

2024:PHHC:130154-DB



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.

CWP-11490-2022
Reserved on: 16.09.2024
Pronounced on: 30.09.2024

Amar KaurPetitioner

Versus

Union of India and OthersRespondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Argued by: Mr. Sandeep Bansal, Advocate
for the petitioner.

Mr. Parvesh K. Saini, Senior Panel Counsel
for the respondent – UOI.

Mr. Vikas Chatrath, Advocate with
Ms. Tanya Sehgal, Advocate
Mr. Akshat Kalia, Advocate
for the respondent - SBI.

SURESHWAR THAKUR, J.

1. Through the instant writ petition, the petitioner herein prays for setting aside the order dated 03.01.2022 (Annexure P-1), as passed by the learned Armed Forces Tribunal concerned, whereby the O.A. filed by the applicant was dismissed by observing that the Tribunal had no jurisdiction to entertain the O.A.

Factual Background

2. The petitioner is the widow of Leading Hand Fireman Gurbax Singh, a civilian employee of Defence Forces, who died while on duty and in service on 17.10.1999 after serving for about 25 years 04 months and 02 days. She is drawing Family Pension since October,

2024:PHHC:130154-DB



1999. Vide letter No. CPPC/PKL/1320 dated 10.06.2019 (Annexure A-2) of SBI, CPPC, Chandigarh at Panchkula, it was intimated to her that she was entitled to basic pension of Rs. 9000/- per month, whereas, she had been paid basic pension @ Rs. 11946/- since 01.11.2009. Thus, a recovery of an amount of Rs. 2,77,296/- was shown to be recoverable from her. Thereafter, again a letter dated 30.06.2020 was received by her showing an amount of Rs. 2,20,896/- to be recoverable from her.

3. Feeling aggrieved from the afore demand notice(s), she filed an O.A. before the learned Armed Forces Tribunal concerned. The learned Tribunal vide order dated 03.01.2022, dismissed the said O.A. with an observation that *the Tribunal has no jurisdiction to entertain this Original Application and the same is dismissed as being not maintainable in the Armed Forces Tribunal.*

4. Feeling dis-satisfied from the aforesaid order, the petitioner has filed thereagainst the instant writ petition before this Court.

Submissions of the learned counsel for the petitioner.

5. At the outset, the learned counsel for the petitioner has placed reliance on a verdict rendered by the Hon'ble Apex Court in case titled as **Ous Kutilingal Achudan Nair and Others Vs. Union of India**, reported in **1976 AIR (SC) 1179**. The relevant paragraphs of the said verdict are extracted hereinafter.

9. *For reasons that follow, the contentions must be repelled.*

10. *Article 33 of the Constitution provides an exception to the preceding Articles in Part III including Art. 19(1) (c). By Article 33, Parliament is empowered to enact law determining to what extent any of the rights conferred by Part III shall, in their application, to the*

2024:PHHC:130154-DB



members of the Armed Forces or Forces charged with the maintenance of public order, be restricted or abrogated so as to ensure the proper discharge of their duties and the maintenance of discipline among them.

11. In enacting the Army Act, 1950, in so far as it restricts or abrogates any of the fundamental rights of the members of the Armed Forces, Parliament derives its competence from Art.33 of the Constitution. Section 2(1) of the Act enumerates the persons who are subject to the operation of this Act. According to sub-clause (i) of this section, persons governed by the Act, include "persons not otherwise subject to military law who, on active service, in camp, on the march or at any frontier post specified by the Central Government by notification in this behalf, are employed by, or are in the service of, or are followers of, or accompany any portion of the regular army."

12. The members of the Unions represented by the appellants fall within this category. It is their duty to follow or accompany the Armed personnel on active service, or in camp or on the march. Although they are non-combatants and are in some matters governed by the Civil Service Regulations, yet they are integral to the Armed Forces. They answer the description of the "members of the Armed Forces" within the contemplation of Art. 33. Consequently, by virtue of Section 21 of the Army Act, the Central Government was competent by notification to make rules restricting or curtailing their fundamental rights under Art. 19(1) (c).

