IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.14045 of 2012
Date of Decision: 18.03.2016

Swaran Kaur ... Petitioner

Versus

State of Punjab and others ... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Daman Jeet, Advocate,
for the petitioner.

Mr. Inqulab Nagpal, AAG, Punjab.

Mr. Sanjeev Gupta, 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.(Oral)

1. The petitioner is the widow of late Pabu Singh who was a Peon in the Department of Information and Public Relations, Punjab, Chandigarh. He served the department from March 24, 1981 till he died on February 03, 2008. Thus he was armed with length of service qualifying service for pension on the date of his demise.

2. Pabu Singh's mother is the respondent in the present petition. She disputes the marriage of her son with the petitioner. She resides in Jodhpur, Rajasthan and says that she was never made aware by her son Pabu Singh that he had contracted a married with the petitioner. Disputes arose on the death of Pabu Singh between the mother and the petitioner to claim his terminal benefits which were substantial in terms of money. The mother

staked her exclusive claim to the service law estate of late Pabu Singh to the expulsion of the rights of wife. On the other hand, the wife asserted her rights to movable property of her husband being a Class 1 heir of his self acquired movable property left behind in the capacity of a widow.

3. Since the disputes and differences between the private parties, that is, the petitioner and the private 3rd respondent could not be resolved amongst themselves, the petitioner approached this Court, claiming to be the wife of late Pabu Singh for his money owed by the employer. The mother has resisted the petition. However, on the intervention of the Court by a previous order, the parties were sent to the Mediation & Conciliation Centre annexed to this Court to try and patch up their disputes. The good thing was that the parties were successful in mediation effort and they resolved their disputes and differences in writing before the Arbitrator in a amicable way, the original of which settlement reduced in writing has been placed on record of the instant file duly signed by the parties and the happy mediator. In the settlement arrived at, the petitioner has agreed to take Rs.2.5 lacs from a total amount of Rs.10,30,005/- (as calculated by the parties) falling due on the death of the breadwinner by the relenting mother; the decedent son. This consensus of minds would quite naturally be subject to confirmation by the respondent-State as the competent authority to make a final administrative decision. The amount involved include the balance salary, GPF accretions, Deposit Linked Insurance, Ex-Gratia grant, DCRG and family pension with effect from the date of death of late Pabu Singh.

4. Accordingly, the financial arrangements on being settled by compromise arrived at amicably between the private parties, they have

agreed in the mediation centre to part with their respective shares asserted in the employment estate left behind by late Pabu Singh with respect to his corpus of terminal benefits arising from death while in service.

5. Notwithstanding the above narration of events and their material bearing on the fate of this case, the respondent-State is surely not privy to the compromise/settlement and thus in the province of law they the State of Punjab is not bound by the terms of a private settlement and consequently it matters little as to who the real claimants are as far as they are concerned, so long as the State stands indemnified against third parties claiming the said amount for themselves. It is not disputed that the mother was the nominee of late Pabu Singh in his service record. Hence, payment to a nominee is as good as against the world and the State cannot be bound to regurgitate the money twice in two coffers.

6. But that is not the end of the trouble in resolution of the private *lis* which has nothing to do with the liability of the State Government to cough the money twice. The State is not concerned with whom the man lived with a woman. To the detriment of he contesting parties the State in its reply makes a counterclaim against the estate of late Pabu Singh so far as iit is concerned. It turns out that Pabu Singh was allotted Government accommodation in Chandigarh from the Punjab Pool and occupied it till his death for which admittedly he paid house rent allowance deducted from his salary. As per the stand of the respondent-State he was transferred to Hoshiarpur on June 29, 2001 but Pabu Singh had retained his Government accommodation in Chandigarh which fact is not disputed. Still further, on Pabu Singh's death on February 03, 2008, the petitioner continued to reside

in the house for over one year without paying any rent. This was till April 22, 2009. The State claims penal rent from the overstayer to be deducted from the terminal benefits of late Pabu Singh from the hands of respondent-mother to be subtracted from the outstanding dues of late Pabu Singh. The penal rent has been calculated at Rs.2,59,057/- for use and occupation of public property without authority which the State wants for itself.

