**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CWP-4071-2023(O&M)
Date of Decision:10.12.2024

Anil Kumar ......Petitioner

Versus

State of Haryana and others

......Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Jaskaran Singh, Advocate for the petitioner.

Mr. Kapil Bansal, DAG, Haryana.

Mr. Subhash Ahuja, Advocate for respondent No.2.

Mr. Pradeep Solath, Advocate for respondent No.3.

Ms. Gurpreet Kaur-Respondent No.4 in person.

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<u>JASGURPREET SINGH PURI J.(Oral)</u>

1. The present petition has been filed under Article 226 of the Constitution of India seeking issuance of a writ in the nature of *mandamus* for directing respondents No.2 and 3 to release the remaining part of retiral benefit i.e. Rs.1,53,312/- alongwith interest @12% per annum from the date it became due until its realization. .

2. Written statement filed on behalf of respondent No.3 is taken on record. A copy of the same has already been supplied to counsel opposite.

3. While giving the brief facts of the present case, learned counsel for the petitioner submitted that the petitioner was working as Assistant Manager in respondent No.2-HARCO bank and retired from the aforesaid

post on 30.06.2021. At the time of his retirement and even thereafter, he was not facing any charge-sheet, disciplinary proceedings, or criminal case and rather he had worked with respondent No.2-HARCO bank with sincerity and honesty from the date of joining till his retirement and was promoted from time to time.

4. Learned counsel for the petitioner submitted that in the year 2009, respondent No.4 who was a colleague of the petitioner had availed a car/vehicle loan from respondent No.3-bank and he stood as a guarantor for the aforesaid car loan. Thereafter, respondent No.4 defaulted in payment of some of the amount of car loan and subsequently retired on 29.02.2020. The respondent No.3-bank proceeded against respondent No.4 under various heads and as a result, a major portion of her retiral benefits was withheld and not paid. He further submitted that the petitioner also stood retired on 30.06.2021 and respondent No.3-bank initiated proceedings under Section 104 of the Haryana Cooperative Societies Act, 1984, for the recovery of an amount of Rs.3,06,624/- from respondent No. 4. He submitted that for the aforesaid loan amount, there were two guarantors i.e. the petitioner and one Mr. Rajiv Mathur and the proceedings also involved the aforesaid guarantors. After the retirement of the petitioner, an amount of Rs. 1,53,312/- being half of the total amount of Rs.3,06,624/-, was withheld from the petitioner's leave encashment/gratuity and has not been paid to him till date. The reason provided for withholding a part of his retiral benefits is that, in 2009, the petitioner stood as a guarantor for a car loan taken by respondent No. 4, which has not been fully repaid. As a result of the petitioner's co-extensive liability, the deduction in question

has been made, although such a deduction is not permissible under the law. He further submitted that there is no such provision in any rule, bye-law or any other provision of law under which the aforesaid amount can be recovered from the pensionary benefits of a guarantor and in the absence of any provision of law, the aforesaid amount could not have been with-held. He also submitted that retiral benefits are not only Statutory right but also Constitutional Right under Article 300-A of the Constitution of India, and a retiree cannot be deprived of his Right to Property, which is guaranteed under Article 300-A, without the authority of law. .

5. On the other hand, learned counsel appearing on behalf of respondent No.2 submitted that respondent No.2 is the Haryana State Cooperative Apex Bank called HARCO Bank and the petitioner retired from the aforesaid bank. However, a request was received from respondent No.3-bank that while the petitioner was in service in respondent No.3-bank, he stood as a guarantor for respondent No.4 with regard to her car/vehicle loan and it was requested by respondent No.3-bank to the HARCO-Bank which is the Apex Bank not to release the aforesaid amount of Rs.1,53,312/- to the petitioner and to deduct the same from his retiral benefits. He submitted that the total outstanding liability of respondent No.4 as of today with regard to aforesaid car loan is Rs.3,06,624/- and there were two guarantors, one of whom is the petitioner and therefore half of the liability was imposed upon the petitioner which has been recovered from his retiral benefits. He referred to a Full Bench judgment of this Court in ***Punjab State Civil Supplies Corporation Limited versus Pyare Lal in LPA No.113 of 2012 decided on 11.08.2014*** to contend that from

the leave encashment, an amount can be with-held in accordance with law.

