
(2001) 02 JH CK 0060
In the Jharkhand High Court
Case No : CWJC No. 4151 of 2000

S.N. Choubey

APPELLANT

Vs

Central Coalfields Ltd. and Others

RESPONDENT

Date of Decision : 08-02-2001

Acts Referred:

Citation : AIR 2001 Jhar 13 : (2001) 49 BLJR 653 : (2001) 3 CCC 19 : (2001) 1 JLJR(Jhar) 129

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : Tapen Sen, for the Appellant; Ritu Kumar, for the Respondent

Final Decision : Allowed

Judgement

M.Y. Eqbal, J.—In this writ application, the petitioner has prayed for quashing the orders, dated 26.10.1999, 11.1.2000 and 15.11.2000 issued by the respondents, the Chief Personnel Manager and Deputy Personnel Manager, whereby the petitioner has been directed to deposit a sum of Rs. 1,07,398/- by way of penal interest and further for a declaration that the respondents have no authority to deduct the aforesaid amount from the salary of the petitioner.

2. The fact of the case lies in a narrow compass.

3. The petitioner, while working as Deputy Personnel Manager under the respondent-CCL at Barkakana Colliery, applied for loan for purchase of a car which was sanctioned by the respondents, vide letter, dated 1.9.1992 and the loan was disbursed on 15.10.1992. The petitioner purchased a vehicle on 9.11.1992 after adding the remaining amount and took delivery of the vehicle from M/s. Narbheram & Company Ltd. The petitioner entered into an agreement with the respondent-CCL on 11.9.1992. Petitioner's further case is that he was then applied for conveyance allowance and the respondents by letter, dated 10.12.1992 sanctioned Rs. 600/- per month as conveyance allowance. The respondent-CCL then started deducting the loan amount from the salary of the

petitioner (c) Rs. 1,000/- per month. However, the petitioner received letter from General Manager (P&A), CCL, dated 28.6.1993 making allegation that the petitioner had temporarily embezzled the company's money as there was no record available to show that he had purchased the vehicle. The petitioner was served with another letter, dated 26.10.1999 by the Deputy Personnel Manager (GA), CCL asking the petitioner to deposit a sum of Rs. 1,07,398/-. The petitioner, thereafter, made several representations requesting the respondents to calculate interest, if any, payable by the petitioner so that the petitioner could pay the same but the representation of the petitioner was not accepted.

4. A counter-affidavit has been filed by the respondents stating, inter alia, that the impugned orders have been issued by the respondents in pursuance of the agreement executed by the petitioner with the CCL where it was clearly mentioned that the petitioner had to execute a document of hypothecation of the vehicle in favour of the respondent-Company. In terms of the agreement, if the petitioner fails to execute an agreement of hypothecation within one month from the date of purchase then the whole, amount of loan and interest become due and payable to the Company. It is stated that the hypothecation has been submitted by the petitioner on 11.2.2000 whereas he has drawn the advance for the purchase of the vehicle on 15.10.1992. Since the petitioner did not submit the deed of hypothecation in 1992, the same was not accepted by the Company.

5. I have heard Mr. Tapen Sen, learned counsel appearing for the petitioner and Mrs. Ritu Kumar, learned counsel for the respondents.

6. After having heard the learned counsels for the parties and after going through the affidavits, the only question falls for consideration is whether the action of the respondents in charging penal interest @ 20% and asking the petitioner to deposit a sum of Rs. 1,07,398/- by way of penal interest is justified.

