IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-1829-2017 (O&M)
Date of decision: 20.05.2019

Sudesh Gulati ....Petitioner

Versus

Punjab University & another ...Respondents

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr.Anil Kumar Lamdharia, Advocate, for the petitioner.

Ms.Balpreet Sidhu, Advocate, for the respondents.

G.S. SANDHAWALIA, J. (Oral)

Prayer in the present writ petition, filed by the wife of the employee, under Articles 226/227 of the Constitution of India, is for issuance of a writ in the nature of mandamus, directing the respondents to release all the terminal benefits in respect of Late Girish Kumar Gulati, Assistant Registrar, Election Cell, who is stated to have expired on 10.04.2016 along with interest @ 18% per annum for the delayed payment.

The ground for holding back the retiral benefits is that a shop had been taken through public bidding by the son of the petitioner at a monthly lease of Rs.8300/- with 5% increase, as per the lease deed dated 20.06.2005 (Annexure R-1). Since the tenancy had started from 01.08.2004 for a period of 3 years, the husband of the petitioner had stood surety for the said shop on 20.06.2005 which is appended with the said lease deed. On account of the son of the petitioner being in arrears of lease amount/rent for the period from 01.02.2008 onwards, the retiral benefits are alleged to have been withheld. The petitioner's son, Sumit Gulati has also filed a Civil Suit, challenging the action of the respondent-University, whereby he seeks a declaration that the interest and penalty calculated is illegal, null and void etc.

It is not denied that the petitioner's husband had expired on 10.04.2016 and the shop in question has also been vacated by the son of the petitioner and that of the deceased-employee on 17.05.2016.

Counsel for the petitioner has, thus, pointed out that as per the lease deed itself, the lease was for a period of 3 years and the surety given by the husband of the petitioner could also not be extended beyond that period. If the petitioner's son had not vacated the premises in possession beyond the period of the lease, the surety amount, as such, cannot be enforced beyond the period of the lease deed. A perusal of notice dated 25.05.2015 (Annexure R-2) would also go on to show that Sumit Gulati & Sons were issued a notice that they had failed to submit the lease amount for the period from 01.02.2008 to 31.01.2011 and that the status of tenancy had not been recommended for further renewal/occupation and was, therefore, illegal. Thus, a demand of Rs.8,16,767/- had been raised on various accounts.

As noticed, the said amounts are subject matter of challenge in the Civil Suit filed by the son of the petitioner and therefore, this Court need not comment upon the said litigation. If the respondents themselves have held out that M/s Sumit Gulati & Sons were in illegal possession, as such, after the expiry of the lease deed (Annexure R-1), which was for a period of 3 years, the enforcement of the surety bond, as such, is not justified, in the facts and circumstances. The said surety bond was executed by the employee so that the arrears of rent to the respondent-University could be recovered from his salary or Provident Fund Account and there was another surety, as such, who was a Senior Assistant in the

Construction Office of the respondent-University. The said surety bonds were, thus, operative only for the lease period and shall not apply once the possession thereafter was illegal or on account of non-payment of the lease amount or the subsequent lease deed not having been executed after the initial period had expired. It was always open for the respondent-University to recover the said amount from the son of the petitioner in accordance with law and the retiral benefits have been wrongly withheld. It is also pointed out that a petition under the Public Premises (Eviction of Un-authorised occupants) Act, 1971 (Annexure R-3) has also been filed for recovery of the arrears amounting to Rs.6,94,258/- along with interest and other charges for the period from April, 2007 to June, 2015 etc. Thus, it is always open to the respondents, as such, to recover the said amount, in accordance with law. However, holding back of the retiral benefits of the employee on this pretext, would not be justified.

Accordingly, in view of the above discussion, the present writ petition is allowed. The arrears of retiral benefits shall be paid to the petitioner along with interest @ 8% per annum, after 3 months from the date of death of the employee. The amount shall be paid within a period of 2 months from today.

20.05.2019 **(G.S. SANDHAWALIA)**
Sailesh **JUDGE**

Whether speaking/reasoned: *Yes/No*

Whether Reportable: *Yes/No*