



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 16.11.2016

Pronounced on : 07.04.2017

WEB COPY

CORAM :

THE HON'BLE DR.JUSTICE S.VIMALA

W.P. (MD) No.21130 of 2015

Kamarajan

... Petitioner

vs.

1.The General Manager,
Head Office, State Bank of India, Chennai.

2.The Assistant General Manager,
State Bank of India, Madurai.

3.The Branch Manager, State Bank of India,
Parthibanoor Branch, Paramakudi Taluk,
Ramanathapuram District.

4.The Branch Manager,
State Bank of India, Manamadurai Branch,
Sivagangai District.

... Respondents

Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus directing the respondents to unfreeze the pension account of the petitioner in A/c No.10747869002 of State Bank of India, Manamadurai Branch to enable the petitioner to withdraw the pension.

For Petitioner : Mr. K.Mahendran

For Respondents : Mr. Pala Ramasamy, for R-3 & R-4

For Respondents 1 & 2 : No Appearance

O R D E R

"....Gratuity and pension are not bounties. An employee earns these benefits by dint of his long, continuous, faithful and unblemished service. Right to receive pension was treated as right to property."



- the Hon'ble Supreme Court, in the case of State Of Jharkhand & Ors vs Jitendra Kumar Srivastava & Anr, decided on 14th August, 2013.

1.1. Pending investigation into the criminal complaint against the petitioner, the accounts of the petitioner has been frozen. This is under challenge in this writ petition.

2. The petitioner was working as Cash Officer in the third respondent Bank from 1977 to 2013 and retired on 30.03.2013. The petitioner was regularly getting pension through Pension Account No.10747869002, in the State Bank of India, Manamadurai Branch, from the date of his retirement.

3. Two years after the retirement, one Fathima, working as Branch Manager, in the third respondent Branch, gave a complaint against the petitioner and two others, stating that one Mr. Shanmugam has received a sum of Rs.3,70,000/- as agricultural loan, from Parthibanoor Branch of the State Bank of India, by mortgaging imitation gold jewellery. This has allegedly happened with the assistance of the petitioner and another Cash Officer, by name, Kavitha. In respect of the same, a First Information Report has been registered.

4. The pension account of the petitioner has been frozen by the third respondent without any intimation or notice to the petitioner. When the petitioner wanted to know the reason, the fourth respondent Bank has informed that a Criminal Case is pending against the petitioner and till the disposal of the case, the petitioner would not be permitted to withdraw the pension amount. It is the contention of the petitioner that there is a presumption of innocence in favour of the petitioner, till the petitioner is convicted by the Criminal Court and therefore, the third respondent has no right to freeze the pension account of the petitioner. Hence, this writ petition has been filed seeking direction against the respondents to unfreeze the pension account of the petitioner, so as to enable the petitioner to withdraw the pension.

5. The claim made by the petitioner is opposed by the third respondent Bank on the ground that the freezing of the account of the petitioner is justified, as the petitioner has caused loss to the Bank to the extent of Rs.3,70,000/-, over which the Bank has exercised lien over the credit lying to the account of the petitioner.

5.1. The characteristics of the pension vanish, once the amount is credited in the Savings Bank Account of the petitioner. Therefore, it is not correct to describe the amount lying in deposit in the account of the petitioner, as pension amount.



5.2. The loss is stated to have been caused on account of the misconduct of the petitioner; during the course of employment, the petitioner appraised the jewels of Mr.S.R.Shanmugam and took documentation on 15.06.2011 for a sum of Rs.1,70,000/-; likewise, the petitioner herein appraised the jewels of Mr.S.R.Shanmugam and took documentation on 16.04.2012 for a sum of Rs.2,00,000/-, thus, the public money was lent against the pledging of jewels by S.R.Shanmugam, through the petitioner; the loan amount was not paid; therefore, the Bank decided to sell the jewels; when re-appraisal was done before auction, it was found that the pledged jewels were spurious jewels; hence, the answering respondents / Bank, lodged a complaint which has been registered in Crime No.24 of 2015. Therefore, the claim of the petitioner is not maintainable, especially, in a writ petition, when there is no public law element is involved.