6. Learned counsel appearing on behalf of respondent No.3 submitted that when the petitioner was working with Respondent No.3-bank, in the year 2009, Respondent No. 4 availed a car loan, out of which approximately Rs.3,06,624/- is still pending. Since the petitioner is one of the co-guarantors, along with another person, namely Rajiv Mathur and the amount has not been paid by the loanee i.e., Respondent No. 4, therefore the petitioner's co-extensive liability made him liable to pay the outstanding amount. Consequently, an amount of Rs. 1,53,312/- has been withheld from the petitioner's retiral benefits, i.e., his leave encashment. He referred to *Rule 45 of the Haryana Cooperative Societies Act, 1984* (hereinafter to be referred to as 1984 Act) which has been reproduced in Para No.2 of the reply filed by Respondent No. 3 and also referred to *Rule 32 of The Haryana State Central Cooperative Bank's Staff Service (Common Cadre) Rules 1975* (hereinafter to be referred as 1975 Rules). He submitted that, in such a situation, recovery can be effected or deducted from the salary of the employee, and this provision empowers the Bank to recover the amount. Therefore, under the aforesaid provisions, the amount has been withheld.

7. Ms. Gurpreet Kaur-respondent No.4 who has appeared in person submitted that there is no dispute that she had taken a car/vehicle loan in the year 2009 and the petitioner alongwith other person namely Rajiv Mathur stood as guarantors and an amount of Rs.03,06,624/- was outstanding at the time of her retirement i.e. on 29.02.2020. She submitted that after her retirement, the aforesaid amount of car loan was not paid by

her to respondent No.3-bank because of the reason that respondent No.3-bank had with-held almost all her retiral benefits regarding which a separate writ petition was filed by her i.e. CWP No.191 of 2023 which is still pending before this Court and submitted that there was no occasion for her to have returned the aforesaid car loan when the respondent No.3-bank itself had with-held almost all her retiral benefits and therefore it cannot be said that she is at fault. She also submitted that rather by wrongfully with-holding the aforesaid amount of Rs.3,06,624/- from two guarantors, the respondents-banks have also earned/gained interest on the aforesaid amount which they are liable to pay back. She further submitted that, so far as the petitioner is concerned, no such recovery or withholding could have been made by respondents-banks because the petitioner was not at fault. Additionally, the petitioner had already retired in the year 2021, and there is no provision of law under which the aforesaid amount could have been withheld. She also submitted that, even otherwise, when the recovery proceedings are pending under *Section 104 of the Cooperative Societies Act, 1984,* the same can be left to a logical conclusion. However, the petitioner cannot be held at fault by withholding the aforesaid amount, considering the reasons explained by her as to why she has not paid the car loan.

8. I have heard the learned counsels for the parties.

9. The issue involved in the present case is as to whether the respondents-banks either it is respondent No.2 or respondent No.3 both of which are registered cooperative societies under the Haryana Cooperative Societies Act 1984, are entitled to withhold an amount of Rs.1,53,312/-

from the retiral benefits of the petitioner or not, particularly from the leave encashment, as stated by learned counsel for respondent No.3-bank. During the course of the argument, a pointed query was put to both the learned counsels for respondents No. 2 and 3 as to under which provision of law/authority the aforesaid amount has been withheld from the retiral benefits of a guarantor in the absence of any disciplinary proceedings, charge-sheet, or criminal proceedings against the petitioner. Another pointed query was put to the learned counsels for the respondents-banks as to whether there was any provision, bye-law, or instrument of law whereby the respondents-banks were authorized to recover an amount from the retiral benefits of an employee on the aforesaid ground of standing as a guarantor, despite the fact that the employee had already retired. Both the learned counsels have stated that neither any provision which could be brought to the notice of the Court nor the same has been so stated in the replies nor the same is within the knowledge of the aforesaid counsels.

