

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No. 3440 of 2012
Reserved on: 10.05.2016
Date of decision: 25.05.2016

Lovepreet Singh and another

....Petitioner(s)

Versus

State of Punjab and another

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr. S.S. Sodhi, Advocate,
for the petitioners.

Mr. L.S. Virk, Addl. A.G., Punjab.

Mr. Surinder Garg, Advocate,
for respondents no. 5 to 8 and 10.

G.S.SANDHAWALIA, J.

The petitioners seek a direction against respondents no. 5 to 8 that pension be not released to them and seek quashing of the order dated 03.11.2005 (Annexure P-9) whereby, full amount of pension is to be released in favour of respondent no. 5. The quashing of the compassionate appointment given to respondent no. 7-Jaspal Singh is also sought. Further direction is sought for incorporation of the names of the petitioners for the family pension benefits being the son and daughter of the deceased-employee Late Dharam Singh, ASI, who expired on 18.10.2003.

Petitioners no. 1 and 2 are children of respondent no. 9-Kulwinder Kaur and have approached this Court through their maternal grand father-Veer Singh-petitioner no. 3, who is thus the father of Kulwinder Kaur. It is their claim that respondent no.5-Smt. Balwinder Kaur

had stated herself to be a widow of Dharam Singh and was aware that no relationship existed between her and the deceased-employee after the mutual divorce. In spite of that being aware of the marriage of respondent no. 9 with Dharam Singh, she had created a dispute. In order to settle the issues, the petitioners, through their mother and the alleged legal heirs respondents no. 5 to 8 entered into a compromise regarding one house which is against the interest of the minors. The said compromise dated 01.01.2004 (Annexure P-2) was prejudicial to them. An application was also filed under Section 372 of the Indian Succession Act, 1925 to succeed to the estate of deceased Dharam Singh by respondent no. 5 and to claim leave, salary, pension, gratuity etc. On appearance of petitioners through their mother respondent no. 9, Smt. Balwinder Kaur had withdrawn the case on 15.01.2008 (Annexure P-3). Resultantly, placing reliance upon the Punjab Civil Service Rules, the claim was projected for retiral benefits in their favour. Challenge was accordingly raised to the recommendation made in favour of the respondent nos. 5 to 8 and respondent no. 10.

Respondents no. 1, 3 and 4 took the plea in the written statement that on the application of Kulwinder Kaur-respondent no. 9, the matter was enquired into and due to the pendency of the succession application, it was agreed that the dues would be as per the directions of the Court. However, after getting the job for respondent no. 10-Jatinder Singh, the petition had been thereafter withdrawn. Thus, Kulwinder Kaur and her children could not get any benefit. Respondent no. 5 and her children were the legal heirs of Dharam Singh and had been paid the benefits as per the succession certificate issued by the Deputy Commissioner, Amritsar dated 31.08.2005 (Annexure R-2). It was admitted that though the petitioners are

covered under the definition of family, but on giving the consent of respondent no. 9 and issuance of succession certificate, there would be no hindrance to release service benefits as per the succession certificate.

Respondent no. 2, in its reply, took the plea that the family pension authorized alongwith death gratuity as per the family pension papers submitted by respondent no. 4 on 22.09.2005 as per the list of family members (Annexure R-2/1).

Respondents no. 5 to 8 and 10, in their written statement, took the plea that the petition was not maintainable as the mother of the petitioners had taken their share from the property of deceased-Dharam Singh. She had sold the house belonging to Dharam Singh and received full consideration after entering into a compromise. Now she had no share in the property of Dharam Singh. The house had been given to her in view of the pensionary benefits liable to be distributed amongst the family members of the deceased-employee. Reliance was placed upon the compromise dated 31.03.2004 (Annexure R-5/1). It was submitted that she had thereafter got remarried and after her marriage, got the writ petition filed through her minor children to harass the respondents.

