

THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 19.09.2012

+ **W.P.(C) 74/2012 & CM No. 142/2012 (stay)**

UNION OF INDIA ... Petitioner

versus

RADHEY SHYAM ... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr Praveen Kumar

For the Respondent : Mr Padma Kumar S. with Mr K.K. Mishraa

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SIDDHARTH MRIDUL

BADAR DURREZ AHMED, J (ORAL)

1. The petitioner is aggrieved by the order dated 21.10.2011 passed by the Central Administrative Tribunal, Principal Bench, New Delhi, in OA No. 3114/2010.
2. The learned counsel for the petitioner straightway submitted that two issues arise for consideration. The first issue being as to whether the respondent was liable to pay damage rent to the department for his alleged unauthorised occupation of the Type-III quarter No. T-28 B at Delhi Sadar which had been allotted to him in the course of his employment. The second issue referred to by the learned counsel for the petitioner was whether the Tribunal was right in holding that the death-cum-retirement gratuity (DCRG) could not be withheld?

3. The respondent had been allotted the said Type-III quarter No. T-28 B, Naya Bazar Railway Colony, Delhi, in 1986. A complaint had been received. As a result a surprise check was conducted on 09.02.2004 by a raiding party. The respondent was allegedly not found at the said quarter nor was his wife found there. On the other hand it is alleged that the respondent's brother-in-law was found in the said premises. The said brother-in-law stated that he was visiting and that is why he was found at the said premises.

4. A show cause notice dated 20.02.2004 was issued to the respondent requiring him to show cause as to why the allotment of the said quarter should not be cancelled. Thereafter by an order dated 26.04.2004 the allotment of the said quarter was cancelled and recovery of damages was also ordered from his salary w.e.f. 09.02.2004.

5. The respondent submitted a representation dated 30.04.2004 wherein he stated that the said brother-in-law (Suresh) was not a tenant but was his brother-in-law who was visiting him. Therefore, he submitted that it was not a case of sub-letting as was made out by the petitioner. He also submitted in his representation that he had not carried out any unauthorised construction. He also challenged the authenticity of the raid inasmuch as nobody from the Uttar Railway Mazdoor Union was associated with the raiding party.

6. On considering the said representation, the office of the Deputy General Manager (G) and the Chairperson Head Quarter Housing Committee (HQHC) referred the same to the General Manager (P) with the observation that the recovery of damage rent and other charges in

respect of the said quarter from the salary of the respondent be kept in abeyance till further orders from the office. It was, however, directed that the recovery of normal rent and other charges of the said quarter besides non-payment of house rent allowance (HRA) would continue.

7. No further action was taken pursuant to the said show cause notice and the representation. The respondent retired as Chief Office Superintendent on 31.05.2008.

8. It may be pointed out that, earlier, the respondent had filed OA No. 2045/2009 challenging the order dated 20.02.2004 as also the order dated 26.04.2004. During pendency of the said O.A, the petitioner had issued a fresh notice dated 25.07.2009 calling upon the respondent to vacate the said quarter within seven days of the receipt of the notice. OA No. 2045/2009 was dismissed as withdrawn by virtue of an order dated 20.04.2010 with liberty to challenge the notice dated 25.07.2009. Thereafter another application, being OA. No. 1468/2010, was filed by the respondent. The said OA No. 1468/2010 was allowed in favour of the respondent and the operative portion of the order reads as under:-

“Heard the learned counsel for the applicant and perused the papers carefully. It seems that the matter can be disposed of at this stage by directing the respondents to calculate the quantum of retirement benefit due to him along with whatever interest due because of the efflux of time till today. The respondents can deduct the damages due to the government from him and pay the balance within two weeks time from the date of receipt of a copy of this order. They are also directed to look into the matter afresh in the light of the apparent order passed by the competent authority on 25.10.2004. They shall consider this matter afresh since one day stay of his

brother-in-law cannot constitute sub-letting. They shall also consider this and pass a speaking order within a period of three months from the date of receipt of a copy of this order. In case the authority finds that damage rent is not correct it shall be refunded to him within next two weeks. However, the applicant is at liberty to challenge the order to be passed by the respondents, if he is aggrieved. The applicant is directed to send a copy of this order along with the copy of this O.A. and its annexures to the respondents. While passing orders the respondents are directed to take into consideration this O.A. as well as this order and pass a speaking order thereof.”

