2023:PHHC:073756

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CWP-4873-2020
Date of decision: 17.05.2023

POST MASTER, MAIN POST OFFICE, HARYANA ......Petitioner

VERSUS

INDER KUMAR NAGPAL AND ANOTHER ....Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

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Present: - Mr. Jagjot Singh Lalli, Dy. Solicitor General of India.
for the petitioner.

Mr. Pankaj Mulwani, DAG, Haryana.

Mr. Harkaran Singh, Advocate
for respondent No.1.

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VINOD S. BHARDWAJ, J. (Oral)

The present petition has been filed for quashing of the award dated 15.03.2019 (Annexure P-3) passed by the Permanent Lok Adalat (Public Utility Services), Sonipat (Camp Court, Jhajjar) whereby application filed for respondent No.1- applicant has been allowed by the Permanent Lok Adalat (Public Utility Services), Sonipat (Camp Court, Jhajjar).

2. Briefly summarized the facts of the present case are that the respondent-applicant had preferred an application under Section 22 (C) of the Legal Services Authorities Act, 1987 averring therein that he was a Teacher in K.DAV High School which was recognized and aided by the Government of Haryana. While in service, his Contributory Provident Fund

(CPF) was being deposited in an account maintained with the Post Office, Bahadurgarh regularly and the School was maintaining the funds ledger for each and every Teacher. The above said Contributory Provident Fund (CPF) account was pledged to the District Education Officer Jhajjar and the account holder could withdraw from the said account after obtaining approval of the District Education Officer. Later on the management of the school deposited/shifted the funds of the CPF Accounts in Rohtak Co-operative Bank Branch at Bahadurgarh. The School Management, however, shut down the School operations and surrendered the recognition to the Education Department and all the employees of the School thereafter withdrew their CPF credit after obtaining permission from the District Education Officer. It was averred that despite the permission granted by the District Education Officer and a letter forwarded to the Post Master, the needful was not done. Accordingly, an application was filed before the Permanent Lok Adalat (Public Utility Services), Sonipat (Camp Court, Jhajjar).

3. The petitioner-Post Master appeared before the Permanent Lok Adalat (Public Utility Services), Sonipat (Camp Court, Jhajjar) and submitted its reply pointing out that the CPF Account was opened by the school management with the Rohtak Co-operative Bank Branch at Bahadurgarh in the year 1990 and all the money had been withdrawn from the Post Office. It was also pointed out that the application in question had been filed in the year 2017 i.e. after nearly 30 years of the closure of the CPF Accounts with the Post Office and that the Rohtak Central Cooperative Bank, where the account had been shifted had not been impleaded as party in the said application. It was further averred that the respondent-applicant

had not provided any pass- book for claiming the amount nor any other document in support of the claim or to establish that any amount stood deposited with the Post Office and that as per the provisions contained in the letter of Director (WL & Sports), Ministry of Communications & IT Department of Posts Dak Bhavan, New Delhi-110001No.19-35/05-WL& Sports dated 24.11.2005, all Saving Bank Accounts other than individual accounts in the Post Offices were ordered to be closed by 31.12.2005. The ledger and the account details are required to be destroyed after expiry of 05 years from the date of their closing. The complainant had approached after prolonged period of nearly 30 years and there are no accounts/details with the Post Office qua the same. The respondent was thus required to furnish details about the pass-books and/or the deposit, if any, qua the amounts lying with the Post Office i.e. the petitioner herein. The account claimed by the respondent-applicant did not exist in the records of the Post Office and as such, it was not in a position to respond to the claims made by the respondent-applicant. The respondent-applicant being the claimant was thus required to establish his claim.

4. The efforts were made by the Permanent Lok Adalat (Public Utility Services), Sonipat (Camp Court, Jhajjar) to find an amicable resolution of the dispute, however, the efforts proved futile to arrive at any mutual settlement. Accordingly, adjudication of the dispute was undertaken by the Permanent Lok Adalat (Public Utility Services), Sonipat (Camp Court Jhajjar).

5. Upon consideration of the submissions, the application was allowed and the petitioner-Post Master was directed to pay a sum of Rs. 30,000/- towards full and final settlement of the claim of the applicant. The

order was to be complied within 02 months failing which the petitioner-Post Master was also liable to pay interest @ 10% from 18.07.2017 till the date of actual payment. Aggrieved thereof, the present petition had been filed.

