NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Appeal No. 384 of 2015

1. South Eastern Coalfields Limited Through Its Managing Director, Seepat Road, Bilaspur, (Chhattisgarh)
2. The General Manager, Gevra Area, South Eastern Coalfields Limited, District Korba, (Chhattisgarh)
3. The Deputy General Manager (Personnel) Gevra Area, South Eastern Coalfields Limited, Korba, District Korba, (Chhattisgarh)

---- Appellants

Versus

Raghuvansh Sharma S/o Shri Ganga Sharma, Aged About 60 Years R/o B- 214, Urja Nagar, S. E. C. L. Gevra Project, District Korba, Civil And Revenue District Korba, (Chhattisgarh)

------Respondent

For Appellants:	Shri HB. Agrawal, Senior Advocate along with Shri Pankaj Agrawal, Advocate.
For Respondent:	Shri Yogesh Chandra, Advocate.

Hon'ble The Chief Justice
Hon'ble Shri Justice P. Sam Koshy

Judgment on Board

Per **Navin Sinha, Chief Justice**

30/10/2015

1. The present appeal arises from order dated 10.7.2015 in W.P.(S) No.6576/14 allowing the Writ Petition holding that any dues like pensionary benefits could not be withheld on grounds for retention of quarter after superannuation, directing the Assistant Labour Commissioner (Central), Bilaspur to pay the entire gratuity amount to the Respondent within a period of 15 days.

2. Learned Senior Counsel for the Appellants submits that in the Writ Petition, the Respondent had made a limited grievance that he had superannuated on 30.11.2014, but payment of Rs.10 lacs towards gratuity was wrongly being withheld because he had not vacated the official

accommodation granted to him. On 17.11.2014, he had given in writing to the General Manager that he would vacate by May, 2015. The Respondent nonetheless still continues in occupation of the official accommodation long after his superannuation and the maximum permissible time period is three months under the Rules after retirement. The Respondent was not submitting a no dues certificate and therefore the gratuity amount was withheld. It has now been deposited with the Regional Labour Commissioner (Central), Bilaspur for payment to the Respondent. It was very fairly acknowledged that there is no provision in the Service Rules for withholding gratuity for any other service dues payable.

3. At our request, Shri NK. Vyas, Learned Counsel for Union of India assisted us in the matter pursuant to which, the Regional Labour Commissioner (Central), Bilaspur appeared before us and submitted that by Challan No.123 dated 19.8.2015, the gratuity amount of Rs.10 lacs payable to the Respondent deposited by the Appellants before him had been forwarded to New Delhi for depositing in the account of the Respondent through RTGS according to Government procedure. He also informed the Court that the amount would be credited in approximately two months' time.

4. Learned Counsel for the Respondent urged before us that apart from gratuity, there are certain other dues also which have not been paid to the Respondent. Unfortunately, there are no pleadings in support of the same either in the Writ Petition or in the appeal. If there are any legitimate dues payable, undoubtedly the Respondent is entitled to the same in accordance with law.

5. Having considered the submissions, we are of the opinion that the payment of gratuity to the Respondent is now a foregone conclusion in view of the sum of Rs.10 lacs having been deposited by the Appellants with the Regional Labour Commissioner (Central), who has already taken necessary

steps for payment to the Respondent. A copy of the set of papers placed by the Regional Labour Commissioner (Central) before us be kept on record and a xerox copy be handed over by the Registry to the Learned Counsel for the Respondent also.

6. The Respondent was allotted Quarter No.B/214, Urja Nagar, Gevra while he was working with the Appellants. He has superannuated on 30.11.2014. According to the affidavit filed by the Appellants, he was permitted to retain the quarter for three months after superannuation according to Rules and thereafter he was liable for market rent or penal rent as the case may be, under the relevant rules. There can be no two opinions that a person who superannuates is required to vacate an official quarter within the time permissible under the Rules or such extended time as he may be given. Payment of penal rent/market rent cannot be sufficient justification to continue in unauthorized occupation of a Government accommodation after superannuation. Needless to state that such accommodation has then to be given to another needy employee. Willingness to pay penal rent/market rent does not create a landlord and tenant relationship.

7. The Respondent had given an undertaking to vacate by May, 2015. That period has already crossed and he has not vacated.

8. The Respondent shall therefore vacate the official quarter positively on or before 31.1.2016 and hand over vacant possession to the Appellants. In the event of his failure to do so, the Appellants shall be at liberty to take possession on 1.2.2016.

9. Liberty is granted to the Respondent to file a representation before the Appellants with regard to his perceived dues, if any.

10. Learned Senior Counsel for the Appellants very fairly submits that if such a representation is filed, it shall be examined bona fide and any

legitimate dues payable shall be paid to the Respondent without any unnecessary delay, at the earliest after, deducting the penal rent/market rent that may be payable by the Respondent in accordance with the Rules till 31.1.2016.

11. (2001) 6 Supreme Court Cases 59 (Gorakhpur University vs. Dr. Shitla Prasad Nagendra) referred to by the Learned Single Judge has been considered in (2005) 5 Supreme Court Cases 245 (Secretary, ONGC Ltd and Another vs. VU. Warrier). Similarly, the employee had continued to occupy the Government allotted accommodation after superannuation. The High Court held that pension and gratuity were rights accrued in favour of the employee on retirement and these benefits therefore could not be withheld even if an employee unauthorizedly occupied accommodation and was liable to pay damages of penal rent under the Rules. The only remedy available to the employer was to take appropriate action but the amount of pensionary benefit cannot be set off against the so called dues for unauthorized occupation. Setting aside the order, the Supreme Court held that the observation was wholly unjustified in exercising the extraordinary and equitable jurisdiction for a person who was acting contrary to the Rules in continuing to retain the Government accommodation unauthorizedly.

12. The appeal is allowed with the aforesaid modification of the order under appeal.

Sd/-	Sd/-
(Navin Sinha)	(P. Sam Koshy)
CHIEF JUSTICE	**JUDGE**

Priya