

(2022-1)205 PLR 057

PUNJAB AND HARYANA HIGH COURT

Before: Mr. Justice Jaswant Singh and Mr. Justice Sant Parkash.

PRITAM SINGH – Petitioner,

versus

STATE BANK OF INDIA and others – Respondents.

CWP-14312-2021

Civil Procedure Code, 1908 (V of 1908) Section 60 – Pension Act, 1871 (23 of 1871) Section 11 – Execution – Pension – Attachment of pension account – Section 11 of the Pensions Act also postulates the words “no money due or to become due” – The words ‘payable’ or ‘due’ are different and distinct from the word ‘paid’ for all practical purposes – What is payable if paid shall be converted into expense for the individual giving and receipt/earning for the recipient – Pension if already paid to the employee shall lose its character of pension and shall be subjected to attachment in execution of a decree.

[Para 9]

Cases referred to:-

1. (2009)1 SCC 376, *Radhey Shyam Gupta v. Punjab National Bank*.
2. (1976)3 SCC 607, *Union of India v. Jyoti Chit Fund and Finance*.
3. (1987)1 SCC 551, *Union of India v. Wing Commander R.R. Hingorani*.

Mr. Ripudaman, for the petitioner. *Mr. Akshay Jain*, for the respondent-Bank. *[through video conferencing]*

Sant Parkash, J. – (16th September, 2021) – By filing of the present writ petition, the petitioner, inter alia, prays for quashing of the order dated 15.05.2021(P-2) passed by respondent-No.3-Bank.

2. The brief facts leading to filing of the present writ petition are that Pension Account bearing No.65015200670 of the petitioner is maintained by respondent No.1. During his service, the petitioner took a loan of Rs.1,00,000/- from the State Bank of Patiala (now merged into State Bank of India-respondent No.2). The petitioner had been regularly paying the installments of the said loan to respondent No.2 but later on he failed to keep the said loan account regular. Accordingly, the petitioner was informed regarding holding of an amount to the extent of Rs.1,00,000/- lying with his pension account. In this regard, the

petitioner served a legal notice dated 21.01.2021 to redress his grievance.

3. Learned counsel for the petitioner submits that the petitioner has earlier approached this Court by way of CWP No.6551 of 2021, whereby this Court vide order dated 28.04.2021 directed the respondents to decide the legal notice of the petitioner by passing a speaking order. He contends that in furtherance of the said order, respondent No.3 passed an order dated 15.05.2021 (P-2) without considering the relevant provisions of law. He also submits that act of the respondents attaching the pension account is against the principal of natural justice. He also places reliance on a judgment of the *Radhey Shyam Gupta v. Punjab National Bank*, ¹ (2009) 1 SCC 376.

4. Per contra, learned counsel for the respondent-Bank submits that the respondent-Bank had filed a civil suit for recovery against the petitioner and the same was decreed on 09.08.2011 by the court of competent jurisdiction and the respondent-Bank was held entitled to recover an amount of Rs.1,30,000/- along with interest @ 13% per annum. He, thus, submits that the respondent-Bank was legally justified to hold the amount of Rs.1,00,000/- and there is no illegality or impropriety. He has further submitted that the case of the petitioner is not covered by the judgment of the Supreme Court rendered in *Radhey Shyam Gupta v. Punjab National Bank*, ¹ (2009) 1 SCC 376. To substantiate this argument, he refers to language used in Section 60 of the Code of Civil Procedure and Section 11 of the Pension Act, 1871. He has placed reliance on the judgments of the Hon'ble Supreme Court in *Union of India v. Jyoti Chit Fund and Finance and others*, ² (1976)3 SCC 607 and *Union of India v. Wing Commander R.R. Hingorani*, ³ (1987)1 SCC 551.

5. This Court has heard the learned counsel for the parties.

6. From the perusal of the impugned order dated 15.05.2021 (A-2) passed by respondent No.2-Bank, it would be revealed that during proceedings of the civil suit for recovery, no settlement had taken place between the parties, rather a settlement took place on 10.01.2017 and an amount of Rs.1,10,000/- was found due against the petitioner as on 31.03.2016. However, as per the settlement, the petitioner would have to pay an amount of Rs.55,500/-. Out of this amount, Rs.14,000/- was deposited by the petitioner and remaining amount was to be paid by him within a period of three months. It was further agreed that if in any case, the petitioner failed to comply with the conditions of the settlement, the respondent-Bank would be entitled to recover the amount as per the judgment and decree of the civil court. However, the petitioner failed to comply with the terms and conditions of the settlement arrived at between the parties as he did not pay the remaining amount within a period of three months.