(underlining added)

9. Thereafter, the speaking order dated 20.07.2010 was passed by the petitioner. The operative portion of that order reads as under:-

“ As per record the total amount of Death cum Retirement Gratuity due to be paid to you is Rs. 427812/- whereas the total outstanding amount toward damage rent of the above house is Rs. 1724071.96 as per details mentioned above + Electric charges extra to be advised by SSE/Power/Delhi. You are therefore, advised to remit the balance amount of Rs. 1296260/- + Electric charges to be advised by SSE/Power/Delhi immediately.”

10. The respondent was aggrieved by this order and, therefore, he had filed the said O.A. No. 3114/2010 challenging the same. That OA was disposed of by the impugned order dated 21.10.2011 whereby the Tribunal concluded as under:-

“ In view of the above facts and circumstances and keeping in view the legal position, and also in view of the omissions on the part of the concerned authorities in the

respondents' office too, i.e., no action taken on the Chairman HQHC's order dated 25.10.2004 as well as no timely concrete action for vacation prior to retirement of the applicant, we feel it would be appropriate to give a quietus to this case by directing the respondents to charge from the applicant normal rent for the period of occupation up to his retirement on 31.05.2008 normal rent for the first four months after retirement and for the rest of the period after retirement double the normal rent for (the period of over stayal), and release the retirement benefits of the applicant (as due under rules) after adjusting the above rent amounts. This may be done within a period of two months from the date of receipt of a copy of this order."

11. The learned counsel for the petitioner is aggrieved by the fact that the Tribunal has directed that the respondent be paid the DCRG and that the same cannot be withheld by the petitioner. According to the learned counsel for the petitioner the damages for the unauthorised occupancy of the said quarter amounted to Rs. 17,24,071.96 whereas the amount payable towards DCRG was only Rs. 4,27,812/-. The learned counsel for the petitioner placed reliance on a decision of the Supreme Court in the case of **Secretary, O.N.G.C. Ltd. and Another v. V.U. Warriar: AIR 2005 Supreme Court 3039**. In particular, the learned counsel for the petitioner placed reliance on the observations of the Supreme Court in paragraph 25 and 26 which read as under:-

"25. It is well settled that gratuity is earned by an employee for long and meritorious service rendered by him. Gratuity is not paid to the employee gratuitously or merely as a matter of boon. It is paid to him for the service rendered by him to the employer (vide Garment Cleaning works v. Its Workmen, (1962) 1 SCR 711). In

Calcutta Insurance Co. Ltd. vs. Their Workmen, (1967) 2 SCR 596, after considering earlier decisions, this Court observed that “ long and meritorious service” must mean long and unbroken period of service meritorious to the end. As the period of service must be unbroken, so must the continuity of meritorious service be a condition for entitling the workman to gratuity. If a workman commits such misconduct as causes financial loss to his employer, the employer would under the general law have a right of action against the employee for the loss caused and making a provision for withholding payment of gratuity where such loss caused to the employer does not seem to aid to the harmonious employment of labourers or workmen. The Court proceeded to state that the misconduct may be such as to undermine the discipline in the workers – a case in which it would be extremely difficult to assess the financial loss to the employer.

26. In *Jarmail Singh v. Secretary, Ministry of Home Affairs & others*, (1993) 1 SCC 47, this court had an occasion to consider the provisions of the Central Civil Services (Pension) Rules, 1972. The definition of “pension” included gratuity under Rule 3. Rule 9 conferred on the President right to withhold or withdraw pension in certain circumstances. The order was passed against the appellant withholding pension and the entire amount of death-cum-retirement gratuity otherwise admissible to him. The direction was given on serious irregularities found to have been committed by the appellant. The appellant challenged that order unsuccessfully before the Central Administrative Tribunal. He, therefore, approached this Court. His contention was that an amount of gratuity could not have been withheld. Negating the contention, the court held that the power to withhold gratuity was conferred on the President under the relevant rules and hence, such action could not be said to be illegal. According to the Court, there could be

adjustment of Government dues against the amount of death-cum-retirement gratuity payable to Government servant.”

12. On the other hand, the learned counsel for the respondent submitted that the case of the respondent was squarely covered by the Supreme Court decision in the case of **Union of India & Ors. v. Madan Mohan Prasad**: JT 2002 (Suppl.1) SC 65, which has also been relied upon by the Tribunal. He submitted that the Supreme Court decision in the case of **Secretary, O.N.G.C. Ltd. and another** (*supra*) is not applicable to the facts and circumstances of the present case as the rules and regulations were different in that case. He submitted that the very same rules which were considered in **Madan Mohan Prasad** (*supra*) were the ones which were applicable in the present case, namely, rule 323 of the Railway Pension Rules, 1950. He further submitted that the determination of whether the respondent was in unauthorized occupation of the quarter in question could only be done under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. He further submitted that even the damages payable for any alleged unauthorized occupancy could be determined only in terms of the said Act. The learned counsel for the respondent submitted further that since there was no proceeding under the said Act, there is no question of declaring the respondent as an unauthorized occupant or for ascertaining the extent of damages which would be allegedly due from him.

