

Court No. - 33

Case :- WRIT - A No. - 37426 of 2014

Petitioner :- Manorama Verma

Respondent :- The Addl.Secy. U.P.Cooperative Union Ltd. And 4 Others

Counsel for Petitioner :- Rajesh Kumar Srivastava

Counsel for Respondent :- C.S.C.,Abhishek Mishra,U.B. Singh

Hon'ble J.J. Munir,J.

1. Heard Mr. R.K. Srivastava, learned Counsel for the petitioner, Mr. Abhishek Mishra, leaned Counsel on behalf of respondent nos. 1 and 6 and Mr. U.B. Singh, learned Counsel for respondent nos. 2, 4 and 5.

2. The petitioner is the widow of the late Gyanendra Pratap Verma, a Co-operative Supervisor in the employ of the U.P. Co-operative Union Limited, Lucknow. He was initially appointed on 26.02.1978 as a Co-operative Supervisor. In the year 2003, the petitioner's husband was posted at Barsathi Block Credit Circle, Jaunpur, wherefrom he was transferred *vide* order dated 20.06.2005 to the District Co-operative Bank Limited, Branch-Barsathi, District-Jaunpur, along with three other Co-operative Supervisors. He joined duties at the District Co-operative Bank Limited, Branch-Barsathi, District-Jaunpur on 20.06.2003. He performed his duties with the said Bank and received salary for a few months. His salary was stopped by the respondents after the month of March, 2005 without assigning any reason.

3. Gyanendra Pratap Verma chased his case with the respondents, leading to release of his salary from the month of March, 2005 to September, 2005 and a total sum of Rs. 50,407/- was credited to the Saving Salary Account No. 11385, opened with the Zila Sahkari Bank Limited, Jaunpur, Branch-Sadar. The said sum of money, though credited

to Verma's account, could not be withdrawn by him with the Bank citing lack of funds.

4. The petitioner's husband represented the matter to the Branch Manager, District Co-operative Bank Limited, Jaunpur, Branch-Sadar saying that out of the credit in his Savings Bank Account no. 11385 maintained with that Branch, a sum of Rs. 40,000/- be transferred to his Savings Bank Account No. 3314 maintained with the District Co-operative Bank Limited, Jaunpur, Branch-Barsathi. Gyanendra Pratap Verma did not receive his remuneration and, therefore, he represented the matter to the Managing Director, U.P. Co-operative Union Limited, Lucknow by a representation dated 12.01.2007, making a grievance that he had not been paid his emoluments for the past twenty two months, leading his family to starve, besides contracting debt. He pointed out that apart from the creditors at his doorsteps, he is not able to pay his outgoings, including electricity bill, house tax *et cetera* due to the Government Bodies. It was prayed that he may be transferred to any of the Districts such as Mau, Ballia, Mirzapur, Azamgarh or Sonbhadra so that payment of his emoluments may be resumed. The petitioner's husband's request was acceded to and he was transferred from Jaunpur to Saharanpur *vide* order dated 05.02.2007 on his own request and directed to report to the Regional Joint Registrar, Co-operative Societies, U.P. and the Chairman, Regional Committee, Co-operative Union, Saharanpur for further orders.

5. It is asserted in paragraph no. 10 of the writ petition by the petitioner that a reading of the order dated 05.02.2007 makes it evident that her husband was transferred from Jaunpur to Saharanpur on his own request as he was being harassed by the Authorities of the Co-operative Union at Jaunpur by withholding his due salary as well as arrears. It is also averred that when the petitioner's husband's grievances regarding payment of his salary were not redressed, he represented the matter to the

Minister in the appropriate Department, but that too did not yield any result.

6. Failing in all his endeavours to secure the payment of his emoluments, the petitioner's husband preferred Civil Misc. Writ Petition No. 18194 of 2007, where this Court on 23.04.2007 issued an interim *mandamus*, directing the respondents to pay a sum of Rs. 40,000/- on account of the petitioner's salary within a period of six weeks from the date of production of a certified copy of the order or show cause within the said period.

