IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 02.05.2016

CWP No.10122 of 2008 (O&M)

Amar Singh ...Petitioner

Vs.

The State of Punjab & others ...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Atul Nehra, Advocate, for the petitioner.

Mr. Inqulab Nagpal, AAG, Punjab.

Mr. A.K.Jaiswal, Advocate, for respondent No.3.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.

On 15.03.2016, this Court passed the following interim order:

"Mr. Jaiswal has filed an affidavit on behalf of respondent No.3, which is taken on record. Copy Supplied. Mr. Nehra has also presented a fresh calculation-sheet together with a certificate from the respondent-Bank which is already part of the paper book at Page 118. The same is taken on record as Mark 'A', copy of which has been handed over to Mr. Jaiswal for onward transmission to his client.

In order to settle the dispute, which is monetary in nature and reconcile the allegations and counter allegations and the areas of convergence and divergence, it is deemed appropriate that parties should sit together with the original record to make a list of what has been paid, what is not and what is due or not due. The parties will appear in the Mediation & Conciliation Centre of this Court on 22.3.2016

> *to sort out their differences. The Mediation & Conciliation Centre would appoint the Mediator to sit with both the parties so that disputes can be moderated and attempted to be resolved. The Bank will be represented by the District Manager, who has signed the affidavit filed in this Court. The Bank to produce the entire original record before the Mediator.*
>
> *List again on 5.4.2016."*

Mediation has failed and the case has to be determined on merits.

The petitioner was an employee of the Fatehgarh Sahib Central Co-operative Bank Limited, Sirhind (hereinafter to be referred as 'the Bank'). The petitioner was prematurely retired on 26.08.2003 while serving in the Branch Office at Rajindergarh, District Fatehgarh Sahib. Challenge in this petition is to the office order dated 20.11.2003 (Annex P-2). The respondent – Bank accepted the request of the petitioner for premature retirement on the basis of resolution passed by the Bank, but made subject to decision of the case filed by respondent No.4 – Nandpur Kalour CASS Ltd. Nandpur Kalaur, District Fatehgarh Sahib (hereinafter referred to as 'the Society') against respondent No.3 – Bank and the petitioner, who had by then resigned to be Assistant Manager. Due to the pendency of the arbitration case, the Bank withheld amounts due towards leave encashment, gratuity, security and other retiral dues. The petitioner had rendered by the time of premature retirement about 33 years of service with the respondent No.3 – Bank. While he was in service, the Bank had come down on for recovery of loss imputing involvement in embezzlement allegedly committed by him in the matter of recovery of loans. The petitioner's case was that those amounts were not loaned during his tenure. Officials of respondent No.3 – Bank had advanced loans to the members of respondent No.4 - Society. It was alleged that the amounts as received from the members of the Co-operative Societies were not entered into books of respondent No.3 – Bank. Respondent No.3 - Bank has initiated arbitration proceedings under Sections 55 & 56 of the Punjab Co-operative Societies Act, 1961 (hereinafter referred to as 'the Act'). The petitioner was not a party to those proceedings. The arbitration case related to inter se disputes between the society and the Bank pertaining to some fictitious entries discovered in the accounts of the Bank and the Society.

It is the case of the petitioner that he was promoted as Assistant Manager on 19.04.1998 on transfer from Head Office. Before he was promoted, one Kashmira Singh was Bank Manager till 18.04.1998. The recoveries of loans had been received by Narinder Singh, Clerk -cum- Cashier. The Award was passed by the Assistant Registrar, Co-operative Societies, Bassi Pathana, where the name of the petitioner did not figure and thus he questioned the initiation of proceedings against him in an illegal manner. It is admitted that the petitioner while in service had taken personal loan, house loan and computer loan etc. as per details furnished and the aforesaid dues amounted to the tune of Rs.2,08,974/-. It is given out that four arbitration cases were pending with respondent No.4 – Society. This was a dispute between respondent No.3 & respondent No.4 and those cases have been adjudicated by the Assistant Registrar, Co-operative Societies in which it has been held that the Bank would pay the amount in dispute to respondent No.4 with the findings returned that the amount was embezzled with the connivance of the Bank officials and the officials of respondent No.4 – Society. The award is dated 10.01.2006. The petitioner is neither party nor does the charge of embezzlement relate to him. The petitioner was never joined in any of the arbitration proceedings launched on the charge of embezzlement inter se Bank and the Society.

The petitioner had been representing to respondent No.3 – Bank for release of his outstanding dues. He approached this Court and during the pendency of the writ petition, the Bank passed an order in writing attaching the retiral benefits of the petitioner in a sum of Rs.1,50,585/- against leave salary dues lying to the credit of the petitioner. The petitioner states that the attachment of retirement benefits is an illegal action as he not had the opportunity to contest the cases as party and therefore was not bound by those decisions except the sole proceeding mentioned above.

