IN THE HIGH COURT OF JUDICATURE AT HYDERABAD FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

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WRIT PETITION NOS.8705 AND 8708 OF 2005

DATED 01st SEPTEMBER, 2015

W.P.No.8705 of 2005:

Between:

K.T. Chandrapani

.. Petitioner

and

The Prakasam District Cooperative Central
Bank Ltd., Ongole

.. Respondent

THE HON'BLE SRI JUSTICE SANJAY KUMAR

WRIT PETITION NOS.8705 AND 8708 OF 2005

COMMON ORDER

Writ Petition No.8705 of 2005 was filed by a retired Assistant Manager in the Prakasam District Co-operative Central Bank Limited, Ongole, assailing the notice dated 30.10.2004 whereby the said bank sought to recover 50% of the long term loan amount due to it from one R. Jayalakshmi along with interest from his retirement benefits. The petitioner also challenged the treatment of his suspension period as on leave. He thereafter filed W.P.No.8708 of 2005 assailing the proceedings dated 09.02.2005 of the bank seeking to recover a sum of Rs.3,16,985/- from his retirement benefits.

The petitioner was subjected to disciplinary proceedings under Charge Memo dated 23.07.2003 on the allegation that he failed to discharge his legitimate duties while working as a Supervisor at the Agricultural Development Bank, Addanki, which was subsequently merged with the Prakasam District Co-operative Central Bank, Ongole. An enquiry was initiated against the petitioner in this regard and the same culminated in the enquiry report dated 28.06.2004. Basing on the said report, the Managing Committee of the bank resolved in its meeting held on 24.09.2004 to recover 50% of the loan amount due to the bank from R. Jayalakshmi along with interest from the petitioner's retirement benefits. This aspect was intimated to the petitioner under the impugned notice dated 30.10.2004. It was also stated therein that the period of suspension undergone by him would be treated as leave to which he was eligible.

In this connection, it is relevant to note that the petitioner was placed under suspension on 16.07.2003 and retired from service on 30.06.2004 while under suspension.

Perusal of the enquiry report dated 28.06.2004 reflects that the enquiry officer did not render a finding to the effect that the petitioner was guilty of the charge leveled against him. On the other hand, the enquiry officer categorically stated that the delinquent employee, the petitioner, could not be held squarely responsible for the lapse and that it is difficult to fix the responsibility. In the light of this finding recorded in the enquiry report, it was for the disciplinary authority to disagree with the same in accordance with due procedure and take steps thereafter. However, the bank did not choose to do so. Treating the enquiry report as having returned a finding against the petitioner, the Managing Committee of the bank resolved to recover 50% of the loan amount due to it from the petitioner's retirement benefits. The said action of the bank was wholly unsustainable in law as there was no finding of guilt recorded against the petitioner during the enquiry which could justify the imposition of the subject punishment by way of recovery from his retirement benefits. The disciplinary action taken against the petitioner was therefore invalid in law and is accordingly set aside.

The petitioner was no doubt placed under suspension but the disciplinary proceedings have come to naught, in the light of the aforestated irregularity. There is thus no justification for the bank to treat the suspension period undergone by the petitioner as leave to which he was eligible. The impugned notice dated 30.10.2004 is accordingly set aside in this regard also.

In so far as W.P.No.8708 of 2005 is concerned, perusal of the impugned proceedings dated 09.02.2005 reflects that the retirement benefits and the arrears of salary payable to the petitioner were worked out at Rs.3,79,673/-. Out of the said amount, a sum of Rs.3,16,985/- was sought to be recovered and the balance amount of Rs.62,688/- by way of cheque and a sum of Rs.4,849/- totaling Rs.79,579/- was kept in his suspense account. The recoveries sought to be effected were under six heads. These heads were as follows:

1.	The difference of salary in between A Class and B Class employees and also the difference of D.A. on which the said issue is pending before the Hon'ble High Court	Rs.79,579
2.	<u>Advances/Establishment:</u> Towards recovery of Gold Ornament Loans:	Rs.38,754
3.	Over draft amount in B. Nidamanur Branch	Rs.90,868
4.	Loan relating to Smt. R. Jayalakshmi and initiating recovery proceedings as per M.C. Resolution No.27, dated 24-9-2004	Rs.59,311
5.	Amount sent in Savings A/c. of Addanki Branch (Personal involvement)	Rs.46,773
6.	Amount credited in your suspense A/c. at Central Office	Rs. 1,700

		Rs.3,16,985

In so far as the first deduction is concerned, it appears that the classification of the bank was in dispute in terms of the quantum of profits that it was generating. However, it is clear from the counter-affidavit that this amount was not paid to the petitioner and was kept in a fixed deposit. Therefore, the said amount was never remitted to the petitioner for it to be now recovered from his retirement benefits. In the event the amount is still lying in the fixed deposit, it is for the bank to appropriate the same. Sri K. Ananda Rao, learned counsel for the petitioner, fairly states that his client has no claim to this amount in terms of the difference of wages relating to the classification of the bank.

As to the recoveries effected towards the loan relating to R. Jayalakshmi, this Court has already held that the petitioner could not be held liable. No finding was recorded by the enquiry officer against the petitioner in the context of the charge laid against him relating to this loan. Therefore, the bank is not entitled to effect this recovery from his retirement benefits.

As regards the recoveries effected towards gold ornament loans, savings account of Addanki Branch (personal involvement) and the amount credited to the suspense account at the Central office, there is no indication of the petitioner having been put on notice as to these issues before effecting the recovery. Sri K. Ananda Rao, learned counsel for the petitioner, states that his client disputes any liability with regard to these three items and that the recovery effected on these counts from the retirement benefits of his client is therefore illegal. There is no justification forth coming from the counter-affidavit as to the deduction of these amounts. Unless the liability of the petitioner was determined in terms of these three items, it was not open to the bank to unilaterally decide that he is responsible for the same and consequently effect recoveries from his retirement benefits.

In so far as the last item of recovery is concerned, Sri K. Ananda Rao, learned counsel for the petitioner, fairly conceded that his client had availed overdraft facility and therefore, a sum of Rs.90,868/- was liable to be recovered.

As the gratuity amount payable to the petitioner was delayed owing to the wrongful deductions and recoveries effected therefrom, Sri Ananda Rao, learned counsel, would contend that this Court should direct payment of interest upon the delayed payment of gratuity. It is noticed that the petitioner did, in fact, pray for interest upon the release of the gratuity amount. Reliance in this regard is placed upon the judgment of the Karnakata High Court in **BHALACHANDRA KRISHNAJI KALE V/s. KARNATAKA STATE ROAD TRANSPORT CORPORATION**[1]. In terms of the aforestated judgment, the petitioner would be entitled to interest as prescribed in the Payment of Gratuity Act, 1972.

Both the writ petitions are accordingly disposed of. The recovery effected by the bank only to the extent of Rs.90,868/- towards the overdraft facility availed by the petitioner is upheld. The balance amount due and payable to the petitioner towards his gratuity and arrears of salary shall be remitted to the petitioner. In so far as the payment of gratuity is concerned, the petitioner shall be entitled to payment of interest at the statutory rate prescribed in Section 7(3-A) of the Payment of Gratuity Act, 1972. The respondent is directed to comply with above directions within a period of eight weeks from the date of receipt of a copy of this order. Pending miscellaneous petitions shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR, J

01st SEPTEMBER, 2015
PGS

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[1] 1999 (1) Labour Law Journal 932