

STATE OF HARYANA AND ORS.

v.

K.N. DUTT

FEBRUARY 24, 1995

[J.S. VERMA AND K.S. PARIPOORNAN, JJ.]

Service Law—Deduction of Government dues from Death-cum-Retirement Gratuity—Legality of—Order of High Court justifying recovery of Government dues—Writ Petition—Division Bench of High Court held that amount has been deducted illegally—Earlier order passed by Single Judge ignored—Abuse of process of Court—Order passed by Division Bench is patently unsustainable, improper and illegal.

The respondent, a retired Chief Engineer of the Irrigation Department in the Haryana State retired on 30-11-1989. While in service the respondent had availed of House Building Advance and Motor Car Advance loans against gratuity in the years 1973 and 1976. He executed an agreement and signed an undertaking that in case he failed to repay the loan, the same was to be recovered from his gratuity with interest at the time of his retirement from the service. Disciplinary proceedings were initiated against the respondent, which resulted in withholding of the outstanding retirement benefits. The respondent filed Civil Writ Petition for appropriate reliefs. A Division Bench of the High Court directed the State to release to the petitioner therein all pensionary benefits to which he was entitled to under the rules as the charges were not served on him before his retirement on attaining the age of superannuation. The respondent herein initiated proceeding in contempt for implementation of the judgment. Dismissing the contempt petition, the High Court, by an order dated 28-4-1993 held that the State was competent to deduct the government dues from the gratuity of the petitioner and that after deduction of the dues from the gratuity the balance amount had been disbursed to the petitioner and the Court's order had been duly complied with. The contempt petition was dismissed. The order so passed by the Single Judge had become final. The respondent filed writ petition and prayed for a declaration that the deduction of the Government dues from the Death-cum-retirement gratuity amount was illegal and *ultra vires* and for a direction to refund the said amount along with interest. Allowing the petition, the

- A Division bench of the High Court held that no inquiry was pending against the respondent nor any Government dues were to be realized from him and so there was no legal basis to make any deduction in the amount of gratuity payable and directed the appellant to refund the amount deducted illegally by the State Government from the gratuity of the respondent. Hence this appeal.

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Allowing the appeal, this Court

- C HELD : In the instance case, the order passed by the Single Judge on 28-4-1993, justifying recovery of Government dues from the gratuity payable to the superannuated employee, had become final. It was not taken in appeal before any forum. The order binds the parties thereto. In the Civil Writ Petition filed by the respondent assailing the deduction of the government dues from Death-cum-retirement gratuity and praying for a direction to refund the amount deducted, without adverting to the prior proceedings and in particular the order passed by the Court in contempt petition, the Division Bench allowed the prayer of the respondent and held that the amount had been deducted illegally by the State Government from the gratuity of the respondent which should be refunded forthwith. The Division Bench totally ignored the earlier order dated 28-4-1993, passed by the court. The respondent, a retired senior officer, himself owned a duty to bring to the notice of the court the earlier order. This was a serious lapse. It is an abuse of the process of the court. The Division Bench of the High Court passed the order in a casual manner in holding that the sum was deducted illegally by the State Government and in ordering the refund. The order so passed was patently unsustainable, improper and illegal. Such a plea was not open to the respondent in the light of the earlier order of the Court. The Division Bench acted illegally in entertaining such a prayer and allowing it, totally ignoring the earlier order of the same court passed in contempt petition. [331-A-F]

- G CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3007 of 1995.

From the Judgment and Order dated 10.12.93 of the Punjab & Haryana High Court in C.W.P. No. 9110 of 1993.

- H Ms. Surubhi Aggarwal for Ms. Indu Malhotra for the Appellants.

Manu Mridul, R.K. Khanna and Surya Kant for the Respondents. A

The Judgment of the Court was delivered by

PARIPOORNAN, J. Delay condoned. Leave granted.