7. As noticed above, the car advance of Rs. 80,000/- was given to the petitioner on 1.10.1992. The petitioner after adding some more amount, issued a draft of Rs. 1,53,910.25 in favour of M/s. Narbheram & Company Ltd. and got delivery of the vehicle. As required by the respondent-Company, the petitioner entered into an agreement on 11.9.1992. The recovery of the loan amount was started from the salary of the petitioner from November 1992 and the entire loan amount was recovered by the respondent-Company till July 1999. Some more amount by way of interest has been recovered by the Company from the petitioner. Strangely, by letter, dated 28.6.1993, the General Manager (P&A) informed the petitioner that there is no record available to show that the petitioner in fact purchased the vehicle and on presumption the petitioner was called upon to submit his explanation as to why besides recovery of the loan amount together with 20% penal interest, a departmental proceeding be not initiated. In pursuant to that notice, the petitioner said to have submitted his explanation and thereafter, the respondents did not take any action till 1999. Suddenly, the petitioner was served with a notice for recovery of the aforementioned amount on the ground that in terms of the agreement no deed of hypothecation was submitted by the

petitioner.

8. For better appreciation, the relevant portion of the agreement is reproduced hereinbelow :--

"Now, it is hereby agreed between the parties hereto that in consideration of the sum of Rs. 80,000/- (Rupees Eighty Thousand only) paid by the Company to the Borrower (the receipt of which the Borrower acknowledges), the borrower hereby agrees with me Company (1) to pay the Company, the said amount with interest calculated according to the said Rules by monthly deduction from his salary as prescribed for by the said Rules and hereby authorises the Company to make such deductions and (2) within one month from the date of drawal of the advance to expend the full amount of the said loan in the purchase of motor vehicle or if the actual price paid is less than the loan to repay the difference to the Company forthwith. Advance would be taken only after the Company servant has made sure that the vehicle will be made available to him within the prescribed period of one month. The excuse of short supply of vehicle in the market would not be advanced for relaxation of the period of one month, and further agrees (3) to immediately execute a document hypothecating the said motor vehicle to the Company as security for the amount lent to the Borrower as aforesaid and interest in the form prescribed by the said Rules and it is hereby lastly agreed and declared that if the motor vehicle has not been purchased and hypothecated within one month from the date of these present or if the Borrower within that period becomes insolvent or quits the service of Company or dies, the whole amount of the loan and interest for one month shall immediately become due and payable and the Company will be entitled to recover it (legal proceedings or otherwise).

9. From perusal of the aforesaid agreement, it is clear that the petitioner was required to execute a document of hypothecation in favour of the Company as security for the amount lent to the petitioner. The agreement further provides that if the petitioner fails to purchase and hypothecate the vehicle within one month from the date of agreement, the entire loan amount become due and payable to the Company. It is, therefore, clear that in order to secure the utilisation of the loan amount the condition has been imposed that the loanee must purchase and hypothecate the vehicle to the Company. To secure repayment of the loan amount, it is also provided that in case, the borrower become insolvent or quits the services of the Company or dies then the entire amount become recoverable forthwith.

10. As noticed above, the loan was disbursed to the petitioner in 1992 and even assuming that no deed of hypothecation was executed by the petitioner, the fact remains that the entire loan amount was recovered from the salary of the petitioner by deducting Rs. 1,000/- per month. It is also relevant to mention here that the respondent-company has not disputed the fact that the petitioner purchased the vehicle from the show-room by paying the price of the vehicle to the Company by bank draft. Admittedly, it is not a case of misappropriation or

misuse of the loan amount. From 1992 to 1998 instead of making any grievance with regard to non-submission of document of hypothecation, the company continuously deducted Rs. 1,000/- from the salary of the petitioner and recovered the entire amount. In such circumstances, I have no hesitation in holding that the action of the respondents in charging penal interest and demanding a further sum of Rs. 1,07,398/- on account of non-submission of deed-of-hypothecation is wholly illegal, arbitrary and unjustified. Of course, the respondent-company is entitled to recover from the petitioner the normal rate of interest as per the rule after calculating the same without charging any penal interest and without taking any other action against him.

11. For all these reasons, this writ application is allowed and the impugned orders/letters for recovery of the penal interest by deducting the same from the salary of the petitioner are quashed. The respondent-Company is directed to calculate the normal interest which was chargeable and become payable by the petitioner after deducting the amount which has already been paid by the petitioner towards interest and recover the same in accordance with law.

12. Petition allowed.