6. It is not in dispute that the petitioner is one of the accused in Crime No.24 of 2015 under Section 420 IPC, later altered into one under Sections 409, 420 and 120B IPC.

7. The learned counsel for the petitioner submitted that the pension as such is not liable to be attached and especially without notice to the petitioner and hence, the account of the petitioner must be un-frozen.

7.1. The learned counsel for the respondents would submit that the amount lying in the credit of the petitioner's account is not his pension account, but the savings bank account and once the pension is credited from the Treasury to the Bank Account, the amount losses the name of pension and therefore, what is frozen cannot be considered as pension.

7.2. Even assuming that the amount frozen is pension, even then, the Bank has got a lien over the property of the petitioner and in support of the same, the following decisions are relied upon by the learned counsel for the third respondent:-

(i) **MANU/TN/0926/1999 (P.Dhanapal v. P.Nagaiah):-**

"7. The whole question is whether the money in the Savings Bank Account of the respondent/ judgment-debtor in the Indian Bank retains the character of pension so as to be vitiated by the over-powering embargo attached to the proviso to Section 60(1) of the C.P.C. The proviso to Section 60(1) says that the various particulars found in (a) to (p) shall not be liable to attachment and the particulars in (g) are as under:

Stipends and gratuities allowed to pensioners of the Government or of a local authority or of any other employer or payable out of any service family pension fund notified in the Official Gazette by the



Central Government or the State Government in this behalf and political pensions.

The pensions and other compulsory deposits covered by the provisions of the Pension Act, even according to the respondent, would retain their character only till they reach the hands of the employee. According to the learned Counsel for the respondent, attachment would be possible and lawful only after such amounts are received by the employee. The question is as to when such amounts can be stated to have been received by the judgment-debtor. The respondent/judgment-debtor has a Savings Bank Account in the Indian Bank, Royapuram. His pension amounts are received by the bank on his behalf and credited in his savings account. No doubt, till provident fund dues, pension, compulsory deposits etc. are actually paid to the Government servant who is entitled to them on retirement or otherwise, the nature of the dues is not altered. As long as the amounts are with the Government, the Government is a trustee for those sums and has an interest in maintaining the objection to attachment. But, the moment the dues leave the Government, they lose the character of Provident Fund dues, pensions of other compulsory deposits as the case may be and they become part of the assets of judgment-debtor. It is not his actual receiving in his hands that is material. The amounts reaching his Savings Account will by itself be sufficient for the operation of Section 60(1) proviso (g) to cease. Admittedly, the amounts due to the respondent are credited to his Savings Account in the Bank.

8. The decision of the Supreme Court relied on by the learned Counsel for the respondent in *Union of India v. Jothi Chit Fund and Finance and Ors.* does not say anything different. In paragraph 11 of the said judgment it is stated as follows:

We may state without fear of contradiction, that provident fund amounts, pensions and other compulsory deposits covered by the provisions we have referred to retain their character until they reach the hands of the employee. The reality of the protection is refunded to illusory formality if we accept the interpretation sought. We take a contrary view, which means that attachment is possible and lawful only after such amounts are received by the employee. If doubts may possibly be entertained on this question, the decision in *Radha Kissen 's* case erases them. Indeed, our case is a



fortiori one, on the facts. A bare reading of Radhao Kissen makes the proposition fool-proof that so long as the amounts are provident fund dues then, till they are actually paid to the Government servant who is entitled to it on retirement or otherwise, the nature of the dues is also authority for the benign view that the Government is a trustee for those sum and has an interest in maintaining the objection in court to attachment."

