IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.08.2018

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.1525 of 2017

R.Nagarajan ... Petitioner

Vs.

1.The Managing Director and Chief Executive Officer
Head Office, United Bank of India
11, Hamandha Basu Sarani
Kolkatta - 700 001.

2.The Deputy General Manager/ chief Regional Manager
United Bank of India, Southern Regional Office
184/192, R.K.Mutt Road
Mandaveli, Chennai - 600 028.

3.The Chief Manager
United Bank of India
90, Ramachandra Road
Coimbatore - 641 002. ... Respondents

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the Third Respondent to reverse all the illegal and unauthorized transaction entries made by him in the Petitioner's Pension Account NO.0289010022705 with the United Bank of India situated at 90, Ramachandra Road, Coimbatore - 641 002 and in Account , 1542010001991 with with the United Bank of India, Ganapathy Branch, Coimbatore District.

For Petitioner : Mr.K.S.Kumar
For Respondents : Mr.P.S.Ganesh [For R2 & R3]
R1-Given up

O R D E R

The relief sought for in this Writ Petition is for a direction to direct the Third Respondent to reverse all the illegal and unauthorized transactions entries made by him in the Petitioner's Pension Account No.0289010022705 with the United Bank of India situated at 90, Ramachandra Road, Coimbatore - 641

002 and in Account No.1542010001991 with the United Bank of India, Ganapathy Branch, Coimbatore District.

2.The learned counsel for the Writ Petitioner made a submission that the Petitioner is a retired employee of United Bank of India. He is drawing pension from the United Bank of India and the Pension amount is being credited in his account No.0289010022705 with the Third Respondent Bank.

3.The Writ Petitioner is drawing pension right from May, 2001 onwards and the pension amount credited by the authority concerned will be normally transferred by him in his another account maintained in the same United Bank of India, Granapathy branch, Coimbatore for the sake of convenience of the Writ Petitioner, so as to transfer the amount for his personal expenses. The account with the Ganapathy branch is also akin to his pension account and both the accounts are being maintained by the Writ Petitioner to transact the pension amount.

4.Under these circumstances, on 29.09.2016, the Writ Petitioner had received four “sms” messages on his mobile from the Third Respondent that certain transactions have been carried out in his pension account No.0289010022705. The Writ Petitioner was shocked to receive such messages and contacted the Third Respondent, who in turn has not given any proper reply to the Writ Petitioner. Subsequently, the Writ Petitioner came to understand that the pension amount transferred by him from the pension account to other accounts had been adjusted in respect of the Educational Loan obtained by his son during the year 2010.

5.The learned counsel for the Writ Petitioner states that his son was sanctioned with the Educational Loan in the year 2010 and so far he repaid an amount of Rs.2,75,000/- towards Educational Loan. The grievances of the Writ Petitioner is that the amount has already been adjusted towards interest by the Third Respondent bank and they have not followed any procedure enabling him to verify the loan details.

6.Even now, the learned counsel for the Petitioner states that the Respondents bank has not issued proper notice providing the break up details in respect of the dues pending for repayment towards the Educational loan obtained in the name of his son of the Writ Petitioner. Hence, the Petitioner is unable to clear the Educational loan. This apart, the Respondent's bank filed a civil suit in C.S.No.367/2017 on the file of Sub-ordinate Court, Coimbatore for recovery of loan dues and the said suit is also pending.

7.The learned counsel appearing on behalf of the Respondents bank opposed the contention by stating that the Writ Petitioner is the co-applicant in respect of the educational loan granted to his son by the Respondents /United Bank of India. At the time of sanctioning loan, the Writ Petitioner along with his son executed a letter of lien categorically stating that

> "........ I/we hereby given you a lien on all share stocks debentures debenture stocks securities and cash belonging to me /us and which are now or may hereafter be held by you or be in your custody on my / our account (hereinafter referred to as "the said securities") for the general outstanding balance of any and every loan, current, overdraft, cash credit or other accounts or accounts whatsoever with you and in respect whereof I/we are or may become liable to you as borrower(s) guarantor(s) or otherwise and whether solely or jointly with others......."

