

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: September 25, 2017

Judgment delivered on: November 14, 2017

+ W.P.(C) 6547/2015

NEERAJ

..... Petitioner

Through: Mr. Sanjay Ghose, Adv. & Mr.
Rishabh Jetly, Adv.

Versus

AIR INDIA LTD. THROUGH: THE CHAIRMAN
& MD

..... Respondent

Through: Mr. Lalit Bhasin, Mr. Ratna D.
Dhingra & Ms. Bhavna Dhami, Advs.

CORAM:

HON'BLE MR JUSTICE V. KAMESWAR RAO

J U D G M E N T

V. KAMESWAR RAO, J

1. The present petition has been filed by the petitioner with the following prayers:-

“In view of the aforesaid facts and circumstances, it is respectfully prayed that the Hon’ble Court may be pleased to grant the following prayers:

- i) Issue an appropriate writ, order or direction, to quash and set aside Respondent’s letter dated 02.01.2015 as being iniquitous, harsh and arbitrary;*
- ii) Issue an appropriate writ, order or direction to*

the Respondent No.1 to immediately release all retirement benefits along with any arrears of Petitioner's late husband to the Petitioner with such interest as is deemed appropriate by this Hon'ble Court;

iii) Issue an appropriate writ, order or direction to the Respondent to grant monetary compensation of Rs. One Crore to the Petitioner on account of the mental agony and harassment caused to the Petitioner due to the various acts and omissions of the Respondent.

iv) In the interim, restrain the Respondent recovering any amount or initiating any suit or legal proceedings for recovery of any amount against the Petitioner;

v) Any Order appropriate in the interest of justice.

vi) Any other appropriate Order.”

2. It is the case of the petitioner that her husband who was working as a Pilot with the respondent developed certain health complications in the year 2006. He was declared temporarily medically unfit for flying for a period of eight weeks effective from November 06, 2006. In the year 2009, respondent called upon the husband of the petitioner to undergo Class-I medical examination. It appears, the husband of the petitioner has been writing to the

respondent his intention to undergo License Renewal Medical Examination. It is also noted from the writ petition that the CMD wrote to ED-Finance and ED-Internal Audit directing an audit into petitioner's husband allowances and stating that all allowances drawn by him are recoverable. On May 24, 2010, a charge sheet was issued to the late husband of the petitioner. On May 28, 2010, the husband of the petitioner was informed that all his retirement benefits will be withheld, excluding his contribution towards Provident Fund, subject to the outcome of the Departmental proceedings. On May 31, 2010, the husband of the petitioner retired from service. Suffice to state, the husband of the petitioner submitted reply to the charge sheet. The inquiry was conducted under the aegis of Commissioner of Enquiries, Central Vigilance Commission. Before the Disciplinary Authority could pass a final order, the husband of the petitioner passed away on October 12, 2010 due to various medical complications. On February 01, 2013, the petitioner approached the respondent demanding the retirement dues and inquiring about the pending proceedings. She was informed that the clearance from the Vigilance Department is essential before retirement dues are granted. On January 23, 2014, the Central Vigilance Commission vide its Memorandum dated January 23, 2014 advised the closure of the disciplinary case against the husband of

the petitioner. On January 02, 2015, the petitioner received a letter from the respondent stating that an amount of Rs.45,04,084/- of retirement benefits of the husband of the petitioner will be retained by the Company and a recovery suit will be filed for recovery of Rs.2,07,72,048/- from his estate.

3. The respondent has filed the counter affidavit, wherein they have primarily stated that they are within their rights to withhold payment of retiral dues of the late husband of the petitioner, inasmuch as the Company has to recover an amount of Rs.2,07,72,048/-, which was paid to the petitioner's husband due to the acts of fraud and dishonesty committed by him during his tenure with the respondent Company. It is also stated that the husband of the petitioner participated in the enquiry proceedings; the enquiry proceedings concluded while he was alive. The Inquiry Officer after scrutinizing the documents and evidence lead before him, held the charges against the petitioner's husband as proved and forwarded the enquiry report to the Competent Authority, who had accepted the said report. It is also stated that an amount of Rs.37,81,608/- against employee's share of Provident Fund and Rs.10,00,000/- towards Gratuity have been paid to the petitioner. According to the respondent, it has not paid the employer's share of Provident Fund amounting to Rs.21,89,865/-; salary of May 2010 amounting to Rs.78,164/-,

PLI for April, 2010 amounting to Rs.11,70,780/-, PLI for May 2010 amounting to Rs.8,71,583/-. They have also stated that a recovery of an amount of Rs.2,07,72,048/- has to be made.

