

(2022) 03 BOM CK 0129
In the Bombay High Court
Case No : Writ Petition No. 1624 Of 2021

Vasant

APPELLANT

Vs

Vidarbha Konkan Gramin Bank And Others

RESPONDENT

Date of Decision : 31-03-2022

Acts Referred:

Vidarbha Konkan Gramin Bank (Employees) Pension Regulations 2018 — Regulation 3, 40, 46, 47
Code Of Civil Procedure, 1908 — Section 60, 60(1), 60(1)(g), 60II
Pensions Act, 1871 — Section 3A, 11, 12(1)
Regional Rural Banks Act, 1976 — Section 17(1), 30

Citation : (2022) 03 BOM CK 0129

Hon'ble Judges : A.S.Chandurkar, J;G.A.Sanap, J

Bench : Division Bench

Advocate : S.A.Mohta, Radhika Bajaj

Final Decision : Dismissed

Judgement

A.S.Chandurkar, J

1. The question that arises for consideration in this writ petition is whether it is permissible for the Vidarbha Konkan Gramin Bank in exercise of authority under Regulation 47 of its Pension Regulations, 2018 to recover its dues on account of loan advanced to the petitioner from his pension account ?

Rule. Rule made returnable forthwith and heard the learned counsel for the parties.

2. The facts relevant for considering the question that arises for adjudication in this writ petition are that the petitioner was employed with the Vidarabh Konkan Gramin Bank (for short, the Bank) and has since superannuated. With a view to provide professional education to his children, he had obtained education loan for them from the Bank. In the loan accounts, the petitioner was a co-borrower. The monthly instalments towards recovery commenced from April, 2012. On his superannuation, the petitioner took steps to be enrolled as a member of the

Bank's Pension Fund. To facilitate the same, he sought to obtain a soft loan also from the Bank. The petitioner was however informed that since he was a co-borrower in the education loan of his children and as there were certain outstandings therein, it would not be possible to advance him such loan. The petitioner thereafter sought enrolment in the Banks Pension Scheme. The Bank directed the petitioner to deposit an amount of Rs.2,39,089/- towards refund of the Bank's contribution to Provident Fund. The petitioner thereafter remitted the aforesaid amount and thus became member of the Banks Pension Scheme. The petitioner subsequently found that various deductions towards instalments due towards the education loan were made from his pension account. After seeking necessary information in that regard, the petitioner has challenged the aforesaid action of the Bank. Since the Bank has sought to act under Regulation 47 of the Vidarbha Konkan Gramin Bank (Employees) Pension Regulations 2018 (for short, Pension Regulations), the petitioner has challenged the validity of Regulation 47 as being ultra vires the provisions of the Pensions Act, 1871 (for short, the Act of 1871) as well as the provisions of Section 60 of the Code of Civil Procedure, 1908 (for short, the Code). The communication dated 01.10.2019 issued by the Bank in that regard has also been challenged.

3. Shri S.A.Mohta, learned counsel for the petitioner submitted that the Bank had no authority in law to seek to recover the arrears of loan amount from the petitioner's pension account. Inviting attention to the provisions of Section 11 of the Act of 1871 it was submitted that the pension account was exempted from attachment and therefore any amount that was due and payable by the petitioner could not be attached or recovered from his pension account. He submitted that Regulation 47 permitting such attachment/recovery from the petitioner's pension account was contrary to the provisions of Section 11 of the Act of 1871. Though in the Pension Regulations it was stated that the same had been brought into force in exercise of powers conferred by Section 30 read with Section 17(1) of the Regional Rural Banks Act, 1976 (for short, the Act of 1976), Regulation 47 travelled beyond the scope of such powers as conferred. Its suffered from the vice of excessive delegation. He submitted that the amount of pension received by a retired employee was not in the nature of bounty but was on account of having rendered satisfactory qualifying service with the employer. It was then submitted that in view of Section 60 of the Code, there was a bar to attach any amount lying in the pension account and therefore Regulation 47 was unsustainable. Without initiating any legal proceedings against the petitioner, the Bank had sought to illegally recover its alleged dues from the petitioner's pension account. The same was not permissible. The learned counsel placed reliance on the decisions in Union of India vs. Jyoti Chit Fund and Finance and others (1976) 3 SCC 607, Calcutta Dock Labour Board and another vs. Smt. Sandhya Mitra and others (1985) 2 SCC 1 and Radhey Shyam Gupta vs. Punjab National Bank and another (2009) 1 SCC 376. It was thus submitted that the illegal action initiated by the Bank of seeking to recover the arrears towards loan account from the petitioner's pension account be declared to be illegal.