The impugned order was passed at the time when the petitioner sought premature retirement without serving upon him a charge-sheet or initiating disciplinary proceedings against him for alleged misconduct. In the written statement, it has been mentioned that the retiral dues consisted of (i) Gratuity in the sum of Rs.3,50,000/-; (ii) Leave Salary in the sum of Rs.2,44,070/-; & (iii) Staff Security in the sum of Rs.6239/-, totaling a sum of Rs.6,00,309/-. At the time of premature retirement, loans (supra) were outstanding against the petitioner. The description of loans taken by the petitioner while serving at Head Office, Rajindergarh Branch and Khand Branch is as under:

(i)	Computer Loan	Rs.42,990/-
(ii)	House Building Loan	Rs.17,041/-
(iii)	Consumer Loan	Rs.29,169/-
(iv)	Personal Loan	Rs.1,53,687/-
Rajindergarh Branch		
(v)	Two Wheeler Loan	Rs.13,871/-
(vi)	Overdraft Loan	Rs.96,968/-
Khand Branch		
(vii)	N.S.C.	Rs.1095/-
(viii)	Recoverable A.D.A.	Rs.16,276/-
	Total	Rs.3,71,104/-

The Bank says that the gratuity amount of Rs.3,50,000/- due to the petitioner would be adjusted as recoverable from amount of Rs.3,71,104/-. Therefore, the balance recoverable amount is Rs.21,104/-, which has been adjusted against due amount of salary. Rs.1,50,585/- have been withheld from the salary due to arbitration cases. The Bank alleges concealment of facts and deliberate false statement made that the petitioner has not been paid his retiral dues. It is only a case of adjustment of money. This is the stand of respondent No.3 – Bank.

Respondents No.1, 2 & 5 have filed their separate reply by way of counter affidavit of the Assistant Registrar, Co-operative Societies, Sirhind. They say that the petitioner has not availed the remedy of appeal under Section 68 of the Act against the order Annex P-12 passed by respondent No.5 under Section 65 of the Act, whereby respondent No.5 had attached before award a sum of Rs.1,50,535/- out of leave encashment dues of the petitioner. Even further remedy of revision would be available to the petitioner against the appellate order, if he files an appeal. These are statutory remedies not availed. It is stated that the petitioner is participating in arbitration cases numbering 4 initiated by the respondent – Bank, as mentioned above.

The second order impugned is dated 14.02.2008 (Annex P-12) passed by the Assistant Registrar, Co-operative Societies, Sirhind exercising powers of Registrar, Co-operative Societies, Punjab, Chandigarh. This is the attachment order of Rs.1,50,585/- from the leave salary amount of Rs.2,29,235/- as mentioned above.

Mr. Arun Kumar Bakshi, Mediator has reduced the disputes after holding a joint session with the disputing parties under interim orders of this Court. The Mediator has the following to say:

"Present: Amar Singh-Petitioner in person along with
Sh. Atul Nehra, Advocate.

Sh. Gurbaj Singh, D.M., presently at
Central Co-operative Bank, Ropar and
Sh. Surinder Sidhu, Accountant alongwith
Sh. A.K.Jaswal, Advocate for respondent No.3.

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In the joint session held today, respondent No.3-Bank has produced the entire original record, which has been shown to the counsel for the petitioner to his satisfaction. The undersigned was directed by the Hon'ble Bench to make a list of what has been paid, what is not and what is due or not due.

Arithmetical versions of both the parties have been taken separately. The payments/figures which both the parties admit, have been indicated and the difference in amount due as claimed by both the parties has also been indicated for the kind perusal of the Hon'ble Court.

Version of the petitioner

Paid by the Bank

31.08.2008	Rs.80,750-00	(Admitted by Bank)
06.03.2014	83,705-00	(Admitted by Bank)
06.03.2014	27,066-00	(Admitted by Bank)
Total	Rs. 1,91,521-00	(Admitted by Bank)

Due from Bank

26.08.2003	Rs.600,309-00	(Admitted by Bank)
	2,387-00	(Admitted by Bank)
	27,066-00	(Admitted by Bank)
Total	Rs.6,29,762-00	(Admitted by Bank)
Less	Rs. 2,33,738-00	(Admitted by Bank as the dues of the Bank from the petitioner as on 26.08.2003)
	Rs.3,96,024-00	
Less	Rs.1,91,521-00	(Already received by the petitioner as given above)
Less	Rs. 1,91,521-00	(Already received by the petitioner as given above)

	Rs.2,04,503-00	(Due as principal at present as per Petitioner)

Version of the Bank (Respondent No.3)

Paid/adjusted

31.01.2008	Rs.3,71,104-00	(The loan amount which admittedly was Rs.2,33,738-00 as on 26.08.2003 due from petitioner)

Due to be paid

	Rs.66,880-00	(Withheld on account of attachment order regarding 4th Arbitration Case)

Conclusion

As per petitioner, the due amount from the Bank is Rs.2,04,503-00 while as per respondent-Bank, the amount due (to be paid to the petitioner) is Rs.66,880-00. It has been explained that this difference of Rs.1,37,623-00 is on account of adjustment/deduction by Bank of Rs.3,71,104-00 on 31.01.2008 instead of the admitted figure of Rs. 2,33,738-00 on 26.08.2003.

