2023:PHHC:094432

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CWP-4946-2017
Date of decision: 20.07.2023

NEW INDIA ASSURANCE COMPANY LTD. ......Petitioner

VERSUS

RAKESH SEHGAL AND ANOTHER ....Respondents

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

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Present: - Mr. Paul S. Saini, Advocate
for the petitioner.

Mr. Devansh Khanna, Advocate for
Mr. Vaibhav Narang, Advocate
for the respondents.

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VINOD S. BHARDWAJ, J. (Oral)

Challenge in the present petition is to the award dated 13. 12.2016 (Annexure P-12) passed by the Permanent Lok Adalat (Public Utility Services), S.A.S. Nagar Mohali.

2. Briefly summarized, the facts of the present case are that the respondent-applicant was appointed as a Development Officer with the New India Assurance Company on 20.04.1978. It is averred that the petitioner was given a target to achieve certain benefits in addition to the salary. A car facility was provided to the respondent-applicant for achieving the targets, in the year 1984, under a Conveyance Scheme prevailing at that time. The said car was registered in the name of the employee on 80:20 ratio basis to mean that the car loan was given in the employees' name and 20% of the car loan

was to be borne by the employee and 80% was allowed as depreciation allowance. After expiry of a period of 10 years, the car was to be given to the employee. Hence, the said car became absolute property of the applicant-respondent and was sold by him in the year 1994.

3. That on being promoted as a Assistant Administrator Officer (Development), the petitioner was allotted a second Maruti 800 car under the conveyance scheme for a period of 08 years. Under the said scheme 100% depreciation was to be borne by the Insurance Company. As per the prevailing conveyance scheme, the petitioner was entitled to his third car after a expiry of 08 years from the date of allotment of the second car. In the month of May, 2003, the applicant-respondent was given a car loan of Rs. 2,82,260/- to purchase the third car, to be registered in the name of the Insurance company but for exclusive use of the respondent-applicant. No deduction was allowed under the then prevailing conveyance scheme, from the salary of respondent-applicant, and the same was to be borne by the Insurance Company itself. The above said car bearing registration No. CH-03L-1481 was however stolen while in possession of the respondent-applicant. An FIR qua the same was registered. An untrace report was also issued to the petitioner Assurance Company itself.

4. As per the erstwhile conveyance scheme, the written down value after 08 years came to Rs. 48342/-. The Insurance Company called upon the petitioner to deposit the written down value of Rs. 48342/- which was duly complied by the applicant-respondent on 16.06.2011. Since the entire payment qua the car had been borne by the respondent-applicant, it thus became his absolute property and the respondent-applicant claimed to be entitled for the Insurance Claim amount under the said scheme.

5. That on completion of the formalities of the Insurance and obtaining an untrace report, the United India Insurance Company (Insurance of the vehicle) issued a cheque of Rs. 1,49,500/- as Insurance claim in the name of petitioner-Insurance company. However, during the audit of the accounts of the Insurance company, it was held that the respondent-applicant was not eligible and that an amount of Rs. 1,01,158/- had been wrongly credited by them in the account of the respondent-applicant. Hence, recovery of the said claim was raised. The respondent-applicant was accordingly apprised about the same. He superannuated on 30.04.2015 whereupon the Insurance Company forfeited an amount of Rs. 48,342/- which was paid by the respondent-applicant as written down value of the car was Rs.1,01,158/- against the amount of Rs. 1,49,500/- released by the petitioner-Insurance Company in favour of the respondent-applicant. Aggrieved thereof, the above said application under Section 22 (C) was filed by the petitioner for seeking a recovery a sum of Rs. 1,01, 158/- with interest @ 18% per annum with effect from 01.05.2015 alongwith a cost.

6. Written statement on behalf of the petitioner Insurance Company was also preferred before the Permanent Lok Adalat (Public Utility Services), S.A.S. Nagar Mohali wherein it was averred that the above said bearing registration No. CH-03L-1481 was provided by the Insurance Company under the Conveyance Scheme, 2002 on 05.05.2003. The cost of the car was Rs.3,59,388/- as per the sale invoice and was registered in the name of the company itself. The car was bought by the company for use by the eligible officer of the company for a period of 08 years. The officers are governed by the terms and conditions specified in the Conveyance Scheme. The said car was to be transferred after completion of 08 years in the name

of officers concerned by recovering the written down value. After completion of a period of 08 years, NOC was to be issued with respect to the vehicle for transfer of its registration in the name of the concerned officer. In the present case, the period of 08 years of agreement had not been completed as the respondent-applicant had been sanctioned loan for car/provided car on 05.05.2003 and the date of theft of car was 01.04.2011. Hence, the loss/theft of the car fell under a total loss category which was governed by the premature change/transfer of the vehicle within a period of 08 years from the date of its purchase. Clause 14 of the Conveyance Scheme provided that Insurance claim amount/sale proceeds of the vehicle shall be utilized as under :-

> *"(i) The first charge shall be the written down value of the vehicle as on the date of disposal.*
>
> *(ii) The shortfall, if any, shall be recovered from the Officer concerned.*
>
> *(iii) Excess, if any, shall be retained by the company."*