(ii) MANU/AP/1005/2005 (Bandi China Ramalinga Reddy @ Chinna Ramalingaiah v. Nalluri Srinivasalu and another):-

"3. The contention of the learned Counsel for the 1st respondent is that since the retrial benefits to be received by the 1st respondent are his pension and gratuity, and since gratuity which is governed by the Payment of Gratuity Act, 1972 (the Act), is exempt from attachment in view of Section 13 of the Act, and in view of the ratio in T. Prabhakar Rao v. Registrar of Co-op. Societies, the order under revision needs no interference by this Court.

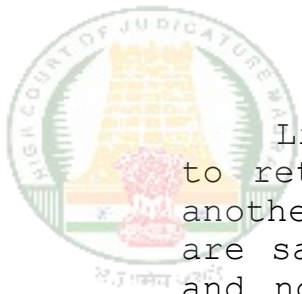
4. In my considered opinion, both the decisions, relied on by the learned Counsel for the revision-petitioner, arising under Section 60(1)(i) C.P.C., have no application to the facts of this case as they relate to quantum of salary that can be attached and since salary of the 1st respondent is not the subject-matter of attachment."

(iii) MANU/AP/1061/2003 (S.Nagappa v. K.P.Hanumappa):-

"10. On a reading of the entire scheme, it is quite apparent that under the said process, virtually the amount of pension is being credited in the accounts of the respective employees and simultaneously debited from the Government account. Thus, there is a payment by the Government and receipt by the employee. Once such payment is made, as held in the aforesaid decision, it cannot be said that the Government still holds any trust. In Union of India v. Radhakissen Agarwalla and Anr., considering the case whether the process of payment was still at the stage of cheque and the Apex Court held that itself would not amount to be the payment and therefore, an objection can validly be raised."

(iv) Order, dated 16.03.2012 of this Court, in W.P.No.19096 of 2011 (C.Lalitha Raj v. The Assistant General Manager, State Bank of India, Vellore and three others):-

"In Halsbury's Laws of England, Vol. 20, 2nd Edn. p.552, para 695, lien is defined as follows :-



Lien is in its primary sense is a right in one man to retain that which is in his possession belonging to another until certain demands of the person in possession are satisfied. In this primary sense it is given by law and not by contract. In Chalmers on Bills of Exchange, thirteenth Edition page 91 the meaning of "Banker's lien" is given as follows :

"A banker's lien on negotiable securities has been judicially defined as "an implied pledge."; A banker has, in the absence of agreement to the contrary, a lien on all bills received from a customer in the ordinary course of banking business in respect of any balance that may be due from such customer."; In Chitty on Contract, Twenty-sixth Edition, page 389, Paragraph 3032 the Banker's lien is explained as under:

"By mercantile custom the banker has a general lien over all forms of commercial paper deposited by or on behalf of a customer in the ordinary course of banking business. The custom does not extent to valuables lodged for the purpose of safe custody and may in any event be displaced by either an express contract or circumstances which show an implied agreement inconsistent with the lien....."

The lien is applicable to negotiable instruments which are remitted to the banker from the customer for the purpose of collection. When collection has been made the process may be used by the banker in reduction of the customer's debit balance unless otherwise earmarked." (Emphasis supplied)

In Paget's Law of Banking, Eighth Edition, Page 498, a passage reads as under :

"THE BANKER'S LIEN Apart from any specific security, the banker can look to his general lien as a protection against loss on loan or overdraft or other credit facility. The general lien of bankers is part of law merchant and judicially recognized as such."; In Brandao v. Barnett (1846) 12 Cl; Fin 787 it was stated as under :

"Bankers most undoubtedly have a general lien on all securities deposited with them as bankers by a customer, unless there be an express contract, or circumstances that show an implied contract, inconsistent with lien."

(v) MANU/TN/1432/2016 **(B.Kamalakannan v. Managing Director, Canara Bank and Ors.) :-**

"15. The learned counsel for the appellant emphasizes the protection clause regarding pension to a retired employees, as provided under the proviso to Section 60 (1) of CPC. He also circulates our Supreme Court Judgment



in Radhey Shyam Gupta v. Punjab National Bank & anr, reported in 2008 STPL (LE) 40958 (SC), for the proposition that even after the retiral benefits, such as Pension and Gratuity had been received by the appellant, they did not lose their character and continue to be covered by proviso (g) to Section 60 (1) of the Code.

