have filed their return. In the return, it is contended that petitioner had taken certain loans and advances during his service which have not been repaid by him. He did not disclose these facts in the writ petition which shows that he has not approached the court with clean hands. It is contended

that petitioner has taken loans and advances from Bankman Credit Cooperative Society Ltd., Gwalior and Central Bank Staff Cooperative Credit Society Ltd. Petitioner has given authority letters authorizing the bank to recover the outstanding balances of said loans and advances. As per said authority letters, the outstanding amount of loans and advances were recovered from retiral dues of the petitioner. The objection is raised that petitioner has not impleaded the societies. It is prayed that petition suffers from non-joinder of necessary parties. Respondents have filed the chart / statement (Annexure R/5) which indicates the total sum of retiral dues (in several heads) outstanding amount of loans and advances payable to the societies. It is contended that amount of loans and advances outstanding on the petitioner is more than his retiral dues and therefore, nothing is required to be paid to him. The petitioner has filed the rejoinder. It is contended in the rejoinder that petitioner has not given any authority letter to the society or bank. Reliance is placed on Annexure P/5 dated 10.10.2014. On the strength of this, it is contended that retiral dues are not bounty. The same cannot be recovered or stopped without authority of law. Shri S.K. Singh contended that so called authority letters are not genuine documents and do not contain the signature of petitioner.

4. I have heard learned counsel for the parties and perused the record.

5. During the course of argument, learned counsel for the respondents fairly admitted that since the loans and advances to the said society is above retiral dues (in several heads) the retiral dues have not been paid. The pivotal question is whether on the basis of so called authority letters, employer was justified in retaining or withholding the retiral dues? This is settled in law that retiral dues are not bounty. The same are earned by employee by rendering long and sincere service to the Department. These dues are paid to employee to enable him to settle down in the december of his life and discharge his social obligations etc. This Court in Bhaskar Ramchandra Joshi Vs. State of M.P. and Others, (2013) ILR (MP) 1907 : (2013) LabIC 4529 : (2013) 4 MPHT 314 : (2013) 4 MPJR 297 : (2013) 4 MPLJ 35 considered various judgments on this point and opined as under :-

"10. The Apex Court on different occasions had considered the scope and ambit of property. In H.H. Maharajadhiraja Madhav Rao Jivaji Rao Scindia Bahadur of Gwalior and Others Vs. Union of India and Another, AIR 1971 SC 530 : (1971) 1 SCC 85 : (1971) 3 SCR 9 opined that Prievy Purse payable to ex- rulers is property. In Nagraj, K v. State of A.P. AIR 1985 SC 553 , Apex Court opined that right of person to his livelihood is property which is subject to rules of retirement. In State of Kerala and Others Vs. M. Padmanabhan Nair, AIR 1985 SC 356 : (1985) LabIC 664 : (1985) 1 LLJ 530 : (1984) 2 SCALE 959 : (1985) 1 SCC 429 : (1985) 2 SCR 476 : (1985) 1 SLJ 106 : (1985) 17 UJ 764 the Apex Court opined that right of pension is property under the Government service Rules, In Madhaorao Phalke Vs. The State of Madhya Bharat, AIR 1961 SC 298 : (1961) 1 SCR 957 and State of Madhya Pradesh Vs. Ranojirao Shinde and

Another, AIR 1968 SC 1053 : (1968) 3 SCR 489 , the Apex Court opined that property in the context of Article 300-A includes "money", salary which has accrued pension, and cash grants annually payable by the Government; pension due under Government Service Rules; a right to bonus and other sums due to employees under statute. This view was also taken in Deokinandan Prasad Vs. The State of Bihar and Others, AIR 1971 SC 1409 : (1971) 1 LLJ 557 : (1971) 2 SCC 330 : (1971) SCR 634 Supp . Bombay High Court in the case reported in Shapoor M. Mehta Vs. Allahabad Bank, (2012) 2 ALLMR 775 : (2013) 1 BomCR 176 : (2012) 114 BOMLR 1210 : (2012) 4 LLJ 429 : (2012) 3 MhLj 126 opined that retiral benefits including pension and gratuity constitute a valuable right in property. In Deokinandan (supra) Apex Court opined as under:

"(i) The right of the petitioner to receive pension is property under Article 31(1) and by a mere executive order the State had no powers to withhold the same. Similarly, the said claim is also property under Article 19(1) (f) and it is not saved by sub-article (5) of Article 19. Therefore, it follows that the order denying the petitioner right to receive pension affects the fundamental right of the petitioner under Article 19(1)(f) and 31(1) of the Constitution and as such the writ petition under Article 32 is maintainable."