10. On 02.08.2024, learned counsel for respondent No. 2 sought time to seek instructions regarding the provision of law under which the petitioner's retiral benefits were withheld. The order dated 02.08.2024 passed by this Court is reproduced as under :-

> ***"CM-20055-CWP-2023***
>
> ***Present application has been filed for placing on record written statement on behalf of respondent No.2.***
>
> ***Application is allowed as prayed for subject to all just exceptions.***
>
> ***The accompanying document is taken on record as Annexure R-2.***

Main case

Mr. Subhash Ahuja, learned counesl for respondent No.2 stated that the retiral benefits of the petitioner were withheld because the petitioner stood as surety for respondent No.4 as she has taken some loan.

On a query being raised how and under which provision of law the retiral benefits can be withheld because of the aforesaid reason to which he prays for some time to seek instructions.

Adjourned to 21.08.2024."

11. Learned counsel for respondent No.3 has referred to Rule 45 of 1984 Act and Rule 32 of 1975 Rules, in this regard and has stated that with-holding of an amount has been done under the aforesaid rules. The aforesaid Rule 45 of 1984 Act and Rule 32 of Rules 1975 are reproduced as under:-

"45. Deduction from salary (1) Notwithstanding anything contained in any law for the time being in force, a member of a co-operative society may execute an agreement in favour of the society providing that his employer shall be competent to deduct from the salary or wages payable to him by the employer, such amount as may be specified in the agreement and to pay the amount so deducted to the society in satisfaction of any debt or other demand owing by the member to the society.

*(2) On the execution of such agreement, the employer shall, if so required by the co-operative society by a requisition in writing and so long as the society does not intimate *[within a period*

of fourteen days from the date of deduction] that the whole of such debt or demand has been paid, make the deduction in accordance with the agreement and pay the amount so deducted to the society. Such payment shall be valid discharge of the employer for his liability to pay the amount deducted.

*(3) If after the receipt of a requisition made under sub-section (2), the employer at any time fails to deduct the amount specified in the requisition from the salary or wages payable to the member concerned or makes default in remitting the amount deducted to the society, the society shall be entitled to recover any such amount from the employer *[as per provisions of section 110 of this Act.]*

** Explanation :- 'employer' shall include an officer disbursing salary.*

32. Deductions:-The Bank shall have the authority to make the following deductions from amounts payable to an employee:

(a) Fines.

(b) Deductions on account of unauthorised absence from duty.

(c) For damages to or loss of goods entrusted to the employee where such loss or damage is due to his/her wilful negigence. Such deductions shall not exceed the amount of damages or loss and shall not be made till the employee is given a reasonable opportunity of explanation.

(d) Shortage or loss of money which the employee is required to account for or any other money payable to Bank by the employee.

(e) Recovery of advances or over-payment of bills and other charges.

(f) Provident Fund contribution.

(g) Amount due in lieu f notices.

(h) Other dues under the Punjab Coop. Societies Act, and Rules. Deduction shall be entered in the roll and separate receipts shall be issued.

(I) Any other deductions for which he may have authorised the Bank in writing or which the Bank may be legally entitled to make.

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12. A perusal of the aforesaid would show that the aforesaid rule would apply only where recovery is to be effected from the salary of an 'employee'. At the same time, it is a settled law that when an employee retires from service, then the employer-employee relationship ceases to exist. No action can be taken against a retired employee with whom the relationship ceases to exist because of lack of privity. However, there can be a departure from the aforesaid rule and that departure can be made only when there is a provision of law that authorizes the employer to recover any amount from the retiral benefits of the employee. The Haryana Civil Services Rules and some other provisions provide that when a charge-sheet is pending or even after the retirement of an employee, a chargesheet is issued within a specified time, then in certain situations with the sanction of the Government, punishment can be imposed and recovery can be made/amount can be with-held. However, in the present case admittedly there is no such charge-sheet or any disciplinary proceedings or criminal proceedings pending against the petitioner. At the same time, there is no provision shown to this Court as to whether the employer can with-hold any amount from the retiral benefits of a 'guarantor'. This Court is of the considered view that, in the absence of any specific express provision, no

such recovery could have been effected from a guarantor who has already retired.