4. Per contra, Ms. Radhika Bajaj learned counsel for the Bank opposed the aforesaid submissions and sought to justify the action of the Bank of seeking to recover the arrears towards the loan account from the amount of pension payable to the petitioner. Inviting attention to the provisions of the Act of 1871, it was submitted that the said Act was applicable only to pensions and grants by Government. The provisions of the Act of 1871 were not applicable to the Bank since it was constituted under the Act of 1976. The Bank had its own Pension Regulations and with the previous sanction of the Central Government the same had been brought into force by virtue of the powers conferred by Section 30 read with Section 17(1) of the Act of 1976. The Bank was competent to have its own Regulations on the subject of pension and the same could not be said to be violative of any provision of the Act of 1871. It is further stated that the provisions of Section 60 of the Code were also not applicable since that Section was attracted only when any property was sought to be attached and sold in the execution of a decree. The Bank was not seeking execution of any decree while recovering the dues towards the loan account of the petitioner. The learned counsel placed reliance on the decision in *Ramesh Chandra Sharma vs Punjab National Bank* and another (2007) 9 SCC 15 in support of her contention that it was permissible to recover the arrears due from the loan account of the petitioner. The petitioner being a co-borrower in the education loan account, he could not deny the liability of repaying the amounts due. It was thus submitted that the challenge as raised to the validity of Regulation 47 of the Pension Regulations was without any substance and the writ petition was liable to be dismissed.

5. We have heard the learned counsel for the parties and we have perused the relevant documentary material placed before us. We have also given due consideration to the rival submissions. The fact that the petitioner was in service with the Bank and had retired on 31.12.2009 is not in dispute. The further fact that educational loan was availed by his daughter and son is also undisputed. The challenge as raised is confined to the action of the Bank of seeking to recover the arrears towards loan account from the petitioner's pension account. Since the Bank has sought to sustain its action of recovering the dues towards the aforesaid loan from the petitioner's pension account by relying upon Regulation 47 of the Pension Regulations, it would be necessary to refer to the same.

The Pension Regulations have been framed in exercise of powers conferred by Section 30 read with Section 17(1) of the Act of 1976. The Bank being a Regional Rural Bank is empowered under Section 30 to make Regulations after consultation with the Sponsor Bank and the National Bank as well as with the previous sanction of the Central Government with regard to all matters for which such provision is necessary to give effect to the Act of 1976. The Pension Regulations accordingly have been framed after consultation with the Bank of India which is a Sponsor Bank and the National Bank and thereafter with the previous sanction of the Central Government. The Pension Regulations have been

published in the Official Gazette on 29.10.2018.

Regulation 47 permits recovery of Bank dues and the same reads as under :

"47. Recovery of Bank's dues.- The Bank shall be entitled to recover the dues to the Bank on account of housing loans, advances license fees, other recoveries and recoveries due to staff co-operative credit society from the commutation value of the pension or the pension or the family pension".