13. Rule 19(ii) of the Army Rules, 1954, imposes a restriction on the fundamental rights in these terms.

"No persons subject to the Act shall without the express sanction of the Central Government:

(i) xx xx xx

(ii) be a member of, or be associated in any way with, any trade union or labour union, or any class of trade or labour unions "

14. In exercise of its powers under Section 4 of the Defence of India Act, the Government of India has by notification dated 11-2-1972, provided that all persons not being members of the Armed Forces of the Union, who are attached to or employed with or following the regular Army shall be subject to the military law. The Army Act, 1950, has also been made applicable to them. By another notification dated 23-2-1972, issued under Rule 79, of the Army Rules, civilian employees of the training establishments and Military Hospitals have been taken out of the purview of the Industrial Disputes Act.

6. The learned counsel for the petitioner submits that the ratio decidendi as settled in the judgment (supra) rendered by the Hon'ble

Apex Court, whereby civilian employees attached to the Defence

2024:PHHC:130154-DB



Establishments become declared to be classified as 'members of the Armed Forces' rather has not been appreciated by the learned Tribunal concerned.

7. The learned counsel for the petitioner further submits that as per settled law, even if any such excess payment was made by the Bank, thereby, the said made excess payments were on account of some purported lapse becoming committed by the bank. As such, the recovery(ies) of excess amounts was required to be made from the derelicting bank officials, but after fixing responsibility upon the bank official(s), and, if further required, the excess payments were to be ordered to be made recoverable from the derelict bank official, rather than the said excess payments being ordered to be recovered from the petitioner.

Submissions of the learned counsel for the respondent-UOI.

8. The learned counsel for the respondent-UOI submits, that the learned Armed Forces Tribunal has rightly dismissed the O.A., on the ground of jurisdiction, as the husband of the applicant, was a Civilian employee. Even otherwise, the orders challenged by the petitioner have been passed by the SBI Bank i.e. respondents No. 2 and 3, thereby, the claim of the petitioner cannot be decided by the learned Armed Forces Tribunal.

Inferences of this Court.

9. In the verdict passed by the Hon'ble Apex Court, in case titled as **Ous Kutilingal Achudan Nair and Others Vs. Union of India**

2024:PHHC:130154-DB



(supra), it has been specifically held that the Civilian employees attached to the defence establishments, become validly classified as the members of the Armed Forces. In sequel, even if the deceased husband of the petitioner was a non-combatant, yet since the non-combatants but also are declared to be an integral part of the Armed Forces besides therebys are made subject to military law, inasmuch as, to the provisions embodied in the Army Act, 1950.

10. Resultantly, therebys the dismissal order passed by the learned Tribunal concerned, on the ground qua no jurisdiction becoming vested in it to entertain the O.A., though *prima facie*, has been made with the vice of grossest non application of mind. However, the impugned notices which led the present petitioner to raise a challenge theretos before the Tribunal concerned, did not evidently emanate from the Army Authorities. Contrarily, the said notices emanated from the SBI. Therefore, the instant *lis*, is not inter-se the present petitioner, and, the Army Authorities, rather it appears to be inter-se the present petitioner and the SBI. Moreover, since in the making of the show cause notices, there is no averment that it was made in pursuance to some orders becoming passed by the Army Authorities. Consequently, unless the impugned show cause notices, became made in pursuance to certain directions being passed by the Army Authorities qua the Bank concerned, thereupon, alone the jurisdiction to try the *lis* became vested in the Tribunal concerned. However, when no such material exists on record, therebys, when the *lis* is confined inter-se the

2024:PHHC:130154-DB



present petitioner, and, the banking Authorities, thereby, as aptly declared the jurisdiction to try the *lis*, became not vested in the Tribunal concerned, but was vested in the Civil Court of competent jurisdiction.

Final Order of this Court.

11. In aftermath, this Court finds no merit in the writ petition, and, with the above observations, the same is dismissed.
12. The impugned order, as passed by the learned Armed Forces Tribunal concerned, is maintained and affirmed. However, liberty reserved to the petitioner to access her civil Court remedies within two months from today. Moreover, upto two months from today, the Banking Authorities may not enforce the show cause notice(s).
13. However, on the filing of a civil suit, the petitioner may on an interim application cast under the relevant provisions of CPC, claim a temporary injunction against the banking authorities, against their enforcing the show cause notice(s), till a decision on merits is made, on the civil suit.
14. Since the main case itself has been decided, thus, all the pending application(s), if any, also stand(s) disposed of.

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

30.09.2024
kavneet singh

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No