13. In addition to above, as per the learned counsels for the parties, respondent No. 4 had taken a car/vehicle loan in the year 2009 and she retired in the year 2020, while the petitioner retired in the year 2021. When there was a default in repayment of the loan, at the time when both the petitioner and respondent No. 4 were in service, no such proceedings were initiated against the petitioner. Even by applying Rule 45 of 1984 Act, as so referred by learned counsel for respondent No.3, recovery could have been effected from the salary of the petitioner. No such action was taken against the petitioner while he was in service even if the liability was co-extensive. Now, after the retirement of the petitioner, when the employer-employee relationship ceases to operate and the petitioner is otherwise entitled under the law for grant of gratuity and leave encashment, then in the absence of any specific provision to proceed against the guarantor as well, no such withholding could have been done. This can only be done in accordance with the law when there is any express provision authorizing an employer to do so.

14. So far as the reference made by learned counsel for respondent No. 2 to the Full Bench judgment of this Court in ***Pyare Lal's case (supra)***, this Court is of the considered view that the aforesaid judgment would not be applicable to the present case and is distinguishable on facts. In the aforesaid judgment of ***Pyare Lal's case (supra)***, the Full Bench of this Court was dealing with Rule 8.21 (aa), Punjab Civil Service Rules, Vol.1 Part-I Chapter VIII and held that when rules specifically provide for

withholding of an amount from the leave encashment, then the same is permissible under the law. However, in the present case, no such rule has been shown to this Court either by learned counsel for respondent No. 2 or by learned counsel for respondent No. 3, nor the same has been attached with their respective replies. Therefore, the aforesaid judgment would not be applicable in the present case and is distinguishable.

15. It is a settled law that retiral benefits are not a bounty of the State and the State does not do any charity by giving retiral benefits/pensionary benefits. Right of receiving pension and pensionary benefits is rather a Right to Property which is a Constitutional Right under Article 300-A of the Constitution of India and a person can only be deprived of his Right to Property with an authority of law whereas in the present case the deprivation has been done without the authority of law.

16. Way back in the year 1971, a Constitution Bench of Hon'ble Supreme Court in ***"Deokinandan Prasad Vs. State of Bihar", 1971(2) SCC 330***, held that pension is not a bounty of the State and is rather a Fundamental Right under Article 31(1) of the Constitution of India. However, later on by virtue of 44th Amendment of the Constitution of India, Right to Property became a Constitutional Right under Article 300-A of the Constitution of India instead of a Fundamental Right. The relevant portion of the aforesaid judgment is reproduced as under:-

> *"31. The matter again came up before a Full Bench of the Punjab and Haryana High Court in **K.R. Erry v. The State of Punjab, ILR 1967 Punj & Har 278**. The High Court had to consider the nature of the right of an officer to get pension. The majority quoted with approval the principles laid*

down in the two earlier decisions of the same High Court, referred to above, and held that the pension is not to be treated as a bounty payable on the sweet-will and pleasure of the Government and the right to superannuation pension including its amount is a valuable right vesting in a Government servant. It was further held by the majority that even though an opportunity had already been afforded to the officer on an earlier occasion for showing cause against the imposition of penalty for lapse or misconduct on his part and he has been found guilty, nevertheless, when a cut is sought to be imposed in the quantum of pension payable to an officer on the basis of misconduct already proved against him, a further opportunity to show cause in that regard must be given to the officer. This view regarding the giving of further opportunity was expressed by the learned Judges on the basis of the relevant Punjab Civil Service Rules. But the learned Chief Justice in his dissenting judgment was not prepared to agree with the majority that under such circumstances a further opportunity should be given to an officer when a reduction in the amount of pension payable is made by the State. It is not necessary for us in the case on hand, to consider the question whether before taking action by way of reducing or denying the pension on the basis of disciplinary action already taken, a further notice to show cause should be given to an officer. That question does not arise for consideration before us. Nor are we concerned with the further question regarding the procedure, if any, to be adopted by the authorities before reducing or withholding the pension for the first time after the retirement of an officer. Hence we express no opinion regarding the views expressed by the majority and the minority Judges in the above Punjab High Court decision, on this aspect. But we agree with the view of the majority when it has approved its earlier decision that pension is not a bounty *payable on the sweet-will and pleasure of the Government and that, on the other hand, the right to pension is a valuable right vesting in a government servant.*

