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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 18th August, 2015

\+ **W.P.(C) 847/2014 & CMs 1710-12/2014**

NORTH DELHI MUNICIPAL CORPORATION ..... Petitioner

Through: Ms Prabhsahay Kaur with Ms. Divya Pandey, Advs.

versus

DEVI DUTT SHARMA ..... Respondent

Through: Mr M.N. Singh, Adv.

CORAM:
HON'BLE MS. JUSTICE SUNITA GUPTA

J U D G M E N T

: SUNITA GUPTA, J.

1. The short point for consideration in the present writ petition is "whether the petitioner is entitled to recover SLA and damage charges of an employee remaining in unauthorized occupation of official accommodation after retirement from his retiral benefits."

2. The factual conspectus of the case as detailed in para 5 of the writ petition which is not controverted by the respondent as no counter affidavit has been filed is as follows:-

(i) The respondent was employed as a Driver with the Health Department of the petitioner till he retired on 31st May, 1996 on superannuation. The respondent during his service period was allotted official/municipal accommodation being E-303A, MCD Colony, Azadpur which he did not vacate on his retirement on 31st May, 1996. As per his own admission, the respondent has admitted that the quarter remained in his occupation and possession till he vacated it only in September, 2003.

(ii) The permissible period under the allotment Rules-General Accommodation to vacate official accommodation after retirement is 4 months (2 months + 2 months). The Respondent did not vacate the premises even after 4 months of his retirement.

(iii) The Petitioner passed a circular dated 20.01.1995 whereby it was decided that for persons/retiree employees who have been retaining official accommodation beyond the permissible period of 4 months, license fee/damages would be recovered by the Accounts Officer (Pension) from dearness relief, till recovery of damages charges is made.

(iv) That despite the Petitioner's letters and requests, the Respondent failed to vacate the municipal accommodation which he was unauthorizedly occupying. The Petitioner was then eventually constrained to file a petition under The Public Premises (Eviction of Unauthorized Occupants) Act, 1971 for eviction of the Respondent from the said municipal accommodation. Vide order dated 13.06.2002 the Estate Officer directed the Respondent to vacate the said quarter within five days of the order and handover peaceful vacant possession to the Petitioner, failing which the Petitioner was given liberty to get the quarter vacated with the assistance of local police or otherwise.

(v) That yet again, in defiance of the eviction order passed by the Estate Officer the Respodent did not vacate the municipal accommodation till 20.06.2002 and continued to enjoy unauthorized occupation thereof.

(vi) That admittedly, it was only in September 2003 that the Respondent was forcibly evicted from the accommodation. By this time, the Respondent had been in unauthorized occupation of municipal accommodation for 7 years, for which he was liable to pay SLF/Damage charges.

(vii) That in the meantime, certain residents of Azadpur and Neemri colonies had approached the Hon'ble High Court by way of writ petitions against their eviction, which were decided by the Hon'ble Court vide order dated 21.07.2000 dismissing the writs of the Residents and holding thereby that the Residents are liable to pay only normal use and occupation charges, failing which they will be liable to pay damages at the current market rate for the entire period during which they remained in occupation after the allotment ceased to be operative.

(viii) That residents of Azadpur colony went in appeal to the Hon'ble Supreme Court by way of SLP (C) No. 13639/2000 which was dismissed vide order dated 21.09.2000. Other writ petitions and appeals were also decided on similar lines rejecting the residents' plea of ownership rights and upholding the Petitioner's right to recover possession as well as SLF/damage charges.

(ix) That the Respondent in blatant disregard of the orders of this Hon'ble Court and the Hon'ble Supreme Court, did not vacate the accommodation even after the specific directions.

(x) That thus it is abundantly clear and as a matter of fact admitted by Respondent that he has been in unauthorized occupation of the accommodation, and also in gross violation of orders of this Hon'ble Court and the Hon'ble Supreme Court and the eviction order passed by the Estate Officer. Therefore, in view of this Hon'ble Court's order, Respondent was liable to pay damages with effect from 1.10.1996 till Sep.2003 amounting to Rs.3,00,272/-.

(xi) Since by this time the Respondent had already retired from the municipal services and had been paid all the terminal benefits hence the only possible way left with the Petitioner to recover the damages in terms of this Hon'ble Court's order was to deduct the dearness allowance payable to the Respondent on his pension.

(xii) That at this juncture it is pertinent to mention that the amount sought to be recovered before the Ld. Tribunal was stated to be Rs.3,10,895/-. On re-calculation the amount sought to be recovered as damages/SLF charge has been reduced to Rs.3,00,272/-. It may be noted that if the Respondent makes the payment of the said amount, his pension will be released to him forthwith. However, as he has failed to pay the said amount, the Petitioner has been constrained to recover the same by making deductions from his pension.