7. Hence, the written down value of the car worked out to Rs.48,342/- which was deposited by the respondent-applicant on 16.06.2011. The car being insured with the United Indian Insurance Co. Ltd. , the claim amount/sale proceeds of Rs. 1,49,500/- were released in favour of the New India Assurance Co. Ltd. on 24.06.2011 being its registered office. Since, a sum of Rs. 48,342/- had already been recovered from the respondent-applicant by the petitioner-Insurance company, the excess amount of Rs.1,01,158/- was to be retained by the petitioner-company, however, the same was inadvertently credited to the Bank Account of the respondent-applicant on 30.06.2011. Consequently, the entire Insurance claim of Rs. 1,49, 500/- was transferred in the name of respondent-applicant for which he

was not eligible as per conveyance scheme. The entitlement of the respondent-applicant was only to the tune of Rs. 48,342/- and he ought to have returned the balance amount. The deduction was thus correctly done from the retiral dues of the respondent.

8. Efforts for amicable resolution of the dispute in terms of Section 22 (C) (4) to 22 (C) (7) were made by the Permanent Lok Adalat (Public Utility Services), S.A.S. Nagar Mohali and terms of settlement were also framed. However, the settlement could not be arrived at. Consequently, adjudication in terms of Section 22 (C) (8) of the Legal Services Authorities Act, 1987 was undertaken by the Permanent Lok Adalat (Public Utility Services), S.A.S. Nagar Mohali.

9. Upon consideration of the respective contentions, the Permanent Lok Adalat (Public Utility Services), S.A.S. Nagar Mohali allowed the said application and directed the petitioner-Insurance Company to refund the sum of Rs.1,01,158/- deducted from retiral benefits to the applicant alongwith interest @ 9% per annum. Litigation expenses were to the tune of Rs. 10,000/- was also awarded. Aggrieved thereof, the present petition has been filed.

10. Learned counsel appearing on behalf of the petitioner-Insurance Company submits that the Permanent Lok Adalat (Public Utility Services), S.A.S. Nagar Mohali was constituted to decide disputes pertaining to the Public Utility Services that have been defined under Section 22 (A) (b) of the Legal Services Authorities, 1987. He submits that an Insurance service is the only dispute which can be adjudicated by the the Permanent Lok Adalat (Public Utility Services), S.A.S. Nagar Mohali. It is contended by the Counsel appearing on behalf of the petitioner that the claim in the present

case was for recovery of the amount deducted from the retiral dues of the petitioner. The same being in the nature of return of the recovered amount, the Permanent Lok Adalat (Public Utility Services), S.A.S. Nagar Mohali had no jurisdiction to decide the same. Merely because the respondent-applicant was employed with the petitioner Insurance Company, dispute with respect to the validity of deduction from retiral dues by the employer, the same could not be adjudicated upon by the Permanent Lok Adalat (Public Utility Services), S.A.S. Nagar Mohali. The petitioner was required to take recourse to the appropriate remedy available to him for restoration of his service done. Exercise of the jurisdiction was clearly an act of overreach and would vitiate the final award.

11. Learned counsel appearing on behalf of the respondent, however, controverts and submits that the dispute pertained to an amount which was an Insurance claim released by the United India Insurance Company with respect to the Car that was stolen and its disbursement. Hence, the same was rightly entertained by the Permanent Lok Adalat (Public Utility Services), S.A.S. Nagar Mohali. He further submits that the above said plea of jurisdiction had not been raised by the petitioner-Insurance Company in the proceedings before the the Permanent Lok Adalat (Public Utility Services), S.A.S. Nagar Mohali and cannot be permitted to raise the same for the first time before the High Court. He prayed for dismissal of the writ petition.

12. Controverting the above, learned counsel for the petitioner has contended that the plea of maintainability is a plea of law and hence can be raised at any stage. No estoppel can be raised against the petitioner for not having raised the legal argument. He further contends that the justification

for the claimed may be in relation to some insurance, however, the relief for respondent was more for recovery of the amount that had been deducted. Hence, it can not be said to be a dispute qua a deficiency in the Insurance service and relates to the contract of the employment. He submits that the said plea had in fact been raised in the written statement before the Permanent Lok Adalat, however, the same was not adverted to by the Permanent Lok Adalat (Public Utility Services), S.A.S. Nagar Mohali in its final award.

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

14. Insofar as the submission of the petitioner that the plea of maintainability cannot be argued at this stage is concerned, I fail to find myself in agreement with the counsel for the respondent. The plea of maintainability on the ground of jurisdiction to entertain the dispute is a question of law and can be raised even at this stage. Even otherwise, the above plea had been raised on behalf of the petitioner even in its written statement filed before the Permanent Lok Adalat (Public Utility Services), S.A.S. Nagar Mohali. Hence, the aforesaid objection is hence declined.