11. In the light of aforesaid legal position, it is crystal clear that right to get the aforesaid benefits is constitutional right. Gratuity or retiral dues can be withheld or reduced only as per provision made under M.P. Civil Services (Pension) Rules, 1976. In the present case, there is no material on record to show that respondents have taken any action in invoking the said rules to stop or withhold gratuity or other dues."

6. The same view is taken by the Supreme Court in State of Jharkhand and Others Vs. Jitendra Kumar Srivastava and Another, (2013) 9 AD 48 : AIR 2013 SC 3383 : (2014) 117 CLT 945 : (2013) 139 FLR 74 : (2013) 11 JT 351 : (2013) LabIC 3674 : (2013) 5 LLN 91 : (2013) 4 LLN 56 : (2013) 10 SCALE 310 : (2013) 12 SCC 210 : (2013) 4 SCT 429 : (2013) 114 SLJ 370 : (2013) AIRSCW 4749 : (2013) 6 Supreme 5 , relevant portion reads as under:-

"Pension is hard earned benefit which accrues to an employee and is in the nature of "property". This right to property cannot be taken away without due process of law as per the provisions of Art. 300A of the Constitution of India. It follows that attempt of the Govt. to take away a part of pension or gratuity or even leave encashment without any statutory provision and under the umbrage of administrative instruction cannot be countenanced. It hardly needs to be emphasized that the executive instructions are not having statutory character and therefore, cannot be termed as "law" with the meaning of Article 300 A. On the basis of such a circular, which is not having force of law, the appellant cannot withhold -even a part of pension or gratuity. So far as statutory rules are concerned, there is no provision for withholding pension or gratuity in the given situation. Had there been any such provision in these rules, the position would have been different. (paras 8,14,15).

7. A plain reading of aforesaid legal position makes it clear that retiral dues can be withheld only in accordance with law. If any legal provision permits the employer to recover or withhold said dues, it can be withheld in consonance with those provisions. In the present case, learned counsel for the bank has not shown any legal or statutory provision which enables the bank to withhold the said amount. In my view, on the strength of alleged authorization letters, the said amount cannot be withheld. The said authorization letters, by no stretch of imagination, have any force of law. More so, when the petitioner has doubted the genuineness of said documents and has specifically stated in the rejoinder and in Annexure P/5 that said documents are not signed by him. Thus, in my view, the said documents cannot be a reason to withhold the petitioner's retiral dues. Since the petitioner is claiming his retiral dues from the employer, he is not required to implead the society. Thus, I am unable to hold that petition suffers from any suppression of material facts or misjoinder of parties. In a petition claiming retiral dues, petitioner was not required to disclose about the loans and advances which were not taken from the employer.

8. As analyzed above, action of respondents in withholding retiral dues is without authority of law. Same be paid to the petitioner within 90 days from the date of production of copy of this order. Petitioner shall get 12% interest on delayed payment as per judgment of Supreme Court reported in Union of India Vs. Justice S.S. Sandhawalia (Retd.) and others, AIR 1994 SC 1377 : (1994) 68 FLR 595 : (1994) 1 JT 62 : (1994) 2 LLJ 509 : (1994) 1 SCALE 69 : (1994) 2 SCC 240 : (1994) 1 SCR 83 : (1994) 3 SLJ 181 : (1994) 1 UJ 387 . It is made clear that this order will not come in the way of society to recover the loan and advances (if any) from the petitioner in accordance with law.

9. Petition is allowed. No costs.