2. The State of Haryana and the Accountant General, respondents in Civil Writ Petition No. 9110 of 1993 in the High Court of Punjab and Haryana, are the appellants. The petitioner in the civil writ petition is the sole respondent herein. The prayer in the writ petition was for a declaration that the deduction of the alleged Government dues from DCRG (Death-cum-Retirement Gratuity) of the petitioner is illegal and for a direction in the nature of mandamus calling upon the respondents in the writ petition - the State of Haryana and the Accountant General - to refund the amount of Rs. 24,996 along with interest at the rate of 18% per annum. By order dated 10.12.1993 the Division Bench of the High Court, comprising of Hon'ble Mr. Justice M.R. Agnihotri and Hon'ble Mr. Justice B.S. Nehra, allowed the writ petition and directed the respondents in the writ petition to refund the amount of Rs. 24,996, deducted by the State Government from the gratuity of the petitioner. Aggrieved by the aforesaid decision of the Division Bench the appellants have come up in appeal. B
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3. We heard counsel on both sides. The matter has a chequered history. The respondent, a retired Chief Engineer of the Irrigation Department in the Haryana State, was a senior responsible officer. He retired on 30.11.1989. While in service the respondent had availed of House Building Advance and Motor Car Advance loans against gratuity in the years 1973 and 1976. He had executed an agreement and had signed an undertaking that in case he fails to repay the loan, the same can be recovered from his gratuity with interest at the time of his retirement from the service. It seems that disciplinary proceedings were initiated against the respondent, which resulted in withholding of the outstanding retirement benefits. The respondent filed Civil Writ Petition No. 12654 of 1990 and prayed for appropriate reliefs. A Division Bench of the High Court comprising of Mr. Justice M.R. Agnihotri and Mr. Justice K.P. Bhandari, directed the State of Haryana, Financial Commissioner and the Accountant General, the respondents in the writ petition, to release to the petitioner therein all pensionary benefits to which he was entitled to under the rules as the charges were not served on him before his retirement on attaining the age of superannuation. The judgment is dated 21.11.1990. Thereafter, the matter took a different turn. E
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A The respondent herein initiated proceedings in contempt for implementation of the Judgment dated 21.11.1990. Finally, a learned Single Judge of the High Court passed the following order dated 28.4.1993 in the matter :-

B "The proposition of law is well settled that recovery of government dues from a superannuated employee can be made from the gratuity. As such, *the respondent State was in its competence to deduct the government dues from the gratuity of the petitioner. After deduction of the dues from the gratuity, the balance amount has been disbursed to the petitioner.* In this view of the matter, this court's order dated 21.11.1990 has been duly complied with.

C COCP is accordingly dismissed. Rule discharged."

Thereafter, the respondent filed writ petition No. 9110 of 1993 and prayed for a declaration that the deduction of the Government dues amount to Rs. 24,996 from the DCRG amount is illegal and *ultra vires* and for a direction to refund the said amount along with interest at the rate of 18% per annum. In the writ petition the order appealed against was passed on 10.12.1993 by the Division Bench of the Punjab & Haryana High Court. The Division Bench opined that no inquiry is pending against the respondent nor any Government dues are to be realised from him and so there is no legal basis to make any deduction in the amount of gratuity payable and directed the appellants to refund a sum of Rs. 24,996, deducted illegally by the State Government from the gratuity of the respondent. Aggrieved by the aforesaid Judgment the appellants have filed this appeal.

F 4. It is unnecessary to traverse the entire gramut of the litigations between the appellants and the respondent. Briefly stated, in Civil Writ Petition 12654 of 1990, a Bench of the High Court directed that all the pensionary benefits due to the respondent to which he would be entitled to under the rules, should be released or disbursed. Thereafter, the respondent initiated certain proceedings which finally culminated in contempt petition No. COCP 1080 of 1991. Therein the court passed the final order on 28.4.1993 justifying recovery of Government dues from the gratuity payable to the superannuated employee and also stated that after deduction of the dues from the gratuity payable, the balance has been disbursed to the petitioner and the order passed by the Court dated 21.11.1990 in Civil Writ Petition No. 12654 of 1990 has been duly complied with. The contempt petition was dismissed. The order so passed by the learned Single

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Judge on 28.4.1993 has become final. It was not taken in appeal before any forum. The order binds the parties thereto, namely, the appellants as well as the respondent. In spite of the above, the respondent filed Civil Writ Petition No. 9110 of 1993 assailing deduction of the Government dues from DCRG and praying for a direction to refund the amount of Rs. 24,996 deducted from the gratuity of the respondent. Without adverting to the prior proceedings and in particular the order passed by the Court in Contempt petition No. 1080 of 1990 dated 28.4.1993 the Division Bench allowed the prayer of the respondent and held that a sum of Rs. 24,996 has been deducted illegally by the State Government from the gratuity of the respondent which should be refunded forthwith. It is rather surprising that the Division Bench totally ignored the earlier order dated 28.4.1993, passed by the court. It is anybody's guess as to what prompted the Division Bench to ignore the earlier order dated 28.4.1993 and to pass the impugned order dated 10.12.1993. The respondent, a senior retired officer, himself owned a duty to bring to the notice of the Court the earlier order dated 28.4.1993. We are not in a position to know whether it was so done. This is a serious lapse indeed, which cannot be countenanced. It is an abuse of the process of the Court. We are further inclined to hold that the Division Bench of the High Court seems to have passed the order in a causal manner in holding that the sum of Rs. 24,996 was deducted illegally by the State Government from the gratuity of the respondent and in ordering the refund. The order so passed is patently unsustainable, improper and illegal. Such a plea was not open to the respondent in the light of the earlier order of the Court dated 28.4.93. The Division Bench acted illegally in entertaining such a prayer and allowing it, totally ignoring the earlier order of the same court passed in contempt petition No. COCP 1080 of 1991 dated 28.4.1993. We therefore, set aside the order passed by the High Court dated 10.12.1993 and allow this appeal with costs.

R.A.

Appeal allowed.