

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH
Sr. No.: 207

Civil Writ Petition No.7580 of 2012 (O & M)
Date of Decision: *January 15, 2018*

Santosh Rani

..... PETITIONER

VERSUS

Food Corporation of India & others

..... RESPONDENTS

. . .

CORAM: **HON'BLE MR. JUSTICE JASPAL SINGH**

. . .

PRESENT: - Mr. N.K. Manchanda, Advocate, for the petitioner.

Ms. Jatinder Jit Kaur, Advocate, for the respondents.

. . .

Jaspal Singh, J

By virtue of the instant writ petition preferred under Article 226/227 of the Constitution of India, petitioner has sought issuance of a writ in the nature of Mandamus, directing the respondents to release the entire amount of leave encashment of ₹ 75,000/- and an amount of ₹ 2,88,578/- payable towards Death –cum- Retirement Gratuity, and to release the original title deeds of the house for which the house building advance and interest thereon has already been recovered by the respondents as well as for grant of interest @ 18% per annum for delayed payment of retiral dues from the date the same fell due till actual payment thereof.

In nutshell, case set up by the petitioner is that her husband, Khushi Ram, retired as AG – III (D) upon attaining the age of superannuation on June 30, 2010. Unfortunately, he was taken away by the nature on April 14, 2011 leaving behind the petitioner as his sole heir being his wife. Since retiral benefits were not being released, petitioner served a legal notice dated June 06, 2011 (Annexure P3) upon the respondents which was replied by them vide letter dated October 31, 2011 intimating that on account of vigilance penalties/ CPF advance/ MHS and excess payment against pay, recovery had been effected from the retiral dues payable to Khushi Ram. Meaning thereby that recovery of ₹ 75,000/- pertaining to the leave encashment and a sum of ₹ 2,88,578/- in respect of DCRG has already been effected/ adjusted. However, it has been acknowledged that house building advance availed off by Khushi Ram has since been recovered alongwith interest. The petitioner has further claimed that though nothing remains payable in respect of house building loan, yet the original title deeds have illegally been retained by the respondents. She further submitted that aforesaid amounts have also been illegally and unlawfully held, that too without any jurisdiction by the respondents to which petitioner being the sole legal heir of her deceased husband is entitled to receive. Otherwise also, respondents were not within a right and had no jurisdiction to recover the amount from the retiral benefits, especially the leave encashment and gratuity after the demise of her husband.

In response to the notice of motion, respondent Nos.1 to 3 filed written statement through Area Manager, Food Corporation of India, District Office, Moga submitting that present writ petition is not maintainable. So far as release of sale deed is concerned, petitioner has

already received the sale deed/ title deed and she has already issued an acknowledgement dated October 04, 2012. Therefore, no cause of action survives so far as the relief sought with regard to release of original sale deed is concerned. As far as other reliefs are concerned, it has been submitted that husband of the petitioner namely Khushi Ram retired on June 30, 2010. The retiral dues have been adjusted against the outstanding vigilance recoveries as furnished by the Manager Accounts, Moga in his No Dues Certificate. It has further been unfolded by the respondents that petitioner was informed about sanctioning of the retiral benefits/ dues and further that on account of vigilance penalties/CPF advance/MHS and excess payment already made against pay recoveries, an amount to the tune of ₹ 15,59,119/- was outstanding against husband of the petitioner which has since been adjusted. The respondents accordingly prayed for dismissal of the petition.

The only question which survives for consideration is whether the amount recoverable from husband of the petitioner could be adjusted and recovered by making deductions from the retiral benefits, especially leave encashment and gratuity payable to the petitioner on his retirement?

The contention of learned counsel for the petitioner is that recoveries have been effected from the retiral dues of husband of the petitioner, particularly gratuity and leave encashment, without giving any notice of affording any opportunity of hearing to the petitioner. Such an order passed by the respondents to the prejudice of the petitioner or her husband in derogation of his vested rights could eventually been made in accordance with the basic rules of justice and fair play. The deciding

authority, it is true, is not in the position of a judge called upon to decide an action between contesting parties and a strict compliance with the forms of judicial procedure may not be insisted upon. He is under a duty to provide the person against whom an enquiry is held an opportunity to set up his/her version or defence and an opportunity to correct or to controvert any evidence which is sought to be relied upon by the authority. In the case in hand, since no opportunity has been afforded before making an adjustment of the recovery of amount allegedly outstanding against husband of the petitioner, action of the respondents in this regard is a nullity and as such, petitioner deserves disbursement of the amounts which were actually payable by the respondents to husband of petitioner on account of his retirement.