15. Now, adverting to the nature of the dispute that had been brought before the Permanent Lok Adalat (Public Utility Services), S.A.S. Nagar Mohali, it would be necessary to refer to the prayer made by the respondent in his application under Section 22 (C) before the the Permanent Lok Adalat (Public Utility Services), S.A.S. Nagar Mohali. The relevant part of the Head Note as well as the Prayer Clause of the application before the

Permanent Lok Adalat (Public Utility Services), S.A.S. Nagar Mohali is extracted as under:

> "***HEAD NOTE***
>
> *Petition FOR RECOVERY OF Rs. 1,01,158/- with interest @18% compound interest w.e.f 01-05-2015 under sections 22(C), 22(D), 22 (E) OF LEGAL SERVICES AUTHORITIES ACT, 1987.*
>
> ***PRAYER***
>
> *It is therefore respectfully prayed that the respondent may kindly be directed to pay a sum of Rs. 1,01,158/- with interest @18% p.a. w.e.f 01/05/15 with Rs. 11,000/- as litigation expenses.*
>
> *Any other relief which this court deeds fit may also be granted in favour of the applicant company against respondents."*

16. It would also be necessary to advert to the jurisdiction of PLA (PUS) as per the Legal Services Authorities Act, 1987 and the defined services notified, that would fall within the competence of the Permanent Lok Adalat. The same is reproduced as under:

> ***Section 22A in The Legal Services Authorities Act, 1987***
>
> *22A. Definitions.—In this Chapter and for the purposes of section 22 and 23, unless the context otherwise requires,—*
>
> *(a) "Permanent Lok Adalat" means a Permanent Lok Adalat established under sub-section (1) of section 22B.*
>
> *(b) "public utility service" means any—*
>
> > *(i) transport service for the carriage of passengers or goods by air, road or water; or*

> *(ii) postal, telegraph or telephone service; or*
> (iii) *supply of power, light or water to the public by any establishment; or*
> (iv) *system of public conservancy or sanitation; or*
> (v) *service in hospital or dispensary; or*
> *(vi) insurance service, and includes any service which the Central Government or the State Government, as the case may be, may, in the public interest, by notification, declare to be a public utility service for the purposes of this Chapter.*

17. It is evident from a perusal of the above that service of Insurance is amenable to the jurisdiction of Permanent Lok Adalat (Public Utility Services), S.A.S. Nagar Mohali.

18. A perusal of the aforesaid clearly shows that the grievance of the respondent-applicant was with respect to the deduction that had been made by the petitioner-Insurance Company from the retiral dues payable to the petitioner. While the claim of the petitioner was that the deduction of Rs. 1,01,158/- made by the petitioner was inappropriate, the claim of the petitioner Insurance Company was to the effect that since the petitioner was only entitled to Rs. 48,342/- as the written down value of the vehicle, which was deposited by him, hence, the differential amount of Rs.1,01,158/- was the entitlement of the petitioner-Insurance Company itself as per the Conveyance Scheme, 2002. The dispute *qua* an Insurance service would have come into play where a service of Insurance had been availed and there would have been a default in payment thereof. The vehicle in this case was insured with the United India Insurance Company and the value in terms of the Insurance policy had been duly remitted to the registered owner. The service of Insurance was in relation to a contract that was executed between

the petitioner being the registered owner and the United India Insurance Company. The respondent-applicant was thus not a beneficiary or consumer/applicant so far as the service of insurance is concerned. The deduction made by the petitioner is claimed to be in terms of the scheme that was floated by the petitioner Insurance company as an employer and the benefit to be given to its employees. Hence, the allowances/benefits contemplated under the aforesaid conveyance scheme of 2002 was a relationship between the employer and employee as a part of contract of employment & cannot be termed as a service of Insurance amenable to jurisdiction of Permanent Lok Adalat.

19. Considering the nature of the dispute, the relief claimed and the *inter se relationship* of the parties, it does not make out a case of deficiency of the service in relation to the insurance. The dispute is primarily and substantially a dispute relating to contract of employment *inter se* employer and employee and recovery of the deductions made by the employer from the retiral dues claimed to admissible by the respondent-applicant.

20. In view of the above, the Permanent Lok Adalat (Public Utility Services), S.A.S. Nagar Mohali had no jurisdiction to decide the said dispute. I find that there was an impropriety and illegality committed by the Permanent Lok Adalat (Public Utility Services), S.A.S. Nagar Mohali in adjudicating the said dispute which was not within its ambit and scope as per the powers conferred upon it by the Legal Services Authorities Act, 1987. The aforesaid illegality amounts to exercise of a jurisdiction and authority which is not being conferred upon it and would thus vitiate the award.

21. In view of the above, I find that the exercise of jurisdiction by the Permanent Lok Adalat (Public Utility Services), S.A.S. Nagar Mohali is

unsustainable. Consequently, the present writ petition is allowed. The award dated 13.12.2016 passed by Permanent Lok Adalat (Public Utility Services), S.A.S. Nagar Mohali is set aside. The respondent-applicant, however, is at liberty to take recourse to the appropriate remedies available to him in accordance with law for seeking redressal of his grievance. Nothing stated herein should be seen as an expression on merits of the *inter se* claim and entitlement of the parties to the dispute qua the legality and validity of the deductions made.

(VINOD S. BHARDWAJ)

JULY 20, 2023 **JUDGE**

Vishal Sharma

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