6. The fact that the petitioner was enrolled as a member of the Pension Scheme floated by the Bank is clear from various communications on record. The petitioner had made an application in Format 2 being pension option format under the Bank's Pension Scheme. The Bank on 08.05.2019 informed the petitioner that as per Regulation 3 of the Pension Regulations for being a member of the pension fund, an applicant was required to refund the amount of the Bank's contribution to the Provident Fund under EPF 1995 Scheme alongwith interest accrued thereon. The petitioner was thus called upon to deposit an ad hoc amount of Rs.2,39,089/- towards refund of the Bank's contribution to the Provident Fund under EPF-1995 Scheme. The petitioner on 09.05.2019 issued a communication to the Bank seeking the amount of soft loan of Rs.2,39,089/- and permitted recovery of the same from the arrears payable to him. The Bank however on 12.06.2019 informed the petitioner that his loan application for clean loan of Rs.2,39,089/- was not accepted by the Bank as the petitioner was a co-borrower in the education loan account of his children. Thereafter on 14.06.2019 the petitioner remitted an amount of Rs.2,39,089/- towards EPFO refund. It is thereafter on 01.10.2019 that the petitioner was informed by the Bank that his arrears of pension for the period from April 2018 to June 2019 for amount of Rs.3,98,016.93 had been released and that amount was paid with the pension amount for the month of September 2019. However as per his earlier declaration dated 20.03.2013 and Regulation 47 of the Pension Regulations, the recovery of Rs.3,98,000/- was effected from the aforesaid payment being dues towards the loan accounts.

7. The challenge to the recovery as made by the Bank is principally on two counts namely, that the same is against the provisions of Section 60 of the Code and, secondly, that such recovery is in violation of Section 11 of the Act of 1871. Regulation 47 is stated to be in conflict with the provisions of the Act of 1871 and exceeds the jurisdiction conferred by the rule making power under the Act of 1976.

While considering the challenge as raised, reference can be made to the decision in State of Tamil Nadu vs. P. Krishnamurthy (2006) 4 SCC 517 wherein it has been held in paragraph 15 as under :

"15. There is a presumption in favour of constitutionality or validity of a subordinate legislation and the burden is upon him who attacks it to show that it is invalid. It is also well recognised that a subordinate legislation can be challenged under any of the following grounds :

- (a) Lack of legislative competence to make the subordinate legislation.
- (b) Violation of fundamental rights guaranteed under the Constitution of India.
- (c) Violation of any provision of the Constitution of India.
- (d) Failure to conform to the statute under which it is made or exceeding the limits of authority conferred by the enabling Act.
- (e) Repugnance to the laws of the land, that is, any enactment.
- (f) Manifest arbitrariness/unreasonableness (to an extent where the Court might well say that the legislature never intended to give authority to make such rules)."

8. The provisions of Section 60 of the Code fall in Part-II of the Code under the Chapter "Execution". Further under the heading "Attachment" various provisions including Section 60 find place. The properties liable to attachment and sale in execution of a decree are mentioned under Section 60(1) of the Code. The petitioner seeks to rely upon sub-clause (g) of sub-section (1) of Section 60 to urge that the pension account of the petitioner could not have been either attached nor could any recovery therefrom be effected. The provisions of Section 60 of the Code however are attracted only when any property is sought to be attached and sold in the execution of a decree. Admittedly, in the present case there is no decree passed against the petitioner that is sought to be executed by attaching the amount of pension. In absence of any such decree being executed against the petitioner the provisions of Section 60(1)(g) of the Code would not be attracted at all. In *State of Punjab and another vs. Dina Nath* (1984) 1 SCC 137 the Honourable Supreme Court has held in clear terms that the provisions of Section 60 apply only to execution of decrees of Civil Courts. That section has no application to attachment and sale under any other statute unless made expressly applicable thereto. There is no provision pointed out in the proceedings before us to hold that the provisions of Section 60(1)(g) of the Code would stand attracted so as to prevent the Bank from recovering its dues from the pension account of the petitioner. For these reasons, the decisions relied upon by the learned counsel for the petitioner in *Jyoti Chit Fund and Finance and others*, *Calcutta Dock Labour Board and another* and *Radhey Shyam Gupta* (supra) cannot be applied to the case in hand.