It was further pleaded that in the application filed under Section 372 of the Succession Act 1925, she had also appeared in the Court on 23.02.2005 (Annexure R-5/2) and made a statement that she had no objection if the application was allowed. Being the guardian of petitioners no. 1 and 2, she had also undertaken that she had not filed any objections to the application on account of the compromise she had entered with the applicants namely respondents no. 5 to 8 and 10. The writ petition had been filed in the year 2012 i.e. 9 years after the death of Dharam Singh and was

liable to be dismissed on the ground of delay. Character of Kulwinder Kaur, who was not good and even one Rapat No. 27 dated 13.04.2004 was registered under Section 41(2)/109 Cr.P.C. at P.S. City Tarn Taran. She had filed a suit for injunction against the answering respondents restraining them from interfering in the possession of the house, which was given to her and accordingly, the litigation had been initiated at her instance. No mutual divorce had ever taken place between the deceased-Dharam Singh and Balwinder Kaur and, therefore, she was the widow of Dharam Singh. The application for succession certificate was withdrawn in view of the compromise entered into between the parties and on account of the statement of Kulwinder Kaur. Applicability of provisions of Rule 6.17 of the Punjab Civil Service Rules were not denied. The retiral benefits were being paid on the basis of the compromise and Jatinder Singh being the major child had rightly been given the appointment on compassionate basis and recommendation made in favour of them for grant of pensionary benefits. The writ petition had only been filed to harass the respondents and to extract money and Kulwinder Kaur had got remarried and it was wrong that Kulwinder Kaur had acted against the interest of the minors.

Counsel for the petitioner has thus vehemently submitted that the petitioners are entitled for the retiral dues being the children of deceased-employee and, therefore, the action of the official respondents was not justified.

Counsel for private respondents, on the other hand, has submitted that the writ petition not only raises disputed questions of fact but also is liable to be dismissed on the ground of concealment of material facts.

The said contention of the private respondents merits

acceptance. It is to be noticed that firstly the petition was initially filed through Kulwinder Kaur who admittedly was legally not married with the deceased-employee as nothing has been placed on record that there was any valid divorce with respondent no. 5-Balwinder Kaur in the year 2012. Thereafter, on C.M. No. 10634 of 2012 being filed, the writ petition was amended before notice of motion was issued and petitioner no. 3, the grand father was brought on record and Kulwinder Kaur's name was directed to be deleted. This was done on account of the fact that it was alleged that Kulwinder Kaur had got remarried. A perusal of the application which was allowed alongwith the affidavit does not even depict that who did Kulwinder Kaur get married to and, therefore, got herself removed from the array of parties as a petitioner. In the application for amendment of the writ petition, she was transposed as respondent no. 9. Even in the said description of parties, it is not depicted as to who is her present husband. This is apparently been done with the intention to avoid the fact that she had given a statement in the Court on 23.02.2005 (Annexure R-5/2) in the application under Section 372 of the Succession Act that petitioners no. 1 and 2, who are the children, would not file any objections to the application filed. Her statement reads thus:-

“Statement of Kulwinder Kaur widow of Dharam Singh (D/o Vir Singh) S/o Phoola Singh, age 35 years, household lady, resident of Mohalla Jaswant Singh, Tarn Taran (Objector) on SA.

I have appeared before this court today in pursuance of the notice of publication issued by the Court in the newspaper.

I have no objection if the application of the applicants is allowed. I have entered into a compromise with the applicants and respondents No. 2

to 5 out of the court. Lovepreet Singh and Kanwaljit Kaur are my son and daughter from the loins of Dharm Singh. I have not to file any objections to this application.”

It is also pertinent to mention that prior to that, the mother of petitioners no. 1 and 2 had also entered into compromise on 31.03.2004 (Annexure R-5/1) wherein, she admitted that she had sold the house in which she was living belonging to Dharam Singh and received the full consideration.