7. It is averred in paragraph no. 17 of the writ petition that in compliance with the interim *mandamus* issued by this Court in Writ Petition No. 18194 of 2007, the respondents filed a short counter affidavit stating in paragraph no. 4 that the salary due to the petitioner's husband was released and credited in his account maintained with the District Co-operative Bank Limited, Jaunpur. It is further averred in paragraph no. 5 of the said short counter affidavit that due to the poor financial position of the District Co-operative Bank Limited, Jaunpur and the Primary Co-operative Societies affiliated to it, the petitioner could not be paid salary and, as such, on his request he was transferred to the Regional Office, Saharanpur.

8. It is the petitioner's case in paragraph no. 18 of the writ petition that in paragraph no. 6 of the aforesaid short counter affidavit, that was filed in Writ Petition No. 18194 of 2007 brought by the petitioner's husband, there is a mention of letters dated 12.06.2007, 25.05.2007 and 08.05.2007 written by the Managing Director, U.P. Co-operative Union Limited, Lucknow, addressed to the General Manager/Secretary, District Co-operative Bank Limited, Jaunpur and the Assistant Registrar, Co-operative Societies, U.P., Jaunpur asking them to ensure payment of salary to the petitioner's husband. It is also averred in paragraph no. 18 of the writ petition that from the case pleaded in the

short counter affidavit, as aforesaid, filed in the aforesaid writ petition, it is apparent that the petitioner's husband was not paid his salary from March 2005 to September 2007, that is to say, the period of time that he was working with the District Co-operative Bank, Branch-Barsathi, Jaunpur.

9. In the year, 2007, the petitioner's husband, who was then posted at Saharanpur, came over to Varanasi during the Deepawali vacations. Unfortunately, he fell ill and admitted to the care of the Sri Shiv Pratap Gupta Government Hospital, Varanasi with effect from 15.11.2007 to 17.11.2007. The petitioner's husband was diagnosed with Cancer and died on 06.10.2008, leaving behind the petitioner, his widow, besides two sons and a daughter. The petitioner's husband died after a prolonged treatment.

10. It is the petitioner's case that, while alive, her husband was harassed by the respondents, who withheld his salary for the period from March, 2005 to September, 2007, which remained unpaid until his death on 06.10.2008.

11. After her husband's death, the petitioner represented the matter before the Member Secretary, U.P. Sahkari Sangh Pradhikari, Lucknow *vide* representation dated 07.07.2009, requesting that all payment of arrears of salary as well as other admissible dues, including general provident fund, gratuity, group insurance and pensionary benefits be released in her favour. Another representation was made on 25.05.2010 to the respondents with a request that casual leave/earned leave with effect from 07.11.2007 to 14.11.2007 and, further, medical leave with effect from 15.11.2007 to 06.10.2008 be sanctioned to her late husband and salary for the said period disbursed. None of the petitioner's claims were heeded to.

12. Despite pursuing the matter for a considerable period of time, post her husband's demise, the petitioner did not receive any of the dues on account of her husband's services. She filed for the grant of a Succession Certificate before the learned Civil Judge, Senior Division, Varanasi *vide* Succession Case No. 268 of 2010. This succession was applied entitling her to receive specific claims, to wit, those detailed in paragraph no. 24 of the writ petition. These are:

"1. The sum of Rs. 42,595/- with the Saving Account No. 3314 in the District Co-operative Bank Limited, Branch-Barsathi (Bhanaur), District-Jaunpur.

2. The sum of Rs. 69,930/- with the Saving Account No. 11385 in the District Co-operative Bank Limited, Branch-Sadar, District-Jaunpur.

3. The sum of Rs. 1,44,693/- with the Joint Registrar, Co-operative Societies U.P., Saharanpur Division, Saharanpur as Group Insurance."