13. After having considered the arguments advanced by the learned counsel for the parties, we are of the view that the submissions made by

the learned counsel for the respondent are to be accepted. First of all, the decision in the case of **Secretary, O.N.G.C. Ltd. and another** (*supra*) which has been relied upon by the learned counsel for the petitioner, as rightly pointed out by the learned counsel for the respondent, would have no application to the facts and circumstances of the present case. This would be apparent from the fact that the Supreme Court in that case was deciding the question in the backdrop of Regulation 5 of the Oil and Natural Gas Commission (Death, Retirement and Terminal Gratuity) Regulations, 1969. The said Regulation 5 has been quoted at paragraph 20 of the said Supreme Court decision and is to be following effect:-

“20. Regulation 5 deals with recovery of dues of the Commission and reads thus:

“Recovery of Dues:

The appointing authority, or any other authority empowered by the Commission in this behalf shall have the right to make recovery of Commission’s dues before the payment of the death-cum-retirement gratuity due in respect of an officer even without obtaining his consent or without obtaining the consent of the members of his family in the case of the deceased officer as the case may be.”

14. It is obvious that the regulation itself stipulates that the Commission shall have the right to make recovery of the Commission’s dues before the payment of the death-cum-retirement gratuity due in respect of an officer even without obtaining his consent. It is in this backdrop that the Supreme Court observed that the above regulation leaves no room of doubt that the Commission has the right to effect recovery of its

dues from any officer without his consent. And therefore the Supreme Court concluded that it cannot be said that the Commission had no right to withhold gratuity by deducting the amount which is found 'due' to the Commission and payable by the respondent towards penal charges for unauthorized occupation of the quarter. In the present case the rules are entirely different. Rule 323 of the Railway Pension Rules, 1950, as has been pointed out in the Supreme Court decision in the case of **Madan Mohan Prasad** (*supra*), clearly envisages that the claim against the railway servant may be on account of only three circumstances:-

“(a) losses (including short collection in freight charges shortage in stores) caused to the government as a result of negligence or fraud on the part of the railway servant while he was in service;

(b) other government dues such as overpayment on account of pay and allowances, or admitted and obvious dues such as house rent, post office, life insurance premia, outstanding advance etc;

(c) non-government dues.”

15. In that context, the Supreme Court in the said decision of **Madan Mohan Prasad** (*supra*) observed as under:-

“It cannot be said that the case put forth on behalf of the appellants can be brought in any one of these categories. The claim made on behalf of the appellants is not only to collect normal house rent but also penal damages, in addition. That is not within the scope of rule 323 at all. What is contemplated therein is 'admitted and 'obvious' dues. The payment resulting in penal damages is neither 'admitted' nor 'obvious' dues apart from the fact that

determination has to be made in such a matter. It also permissible under relevant rules to waive the same in appropriate cases. In that view of the matter, it cannot be said that such due is either 'admitted' or obvious'. Hence, we do not think that the view taken by the tribunal calls for any interference. However, it is made clear that while the appellants have to disburse the DCRG to the respondent the normal house rent, inclusive of electricity and water charges, which are 'admitted' or 'obvious' dues can be deducted out of the same. If still due."

16. Similarly in the facts of the present case, it is obvious that circumstance (a) & (c) do not apply at all. Insofar as circumstance (b) is concerned, only admitted and obvious dues such as house rent, life insurance premia, outstanding advance etc. can be adjusted against the DCRG which is payable by the petitioner to the respondent. Normal house rent inclusive of electricity and water charges fall within the category of admitted dues and they can, therefore, be deducted.

17. As a result, we feel that the Tribunal's order ought to be modified. While the petitioner can deduct normal rent for the period of occupation up to his retirement on 31.05.2008 and normal rent for the first four months after his retirement and double the normal rent for the rest of the period thereafter, if not already recovered, in case the petitioner feels that any damages are due from the respondent by way of unauthorized occupation it shall be open to the petitioner to take separate action for the same under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 provided such remedy is available to the petitioner, in accordance with law.

17. With this modification of the order passed by the Tribunal, the writ petition stands disposed of. The said amount after adjustment be released within four weeks.

BADAR DURREZ AHMED,J

SIDDHARTH MRIDUL, J

SEPTEMBER 19, 2012
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