AD-22
Ct No.09
15.12.2023
TN

WPA No. 20666 of 2023

Swapna Adhikary
Vs.
State Bank of India and others

Mr. Gautam Chakraborty,
Mr. Debashish Sarkar,
Ms. Sonali Halder

.... for the petitioner

Mr. Debashis Saha,
Ms. Srabanti Das

.... for the respondent nos.1 & 2

1. The petitioner is the deceased widow of one Dr. Samir Kr. Adhikari who was an employee with the CSIR-Central Salt & Marine Chemicals Research Institute, Bhabnagar.

2. The said employer of the deceased husband of the petitioner, on the demise of the husband on May 24, 2023 by an Office Memorandum dated August 07, 2023 notified that upon the demise of the petitioner's husband, as per Rule 50 of CCS (Pension) Rules, 2021, it was decided by the Competent Authority to sanction the payment of family pension to the petitioner with effect from May 25, 2023 till her death or remarriage, whichever is earlier.

3. Prior thereto, on July 01, 2023 and on July 25, 2023, by two separate communications, the respondent-Bank had intimated the petitioner that with reference to the family pension proposal, two active pension loans are present under pension bearing account bearing no. 41553768909 (current outstanding Rs. 86,211/-) and account no. 40438762918 (current outstanding Rs. 8,39,435/-). In order to start family pension, it was intimated by the Bank to the petitioner that the petitioner was to either close both loans or close at least one loan with undertaking to continue the existing loan (maximum one loan) so that the Bank can proceed for family pension proposal.

4. Learned counsel assails the Bank's action of withholding the family pension to the petitioner on the ground that even under the analogy of Section 60 of the Code of Civil Procedure, stipends and gratuities allowed to pensioners of the Government or payable out of any service family pension fund notified in the Official Gazette by the Central Government or the State Government shall not be liable to attachment or sale even in execution of a decree.

5. Learned counsel places Section 50 of the Code of Civil Procedure. Sub-Section (2) of the same provides that where the decree is executed

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against the legal representative of a judgment debtor when the judgment debtor dies before a decree has been fully satisfied, he shall be liable only to the extent of the property of the deceased which has come to his hands and has not been duly disposed of.

6. By drawing a line of distinction between the property of the deceased husband and the petitioner's own entitlement, it is argued that family pension is given, although on the demise of the husband of the petitioner, to the petitioner in her independent right as a widow of the petitioner and has no nexus with the inherited property of her husband.

7. Learned counsel places reliance on Section 11 of the Pensions Act, 1871 which also provides 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 such pension or allowance, shall be liable to seizure, attachment or sequestration by process of any court at the instance of a creditor.

8. Learned counsel places reliance on a judgment of the Supreme Court rendered in *Radhey Shyam*

Gupta vs. Punjab National Bank and another, reported at *(2009) 1 SCC 376* where the Supreme Court observed, *inter alia*, that the High Court erred in altering the decree of the trial court particularly when the pension and gratuity of the appellant, which had been converted into fixed deposits, could not be attached under the provisions of the Code of Civil Procedure. It was observed that the decision in the *Jyoti Chit Fund and Finance case* has been considerably watered down by later decisions which have been indicated in paragraph no. 22 of the cited judgment and it had been held that gratuity payable would not be liable to attachment for satisfaction of a court decree in view of proviso (g) to Section 60(1) of the Code. It was also observed that 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 proviso (g) to Section 60(1).

9. It is, thus, argued that even if the Bank alleges that the petitioner's husband had outstanding dues by way of loan taken from the pension account, the Bank cannot assert its rights on the family pension payable to the petitioner on such count. In any event, it is contended by the petitioner that the petitioner disputes the outstanding dues as alleged by the Bank.

10. Learned counsel for the respondent-Bank contends that the provisions of Section 60 are not applicable in the present case, since the instant matter does not pertain to the claims of the Bank on the basis of decretal dues. This is not a case of attachment but the husband of the petitioner himself had taken a loan not from any other account but from the pension account itself. As such, if the petitioner claims the benefit of the said pension, it is the incumbent duty of the petitioner first to meet the liabilities of the said account with the Bank.