13. The Succession Certificate was granted in the petitioner's favour on 07.04.2012 by the learned Civil Judge.

14. In the meantime, Writ Petition No. 18194 of 2007 that was instituted by the petitioner's husband, came up for hearing and heard after substitution of his L.Rs. The said writ petition was allowed, directing payment of the entire arrears of salary due to the petitioner's husband from March, 2005 to Sep, 2007 and other dues, to wit, gratuity *et cetera* along with 12% interest per annum. The payment was directed to be made within a period of two months from the date of production of a copy of the judgment in the said case and, in the event of further delay, interest was ordered to be paid @ 18% per annum till realization.

15. The judgment and order dated 29.01.2013 passed by this Court was not complied with, though the matter was represented time and again by the petitioner. Instead of complying with the judgment and order of this Court, entitling the petitioner to receive the unpaid salary of her

deceased husband and other post retiral benefits, the General Manager, U.P. Co-operative Union Limited passed an order dated 07.06.2013, intimating the petitioner that her deceased husband was entitled to receive a sum of Rs. 3,88,727/-, but taking into account the sum of Rs. 3,54,853.37 that he had embezzled during his tenure, the balance of Rs. 33,873.63 alone was payable and a cheque for the said sum was enclosed with the impugned order dated 07.06.2013.

16. Later on, the petitioner was served with the order impugned dated 03.09.2013, passed by the General Manager (Law), U.P. Co-operative Union, Limited, which says that the petitioner may take reference of her letter dated 16.08.2013, in connection with the order dated 29.01.2013 passed by this Court in Writ Petition No. 18194 of 2007, addressed to the Assistant Registrar, Co-operatives U.P. Jaunpur with a copy endorsed to the U.P. Co-operative Union Limited, Lucknow, by which a demand had been made to comply with the orders of this Court.

17. The order goes on to say that, according to a certain letter dated 25.02.2013, received under the signatures of the Secretary/General Manager, District Co-operative Bank Limited, Jaunpur and the Assistant Commissioner and Assistant Registrar, Co-operative, Jaunpur, the total outstandings due to her husband were in the sum of Rs. 3,88,727/-, wherefrom after adjustment of the sum of Rs. 3,54,853.37 due against her late husband, the balance of Rs. 33,873.63 have been paid to her *vide* cheque dated 07.06.2013. It further says that, according to the letter of the Assistant Commissioner and Assistant Registrar, Co-operative Saharanpur dated 17.08.2013, the dues of salary/earned leave encashment dues/medical leave and arrears on account of revision under the 5th Pay Commission, a total sum of Rs. 2,48,628/- were due to her husband, wherefrom after deducting a sum of Rs. 15,063/-, the balance of a sum of Rs. 2,33,565/- had been credited to the petitioner's Bank Account No. 12405, opened with the District Co-operative Bank Limited, Saharanpur.

18. It is mentioned in the order dated 03.09.2013, that a sum of Rs. 75,000/- towards gratuity and Rs. 3,288/- towards refund of security *vide* cheques dated 23.07.2013 and 25.07.2013 respectively, had been remitted to her. It is also mentioned that no credit being made in the provident fund account it was not payable. It is said in the order dated 03.09.2013 that the respondents have made an application seeking recall/ modification of the order dated 29.01.2013 passed by this Court and further steps would be taken according to result of that application.

19. It is averred in the writ petition that the impugned order dated 07.06.2013, or for that matter, the other order dated 03.09.2013, does not show on their terms basis for the deduction of a sum of Rs. 3,54,853.37 from the dues of the petitioner's husband, claiming it to be proceeds of embezzlement. The petitioner says that her husband was never given a show cause or faced departmental proceedings for the purpose during his life time.

20. The basis of the orders impugned, according to the petitioner, came to her knowledge through the affidavit filed in support of the recall application made in Writ Petition No. 18194 of 2007, seeking recall of the judgment and order dated 29.01.2013 passed by this Court.