The needful having been done, the matter may kindly be returned to the Hon'ble Court."

The arguments have since proceeded to test the correctness of the version of the petitioner and the Bank before the Mediator and the conclusions reached. The valuable work done by the Mediator has brought focus on the disputes in a lucid manner of who owes what to each other.

Mr. Jaiswal appearing for the bank has submitted a calculation sheet, which has been taken on record as Mark 'A'. Such calculations together with the statement of amounts recoverable from the petitioner are figured out as under:

Date	**Particulars Retirement Dues**	**Amount Due**	**Dt.**	**Loan Due / Amount Paid**	**Amount**
Due on 26.08.2003	As per respondents affidavit dated 25.01.2016, para 1 & 5 towards Gratuity, salary 26 days,	6,00,309 + 2,387 + 27,066	26.08.2003	Loan outstanding on 26.08.2003. As per respondents' certificate dated 31.01.2008 at Page	2,33,738

	security etc.	6,29,696		118	
26.08.2003	Due on 26.08.2003 Less Loan Net Balance	 6,29,696 2,33,738 3,98,034			
	Even as per the record of the respondent 3,98,034 Less 1,91,521/- Principal Amount unpaid is 2,06,513/-		31.08.2008 06.03.2014 06.03.2014	As per respondents' affidavit dated 25.01.2016, para 3 & 4 Total	80,750 83,705 27,066 1,91,521

Statement of amounts recoverable from the petitioner

Particulars	26.08.2003	31.01.2008
At H.O.		
Computer Loan	28958.00	42997.00
House Building Loan	17041.00	17041.00
Consumer Loan	17197.00	29169.00
Personal Loan	82660.00	153687.00
A.D.A. Deduction	16276.00	16276.00
At Branch Office Level		
B.O. Rajindergarh		
Two Wheelers Loan	20680.00	13871.00
Overdraft Limit	49831.00	96968.00
B.O.Khant		
N.S.C.	1095.00	1095.00
	233738.00	371104.00

There is no dispute that of the four arbitration cases, three of them stand concluded and the petitioner was not party therein. The non-disputed facts are that by the impugned order dated 04.02.2008, the amount of Rs.1,50,585/- was attached as against the salary amount of Rs.2,29,235/-. There is no dispute that Rs.80,750/- have been paid to the petitioner. It is also not disputed that the petitioner was allowed premature retirement on his request in 2003. If a charge of embezzlement could be proved, then it was open to the Bank not to have accepted premature retirement of the petitioner and instead charge-sheeted him and subjected him to disciplinary proceedings and taking such action as was required in view of the conclusions. But this right has not been availed by the Bank against the petitioner.

The petitioner will be treated as a person retired on 20.11.2003. In the absence of charge-sheet, the petitioner was entitled to gratuity, leave encashment and staff security in absence of any provision in the Bank justifying retention of money. If any amount was found due against the petitioner in the arbitration cases, then the remedy was execution in case finding of guilt was recorded. During the hearing, the respondent Bank has tried its best to obfuscate the matter and cause confusion in the mind of the court without any reasonable or factual basis. As against the admitted outstanding of Rs.6 lakhs and odd a much smaller amount was involved in the attachment order to justify retention of the total outstanding dues.

I see no reason why the picture as brought out by the Mediator in his work should not be accepted as the correct position, given the effort put in to understand the pending disputes for the assistance of the court. Especially to the extent of the amounts which are admitted by the Bank as due from each other. The amount due to be paid recommended by the Mediator is Rs.66,880/. The dispute has been pending since sufficiently long. The respondents have not made a clean breast of things.

The payments already made to the petitioner have been recorded in the interim order dated 05.08.2015 passed by the Coordinate Bench. It has been recorded that the remaining payment was paid by way of two drafts dated 06.03.2014 amounting to Rs.27,066/- and Rs.83,705/- respectively. Though the order dated 05.08.2015 was passed in the absence of the petitioner and the petition was taken to be rendered infructuous, the matter has been reopened for a just and meaningful determination of the dispute on merits.

In view of the foregoing reasons, this petition is accepted by reviving the petition and recalling the order as was permitted by the Coordinate Bench in its order in case the dispute had not been settled to the satisfaction of the parties.

As a result, CM No.10629 of 2015 is allowed. The pending dues be paid to the petitioner with interest @ 8.7% p.a. i.e. the rate payable on long term fixed deposits sitting invested in nationalized Banks within a period of two months from the date of receipt of certified copy of this order. If any dispute as to amount persists or remains unresolved, the petitioner and the competent authority in the Bank would sit together to work out the details and payments can be made accordingly.

02.05.2016 [RAJIV NARAIN RAINA]
Vimal JUDGE