9. The Bank has been constituted under the provisions of the Act of 1976. Under Section 30 of the Act of 1976 the Board of Directors of the Bank after consultation with Sponsor Bank and the National Bank as well as with the previous sanction of the Central Government is empowered to make regulations that are consistent with the provisions of the Act of 1976 and the Rules made thereunder. Such Regulations can provide for all matters for giving the effect to the provisions of the Act of 1976 and the same should not be inconsistent with the Act of 1976. Perusal of the Pension Regulations indicates that the Board of Directors of the Bank after consultation with the Sponsor Bank and National Bank

which is the Bank of India and with the previous sanction of the Central Government has made the Pension Regulations. They have been published in the official gazette on 29.10.2018. Except for stating that the Pension Regulations as made travelled beyond the statutory scope and ambit of the Act of 1976, it has not been demonstrated as to how these Pension Regulations are ultra vires the Act of 1976. The power while making the Pension Regulations has been exercised in the manner prescribed by Section 30 of the Act of 1976 and it is not possible to accept the contention of the petitioner in that regard.

10. Heavy reliance was placed by the petitioner on the Pension Regulations being contrary to Section 11 of the Act of 1871 and that the Bank was prevented by Section 11 from making any recovery from the pension account of the petitioner. The preamble of the Act of 1871 reads as under :

"An Act to consolidate and amend the law relating to pensions and grants by Government of money or land-revenue."

The Act of 1871 was amended by the Act 20 of 1982 and in the statement of objects and reasons of the Amending Act it was stated that the Act of 1871 applied both to Union pensions and the State pensions. Insofar as the State pensions were concerned, State Legislatures alone were competent to make any amendment to the Act. Accordingly the provisions of Section 1 and Section 12 came to be amended. Section 1 thereof reads as under:

1. Short title and extent – This Act may be called the Pensions Act, 1871.

[Insofar as it relates to Union Pensions, it extends to the whole of India and insofar as it relates to other pensions, it extends] to the whole of India except the territories which immediately before the 1st November, 1956 were comprised in Part B States."

Section 3-A which defines the expression "the appropriate Government" reads as under :

"3-A Definition: The expression 'the appropriate Government' means, in relation to Union Pensions, the Central Government, and in relation to other pensions, the State Government."

Section 11 which is material for the present purpose reads as under :

"11. Exemption of pension from attachment -No pension granted or continued by Government on political considerations, or on account of past services or present infirmities or as a compassionate allowance, and no money due or to become due on account of any such pension or allowance, shall be liable to seizure, attachment or sequestration by process of any Court, at the instance of a creditor, for any demand against the pensioner, or in satisfaction of a decree or order of any such Court."

Perusal of the provisions of the Act of 1871 indicates that it is applicable to pensions and grants made by the Central Government or the State Government

as the case may be. The appropriate Government has been defined in that context. Under Section 11 no pension granted or continued by Government is liable to seizure, attachment or sequestration at the instance of a creditor. It thus becomes clear that the provisions of Section 11 of the Act of 1871 would not be attracted in the present case for the reason that the petitioner is receiving his pension from his employer which is the Bank constituted under the Act of 1976 and not the Central or State Government. It thus clear that the petitioner cannot seek to rely upon Section 11 of the Act of 1871 in these facts.

11. The Pension Regulations prescribe general conditions under Chapter IX and Regulation 40 states that future good conduct is an implied condition for every grant of pension and its continuance under the Regulations. There is a power to withhold or withdraw pension if the pensioner is convicted for a serious crime or criminal breach of trust or is found guilty of grave misconduct. Under Regulation 46 the competent authority is empowered to recover any pecuniary loss caused to the Bank and under Regulation 47 the Bank is entitled to recover its dues on account of any loan, advances from the amount of pension. The impugned action of recovery is from the petitioner's pension account in terms of Regulation 47.

12. It thus becomes clear that the Pension Regulations have been brought into force by following the legal modalities prescribed by Section 30 of the Act of 1976. Regulation 47 which empowers the Bank to recover its dues from the pension account of a staff member is not in contravention of Section 11 of the Act of 1871 which applies to pensions and grants by the Central Government and the State Government. Similarly, such recovery not being in execution of a decree by any Court, the same is not in any manner contrary to the provisions of Section 60(1)(g) of the Code. We therefore do not find any reason to uphold the challenge as raised by the petitioner to the recovery of the Bank's dues from the petitioner's pension account by having recourse to Regulation 47 of the Pension Regulations. The challenge as raised thus fails.

The writ petition is therefore dismissed. Rule stands discharged with no order as to costs.