21. There is an averment in paragraph no. 33 of the writ petition that for the first time upon perusal of the contents of the affidavit dated 12.05.2013 filed by Shrawan Kumar, Secretary/General Manager, District Co-operative Bank Limited in support of the Civil Misc. Recall/Restoration Application No. Nil of 2013, it was revealed that the Deputy Commissioner and Deputy Registrar, Co-operative U.P. and the Chairman, Regional Committee, Provincial Co-operative Union, Varanasi Division, Varanasi had passed an order dated 10.04.2013 punishing the petitioner's husband after his death on multiple charges of embezzlement and financial irregularities and holding him liable to pay a sum of Rs.3,54,853.37.

22. This Court may interpose at this juncture to say that though the order dated 10.04.2013 has not been formally included in the relief clause as the impugned order, but being annexed to the record, and sufficiently objected to, this Court proceeds to treat it as one.

23. It is averred in paragraph no. 38 of the writ petition that going by the settled law, no order of punishment could be passed against a dead employee, the petitioner's husband being dead on 06.10.2008. As such, the orders impugned are liable to be quashed on this ground alone.

24. There is a further averment in paragraph no. 41 of the writ petition that a perusal of the order dated 10.04.2013 would show that while punishing the petitioner's husband neither disciplinary proceedings were initiated while he was alive, nor a show cause issued to him. The petitioner has also asserted that the impugned order dated 10.04.2013 had been passed to frustrate the petitioner's claim by any means.

25. According to the petitioner's averment in paragraph no. 42 of the writ petition, the entire action of the respondents is illegal, arbitrary and one taken behind the petitioner's back after her husband's demise, vitiating the orders impugned. There are consistent allegations of harassment that the petitioner's husband faced and now the petitioner faces on account of the respondents' conduct.

26. There are three counter affidavits filed in the present case. One on behalf of respondent no. 1, the other on behalf of respondent nos. 2, 4 and 5, and, the third, on behalf of respondent no. 3. In addition, there is a short counter affidavit filed on behalf of respondent no. 6

27. There are three sets of rejoinder affidavits. One filed in answer to the counter affidavit on behalf of respondent no. 3, the other in answer to the return on behalf of respondent nos. 2, 4 and 5 and a short rejoinder affidavit in answer to the return on behalf of respondent no. 1.

28. The counter affidavit filed on behalf of respondent no. 1 is a short counter affidavit. Respondent no. 1 is the Additional Secretary, U.P. Co-operative Union Limited, Lucknow. He has adopted the contents of the short counter affidavit filed on behalf of respondent no. 6. Across length and breadth of this short counter affidavit, there is no mention of the order dated 10.04.2013 passed by the Deputy Commissioner and Deputy Registrar, Co-operative U.P. and the Chairman, Regional Committee, Provincial Co-operative Union, Varanasi. There is absolutely no answer to the assertions in paragraph nos. 38 and 41 of the writ petition as to how the Deputy Commissioner and Deputy Registrar, Co-operatives passed the order dated 10.04.2013, punishing the petitioner's husband, long after he was dead. It also does not say how, the order impugned holding the petitioner's husband liable was passed, without any departmental proceedings being drawn against him while alive or a show cause issued.

29. Likewise is the position in the counter affidavit dated 31.08.2017 filed on behalf of respondent nos. 2, 4 and 5. This is a detailed affidavit carrying a parawise reply. The answer to paragraph nos. 38 and 41 is carried in paragraph no. 28 of this affidavit, where all that said is that the contents of paragraph nos. 38 to 42 of the writ petition need no comments. There is, therefore, non-traverse to the petitioner's case in paragraph nos. 38 and 41 of the writ petition so far as respondent nos. 2, 4 and 5 are concerned.