The official respondents have rightly relied upon the letter addressed by her on 01.01.2004 (Annexure P-2) wherein, she had admitted that in view of the compromise, she had no grudge or complaint against Balwinder Kaur-respondent no. 5. Similar exercise was also done by the official respondents on 04.11.2004 (Annexure R-3) whereby, it was noticed that she did not want to further proceed on her complaint and she did not have objection with Balwinder Kaur. It is thus apparent that after having received the lion's share by the sale of the house and having accepted the inter se compromise, the mother of petitioners no. 1 and 2 kept silent. She was satisfied with the arrangement inter se the dispute regarding the family pensionary benefits. In view of the settlement, respondent no. 5 withdrew the Section 372 application on 15.01.2008 (Annexure P-3) which has now been attached with the petition to submit that the claim of the petitioners would still subsist as nothing had been decided on merits. However, conveniently, the statement of the mother dated 23.02.2005 was kept back from this Court, which has been reproduced above.

The Apex Court in *M/s. Prestige Lights Ltd. vs. State Bank of India, 2007 (8) SCC 449* laid down the principles as to whether this Court

should exercise its extra ordinary discretionary writ jurisdiction where the party does not disclose true and complete facts. In the said case, the company had approached the High Court by suppressing the fact of the legal legitimate dues of the bank which the bank was entitled to realize and shifted the machinery and materials without informing the respondent-bank prejudicially affecting the interest of the bank. The High Court had denied to entertain the claim of the petitioner-company, which order was upheld by holding as under:-

“32. It is thus clear that though the appellant-Company had approached the High Court under Article 226 of the Constitution, it had not candidly stated all the facts to the Court. The High Court is exercising discretionary and extraordinary jurisdiction under Article 226 of the Constitution. Over and above, a Court of Law is also a Court of Equity. It is, therefore, of utmost necessity that when a party approaches a High Court, he must place all the facts before the Court without any reservation. If there is suppression of material facts on the part of the applicant or twisted facts have been placed before the Court, the Writ Court may refuse to entertain the petition and dismiss it without entering into merits of the matter.

33. The object underlying the above principle has been succinctly stated by Scrutton, L.J., in R v. Kensington Income Tax Commissioners, [(1917) 1 KB 486 : 86 LJ KB 257 : 116 LT 136], in the following words:

"(I)t has been for many years the rule of the Court, and one which it is of the greatest importance to maintain, that when an applicant comes to the Court to obtain relief on an ex parte statement he should made a full

and fair disclosure of all the material facts - facts, not law. He must not misstate the law if he can help it - the Court is supposed to know the law. But it knows nothing about the facts, and the applicant must state fully and fairly the facts, and the penalty by which the Court enforces that obligation is that if it finds out that the facts have not been fully and fairly stated to it, the Court will set aside, any action which it has taken on the faith of the imperfect statement".

34. It is well settled that a prerogative remedy is not a matter of course. In exercising extraordinary power, therefore, a Writ Court will indeed bear in mind the conduct of the party who is invoking such jurisdiction. If the applicant does not disclose full facts or suppresses relevant materials or is otherwise guilty of misleading the Court, the Court may dismiss the action without adjudicating the matter. The rule has been evolved in larger public interest to deter unscrupulous litigants from abusing the process of Court by deceiving it. The very basis of the writ jurisdiction rests in disclosure of true, complete and correct facts. If the material facts are not candidly stated or are suppressed or are distorted, the very functioning of the writ courts would become impossible.

35. In the case on hand, several facts had been suppressed by the appellant-Company. Collusive action has been taken with a view to deprive the respondent-Bank from realizing legal and legitimate dues to which it was otherwise entitled. The Company had never disclosed that it had created third party's interests in the property mortgaged with the Bank. It had also shifted machinery and materials without informing the respondent-Bank prejudicially affecting the interest of

the Bank. It has created tenancy or third party's right over the property mortgaged with the Bank. All these allegations are relevant when such petitioner comes before the Court and prays for discretionary and equitable relief. In our judgment, the submission of the respondent-Bank is well-founded that appellant is not entitled to ask for an extraordinary remedy under Article 226 of the Constitution from the High Court as also equitable remedy from this Court under Article 136 of the Constitution. A party, whose hands are soiled, cannot hold the writ of the Court. We, therefore, hold that the High Court was not in error in refusing relief to the appellant-Company.