11. Over and above, it is argued that the pension account has been marked as Non-Performing Asset (NPA) in terms of the concerned guidelines of the Reserve Bank of India in the meantime for non-payment of the loans.

12. Thus, it is argued that the ratio relied on by the petitioner is not applicable to the present case and the Bank is entitled to withhold the family pension on the ground of the petitioner having not cleared off the loans taken by her husband from his pension account.

13. The point which has arisen for adjudication here is whether the family pension is a component of the estate which the petitioner derives by way of inheritance from her husband.

14. The governing jurisprudence in the field of pension and gratuity as well as family pension is clear on the issue. Family pension is not a part of the estate of the deceased husband/predecessor-in-interest of the person who is entitled to the said pension. It is a sort of subsistence provided to the heir of the deceased in view of the financial crisis suffered by such heir on the demise of the original employee. The said pension is for the upkeep and maintenance of the heir and not a component of the estate of the deceased employee. Although the right to get such a pension accrues on the demise of the predecessor-in-interest, the family pension is an independent payment to the petitioner and not a part and parcel of the estate of the deceased which devolves on the heir upon such demise. As such, the argument that the petitioner is required to meet the loans of the husband of the petitioner prior to getting the benefit of the estate is not applicable to the concept of family pension.

15. As to the other aspect of the matter, that is, the Bank's dues in lieu of loans taken by the deceased husband allegedly from the pension account, if the Bank is of the opinion that the said account has been marked as NPA and there is an outstanding due in that regard, the Bank has every option to recover the amount and/or take appropriate steps in accordance with law in that regard. However, before obtaining a decree/award or taking appropriate measures under the governing statutes, the Bank cannot claim lien over the future family pension which is to be disbursed in favour of the petitioner.

16. Even assuming that the husband of the petitioner took a loan from the pension account which could not be serviced during his life time, it still remains a fact that the Bank has to obtain a recovery of such amount in due process of law. No provision of law or jural concept in India entitles the Bank to have a lien on future family pension to be paid to the heir of the deceased with regard to a pre-existing loan taken by the predecessor-in-interest during his life time.

17. As such, the action of the Bank in withholding the family pension to the petitioner on the ground that her husband has left outstanding dues with regard to loan accounts, *albeit* the same are pension accounts, is not tenable in the eye of law.

18. As rightly argued by the petitioner, the principle of Section 60 is applicable to the present case, although not directly but on a point of analogy. Section 60 is a higher right where a decree holder has the benefit of a decree and seeks to implement the same on the decretal property. Even in such cases, Section 60 of the Code of Civil Procedure exempts family pension and gratuity etc. although the decree holder has a valid and legitimate decree in his favour, which can be implemented in law.

19. Section 50 of the Code of Civil Procedure, as rightly pointed out by the petitioner, does not entitle the Bank to withhold family pension which, as discussed earlier, is not a component of the estate of the deceased. Thus, the Bank cannot go one step further than that contemplated in Section 60, which is with regard to attachment of a property in execution of a decree, before having a proper award or decree and/or having taken steps under the due provisions of law for recovery of the amount.

20. In view of the above observations, the Bank acted without jurisdiction and *de hors* its authority in withholding the family pension of the petitioner on account of previous loans allegedly taken by the petitioner's husband. In the event the Bank is of the opinion that there were such outstanding loans, the Bank is required to make a claim in due process of law from the petitioner, giving a right and opportunity of representation/hearing and/or payment to the petitioner and only thereafter can take due steps in accordance with law in that regard. The *modus operandi* adopted by the Bank in the present case, however, is not acceptable to law or judicial scrutiny.

21. Accordingly, WPA No. 20666 of 2023 is allowed, thereby directing the Bank to disburse all due family pension to the petitioner and to go on paying such family pension to the petitioner irrespective of the claims of the Bank in respect of alleged dues of the husband of the petitioner regarding pension etc.

22. However, nothing in this order shall preclude the respondent-Bank from taking due steps in accordance with law for recovery of the amounts claimed by the Bank in lieu of the outstanding dues left by the petitioner's husband. If such proceedings are taken out by the Bank, the same will continue without being prejudiced in any manner by any of the observations made herein.

23. There will be no order as to costs.

24. Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)