

THE HIGH COURT OF TRIPURA
_A_G_A_R_T_A_L_A_

RSA No.22 of 2006

Shri Narayan Chandra Debnath,
S/o Late Radhamohan Debnath,
Resident of Abhoynagar,
Near Agrgati Club, P.O. Abhoynagar,
P.S. West Agartala ,
District - West Tripura.

..... Appellant.

- Vs -

- 1. The State of Tripura**
(Represented through the Chief Secretary,
Government of Tripura,
Secretariat Building, Agartala,
West Tripura.
- 2. The Secretary**
Public Works Department
Government of Tripura,
Irrigation and Food Management
Secretariat Building, Agartala,
Tripura West.
- 3. The Executive Engineer**
Irrigation & Flood Management Division No.1,
Agartala West Tripura.
- 4. The Assistant Engineer,**
Irrigation & Flood Management Sub-Division No.II,
Agartala, West Tripura.

..... Respondents.

_B_E_F_O_R_E_
THE HON'BLE CHIEF JUSTICE MR. DEEPAK GUPTA

For the appellant : Mr. Somik Deb, Advocate.

For the respondents : Mr. T D Majumder, Govt. Advocate.

Date of hearing and : 16.01.2015.
delivery of judgment.

Whether fit for reporting : No.

JUDGMENT & ORDER (ORAL)

This regular second appeal is directed against the judgment & decree dated 2nd January, 2006 passed by the learned Additional District Judge, West Tripura, Agartala in Title Appeal No.62 of 2002 whereby he allowed the appeal of the State (respondent herein) and set aside the judgment & decree dated 26.7.2002 passed by the learned Civil Judge, Senior Division, West Tripura, Agartala decreeing the suit of the plaintiff.

2. The appeal was admitted on the following substantial questions of law :

“(i) Whether the learned appellate court can upset the decision of the learned trial court ignoring the provisions of Rule 45 of the Fundamental rules as well as the provisions of Supplementary Rules 311?

(ii) Whether the learned appellate court can decide an appeal contrary to the evidences on record for frustrating the decree of the learned trial court?”

In my view, the main substantial question of law which arises in the appeal is, “whether any recovery from the retiral benefits of the plaintiff could have been made without issuance of notice to him”.

3. The undisputed facts are that the plaintiff was employed as a ‘driver’ in the Public Works Department of the State of Tripura. It is also not disputed that from the year 1995 he occupied a ‘shed’ which

was owned by the department and resided there till a little after his retirement. It is also not disputed that though the plaintiff was residing in this shed he was being paid House Rent Allowance (HRA) during this entire period.

4. The short dispute is that whereas, according to the plaintiff, he was asked by his senior officials to occupy the shed on the ground that if in an emergency his services are required he would be readily available, the stand of the State is that the plaintiff occupied the shed without any such orders of his own accord.

5. In my opinion, assuming that the stand of the State is correct then also the State cannot deny the fact that right from 1985 it was aware of the fact that the plaintiff was occupying the accommodation and was also claiming house rent. No notice was sent to the plaintiff during the period when he was in service that he is not entitled to house rent. He was never informed that either he should claim house rent or he should vacate the government shed. Admittedly, this shed is not a government quarter or residence but just a small shed in a portion of which material was stored and in a portion of which the plaintiff resided. This was not even exclusive accommodation in the hands of the plaintiff.

6. In this view of the matter, I am extremely doubtful whether the claim of the house rent could have been denied to the plaintiff. Even otherwise, I have no doubt in my mind that for 14 long

years the claimant claimed house rent and was given the same by the department. He had not misstated any fact to the department. The respondent was aware of all the facts and the senior officers despite having knowledge of the fact that the plaintiff was residing in a shed owned by the department in which some material of the department was stored continued to pay him house rent. After retirement even if the State had any right to recover the same it could not have done so without issuing notice to the plaintiff. It is well-settled law that when any action, even administrative action, is to be taken against an official which affects his civil rights then a notice must precede the taking of such action. Here, in the present case, without issuing any notice the amount was straightway deducted from the gratuity of the plaintiff. Therefore, I have no hesitation in setting aside the judgment and decree of the learned lower appellate Court and restoring the judgment of the trial Court.

The appeal is disposed of accordingly.

CHIEF JUSTICE

Sukhendu