The second contention raised by learned counsel for the petitioner is that there is no provision in the Food Corporation of India (Staff Regulations) 1971 (for short, “1971 Regulations”) empowering the Corporation to make any recovery from a dead person. There is also no provision in the aforesaid 1971 Regulations authorizing the Corporation to make recovery from the amount of DCRG of an employee. In the instant case, there is no reference of any pending departmental enquiry against husband of the petitioner in his retirement order dated June 30, 2010. The recovery allegedly effected on account of excess payment against pay is also impermissible in view of law laid down by Full Bench of this Court in **Budh Ram vs. State of Haryana, 2009(3) SCT 333.**

While concluding his arguments, learned counsel for the petitioner has contended that it is not the case of respondents that excess payment was made to late husband of petitioner on account of any fraud or

mis-representation exercised by him. Thus, impugned action of effecting recovery from the retiral dues being illegal, arbitrary, discriminatory, without jurisdiction, violative of principles of natural justice and against the letter & spirit of Article 14 of the Constitution deserves to be quashed and instant petition deserves to be accepted.

Per contra, learned counsel for the respondents submits that undoubtedly, husband of the petitioner retired on June 30, 2010 as AG – III (D) and unfortunately, expired on April 14, 2011. But, on account of financial loss caused to the FCI on account of misconduct or negligence of the retiree, some recoveries were to be effected which were fully depicted in the NOC prepared by the competent authority and as per the Payment of Gratuity Act, 1972 as well as Discipline and Appeal Regulations of the FCI (Staff) Regulations, 1971, particularly, Regulations 54 (ix) and 56, loss caused due to negligence of the employee even if no specific order to that effect is passed, forfeiture of the entire amount of gratuity is legally justified. To buttress this contention, learned counsel for the respondents has placed reliance on **D.S. Chauhan vs. The Food Corporation of India & others, 2008(1) SCT 707** as well as **Devidner Singh vs. Food Corporation of India & others, 2008(2) SCT 434**.

While relying upon another judgment delivered in the case of **Punjab State Civil Supplies Corporation Limited vs. Pyare Lal, 2015(4) SLR 88**, learned counsel for the respondents has contended that withholding of the leave encashment is also permissible and the judgment rendered in **Harbhajan Singh Riar vs. State of Punjab & others, 2010(1) SCT 120** was approved whereas the view taken in **Gurdial Singh vs. Punjab State Civil Supplies Corporation Limited, 2009(8) SLR 99** was

over-ruled. Thus, respondents are duly competent and within their jurisdiction to effect recovery from the aforesaid dues of the retiree. Accordingly, learned counsel for the respondents prayed for dismissal of the writ petition.

This Court has given a thoughtful consideration to the rival submissions made by learned counsel for the parties and scanned the various documents available as well as the judgments referred during the course of arguments meticulously.

The rendering of service and retiring of husband of petitioner on June 30, 2010 are not in dispute. However, it has become clear from the various documents available on file that during service, petitioner availed off CPF advance/ house building loan which were adjusted alongwith interest towards his retiral dues. Apart from it, petitioner also faced vigilance enquiries vide which a sum of ₹ 14,47,439/- was found recoverable besides an excess payment made on account of pay disbursed to him to the tune of ₹ 1,03,042/- and total amount on calculation came to the tune of ₹ 15,59,199/-. While delivering judgment, the Division Bench of this Court in Devinder Singh's case (supra) has categorically observed that recovery of loss to establishment from gratuity is permissible. In that situation, order of recovery need not be separately passed. Further that once there is a punishment order, the delinquent is liable to make good the loss, the amount of attributed to him can be recovered from the amount of his gratuity.

The aforesaid observation was made after having discussed at length the provisions of payment of Gratuity Act, 1972 as well as 1971 Regulations. Thus, it cannot be said that there is no provision in law as has

been projected by learned counsel for the petitioner debarring effecting of recovery from the amount of gratuity payable to the retiree. It is not the case of the petitioner that her husband was not associated in the vigilance enquiry in which penalties were imposed and it has simply been submitted that while effecting recovery from retiral dues, either petitioner or her husband has not been given an opportunity of hearing. Husband of petitioner must have been aware about the vigilance penalties imposed upon him, that too, during his service. Similarly, the amount payable to the retire on account of leave encashment can also be withheld and recovered for the satisfaction of the loss caused on account of negligence or carelessness attributed to the concerned employee/retiree during his service. So, this Court does not find any illegality or impropriety in the impugned action of the respondents for effecting recovery from retiral benefits of husband of the petitioner.

As far as, another relief sought by the petitioner with regard to return/ release of title deed/ sale deed is concerned, that stands already returned/released in favour of petitioner who has also acknowledged in writing on October 04, 2012. The said relief has otherwise rendered infructuous.

In the light of aforesaid discussion, instant petition is dismissed with no order as to costs.

January 15, 2018
avin

(Jaspal Singh)
Judge

Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No