30. In the counter affidavit dated 30.03.2015, filed on behalf of respondent no. 3, the Assistant Registrar, Co-operative Societies, U.P., Jaunpur, which again is a detailed affidavit, carrying a parawise reply, in paragraph no. 28 all that is said is that the contents of paragraph no. 38 to 42 of the writ petition need no comments. This affidavit does say in paragraph no. 6 that the petitioner's husband, the late Gyanendra Pratap Verma was suspended on 31.03.2000 and along with the affidavit, a copy

of the suspension order has been annexed as Annexure No. 1. The suspension order mentions that Gyanendra Pratap Verma was *prima facie* responsible for embezzling a sum of Rs. 1,18,000/-. In paragraph no. 9 of this affidavit it is said that the petitioner's suspension was provisionally revoked on 26.02.2002 and during his transfer, the matter against him was under consideration.

31. A perusal of the revocation order shows that the petitioner's husband was reinstated without prejudice to the ongoing inquiry. It must be mentioned here that in paragraph no. 6 of the counter affidavit filed on behalf of respondent nos. 2, 4 and 5, there is a reference to the suspension order dated 31.03.2000 and its revocation on 26.02.2002 with copies of those orders annexed.

32. Upon hearing learned Counsel for parties and perusing the record, including the affidavits filed in the case, this Court finds that while there is no doubt that there were some disciplinary proceedings initiated against the petitioner's husband in terms of the suspension order dated 31.03.2000, but after his provisional reinstatement in service on 26.02.2002, there is not a whisper about those proceedings being concluded during his lifetime.

33. The stand in paragraph no. 19 of the counter affidavit filed on behalf of respondent nos. 2, 4 and 5 and that in paragraph no. 19 on behalf of respondent no. 3 is identical. In fact, both the paragraphs are identical, without the difference of a punctuation. The affidavit filed on behalf of respondent no. 3, being older in point of time, it is obvious that paragraph no. 19 of the counter affidavit on behalf of respondent nos. 2, 4 and 5 has mechanically copied the stand from the third respondent's return.

34. The difficulty arises because between the order of suspension and its provisional revocation in the year, 2002, there is no course of proceedings to show that any inquiry was held against Gyanendra Pratap

Verma while alive. Admittedly, he passed away on 06.10.2008 and the impugned order was passed by the Deputy Commissioner and Deputy Registrar, Co-operative, Varanasi on 10.04.2013.

35. In paragraph no. 19 of the affidavits filed on behalf of respondent no. 3 on one hand and respondent nos. 2, 4 and 5 on the other, there is no mention of facts or material to indicate what happened between Verma's provisional reinstatement on 26.02.2002 and his demise on 06.10.2008. Unless proceedings were taken, while the petitioner's husband was alive, it is very difficult to sustain the order of punishment dated 10.04.2013 passed against the dead man. In fact, the order of punishment is not only a nullity but a product of absurdity. It is indeed surprising that during the entire course of hearing of Writ Petition No. 18194 of 2007, there is no mention of any disciplinary proceedings on charges of embezzlement *et cetera* being taken against Gyanendra Pratap Verma. At least, the fact has not found mention in the judgment and order of this Court dated 29.01.2013.

36. This Court did not have the advantage of looking into the pleadings in that case, but we have no manner of doubt that if any proceedings were taken, or even the fact of these charges being there against Verma, or some steps taken in the enquiry referred to, the Court would have certainly mentioned it. The other circumstances that are evident on record are that while alive Gyanendra Pratap Verma was badly harassed by the respondents by non-payment of his salary. Even when some part of it was credited in the District Co-operative Bank, Jaunpur, it was not paid to him on the pretext that the Bank was facing a financial crunch. It is also not in dispute that Gyanendra Pratap Verma had to seek his transfer from Jaunpur voluntarily, almost fleeing from that region, so that he could make his ends meet.