In view of the lien executed by the applicant as well as co-applicant/Writ Petitioner, when the amount of pension once transferred from the pension account to the other accounts, the Respondents bank is entitled to adjust the same towards the arrears of educational loan, which is pending for repayment. Thus, the very contention of the Writ Petitioner cannot be accepted. This apart, the Writ Petitioner was an employee of the very same Respondents /United Bank of India and he was serving in the Bank for about 30 years.

8.Having served in the Respondents bank for about 30 years, this Court is of an opinion that the Writ Petitioner must be knowing the entire procedures being followed by the United Bank of India for grant of loan and recovery of the loan amount from the persons, who obtained such loans from the Bank.

9.The contention of the learned counsel for the Writ Petitioner is that the pension amount can never be attached in view of the provisions of the Pension Act. To substantiate this, learned counsel for the Petitioner states that Section 11 of the Pensioner's Act, 1871 states that no pension granted or continued by Government on political considerations, or on account of past services or present infirmities or as a compassionate allowance and no money due or to become due on account of any such pension or allowance shall be liable to seizure, attachment or sequestration by process of any Court at the instance of a creditor, for, any demand against the pensioner, or in satisfaction of a decree or order of any such Court.

10.In view of the above provisions, the pension amount transferred from one account to another account can never be attached by any of the bank. In support of his contention the Petitioner relies on the judgment in the case of Radhey Shyam Gupta Vs.Punjab National Bank and Another reported in (2009) 1 SCC 376. Wherein the Apex Court of India has observed as follows:

> ".....when the pension and gratuity of the appellant, which had been converted into fixed deposits, could not be attached under the provisions of CPC. Even after the retiral benefits, such as pension and gratuity, had been received by the appellant, they did not lose their character and continued to be covered by Section 60(1) CPC proviso (g)".

Relying on the above said judgment, the learned counsel for the Writ Petitioner contended that the action of the Respondents bank in recovering the pension amount transferred to the Writ Petitioner's another account suo motu is impermissible. Thus, the Writ Petition deserves to be allowed.

11.The learned counsel for the Respondents states that the Educational Loan was sanctioned to the son of the Writ Petitioner by verifying his application and in accordance with the terms and conditions of the Educational Loan scheme of the bank.

12.However, the Writ Petitioner is a defaulter so also his son. Therefore, the amount deposited by the Writ Petitioner in his account was adjusted based on the letter of lien executed in favour of the bank both by the son of the Writ Petitioner as well as by the Writ Petitioner. Thus, there is no irregularity in respect of the adjustment of the loan amount from the account of the Writ Petitioner. In order to repudiate the contention of the Writ Petitioner stating that the pension amount cannot be attached, the learned counsel for the Respondents cited judgment of the Hon'ble Supreme Court of India in the case of Union of India Vs.Jyoti Chit Fund and Finance and Others reported in AIR 1976 Supreme Court 1163, wherein para 11 of the judgment is extracted hereunder:-

> "11.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 reduced 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 (1969) 3 SCR 28 - (AIR 1969 SC 762) erases them. Indeed our

> case is a fortiori one, on the facts. A bare reading of Radha 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 not altered. What is more, that case is also authority for the benignant view that the government is a trustee for those sums and has an interest in maintaining the objection in court to attachment. We follow that ruling and overrule the contention."

13.This apart, this Court is of an opinion that it is not as if the pensioner can simply escape from the liability by stating that the pension amount cannot be attached at all. No doubt the pension paid to a Government employee is to be protected, in order to protect the livelihood of the Petitioner. However, the facts and circumstances of each case is to be considered with reference to the purpose and object sought to be achieved by granting exemption for recovery of pension. For instance the pensioner, who is otherwise rich enough to lead a standard life and believing on the principle that the pension account cannot be attached, then the Courts are committing an act of injustice in respect of the public money. The banks are being run from and out of the public money deposited by the public at large. Thus, there cannot be any absolute exemption in respect of the pension account. Even in yet another case, where the pensioner is not maintaining his spouse and his spouse on filing an application for maintenance and if the Court passed an order granting maintenance in favour of the spouse and the principles mooted by the learned counsel for the Petitioner that the pension account never be attached at all is accepted, then the livelihood of the spouse is denied. Therefore, various circumstances arising from and out of differential facts are to be considered while taking decision in such matters, It is not as if a blanket exemption is granted in respect of the attachment of the pension amount from the pensioners.