4. Rejoinder has been filed by the petitioner wherein, the petitioner has denied that the petitioner's husband committed fraud and dishonesty. She has taken a strong objection to the scandalous averments made by the respondent. It is also stated that the copy of the enquiry report, alleged to have been submitted by the Inquiry Officer has not been served on the husband of the petitioner.

5. Mr. Sanjay Ghose, Id. Counsel for the petitioner reiterates the stand taken in the pleadings on behalf of the petitioner that the respondent could not have withheld the terminal benefits/retiral benefits to be paid to her husband. According to him, the allegations against the petitioner's husband of committing fraud and dishonesty are denied. The said charges have not been proved against the petitioner's husband and as such, cannot be a ground to withhold the same. He seeks grant of reliefs as prayed. He would rely upon the judgment reported as **2001 Law Suit(Jhar) 238 Jayanti Devi v. State of Bihar decided on May 01, 2001.**

6. Mr. Lalit Bhasin, learned counsel appearing for the respondent would submit that the petitioner is not entitled to the retiral benefits as her husband has committed serious acts of fraud, which resulted in payment of allowances, which he was not entitled to under the Rules. According to him, if a benefit has been given to an employee, which he is not entitled to, the respondent is within its right to recover the same from the retirement dues. He relied on the enquiry report filed on record to submit that the Inquiry Officer has proved the allegations against the husband of the petitioner. Hence, it is a foregone conclusion that the husband of the petitioner was involved in misdemeanour. The respondent is only recovering the financial benefits reaped by the petitioner's husband because of the misdemeanour and nothing more. He has drawn my attention to the charges framed against the petitioner and the conclusion arrived at by the Inquiry Officer against the husband of the petitioner, wherein he has proved three components of Article of Charge-I as proved and four components as partially proved. He conceded that before any action could be taken on the Enquiry Report against the petitioner's husband, unfortunately he expired. He also reiterated, that amount of Rs.37,81,608/- against employee's share of Provident Fund and Rs.10,00,000/- towards Gratuity have been paid to the petitioner and withholding different amounts as

stated in the counter affidavit. He has also drawn my attention to the extracts of the Minutes of the 63rd Board meeting of Air India Ltd. held on November 05, 2014 wherein it has been decided that an amount of Rs.45,04,084/- towards Company's contribution to the employees Provident Fund be retained with the Company and a suit be filed in the Court of law for recovery of amount of Rs.2,07,72,048/-. He would also state that in terms of Clause 23 of the Indian Airlines Employees' Provident Fund Regulations, 1955, which contemplates, if a Member is dismissed for serious and/or willful misconduct, the Company may send intimation thereof to the Board and the Board shall have powers to forfeit the employer's contribution together with the interest thereon in respect of the entire service of the employee or for such shorter period as may be decided by the Authority competent to dismiss the employee. He also refers to Clause 23(3), which inter-alia contemplates for deduction from the amount of Provident fund, so payable and pay to the Company any amount due under a liability incurred by a Member of the Company not exceeding in any case the total amount of the employer's contributions and interest thereon standing to the credit of the Member. In other words, it is his submission that the impugned action of the respondent to withhold the employer's contribution towards Provident Fund has the sanction

of the Provident Fund Regulations referred above. He would, in support of his contention rely upon the judgment of the Supreme Court in the case reported as **(2012) 8 SCC 417 Chandi Prasad Uniyal & Ors v. State of Uttarakhand & Ors** to contend that any excess payment made to an employee can always be recovered because if that is not done, it would amount to unnecessary enrichment of the concerned employee. He refers to the judgment of the High Court of Jharkhand at Ranchi in the case of **Neelam Dubey v. State of Jharkhand and Ors W.P.S) No. 3810/2002 decided on May 10, 2013**, wherein the High Court had relied upon the judgment of the Supreme Court in **Chandi Prasad Uniyal & Ors (supra)**, justifying the recovery by the employer. He also relies upon the judgment of the High Court of Karnataka at Bangalore in **W.P.(C) No. 13372/2013 Smt. Mallava Sabanna Kaladagi v. The Managing Director, Karnataka Power Transmission Corporation Limited and another** wherein it has been held that recovery can be effected from the pensionary benefits and from the estate of the deceased employee.