37. It has figured in Gyanendra Pratap Verma's representation during the relevant period of time addressed to the respondents that on

account of non-payment of his emoluments he had been reduced to penury and landed thick into debt. The fact that it was not disputed during the hearing of Writ Petition No. 18194 of 2007 that the petitioner's husband's salary for the period March 2005 to September, 2007 was not paid, is telltale of the fact that the conduct of the respondents is reprehensible. This Court in its judgment and order dated 29.01.2013 has condemned the conduct of the respondents in very kind words. The conduct of the respondents, in not paying Gyanendra Pratap Verma's emoluments for the period March, 2005 to September, 2007, is abominable and unpardonable. This Court makes it bold to say that, if this kind of an obdurate conduct is exhibited by any Statutory Body or a Private Body, liable to pay salary to its employees, which it refuses to pay on account of shortage of funds, its assets ought to be attached and sold off, of course bearing in mind the interest of the other employees also, may be through a Scheme devised for the purpose.

38. This Court is convinced further that in failing to persuade this Court in Writ Petition No. 18194 of 2007 to their point of view, and facing adverse judgment there, the respondents have come up with a device *mala fide* to weave a story about Gyanendra Pratap Verma being liable on charges of embezzlement. There is nothing shown in any of the affidavits that, while alive, any charge-sheet was issued to the petitioner's husband or departmental proceedings held against him on any kind of charges, including embezzlement. There is big disconnect between the suspension order dated 31.03.2000, its provisional revocation dated 26.02.2002 and the impugned order dated 10.04.2013. There is a void between these points regarding which there is no material to fill up. The conclusion is that the impugned order fastening liability upon the petitioner's husband, on account of the alleged embezzlement of various sums of money, of which he has been held guilty *vide* order dated 10.04.2013, more than four and a half years after he was dead and gone, is nothing but an adjudgement of liability against a dead man done even without hearing his

L.Rs.; not that, that kind of an inquiry could be held after hearing the L.Rs. The proceedings by the first principles of law could be taken while Verma was alive and, if concluded or substantially over during his lifetime, the consequences thereof could follow his estate in the hands of his L.Rs. But, by no principle of valid proceeding could an order of punishment be passed where no proceedings were taken, while the employee said to be delinquent was alive. The disciplinary proceedings in this case of whatever kind are utterly sham and a device to disobey the judgment and order of this Court in Writ Petition No. 18194 of 2007.

39. The impugned order dated 10.04.2013 is patently *mala fide* for all these reasons, both in law and fact. The respondents cannot be permitted to pass orders of the kind impugned and take the stand that they have, to frustrate either the rights of an employee whom they have not paid during his life time, or to obstruct orders of this Court directing payment of his emoluments while alive and his death-cum-terminal benefits to his wife.

40. In the opinion of this Court, this is a case where not only the respondents' actions ought to be undone but exemplary cost imposed.

41. In the result this writ petition **succeeds** and is **allowed** with costs. The impugned order dated 07.06.2013 passed by the Assistant Commissioner and Assistant Registrar, Co-operative Societies, Jaunpur and the order dated 03.09.2013 passed by the General Manager, U.P. Co-operative Union Limited, Lucknow are hereby **quashed**. A *mandamus* is issued to all the respondents ordering them to ensure payment of the sum of Rs. 3,54,853.37 by crediting it to the petitioner's account, that she intimates them with, maintained with a Nationalised Bank of her choice, within the period of two weeks of communication of this order. The sum of Rs. 3,54,853.37 shall be paid to the petitioner, as above directed, together with interest at the rate of 18% per annum reckoned with effect from 29.01.2013 till the date it is credited to the petitioner's account. The

respondents shall pay exemplary cost in the sum of Rs. 1,00,000/- to the petitioner also within the period of fifteen days of receipt of a copy of this judgment.

42. Let this order be communicated to the Managing Director, U.P. Co-operative Union Limited, 14-Dr. Ambedkar Marg, U.P., Lucknow, the Additional Secretary, U.P. Co-operative Union Limited, 14-Dr. Ambedkar Marg, U.P., Lucknow, the Assistant Co-operative Registrar, Co-operative Societies, U.P. Lucknow, the Branch Manager, Barsathi, District Co-operative Bank Limited, Jaunpur and the Branch Manager, Sadar, District Co-operative Bank Limited, Jaunpur by the Registrar (Compliance).

Order Date :- October 19, 2023
Prashant D.