14.In the present case, the learned counsel for the Respondents produced two photographs, which are treated as part of record in this Writ Petition. One photograph showing the writ petitioner is running a higher secondary school in the name and style of "Sri Bharathi Educational and Charitable Trust and School". The school is being run. This apart, the writ petitioner is having other properties.

15.The Deputy Manager, United Bank of India, who is present before this court shared an information that the writ petitioner has constructed a house in the IT corridor at Coimbatore and performed "grahapravesam" in the year 2016. This apart, the writ petitioner and their family members are having other properties in and around the area. This being the factual position and the financial status of the writ petitioner, this Court is surprised that the writ petitioner has not repaid the educational loan amount obtained in the name of his son. As the erstwhile employee of the United Bank of India he must be responsible, accountable and duty bound to deposit the arrears of loan amount obtained by his son for the purpose of completing his education and that is not expected from one who served in the very same bank. This Court is painful to record that, it is the most undeserving conduct on the part of the writ petitioner that he is fighting with the bank in respect of the repayment of the educational loan, wherein he has signed as a co-applicant. There is a doubt in the mind of the Court that, when the Writ Petitioner has served 30 years and retired from service in the year 2001 and his son applied for educational loan in the year 2010 it is doubtful whether the financial status / properties possessed by the writ petitioner and his family members were ascertained by the bank officials or not. The terms and conditions of the educational loan scheme were followed by the authorities while sanctioning the loan or not and also as narrated by the learned counsel for the Respondent, when a person who is eligible and deserving alone is to be considered for grant of educational loan. Educational loan scheme was introduced through nationalised banks and other banks in order to encourage the students to go for higher education and for want of money no youth of this great nationshould suffer to pursue their higher education. When this scheme has got a noble character, the same has to be implemented in respect of the deserving youths and not in respect of all the persons who are capable of spending for the education of their children. Certainly the terms and conditions would provide that the eligible criteria and other aspects should be verified before sanctioning such loan.

16.The learned counsel for the Respondents states that the Respondents bank had verified the declaration given by the Writ Petitioner and sanctioned the loan. The Writ Petitioner was an employee served in the very same bank for about 30 years. Therefore his service details and all other property details would be available in the service record. Because all employees have to give property details to the employer, when they join in service. It is not known as to whether those details have been verified by the authorities at the time of sanctioning of educational loan.

17.In this regard, the Chief Regional Manager, Union Bank of India, Southern Regional Office, R.K.Mutt Road, Mandaiveli, Chennai - 600 028 is directed to conduct an enquiry in respect of the grant of loan to the son of the writ petitioner.

18.In this view of the matter the writ petitioner and his son are absolutely liable to repay the loan amount. The educational loan was granted from and out of public money and further, the writ petitioner is capable of repaying the amount on verification of facts.

19.Under these circumstances, the Respondents are directed to issue proper notice containing the entire break up details / loan details to the writ petitioner within a period of one week from the date of receipt of a copy of this order. On receipt of such notice from the Respondents, the Writ Petitioner shall settle the loan amount in accordance with the terms and conditions of the loan. In the event of any failure the Respondents are at liberty to proceed all further actions in accordance with law. Accordingly, this writ petition stands dismissed. Consequently, connected miscellaneous petition is closed. However, there is no order as to costs.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

To

1.The Managing Director and Chief Executive Officer
Head Office, United Bank of India
11, Hamandha Basu Sarani
Kolkatta - 700 001.

2.The Deputy General Manager/ chief Regional Manager
United Bank of India, Southern Regional Office
184/192, R.K.Mutt Road
Mandaveli, Chennai - 600 028.

3.The Chief Manager
United Bank of India
90, Ramachandra Road
Coimbatore - 641 002.

+1cc to Mr.P.S.Ganesh, Advocate, S.R.No.58793
+1cc to Mr.K.S.Kumar, Advocate, S.R.No.58568

W.P.No.1525 of 2017

NRL(CO)
GSP(08/10/2018)