7. Having heard the learned counsel for the parties, the issue, which falls for consideration is, whether the respondent could have withheld the amount of the employer's share of PF and other benefits. It is the case of the

respondent that the allowances were paid because of fraud perpetrated by the petitioner's husband. There is no dispute that a charge sheet was issued to the late husband of the petitioner, which was enquired into. The charges inter alia were that he derived illegal benefits from the Company on account of Simulate Training Hours, which were remunerated at a higher rate than flying hours. The husband of the petitioner had participated in the said proceedings. It is the stand of the respondent that the Inquiry Officer has submitted his report proving/partially proving the charges. Before the enquiry report could be acted upon, the husband of the petitioner had expired. The death of the husband of the petitioner, resulted in abatement of the proceedings against him. In fact, the Central Vigilance Commission has advised the closing of the Disciplinary Proceedings against the husband of the petitioner on his death. The result thereof is that the allegations so made against the husband of the petitioner have not been proved. It is also a settled law that Disciplinary Proceeding culminate with the issuance of a final order by the Disciplinary Authority. It is not such a case here. Mr. Bhasin had placed reliance on Regulation 23 of the PF Regulations, 1995. The said Regulations reads as under:

“23. Deduction on dismissal.

1) Notwithstanding anything contained in regulation 20, if a member is dismissed for serious and / or willful misconduct, the Company may send intimation thereof to the Board and the Board shall have powers to forfeit the employer's contribution together with the interest thereon in respect of the entire service of the employee or for such shorter period as may be decided by the authority competent to dismiss the employee. Provided that the member concerned shall be asked to show cause why the forfeiture shall not be made and shall be afforded an opportunity to make representation which shall be duly considered before making the forfeiture.

2) Save as provided in sub-regulation (3) of Regulation 23 any amount forfeited under Clause (1) and the net profit or loss, if any, from the sale of investments, shall be credited to the 'Reverse Account' of the Fund.

3) Notwithstanding anything contained in Regulation 20, when the sum standing to the credit of any member becomes payable on cessation of membership, the Board shall, if so directed by the Company deduct from the amount so payable and pay to the Company any amount due under a liability incurred by a member to the Company not exceeding in any case the total amount of the employer's contributions and interest thereon standing on the credit of the member.”

8. It is clear from Regulation 23 (1) that it is only in the eventuality an employee is dismissed from service, that the respondent through the Board has powers, to forfeit the employers contribution together with interest. Even

Regulation 23(3) contemplates an eventuality, where a sum standing to the credit of any member becomes payable on cessation of membership, the Board on the direction of the Company deduct the amount and pay to the company any amount due under a liability incurred by a member to the Company not exceeding the total amount of employers contribution. Even this regulation would have no applicability, as no liability of the petitioner's husband has been determined by the Company so as to enable the Board to deduct the amount from the contribution to pay to the Company. In fact Mr. Bhasin is precluded from placing reliance on the Regulation 23 of the PF Regulations and the enquiry report, when it is the case of the respondent itself that, a decision has been taken by the Board, to file a suit for recovery of the amount allegedly due from the petitioner's husband.

9. I agree with the reliance placed by Mr. Ghose on the judgment of the Bombay High Court in the case reported as **1986 LAB. I.C. 248 Hirabai Deshmukh and another v. State of Maharashtra and others**. Paras 6, 7 and 8 are reproduced as under:-

“6. The provisions with regard to dismissal, removal and suspension of the civil servant do not permit holding of any further enquiry into the conduct of such a civil servant after his death. Such proceedings are intended to impose departmental penalty and would

abate by reason of the death of civil servant. The purpose of proceedings is to impose penalty, if misconduct is established against the civil servant. That can only be achieved if the civil servant continues to be in service. Upon broader view the proceedings are quasi-criminal in the sense it can result in fault finding and further imposition of penalty. The character of such proceedings has to be treated as quasi-judicial for this purpose. In the light of the character of the proceedings and the nature of penalty like dismissal or removal, or any other penalties, minor or major, it has nexus to the contract of service. Therefore, if the person who has undertaken that contract is not available, it should follow that no proceedings can continue. Thus when the proceedings are quite personal in relation to such a contract of service, the same should terminate upon death of the delinquent. By reason of death, such proceedings would terminate and abate. We think that such a result is also inferable from the provisions of Rule 152-B of the Bombay Civil Services Rules.