6. Learned counsel appearing on behalf of the petitioner contends that the respondent-applicant had not led evidence or documents in support of his claim which includes copy of the CPF Pass-book issued by the Rohtak Central Cooperative Bank. He further submits that there was no record produced by the respondent-applicant with respect to the details of the deposit/the CPF Account with the petitioner-Post Master and that in the absence of any such documentation, the petitioner-Post Master could not be held liable to pay any compensation. There being no deficiency or delay on the part of the Post Master, the lapse/delay, if any, is on the part of the Rohtak Central Cooperative Bank against which no proceedings had been initated & they are not parties to the present claim as well. He further contends that the old record had been weeded out by the Post Master in accordance with the instructions issued by the Government of India and that the respondent himself being at lapse in approaching the Court after a gap of 30 years of the account having been closed with the Post Master, the burden could not have been passed on to the Post Master to establish that any accounts/money of the respondents was still lying with him. In the absence of leading any primary evidence by the respondent-applicant, the liability could not have been presumed and be ordered to be discharged by the petitioner.

7. Learned counsel for the respondent was not in a situation to refer to any material on the basis whereof it could be ascertained that any amount of the respondent-applicant was lying with the Post Master as on the

date when the claim application had been submitted. It is also evident that the documents brought by the respondent-applicant on record relate to the account at the Rohtak Central Cooperative Bank Branch at Bahadurgarh. He also fairly concedes that the said Rohtak Central Cooperative Bank has not been impleaded as a party in the proceedings that were initiated before the Permanent Lok Adalat (Public Utility Services), Sonipat (Camp Court, Jhajjar).

8. I have heard learned counsel appearing on behalf of the respective parties and have gone through the documents appended alongwith the present petition.

9 Before proceeding further into the matter, the relevant extract of the award is reproduced hereinafter below:-

> *"5. The applicant in support of his claim, submitted CPF contribution register maintained by the school, copy of the CPF Passbook at CCB, Rohtak. His correspondence with the respondents, his complaint to the CM window, copy of the passbook no. 613622 in the name of Shri Joginder Kumar, copy of DEO, Jhajjar of letter dated 08/06/2018 and copy of postmaster Bahadurgarh letter, dated 01-05-2017 address to CJM, DLSA, Jhajjar. All the documents of the applicant have been marked as A-1 to A-49.*
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> *6. The respondent no. 1, post office in support of defence submitted circular of department of posts, dated 24-11-2005, guidelines for preservation of SB Accounts and details of SB accounts bearing no. from 617261 to 617731, transaction enquiry report of account no. 617517 and certificate dated 12-03-2018 issued by postmaster Bahadurgarh, these documents have been marked as R-1 to R-7.*

7. We have heard the arguments of both the parties with rapt attention and carefully perused the documents placed on record. Our findings are:

- *The applicant has submitted the copy of CPF Register maintained by the employer. However, the respondent post office has disputed it's authenticity. We note that the register contains the monthly deposit details of all employees of the school, entries in this register match with the entries in the passbook of account no. 613622. From 1990 onwards the CPF Account of the employees of this school was opened in CCB, Rohtak and entries in the register also match with the passbook of the CCB, Rohtak. Further the statement of Miss Anjani, legal assistant of the office DEO, Jhajjar further confirms that the CPF Account of the employees of the school including that of the applicant was with the post office Bahadurgarh and the payment of this account have not been made so far to the applicant. Hence the inference is drawn in favour of the applicant.*
- *The respondent post office has relied mainly on the non availability of the passbook with the petitioner and non existence of this account in their list of live or silent accounts. They have also submitted the guidelines regarding preservation of the record of SB Accounts. It is pertinent to note that the account of the applicant in question was CPF Account which has unique features which are quite different from usual SB accounts. The CPF Accounts are for quite long periods usually for the entire service span of the employee, accounts cannot be closed without the permission of the employer, the deposits of CPF Account are meant for use in the sunset of the life of the account holder and even cannot be attached by any court order. Hence it was for the respondent to substantiate as to what exactly happened to this account. A simple statement of non availability of record with them cannot absolve the liability of the respondent, thus the inference is drawn in favour of the*

applicant and against the respondent post office. More so because of the confirmation of DEO, Jhajjar that as per their record, payment of this account has not been made so far.

