IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

214

CWP No. 14392 of 2015
Date of decision: 16.01.2017

Raghbir Chand Goyal ..Petitioner

Vs.

State of Haryana & Ors. ..Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. J.S. Maanipur, Advocate for the petitioner.

Mr. Keshav Gupta, AAG, Haryana.

*****

KULDIP SINGH, J.(ORAL)

Petitioners joined the respondent-department i.e. Director General Higher Education, Haryana on 14.01.1980 as Lecturer. He was promoted as Principal in July 2007 and superannuated on 31.12.2012 on attaining the age of superannuation. It comes out that during his service as Lecturer, petitioner obtained two loans, one is House Building Advance Loan and second was car loan. The house building loan was advanced in three instalments of ₹75,000/-, dated 25.11.1991, ₹ 60,000/- on 04.06.1992 and ₹45,000/- on 28.11.1992 vide sanction letters Annexures P-2 to P-4 respectively. In the said sanction letters three conditions i.e. conditions Nos. 2, 5 and 7 which are reproduced as under:-

> 2.“ The advance is sanctioned subject to the condition laid down in chapter X of the Punjab Financial Rules Vol. I and all other subsequent instructions on the subject issued from time to time.
>
> 5. The advance shall be recovered in 150 instalments each instalments shall be ₹ 500/- and the last instalment will be of ₹ 500/-.

After the advance is completely recovered, the interest is calculated under the rules shall be recovered from the official in instalments of the same amount as that of the principle. This shall commence immediately after, the recovery of the Principle. The total recovery of interest should be got verified from the Accountant General, Haryana, Chandigarh.

The balance, if any, on account of Principle and interest will be recovered from the death-cum-retirement gratuity payable to the applicant at the time of his retirement or death. For this purpose the official has furnished an agreement in the form as prescribed in Haryana Govt. letter No. 218-WM (1) 67/296 dated 5th Sept., 1967. Simultaneously, he has cancelled the nomination already made by him under rule 4(6) of the New Pension rules as contained in the appendix 3 of the Punjab Civil Services Rules Vol. III.

The officer is due to retire on 31/12/2009 after attaining the normal age of superannuation and the instalment of recovery has been so fixed as to recover the entire amount before actual retirement.

7. The repayment of advance shall commence from the 13th issue of pay after the date of drawal of the advance. The repayment of advance shall commence from the 13th issue of pay from the date of 1st instalment sanctioned vide this office".

It comes out that the recovery of the house building advance was started by Drawing & Disbursing Officer on 01.07.2001 in installment of ₹ 2,000/- per month. Now the entire house building advance has been repaid along with interest @ 9% per annum.

Car advance of ₹ 90,000/- was sanctioned vide sanction letter Annexure P-5 dated 26.02.1992. It was stipulated that in said sanction that the grant of an advance was subject to terms and conditions contained in Rule 10.21 and 10.22 of the Punjab Financial Rules, Vol. 1 Part 1. The advance was to be recovered in 100 monthly instalments of ₹ 900/- each excluding additional instalment which will be recovered after loan is fully repaid. The said deduction of installments of car loan had also been started from July 2001. Now the entire car loan has been re-paid along with interest and penal interest at the rate of 4% per annum.

The petitioner has challenged the letter dated 01.04.2015 and 01.07.2015 Annexure P-10 and P-11 respectively vide which penal interest @10% is claimed for said advances for the period the recovery was not started which was to commence 13 months after the advancing of the loan till July 2001 when the recovery was actually commenced.

The State in the reply has taken the plea not recovery of the advance should have commenced from the 13th issue of pay i.e. after one year of the advancing of the loan which was not done. Therefore, the penal interest is chargeable under the financial rules quoted in the sanction letters which is 8% per annum. Reliance has also been placed on the instructions dated 23.08.1993, (Annexure P-12) wherein penal interest @ 10% is chargeable.

I have heard learned counsel for the parties. So far as the car loan is concerned it is not disputed that only 4% penal interest could be charged which the petitioner has already paid. Therefore, no further penal interest should be charged on the car loan as settled by a Division Bench of this Court **Ram Singh Vs. State of Haryana and Ors.(2006) 4 SCT 821**. Now coming to house building advance loan the terms and conditions of the sanction letter reproduced above that interest @ 9% per annum is payable. The reference was also made to the conditions laid down in Chapter 10, Volume 1 and subsequent instructions. In this case, agreed rate of interest

@ 9% per annum was subject to the condition laid down in the Chapter 10 of the Punjab Financial Rules Vol. 1. The loan was to be deducted in the 150 installment of Rs. 300 each. However, in this case the recovery was started by Drawing and Disbursing Officer in July 2001 in monthly equal installment of ₹ 2,000/- each.

Learned State counsel has relied upon rule 10.7 of the Punjab Financial Rules Volume 1 Chapter 10 reproduced as under:-

> "(a) Any default in the payment of interest upon a loan or advance or in the payment of the principal, will be promptly reported by the Accountant-General to Government. On receipt of such a report the Government should immediately take steps to get the defaults remedied.

Note. The responsibility of the Accountant-General under this rule refers only to the loans the detailed accounts for which are kept up by him.

> (b)The authority which sanctions a loan may in so far as the law allows, enforce a penal rate of compound interest upon all overdue instalments of interest, or principal and interest. If a penal rate is enforced, it should not be less than 8 percent per annum.

The rules makes it clear that instructions allows penal interest upon all overdue instalments of interest, or principal and interest. A penal rate of interest cannot be less than 8% per annum. First of all, this Court is to examine whether the petitioner is liable for non-payment of the installments. The sanction letter is itself clear that loan was to be deducted in installments by the DDO. However, inadvertently the DDO did not start the deductions in terms of the sanction letter and as per the instalment mentioned in sanction letter. Suddenly in July 2001, it appears that it came to the notice of DDO and from July 2001, he started recovery in installments of ₹ 2,000/- per month which continued till the entire loan was wiped out with interest.

In these circumstances, petitioner cannot be held responsible for non-payment of the loan. Secondly, the said rules makes it clear that penal interest is subject to the conditions that 'so far as the law allows'. The law does not allowed that if the petitioner is not at fault and DDO fails to start deduction of installments, petitioner is liable to pay penal interest. It being so the impugned order Annexure P-11 claiming the penal rate of interest 10% per annum is hereby quashed. So far as the instructions dated 23.08.1993 are concerned, the instructions make it clear that penal interest 10% can be charged, if the loan is used for the purpose other than for which it was granted. The house loan is not stated to have been misused or mis-utilised. Therefore, instructions Annexure P-12 are not attached in the present case.

In view of the matter, the petition is allowed. Since the car loan has already been settled by paying penal interest at the rate of 4% per annum. Therefore, no penal interest is liable to be paid on the car loan. The order Annexure P-11 claiming 10% penal for the house building loan is quashed. Consequently, respondents are directed to release the gratuity withheld by them immediately with interest at the rate of 9% per annum starting 3 months from the date of retirement till payment.

Petition is allowed.

(KULDIP SINGH)
JUDGE

January 16, 2017
Poonam (II)

Whether speaking/ reasoned: Yes

Whether Reportable: No