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HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 3539 of 2011

Bhagatram Yadav S/o Shri Aitharam Yadav, Aged about 64 years, R/o Beladula Kharraghat, Raigarh, Tah & Distt. Raigarh, CG

---- Petitioner

Versus

1. State Of Chhattisgarh through : The Secretary, PWD, DKS Bhawan, Mantralaya, Raipur
2. Executive Engineer, PWD, Raigarh, Division Raigarh (CG)
3. Chhattisgarh Gramin Bank, Raigarh, through : Branch Manager, Chhetriya Gramin Bank, Raigarh (CG)

---- Respondents

For Petitioner	:	Shri Vipin Punjabi, Advocate
For State	:	Shri Ramakant Mishra, Dy.A.G.
For Respondent No.3	:	Shri B.D. Guru, Advocate

S.B.:Hon'ble Shri Justice Manindra Mohan Shrivastava

CAV Order

15/06/2016

1. The petitioner has filed this petition aggrieved by the action of respondent No.2 in allowing respondent No.3-Bank to recover its due against the personal loan advanced to the petitioner, from the retiral dues of the petitioner.

2. Learned counsel for the petitioner submitted that the petitioner was an employee of Public Works Department and working under the Executive Engineer, PWD Raigarh, Division Raigarh, wherefrom he retired from his services on 30th June, 2008. The retiral dues ought to be paid to the petitioner, but respondent No.2 illegally and without there being any undertaking of the petitioner, transferred the amount by way of cheque to respondent No.3- Bank which adjusted Rs.1,00,523/-

from the retiral dues of the petitioner. The argument of learned counsel for the petitioner is that the retiral dues ought to be paid to the petitioner and respondent No.2 had no authority to clear the outstanding loan of the petitioner by crediting the amount in favour of respondent -Bank.

3. On the other hand, learned counsel for respondent No.2 & 3 both have submitted that the personal loan of Rs.82,000/- was advanced to the petitioner by respondent No.3-Bank on his application (Annexure P-4), in which the petitioner authorized the Executive Engineer to deduct from his salary or from retiral dues, the loan due on the petitioner in favour of respondent No.3- Bank.

4. A perusal of the petitioner's application (Annexure P-4) reveals that the petitioner had given an authorization letter in favour of Executive Engineer in respect of personal loan taken by him that towards repayment of the loan in installments, appropriate deduction may be made from the salary. Not only this, the petitioner also authorized his employer that any payment due to be paid by the petitioner to the Bank against the loan borrowed from the Bank may also be deducted from other dues of the petitioner which included retiral dues also. This document bears signature of the petitioner as well as guarantor - Premanand Rathiya.

5. In view of the authorization letter given by the petitioner in favour of his employer-Executive Engineer, the Executive Engineer stood guarantor towards repayment of loan by the petitioner vide his letter dated 10.11.2003 which has been filed as Annexure R-1 along with the return of respondents No. 1 & 2.

   It is quite obvious that but for the authorization given by the petitioner and guarantee given by petitioner's employer on the basis of authorization of the petitioner, loan would not have been advanced to the petitioner by the respondent -Bank.

6. The petitioner, having authorized the employer to deduct not only from salary but also from retiral dues towards repayment of loan of the Bank, could not raise any legitimate grievance, if ultimately, towards realization of the amount due and payable by the petitioner towards loan, employer has allowed deduction from the retiral dues of the petitioner in favour of respondent-Bank against the personal

loan taken by the petitioner from the Bank.

7. However, from the return of both respondents No. 2 & 3, it is revealed that at the time of retirement, the total amount of retiral dues was calculated as Rs.1,76,139/-, whereas the recovery of the Bank was only for a loan of Rs.1,00,523/-. The balance amount was liable to be paid to the petitioner. Therefore, in these circumstances, respondent No.2 ought not to have sent the entire amount of retiral dues of the petitioner to respondent No.3-Bank. Respondent No.2 ought to have allowed only that amount to be deducted from the retiral dues which were to be paid towards recovery of loan to the Bank. Respondent No.2 illegally transferred the entire amount by way of cheque in favour of respondent No.3-Bank. The balance amount was liable to be paid to the petitioner by respondent No.2.

8. The respondents No. 2 & 3 have come out with the case that the petitioner was sent letter by the respondent-Bank that a bankers cheque of Rs.75,366/- has been sent by registered post along with a copy of lager-sheet to the petitioner by the respondent-Bank on 1.9.2008, which is revealed from Annexure P-15 dated 27.8.2009. However, the case of the petitioner is that he never received any such cheque. There is no material on record to show that the said cheque was received by the petitioner. The respondent No.2 has also not come out with the case that the said cheque was ever encashed by the petitioner.

9. This amount of Rs.75,366/- was liable to be paid to the petitioner at the time of his retirement which was illegally credited by his employer in favour of the Bank. Letter dated 27.8.2009 (Annexure P-15), which is the communication of the Bank, shows that the Bank itself treated the cheque as having become invalid after expiry of 6 months.

10. In view of the above, respondent No.3-Bank is directed to pay Rs.75,366/- along with interest @ 6 % per annum w.e.f. from the date on which Rs.1,76,139/- was credited in the account of the Bank under cheque No.521938 dated 13.8.2008 of the Executive Engineer PWD, Raigarh, Devision Raigarh.

11. Considering that the petitioner is a retired employee, respondent No.3-Bank shall

ensure payment of the aforesaid amount with interest as directed by the Court within a period of 60 days from the date of receipt of copy of this order. If the amount is not paid within 60 days, it shall carry a penal interest of 18 % per annum from the date of expiry of 60 days as directed above, in addition to non-compliance of Court's order and other consequences which may ensue. The petitioner is entitled to cost of Rs.5,000/- from respondent No.2 and equivalent amount of cost from respondent No.3 also, which are also to be paid within 3 months.

12. With the aforesaid direction, the petition is partly allowed.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Praveen