*32. This Court in **State of Madhya Pradesh v. Ranojirao Shinde and another, 1968-3 SCR 489** had to consider the question whether a "cash grant" is "property" within the meaning of that expression in Articles 19(1)(f) and 31(1) of the Constitution. This Court held that it was property, observing "it is obvious that a right to sum of money is property".*

17. Thereafter, in ***"State of Kerala Vs. M. Padmanabhan Nair", AIR 1985 Supreme Court 356***, the Hon'ble Supreme Court observed that pension and gratuity are no longer any bounty to be distributed by the Government to its employees on their retirement but are valuable rights and property, in their hands. The aforesaid authoritative law was thereafter reiterated by the Hon'ble Supreme Court in ***"Dr. Uma Agrawal Vs. State of U.P. and another", 1999(2) SCT 347 (SC).***

18. Thereafter, Hon'ble Supreme Court in another authoritative judgment passed in ***"State of Jharkhand and others Vs. Jitendra Kumar Srivastava and another", 2013(12) SCC 210*** again discussed the entire law pertaining to the valuable rights pertaining to the grant of pensionary benefits. Para Nos.8 and 16 of the aforesaid judgment is reproduced as under:-

"8. It is an accepted position that gratuity and pension are not the bounties. An employee earns these benefits by dint of his long, continuous, faithful and unblemished service. Conceptually it is so lucidly described in D.S. Nakara and Ors. Vs. Union of India; (1983) 1 SCC 305 by Justice

D.A. Desai, who spoke for the Bench, in his inimitable style, in the following words:

"18. The approach of the respondents raises a vital and none too easy of answer, question as to why pension is paid. And why was it required to be liberalised? Is the employer, which expression will include even the State, bound to pay pension? Is there any obligation on the employer to provide for the erstwhile employee even after the contract of employment has come to an end and the employee has ceased to render service?

19. What is a pension? What are the goals of pension? What public interest or purpose, if any, it seeks to serve? If it does seek to serve some public purpose, is it thwarted by such artificial division of retirement pre and post a certain date? We need seek answer to these and incidental questions so as to render just justice between parties to this petition.

20. The antiquated notion of pension being a bounty a gratuitous payment depending upon the sweet will or grace of the employer not claimable as a right and, therefore, no right to pension can be enforced through Court has been swept under the carpet by the decision of the Constitution Bench in ***Deoki Nandan Prasad v. State of Bihar and Ors. [1971] Su. S.C.R. 634*** *wherein this Court authoritatively ruled that pension is a right and the payment of it does not depend upon the discretion of the Government but is governed by the rules and a Government servant coming within those rules is entitled to claim pension. It was further held that the grant of pension does not depend upon any one's discretion. It is only for the purpose of quantifying the amount having regard to service and other allied* *maters that it may be necessary for the authority to pass an order to that effect but the right to receive pension flows to the officer not because of any such order but by virtue of the rules. This view was reaffirmed in **State of Punjab and Another Vs. Iqbal Singh(6)”**.*

It is thus hard earned benefit which accrues to an employee and is in the nature of “property”. This right to property cannot be taken away without the due process of law as per the provisions of Article 300-A of the Constitution of India.

16. The fact remains that there is an imprimatur to the legal principle that the right to receive pension is recognized as a right in “property”. Article 300-A of the Constitution of India reads as under:

***“300-A Persons not to be deprived of property save by authority of law.-** No person shall be deprived of his property save by authority of law.”*

Once we proceed on that premise, the answer to the question posed by us in the beginning of this judgment becomes too obvious. A person cannot be deprived of this pension without the authority of law, which is the Constitutional mandate enshrined in Article 300-A of the Constitution. It follows that attempt of the appellant to take away a part of pension or gratuity or even leave encashment without any statutory provision and under the umbrage of administrative instruction cannot be countenanced.”