7. Once the proceedings come to an end by reason of death, the provisions of Rule 152-B, Sub-rule (2) of the Bombay Civil Services Rules state that notwithstanding anything contained in Rule 151 where a Government servant under suspension dies before the disciplinary proceedings are concluded, the period between the date of suspension and the date of death has to be treated as duty for all purposes and the family of such civil servant is required to be paid full pay and allowances for that period subject to adjustment in respect of subsistence allowance already paid.

8. These being the express provisions available in the Bombay Civil Services Rules which were admittedly applicable to the Talathi, the petitioners, who are the members, were entitled as of right to have full pay and allowances which were payable to Bhikanrao subject to

deduction of subsistence allowance, if any, already paid.”

10. Insofar as the reliance placed by Mr. Lalit Bhasin on the judgment of the Supreme Court in the case of ***Chandi Prasad Uniyal & Ors (supra)*** in support of his contention that, employer is within his right to make recovery of excess amount paid to the employee is concerned, the said judgment would not be applicable to the facts of this case, inasmuch as it is the case of the respondent that the husband of the petitioner has drawn the allowance by playing fraud. Apparently, the charge against the petitioner’s husband is of very serious nature. The same could not be proved despite issuance of a charge sheet to him. It follows that if fraud is not proved, then withholding of retiral benefits is not justified. Even during the course of the submissions, nothing has been brought to the notice of this Court that the monetary benefits received by the husband of the petitioner were contrary to the Rules and Regulations.

11. That apart, Mr. Bhasin cannot take support of the judgment in the case of ***Chandi Prasad Uniyal & Ors (supra)***, inasmuch as in a subsequent judgment reported as ***(2014) 8 SCC 883 State of Punjab v. Rafiq Masih***, wherein the Supreme Court referring to ***Chandi Prasad Uniyal & Ors (supra)***, has culled out certain situations wherein a recovery of excess

monetary gains have been held to be impermissible including in the case where a person has retired. In the case in hand, in view of the fact that the employee of the respondent Capt. Ashok Raj having expired, the recovery cannot be effected by the respondent, even on this ground as well. In view of this, the judgment of the Jharkhand High Court in *Neelam Dubey (Supra)* is not applicable. It is also not applicable in view of the decision of the Board of the respondent to file a suit for recovery of the amount.

12. Insofar as the reference made by Mr. Bhasin in the case of *Smt. Mallava Sabanna Kaladagi (supra)* is concerned, wherein the respondent intended to recover an amount of Rs.3,82,895/- of the alleged misuse of material by the petitioner's husband from the petitioner being the legal heir. The writ petition was disposed of by the Karnataka High Court, setting aside the notice issued to the petitioner, reserving the right of the respondent to issue a show cause notice to the petitioner and furnishing full detail of the amount, if any to be recovered from the estate of the husband of the petitioner. In the case in hand, a decision in that regard has been taken by the respondent Company to file a suit for recovery of amount of Rs. 2,07,72,048/- from the estate of the husband of the petitioner. So, the judgment would not help the respondent, in so far as their action to withhold the benefits is concerned. The

respondent in contemplation, that such recovery suit shall be filed and their claim shall be allowed, cannot withhold the amount as payable to the legal heirs of Capt. Ashok Raj. It may so happen, the claim may not be allowed.

13. Accordingly, in view of my above discussion, the writ petition is allowed. The letter dated January 02, 2015 is set aside. The respondent is directed to release all the withheld amounts from the retiral benefits / other benefits payable to Late Capt. Ashok Raj to the legal heirs of Capt. Ashok Raj in accordance with law with interest @ 9% per annum calculated from the date, the same were payable within two months from the receipt of this order.

No costs.

CM No. 11918/2015

Dismissed as infructuous.

V. KAMESWAR RAO, J

NOVEMBER 14, 2017/ak