7. With regard to submission of learned counsel for the petitioner that respondent-Bank cannot hold the amount of pension lying in his bank account, firstly it would be appropriate to reproduce relevant part of Section 60 of the Code of Civil Procedure, which reads as under:-

"Section 60 of the Code of Civil Procedure

60. *Property liable to attachment and sale in execution of decree*

(1) The following property is liable to attachment and sale in execution of a decree, namely, lands, houses or other buildings, goods, money, bank-notes, cheques, bills of exchange, hundis, promissory notes, Government securities, bonds or other securities for money, debts, shares in a corporation and, save as hereinafter mentioned, all other saleable property, movable or immovable, belonging to the judgment-debtor, or over which, or the profits of which, he has a disposing power which he may exercise for his own benefit, whether the same be held in the name of the judgment-debtor or by another person in trust for him or on his behalf:

Provided that the following particulars shall not be liable to such attachment or sale, namely:

XXX XXX XXX XXX XXX

(g) stipends and gratuities allowed to pensioners of the Government or of a local authority or of any other employer], or payable out of any service family pension fund notified in the Official Gazette by 5 [the Central Government or the State Government] in this behalf, and political pensions;

XXX XXX XXX XXX XXX\

Explanation 1-The moneys payable in relation to the matters mentioned in clauses (g), (h), (i), (ia), (j), (l) and (o) are exempt from attachment or sale, whether before or after they are actually payable, and, in the case of salary, the attachable portion thereof is liable to attachment whether before or after it is actually payable.....xxxx” (emphasis supplied)

8. It is apt to refer Section 11 of the Pension Act, which reads as under:-

11. Exemption of pension from attachment.- 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 any such pension or allowance, shall be liable to seizure, attachment or sequestration by process of any Court at the instance of a creditor, for any demand against the pensioner, or in satisfaction of a decree or order of any such Court.

This section applies also to pensions granted or continued”, after the separation of Burma from India, by the Government of Burma. (emphasis supplied)

9. From the bare reading of the aforesaid provisions of law, it is evidently clear that Section 60 provides for the properties, movable or immovable, which can be subjected to attachment in execution of a decree of the Court. However, the proviso to this subsection provides for exceptions. Proviso (g) indubitably provides for an exception to attachment or sale in execution of a decree in the context of gratuity, allowance and pension payable by the Government or the Local Bodies to their employees. Explanation 1 to this sub-section

also refers to the same words “whether before or after they are actually payable”. Undisputedly, Section 11 of the Pensions Act also postulates the words “no money due or to become due”. The words ‘payable’ or ‘due’ are different and distinct from the word ‘paid’ for all practical purposes. What is payable if paid shall be converted into expense for the individual giving and receipt/earning for the recipient. Thus, the aforesaid provisions, from its bare reading, leave no room for any doubt that the pension if already paid to the employee shall lose its character of pension and shall be subjected to attachment in execution of a decree. Both the aforesaid provisions, viz. Section 60 of the Code of Civil Procedure and Section 11 of the Pension Act, 1871 came up for consideration before the Hon’ble Supreme Court in *Jyoti Chit Fund’s case* (supra), wherein it has been held as under:-

“11. The finer distinction sought to be made by Shri Rohatgi that because the appellant has already retired, therefore, the provident fund and allied amounts have already fallen due and have ceased to possess the complexion of sums “by way of provident fund under Sections 3 and 4”, is fallacious. On first principles and on precedent, we are clear in our minds that these sums, if they are of the character set up by the Union of India, are beyond the reach of the court’s power to attach. Section 2(a) of the Provident Funds Act has also to be read in this connection to remove possible doubts because this definitional clause is of wide amplitude. Moreover Section 60(1), provisos (g) and (k), leave no doubt on the point of non-attachability. The matter is so plain that discussion is uncalled for.

12. We may state without fear of contradiction that provident fund amounts, pensions and other compulsory deposits covered by the provisions we have referred to, retain their character until they reach the hands of the employee. The reality of the protection is reduced to illusory formality if we accept the interpretation sought.

We take a contrary view which means that attachment is possible and lawful only after such amounts are received by the employee. If doubts may possibly be entertained on this question, the decision in *Union of India v. Radha Kissen Agarwalla*, (1969)1 SCC 225, erases them. Indeed, our case is an a fortiori one, on the facts. A bare reading of *Radha Kissen* makes the proposition foolproof that so long as the amounts are provident fund dues then, till they are actually paid to the government servant who is entitled to it on retirement or otherwise the nature of the dues is not altered. What is more, that case is also authority for the benignant view that the government is a trustee for those sums and has an interest in maintaining the objection in court to attachment. We follow that ruling and overrule the contention.”

10. In view of the aforesaid discussion, this Court is of the view that the case of the petitioner is not covered by the express provisions on the subject as also the judgment of the Hon’ble Supreme Court in *Radhey Shyam Gupta’s case* (supra).

11. Keeping in view the facts and circumstances of the case as above, the present writ petition is dismissed, being devoid of any merit.

Sd/- Jaswant Singh, J.

R.M.S.

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Petition dismissed.