19. A Full Bench of this Court in ***“Dr. Ishar Singh Vs. State of Punjab and another” 1993(3) PLR 499,*** also discussed the entire issue with regard to right to withhold the pension and permissibility to withhold the commutation of pension etc. was also discussed in detail wherein it was observed that the entire pension has to be paid and it cannot be withheld

without any authority of law. The relevant portion is reproduced as under:-

> "81. *As a result of the above discussion, I would conclude as under:-*
>
> *(i) The Government has no right to withhold or postpone pension or the payment on account of commutation of pension. The State is bound to release 100 per cent pension at the time of superannuation, may be provisionally.*
>
> *(ii) The Government can withhold the gratuity or other retiral benefits except pension or postpone payment of the same during pendency of an enquiry.*
>
> *(iii) Pension cannot be adversely affected before a finding of guilt is returned.*
>
> *(iv) The Government can initiate Departmental enquiry after long lapse before retirement, rather there is no limitation for initiating the departmental enquiry from the date of incident before retirement. The delay and the explanation for the same may reasonably be taken note of keeping in view its likelihood to cause prejudice to the delinquent if the enquiry is challenged in appropriate proceedings.*
>
> *(v) The enquiry proceedings cannot be quashed solely on the ground of long pendency.*
>
> *(vi) There is no effect of superannuation on the pendency of the enquiry proceedings.*
>
> *(vii) The recovery of the Government dues can be made from gratuity or other retiral benefits only."*

20. In a judgment passed by a Division Bench of this Court in ***LPA No.340 of 2017*** titled as ***"Gurcharan Singh Vs. State of Punjab",*** decided on 08.02.2023, it was observed that in the absence of any pecuniary loss, no recovery can be effected from the pensioner. The relevant portion of the aforesaid judgment is reproduced as under:-

"In the absence of any finding of loss caused to the Government either by the enquiry officer or by respondent No.1, no recovery from pension could have been ordered as a punitive measure by the respondents."

21. In "***Tukaram Kana Joshi and others through Power of Attorney Holder Vs. M.I.D.C. and others", 2013(1) SCC 353***, Hon'ble Supreme Court observed that right to property is now considered to be not only a Constitutional or a Statutory Right but also a human right. Para 9 of the aforesaid judgment is reproduced as under:-

> "9. The right to property is now considered to be not only a constitutional or a statutory right but also a human right. Though, it is not a basic feature of the Constitution or a fundamental right. Human rights are considered to be in realm of individual rights, such as the right to health, the right to livelihood, the right to shelter and employment etc. Now however, human rights are gaining an even greater multi faceted dimension. The right to property is considered very much to be a part of such new dimension. ***(Vide: Lachhman Dass v. Jagat Ram, (2007) 10 SCC 448; Amarjit Singh v. State of Punjab, (2010)10 SCC 43; (2010)4 SCC (Civ) 29, State of Madhya Pradesh v. Narmada Bachao Andolan, (2011)7 SCC 639: AIR 2011 SC 1989, State of Haryana v. Mukesh Kumar, (2011)10 SCC 404: (2012)3 SCC (Civ) 769: AIR 2012 SC 559 and Delhi Airtech Services (P) Ltd. v. State of U.P., (2011)9 SCC 354: (2011)4 SCC (Civ) 673: AIR 2012 SC 573)."***

22. It is, therefore, clear that in the absence of any provision for withholding or recovering any pensionary benefits being only a guarantor for a car loan, such an action is without the authority of law and illegal.

23. Consequently, the present petition is allowed. The respondents No.2 and 3 are directed to release the aforesaid amount i.e.Rs.1,53,312/- to the petitioner alongwith interest @ 6% per annum (simple) from the date of

retirement of the petitioner plus two months till the date of its actual disbursement to the petitioner within a period of four months from today.

24. In case the aforesaid amount is not released to the petitioner within the aforesaid time frame then the petitioner shall be entitled for future rate of interest @ 9% per annum (simple).

25. Since the action of the respondents-bank, i.e., respondents No. 2 and 3, was *ex facie* without the authority of law, the petitioner shall also be entitled to costs of Rs.10,000/-, which shall be shared equally by respondents No. 2 and 3 and shall be paid to the petitioner within the aforesaid time frame.

(JASGURPREET SINGH PURI)
JUDGE

10.12.2024
shweta

Whether speaking: Yes/No

Whether reportable: Yes/No