7. Mr. Inqulab Nagpal appearing for the State submits that House Rent Allowance was deducted from the salary of the late employee and it is only the element of penal rent which State asserts is outstanding and recoverable from the account of the dead employee before parting with payment of money to the rightful owner. As per the stand of the State in the written statement, the keys of the Government accommodation were handed over to the designated functionary of the Government by the petitioner when she left the dwelling unit. Therefore, she is responsible for overstaying and is liable to pay the amount. If she fails to pay then the amount is recoverable from the nominee. However, if the amount is fastened on the petitioner she would get nothing from the compromise or from the estate of late Pabu Singh and instead she will be compelled to discharge the debt and in addition pay a balance sum Rs. 9000 and odd to the State if the compromise between her and the respondent mother is satisfied.

8. The respondent-mother is not guilty of retaining the accommodation after the death of her son and thus cannot be penalized on account of no fault of hers while living in Jodhpur. Therefore, the amount claimed by the State cannot be ordered to be deducted from the estate of late Pabu Singh in her hands. The only possible way out of the iniquitous

situation is for the the court of equity to venture to do unconventional justice to save the petitioner from debt and for the mother to get her dues. The only way out to balance mite of the two contestants and the might of the State is to direct the respondent State to write off the amount from its record so that the petitioner and the mother are able to get the fruit of the compromise and access to outstanding dues lying with the Government in late Pabu Singh's account. Such an order is contemplated on the assumption that the liability created by the State towards penal rent on overstaying is notional and fictional as no direct financial loss has been caused to the State except for loss of use of public property for about a year and allotment to employees waiting for government accommodation. In any case, if the State were to bring an action to recover the money representing penal rent the action would, in all probability, fail being hit by limitation. Article 113 of the Limitation Act, 1963 prescribes three years for bringing suit for recovery of money. Therefore, the State may have a right but it has lost the remedy.

9. If the amount of penal rent is allowed to be deducted from the terminal benefits, the mother would be punished for no fault of hers for events after the death of her son with the petitioner staying on in pool accommodation. I am therefore inclined to think in this unique case that the mother has a right to the full amount without any deduction. Late Pabu Singh has not incurred liability of penal rent during his life time. His untimely death has caused the hardship upon the mother. The court could have ordered that the State is at liberty to recover penal rent from the petitioner but looking to her plight and her face in Court I would not have

the heart to do so. She will be doomed. Besides, it will fan litigation involving Rs.2,59,057/-. Since the marriage is disputed by the mother this court expresses no opinion on its status. The court has only gone by the compromise and whatever legal principles were available to take a decision and especially the Latin maxim; ex aequo et bono which appears to help in the adjudication of the case on equitable principles. In venturing to do unconventional justice in **Jagdev Sharma v. State of Punjab**, in CWP No.2095 of 2012 decided on December 16, 2014 to bring relief in a case which could have been decided either way I observed as follows:-

> *"The relief provided by article 226 of the Constitution is a discretionary one. A writ may neither issue nor an order made merely because it is lawful to do so. The writ court sits in equity where the rules of prudence preside and occupy the field of vision when known legal principles may not come to the rescue or be of any intrinsic help to cull out the relief or to deny it. Equity in its brightest and the most sublime form is a jealous mistress which may not want to share its bed and be betrayed by pedestrian rules, shackled by plebeian legal principles which may be found insufficient whilst venturing to do unconventional justice in a case. It is often said that a case to be decided ex aequo et bono, overrides the strict rule of law and requires instead a decision based on what is fair and just, given the circumstances. Life and its vicissitudes are larger than the law."*

10. For the foregoing reasons, the petition is accepted. The impugned order dated May 07, 2012 (Annex P-2) is quashed. The State is directed to hand over the money to respondent No.3 forthwith. Respondent No.3 will remain committed by this order to part with Rs.2.5 lacs to the petitioner within one week of receiving the money from the Government. The terms of the compromise will be read as an an undertaking to the Court.

The amounts withheld will also earn interest @ 9% per annum for delay in payment since the State was always free to deal with the nominee under the law and should not have waited till this date except to keep the disputed amount of penal rent on production of a succession certificate or intervention of the court. However, no interest will accrue on the amount of penal rent assessed. The amount of interest accordingly be calculated and paid together with the principal amount to the respondent mother within 6 weeks from the date of receipt of a certified copy of this order. Suffice it to observe that this order will not be treated as a precedent.

(RAJIV NARAIN RAINA)
JUDGE

18.03.2016
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