16. Though there is protective clause under proviso to Section 60 CPC, regarding attachment of pension, the appellant, being retired employee of the Canara Bank is bound by the Canara Bank (Employees') Pension Regulations, 1995.

17. Having accepted the regulations to avail the pension, the appellant is estopped from contending that the Bank is not entitled to deduct his pension towards the loan due from him.

18. Under the above circumstances, the contention of the learned counsel for the appellant that pension regulations of the Canara Bank does not have over-riding effect to the provisions of CPC is not acceptable."

8. From the above decisions, it is clear that the rights of the Banker over the securities of the petitioner available at the disposal of the Bank cannot be disputed. But, at the same time, the question is, whether the liability of the petitioner to the Bank is crystallized or determined, so that the Bank can effect reduction from the account of the petitioner. The facts disclose that only a case has been registered against the petitioner. It is the case of the Banker that: (a) the enquiry initiated has proved the liability of the petitioner for the issuance of loan against the pledging of imitation jewellery; (b) the investigation has been concluded and a final report is filed, where-under there is a prima facie finding that the petitioner could have been responsible for the issuance of loan against the pledging of imitation jewellery. In the absence of those circumstances, the freezing of the account of the petitioner is not justified without even issuing a show cause notice.

9. The fact remains that the case has been registered in the year 2015, but there is no progress. Priority should have been given in investigation, especially when the offence alleged is serious, but at the same time, the liberty and life of a senior citizen, who has rendered 36 years of service to the Bank, is involved at the fag end of his life.

10. It is appropriate to quote the decision of the Hon'ble Supreme Court in the case of **State Of Jharkhand & Ors vs Jitendra Kumar Srivastava & Anr on 14 August, 2013**, where-under, the Hon'ble Supreme Court, raising the following issue, has answered that, in the absence of any finding regarding the involvement of



the petitioner either in the departmental proceedings or judicial proceedings, pension cannot be withheld:-

'The question is this:-

"Crisp and short question which arises for consideration in these cases is as to whether, in the absence of any provision in the Pension Rules, the State Government can withhold a part of pension and/or gratuity during the pendency of departmental/ criminal proceedings?"

The answer by the Hon'ble Supreme Court is this:-

"According to Article 300 A of the Constitution, no person shall be deprived of his property save by authority of law. A person cannot be deprived of his pension without the authority of law. It follows that the attempt of the appellant [in this case the Jharkhand Government] to take away a part of pension or gratuity or even leave encashment without any statutory provision and under the umbrage of administrative instruction cannot be countenanced."

"11. Reading of Rule 43(b) makes it abundantly clear that even after the conclusion of the departmental inquiry, it is permissible for the Government to withhold pension etc. ONLY when a finding is recorded either in departmental inquiry or judicial proceedings that the employee had committed grave misconduct in the discharge of his duty while in his office. **There is no provision in the rules for withholding of the pension/ gratuity when such departmental proceedings or judicial proceedings are still pending**".'

11. It is not the case of the respondents-Bank that there is either a Departmental proceeding or judicial proceeding, which had culminated resulting in the petitioner being branded as a person responsible for the alleged occurrence. Under such circumstances, the respondents are directed to unfreeze the pension account of the petitioner, forthwith. It is open to the respondents to take further action against the petitioner, which would be subject to the result of the judicial proceedings.

12. With the above observations and findings, the writ petition stands disposed of. No costs.

Sd/-

Assistant Registrar(RTI)

/True copy/



To

1.The General Manager,
Head Office, State Bank of India, Chennai.

2.The Assistant General Manager,
State Bank of India, Madurai.

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Sivagangai District.

Srk

AE/MR/SAR3/15.06.2017/9P/5C

Order in
W.P. (MD) No.21130 of 2015
07.04.2017