36. For the foregoing reasons, we hold that by dismissing the petition in limine, the High Court has neither committed an error of law nor of jurisdiction. The appellant-Company is not entitled to any relief. Though the respondent-Bank is right in submitting that the appellant has suppressed material facts from this Court as also that it has not complied with interim order passed by the Court and it has, therefore, no right to claim hearing on merits, we have considered the merits of the matter also and we are of the considered view that no case has been made out for interference with the action taken by the respondent-Bank or the order passed by the High Court."

It is thus, apparent that the petitioners are only being set up by Kulwinder Kaur by taking the plea of their minority after the dust had settled down regarding the claim of retiral benefits. The present petition has been filed 7 years later and as noticed, firstly through Kulwinder Kaur and then anticipating the objections which would come forth in view of her statement given in Court, amending the writ petition and transposing the mother as a respondent.

In such circumstances, this Court is of the opinion that the petition is liable to be dismissed on account of concealment of facts and also on the ground that disputed questions are apparently arising. It is settled principle that the writ Court is not to get into disputed questions of fact. The above narration of facts would go on to show that Kulwinder Kaur is now fighting a proxy litigation through her children and herself is not coming forth.

It is not for this Court to adjudicate in writ jurisdiction the disputed questions of fact. The law regarding this aspect is clear and has been settled by the Apex Court way back in ***Dwarka Prasad Agarwal (D) by LRs. & another Vs. B.D. Agarwal & others 2003 (6) SCC 230*** wherein it was held as under:

“29. A writ petition is filed in public law remedy. The High Court while exercising a power of judicial review is concerned with illegality, irrationality and procedural impropriety of an order passed by the State or a statutory authority. Remedy under [Article 226](#) of the Constitution of India cannot be invoked for resolution of a private law dispute as contra distinguished from a dispute involving public law character. It is also well- settled that a writ remedy is not available for resolution of a property or a title dispute. Indisputably, a large number of private disputes between the parties and in particular the question as to whether any deed of transfer was effected in favour of M/s Writer & Publishers Pvt. Ltd. as also whether a partition or a family settlement was arrived or not, were pending adjudication before the Civil Courts of competent jurisdiction. The reliefs sought for in the writ petition primarily revolved round the order of authentication of the declaration made by one of the

respondents in terms of the provisions of the said Act. The writ petition, in the factual matrix involved in the matter, could have been held to be maintainable only for that purpose and no other.

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38. It is now well-settled that an order passed by a court without jurisdiction is a nullity. Any order passed or action taken pursuant thereto or in furtherance thereof would also be nullities. In the instant case, as the High Court did not have any jurisdiction to record the compromise for the reasons stated hereinbefore and in particular as no writ was required to be issued having regard to the fact that public law remedy could not have been resorted to, the impugned orders must be held to be illegal and without jurisdiction and are liable to be set aside. All orders and actions taken pursuant to or in furtherance thereof must also be declared wholly illegal and without jurisdiction and consequently are liable to be set aside. They are declared as such.”

In *Antonio S.C.Pereira Vs. Ricardina Noronha (D) by LRs.*

2006 (7) SCC 740 the Apex Court has observed as under:

“17. It is now trite that ordinarily a writ court would not go into a disputed question of title. We have noticed some of the issues pending before different courts only for the purpose of showing that the parties are at loggerheads as regards the title of the property and in particular the legality or validity of the alterations in the terms of the Will.”

The said view had been repeated in ***Shalini Shyam Shetty & another Vs. Rajendra Shankar Patel (2010) 8 SCC 329*** and ***Jacky Vs. Tiny @ Antony & others 2014 (6) SCC 508.***

In such circumstances, the present writ petition is dismissed,

however, liberty is granted to the petitioners, in case they so desire, to agitate for their claims before the Civil Court. Nothing said herein will prejudice the petitioners' case as the observations have come forth to decide the right under Article 226 of the Constitution of India.

25.05.2016
shivani

(G.S. SANDHAWALIA)
JUDGE