- *The last balance in this account in the year 1985 was Rs 10,035.61. Interest on the PF Accounts varied from time to time and ranged between 8.5 to 14 per cent. The interest is to be compounded on yearly basis. To find out interest for each year and subsequent calculations will be quite elaborate exercise and will require lot of evidences, however if we take average interest rate of 10%, even then the accumulated amount in 34 years comes to Rs 2,56,370. We are the view that though the final closure of the CPF Account is permissible only with the employer, however, partial withdrawals may have been allowed. In the present case it is not clear if the petitioner has ever withdrawn partial amount, the applicant is a Super Senior citizen and has not been able to produce passbook to substantiate his claim beyond doubt. Also the respondent has failed to produce any details of the partial or full and final payment of this account. We solely rely upon the CPF Register maintained by the school and supporting statement of DEO, Jhajjar. This Adalat convinced the applicant to accept Rs 30,000/- as full and final settlement of his claim however the respondent post office did not accept this proposal.*

8. Taking into consideration all the facts and circumstances of this case, the applicant succeeds partially to prove his application and keeping in view the principle of natural justice, the same is hereby allowed. The respondent no. 1 i.e. the Postmaster, Main Post office, Bahadurgarh is hereby directed to pay a sum of Rs 30,000/- towards full and final settlement of the claim of the applicant. The order be complied with in a period of two months otherwise the respondent will also pay interest @10% p.a. from 18-07- 2017 till the date of actual payment.A copy of this award be supplied to parties free of cost *and file be consigned to the records after due compliance. Announced in the open court on 15.03.2019."*

10. It is evident from a perusal of the report that there are no details with respect to any amount that was deposited or that remained pending with the Post Office i.e. the petitioner herein. The documents that had been adduced relate to the CPF contribution and Pass book of the Rohtak Central Cooperative Bank Branch at Bahadurgarh. In the absence of any evidence which was required to be led by the respondent-applicant showing the deposit with the petitioner-Post Officer, the liability to compensate the respondent-applicant could not have been fastened upon the petitioner-applicant. The account having been closed in the Post Office way back in 1990 and all record having been weeded out, there can be no presumption of default on the part of the Post Master. A claim which is being made is required to be prima facie shown to be established on the strength of the documents that are on record. Merely because at some point of time a CPF account was being operated with the Post Office is not sufficient to construe that the funds in question had not been transferred on account of the closing of the CPF Account with the Post Office way back in 1990.

11. It is also undisputed that even though the C.P.F. account with the petitioner was closed in the year 1990 and even the School was shut down in the year 1997, however, application under Section 22-C of the Legal Services Authorities Act, 1987 was moved for the first time only in March, 2017 i.e. after a gap of about 27 years. The Permanent Lok Adalat (Public Utility Services), Sonipat (Camp Court, Jhajjar) failed to appreciate that provisions of Limitation Act, 1963 are applicable to the proceedings before the Permanent Lok Adalat (Public Utility Services), Sonipat (Camp

Court, Jhajjar). Nothing has been shown as to how the claim was within limitation. A Division Bench of this Court has already upheld the applicability of Limitation Act, 1963 & consequential dismissal of the complaint by the Permanent Lok Adalat in the matter of "Hind Motors India Ltd. Versus Permanent Lok Adalat, Public Utility Services &Others reported as 2008 (2) PLR 91. The duty to examine the said issue lies with the Court & ascertain whether claim is within limitation or not.

12. I find that the award passed by the Permanent Lok Adalat (Public Utility Services), Sonipat (Camp Court, Jhajjar) suffers from illegality, impropriety, perversity and failure to appreciate the evidence adduced before it. There was also nothing on record to suggest that any amount was lying with the petitioner-Post Office and that in the absence of any link evidence and/or primary evidence to show the deposit having been made with the petitioner-Post Office, the Post Office could not have been held liable to compensate the respondent-applicant. The award thus also suffers from failure to appreciate the merits in right perspective and a misplaced presumption.

13. The present petition is hence allowed and the award dated 15.03.2019 (Annexure P-3) passed by the Permanent Lok Adalat (Public Utility Services), Sonipat (Camp Court, Jhajjar) is aside.

(VINOD S. BHARDWAJ)

MAY 17, 2023 **JUDGE**

Vishal Sharma

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No