221

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CM-5355-CWP-2015 in/and
CWP No. 10242 of 2013 (O&M)
Date of Decision: 24.05.2017.

ABHINAV SINGH AND ANOTHER ***… Petitioners***

VS.

CORPORATION BANK AND ANOTHER ***...Respondents***

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. Amrinder Singh Sidhu, Advocate,
for the petitioners.

Mr. Vikas Chatrath, Advocate,
for the respondents.

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KULDIP SINGH, J. (Oral)

CM-5355-CWP-2015

Pending the petition, learned counsel for the petitioners has filed the present application under Section 151 of Civil Procedure Code for providing interim relief of directing the release of at least 50% of the retiral benefits and provident fund amount. As consented by both the counsel, main writ petition is taken on board today for hearing.

CWP No. 10242 of 2013

The petitioners have invoked the writ jurisdiction under Article 226/227 of the Constitution of India praying for issuance of writ in the nature of certiorari for quashing of the impugned orders dated 21.12.2010, 01.03.2012, 30.03.2012, 18.04.2012 and 04.08.2012 *(Annexure P-4 and P-6 to P-9 respectively)* vide which the respondents have refused to release the retiral benefits and provident fund amount to the petitioners. The prayer has also been made for issuance of writ of mandamus directing the respondents to release the retiral benefits and provident fund amount in favour of the petitioners alongwith interest.

Brief facts of this case are that B.P. Singh, deceased father of the petitioners, was compulsorily retired from service vide order dated 17.07.2009 *(Annexure R-2/1)*. It was further directed that an amount of ₹3,90,383.69 be also recovered from his terminal benefits. Ultimately, he expired on 02.11.2010. The petitioners, who are the sons of B.P.Singh (deceased employee), have challenged the orders dated 21.12.2010, 01.03.2012, 30.03.2012, 18.04.2012 and 04.08.2012 *(Annexure P-4 and P-6 to P-9 respectively)* vide which the respondents have refused to release the retiral benefits including EPF, Gratuity and leave encashment amount to the petitioners.

The respondents, in the written statement have taken the stand while reiterating that B.P. Singh (deceased employee) was compulsorily retired, that from total amount of EPF i.e. ₹10,44,713.29, following amount is recoverable from him: -

Temporary Withdrawal	*₹49,500.00*
Interest on Temporary Withdrawal	*₹12,387.00*
Non Repayable withdrawal	*₹1,65,000.00*
Unrecovered portion of financial loss caused to the Bank	*₹40,383.69*

It was further stated that another sum of ₹16,45,872.94 was also recoverable under various loan-accounts maintained at Chandigarh branch apart from uncharged interest. The details of the same are as under: -

Type of loan	***Account type and No.***	***Book Balance (in ₹)***
Home Loan	*SHL/02/990003*	*4,90,080.00*
	ESHLN/02/20003	*2,76,333.00*
	CHOMS/02/60001	*50,694.00*
Gold Loan	*CGOLD/021/50001*	*13,709.00*
Vehicle Loan	*EHPL/02/40005*	*1,44,824.00*

	CMOBI/01/70032	*26,984.00*
Over Draft	*ECOD/02/40009*	*6,43,248.94*
	Total	***16,45,872.94***

For recovery of said amount, the respondents have filed an application bearing No. OA/6 of 2012 before the Debts Recovery Tribunal-I, Chandigarh, which was decided on 20.07.2015 in which sum of ₹20,24,742.09 were ordered to be recovered with costs, current and future interest @ 14.5% per annum from the date of filing of O.A. i.e. 26.11.2011 till its realization. Relevant part of the recovery certificate dated 20.07.2015 *(Annexure R2/3)* is reproduced as under: -

> *"It is certified that the above mentioned sum of ₹20,24,742.09 (Rupees twenty lacs twenty four thousand seven hundred forty two and paise nine only) with future interest @14.5% p.a. from the date of filing of the OA till realization of the amount along with costs is due to the Applicant Bank/Certificate Holder from the Defendants/Certificate debtors. The Applicant-Bank shall be entitled to recover aforesaid amount from the sale of hypothecated and mortgaged properties of the defendant/CD in execution proceedings, if not sold earlier under the provisions of The SARFAESI Act, 2002. If the dues of the bank still remain unsatisfied, it shall be entitled to recover the same by attachment and sale of personal assets of all the defendant/CD. However, liability of Def./CD No. 2 shall be restricted to inheritance from Sh. B.P. Singh (deceased)."*

So far as, the order forfeiting the gratuity is concerned, the said order, forfeiting a sum of ₹3,90,383.69, was passed while compulsory retiring B.P. Singh (deceased-employee) on 17.07.2009. The order dated 28.01.2010

(Annexure R2/2) has not been challenged by the petitioners vide which gratuity amount of ₹3,50,000/- is ordered to be withheld on account of financial loss caused by the deceased employee. Since, the said order has become final as not being challenged, therefore, the petitioners are not entitled for the gratuity of their father (deceased employee).

Now, coming to the claim of the petitioners in respect of payment of EPF. In the written statement, the respondents have taken the stand that the necessary forms were not filled. However, the correspondence/letter dated 30.03.2012 *(Annexure P-7)* shows that the petitioners were not only directed to submit the documents but were also directed to submit the authorization to adjust the dues to the respondent-bank under the loan account and financial loss. Therefore, the said letter was a conditional letter. It comes out that the Bank has already obtained the order from the Debts Recovery Tribunal-I, Chandigarh and they are always at liberty to execute the said order. However, without any other order from the Debts Recovery Tribunal or that of any other competent authority, the balance amount of EPF could not be withheld.

Learned counsel for the respondents has argued that the irrevocable letter of authority was also given by B.P. Singh (deceased employee) and the reference of the same has also been made in the written statement. In any case, with the death of B.P. Singh, the said letter of authority will become unenforceable. In view thereof, the petitioners are entitled for the balance payment of EPF.

Now, coming to the claim in respect of leave encashment. The petitioners were informed vide letter dated 04.08.2012 *(Annexure P-9)* that leave encashment is not payable as their father was imposed with the major penalty of compulsorily retirement. The relevant extract of order dated (Annexure P-9) is reproduced as under: -

> "*As regards the query No. (iv) of your application dated 26.06.2012, we wish to inform that the salary arrears on account of salary revision is yet to be settled. Further, we wish to inform that since your father was imposed with the major penalty of compulsorily retirement from the service of the Bank, he was not entitled for leave encashment.*"

I am of the view that compulsory retirement is also a form of retirement. Learned counsel for respondents has not shown any Rule/authority under which leave encashment could be withheld. It being so, the petitioners are also entitled for the payment of leave encashment of the deceased employee.

Learned counsel for the respondents has stated that as there were no pleadings in the petition in respect of leave encashment therefore, no averments have been made on the same in the written statement. However, the petition shows that letter dated 04.08.2012 *(Annexure P-9)* is also impugned in the present petition, vide which the respondents have refused to release the leave encashment in respect of the deceased father of the petitioners.

I am of the view that compulsorily retirement is not a termination from services. Therefore, without any Rule, leave encashment could not be withheld.

In view of the matter, the petition is partly allowed. The respondents are directed to release balance amount of EPF and payment of leave encashment alongwith interest @ 9% per annum within two months from the date of receipt of certified copy of this order.

May 24, 2017 **[KULDIP SINGH]**
Suresh Kumar **JUDGE**

Whether speaking / reasoned	**:**	***Yes*** ✓	/	***No***
Whether Reportable	**:**	***Yes***	/	***No*** ✓