

10. 06.12.2022
Ct. No.6
Tanmoy

MAT 1563 of 2022

Niladri Sekhar Duley
-Versus-
The State of West Bengal & Ors.

With
IA No: CAN/1/2022

Mr. Sourav Prasanna Mukherjee, Adv.

...for the appellant.

Mrs. Chama Mukherji, Ld Sr. Govt. Adv.,
Mrs. Paramita Pal, Adv.

...for the State.

Mr. Dhiman Kr. Sengupta, Adv.,
Ms. Sweta Saha, Adv.

...for the respondent Bank.

Mr. Samiran Mandal, Adv.,
Mr. Abhinaba Dan, Adv.

...for the School Authority.

By consent of the parties, the appeal and the connected application are taken up together for hearing.

The appellant is aggrieved by an *interim* order dated September 15, 2022, passed by a learned Single Judge in WPA 12594 of 2022.

Bankura District Central Cooperative Bank Limited (in short, the 'Bank') lent money to the appellant. The appellant is a teacher of Lodna Mankhamar Vivekananda Vidya Mandir (HS), school. Admittedly, the money borrowed by the appellant from the Bank has not

been repaid. The Bank says that its dues are in the region of Rs.5.40 lakh. The Bank further says that there was an agreement as envisaged under Section 59 of the West Bengal Co-operative Societies Act, 2006. However, no deduction was made by the concerned Authority from the salary of the appellant which was to be deposited with the Bank in repayment of the loan advanced by the Bank.

The appellant was placed under suspension on January 6, 2021, by the disciplinary Authority on the grounds of alleged overdrawal as well as unauthorized absence. From that point onwards he is being paid subsistence allowance as per the applicable Rules.

It appears that the Bank has obtained an Award dated December 5, 2014, against the appellant from the Court of the Arbitrator of Co-operative Societies, Bankura.

The Bank approached the learned Single Judge by filing WPA 12594 of 2022, wherein the present appellant was the respondent no.6, praying, *inter alia*, for the following reliefs:-

- “... b) A writ in the nature of mandamus by directing the respondent no. 2 and/or 3 to make deduction of the Awarded amount with accrued interest from the salary of Respondent no.6 for repayment of the debt due to the petitioner pursuant to the Award forwarded to the respondents authorities;
- c) A writ in the nature of mandamus by directing the respondent authorities particularly respondent no. 2 & 3 to take all steps for attachment of the Bank account, salary and all retirement benefits of the

Respondent No. 6 till realization of the Awarded amount and interest accrued on balance amount till disposal of the same pursuant to the award passed by the Ld. Arbitrator.

d) A writ in the nature of mandamus by directing the respondent authorities to attach the retirement benefits of the respondent no. 6 for payment of debt of the petitioner in the event the Respondent no. 6 retires.

...

g) To pass an interim order restraining the respondents authorities to disburse any amount, salary/retirement benefit to the Respondent No. 6 till disposal of the Writ application; ...”

On the said writ application being moved, the impugned order was passed by the learned Single Judge directing the District Inspector of Schools (Secondary Education), who is the respondent no.3 in the writ petition “*to attach the salary of the respondent no. 6*”. The learned Judge directed exchange of affidavits and directed the writ petition to be listed in December, 2022 for final hearing. The *interim* order was directed to be operative till December 23, 2022. Being aggrieved, the respondent no.6 has come up by way of this appeal.

We have heard learned Counsel for the parties at length.

Learned Advocate for the appellant has submitted that subsistence allowance cannot be attached. The prayer in the writ petition was for attachment of salary. The appellant is not receiving salary. Hence, the order of the learned Single Judge is unsustainable in law.

Mr. Sengupta, learned Advocate for the Bank submits that there is no absolute proposition of law that subsistence allowance cannot be attached under any circumstances. If a suspended employee receives a huge amount on account of subsistence allowance, there should be no reason for not attaching a portion of it in repayment of admitted dues of a person who lent money to such employee.

Learned Advocate for the appellant has relied on an unreported decision of the Hon'ble Supreme Court in the case of ***Dena Bank – Vs. – Kiritikumar T. Patel***, rendered on November 19, 1997 as also an unreported decision of the Hon'ble Supreme Court in the case of ***Capt.M. Paul Anthony – Vs. – Bharat Gold Mines Ltd. & Anr.***, rendered on March 30, 1999, in support of his proposition that subsistence allowance cannot be attached.

Having considered the rival contentions of the parties we are of the view that learned Counsel for the appellant is right. Subsistence allowance is paid to an employee under suspension to help him survive. As observed by the Hon'ble Supreme Court in the case of ***Capt.M. Paul Anthony*** (supra) the word "Subsist" means – *"to remain alive as on food; to continue to exist"*. "Subsistence" means – *"means of supporting life, especially a minimum livelihood."* In other words, subsistence allowance denotes a bare minimum amount

which is necessary for the suspended employee and his family to survive. It should make no difference as to the amount of subsistence allowance that an employee is receiving. As a matter of principle, subsistence allowance cannot be attached.

Although the learned Judge directed attachment of the appellant's salary, on the strength of such order, we are told, the concerned Authority is threatening to attach the appellant's subsistence allowance. We make it clear that the same cannot be done. If and when the suspension on the appellant is lifted and salary is paid to him, the Bank may renew its prayer for attachment of his salary before the appropriate forum.

We clarify that if the Bank has any other remedy against the appellant or the concerned Drawing and Disbursing Officer (DDO) contemplated in Section 59 of the West Bengal Co-operative Societies Act, 2006, the Bank would be at liberty to pursue such remedy before the appropriate forum. If any such forum is approached by the Bank with appropriate application, such forum is requested to decide such application on merits, in accordance with law, without being influenced by anything in this order.

Learned Advocate for the writ petitioner/Bank prays for liberty to apply for amendment of the writ petition. We do not think any such liberty is necessary.

If the amendment that the writ petitioner/Bank has in mind is permissible in law, it can always be applied for.

The order under appeal is set aside to the aforesaid extent only. The learned Judge is requested to finally decide the writ petition on merits.

The appeal being MAT 1563 of 2022 and the connected application being IA No: CAN/1/2022 are disposed of.

Let urgent photostat certified copy of this order, if applied for, be made available to the parties upon compliance with all necessary formalities.

(Apurba Sinha Ray, J.)

(Arijit Banerjee, J.)