(xiii) That till date an amount of Rs.2,05,548/- has been recovered from the retiral benefits of the Respondent and Rs.94,724/- is yet to be recovered towards the damages. As soon as this amount is recovered, the pension will be duly paid to the Respondent.

3. In view of the deduction of the amount from the retiral benefits of the respondent, he raised an industrial dispute through Union and on failure of conciliation proceedings, GNCT of Delhi referred the dispute to Industrial Tribunal for adjudication in following terms of reference:-

> *"Whether the action of management in making deduction from the pension of Devi Dutt Sharma, S/o Sh. Lok Mani Sharma on account of occupation of allotted accommodation is illegal and/or unjustified and if so, whether he is entitled to get back the entire amount so deducted and what directions are necessary in this respect.?"*

4. Statement of claim has been filed by the workman alleging that deduction from his pension w.e.f. June, 1996 be held illegal and the entire deducted amount of pension be refunded to him with interest. Various preliminary objections were taken by the respondent (petitioner herein) besides alleging that on merits, he has no case, as such, the claim of the workman be dismissed.

5. On the pleadings of the parties, following issues were framed vide order dated 14th February, 2012:-

(i) Whether claimant is workman as defined u/s 2(s) of Industrial

Disputes Act? OPW

(ii) Whether present dispute is an Industrial Dispute as defined in Section 2(k) of Industrial Disputes Act? OPW

(iii) Whether the present claim of the workman has been properly espoused by the union? OPW

(iv) Whether any notice of demand was served upon the management, if so its effect? OPW

(v) As per terms of reference.

6. Both the parties led their respective evidence. Vide impugned award dated 13th August, 2013, the learned Presiding Officer, Industrial Tribunal held that the action of the management in making deduction from the pension of the workman on account of occupation of allotted accommodation is illegal and unjustified and as such, he is entitled to get back entire amount so deducted. While holding so, reliance was placed on ***UOI vs. R.R. Hingorani***, 1987(1) SLR 479 and ***UOI vs. Jyoti Chit Fund and Finance***, AIR 1976 SC 1163. The management was, however, granted liberty to avail other legal remedies for recovery of the outstanding dues from the workman.

7. Feeling aggrieved, this writ petition under Article 226 & 227 of Constitution of India has been filed by the petitioner.

8. Ms. Prabhsahay Kaur, learned counsel for the petitioner submitted that the respondent retired on 31.05.1996. Four months time was given to him to vacate the official accommodation allotted to him but he did not vacate the same.Thereafter, proceedings under Public Premises Act were initiated whereby he was directed to vacate the premises within five days;

still he did not vacate. Ultimately he vacated the premises in September, 2003. For seven years he remained in unauthorised occupation of the allotted accommodation thereby depriving more needy persons the benefit of the residential accommodation. She further submitted that a total sum of Rs.3,00,272/- was to be recovered as damages/SLF charges out of which a sum of Rs.2,05,548/- has been recovered and Rs.94,724/- is yet to be recovered. Since the terminal benefits were already paid to the respondent, as such, petitioner was left with no option but to recover the damages out of the dearness allowance payable to the respondent from his pension. By virtue of Rule 72 of CCS (Pension) Rules, 1972 and the circular dated 20.01.1995, MCD has decided that dearness allowance should not be disbursed to the retiree employee who has been retaining the official accommodation beyond the permissible period of four months and the amount should be adjusted from the retiral benefits. Learned counsel further submits that the learned Tribunal relied upon ***Union of India vs. R. R. Hingorani*** *(1987) 1 SCC 551* which is no longer a good law after the pronouncement of judgment by a larger bench of Supreme Court in ***Union of India vs. Sisir Kumar Deb*** *1999 SCC (L&S) 781* wherein Hon'ble Supreme Court had allowed the employer to deduct all dues payable by an employee which arise on account of the employee not vacating the government quarter after retirement. The dues were held to be recoverable from the terminal benefits payable to the employee. Counsel further referred to the judgment rendered by a Single Judge of this Court in ***Sudershan Bhagra vs. Delhi Cantonment Board (2013) 200 DLT (CNA) 38*** wherein the case of ***R.R.Hingorani*** *(supra)* was distinguished. Similarly, reliance was also placed on ***Hirubhai M.Patel vs. State of Gujarat***

Manu/GJ/0320/1999 where also the decision of Supreme Court in ***R.R.Hingorani's*** case was relied upon and observed that the decision given by the Supreme Court in ***Sisir Kumar Deb*** *(supra)* was of a later date and of a larger bench and, therefore, binds the Court. Reliance was also placed on ***K.N.Bahuguna v. C.S.I.R & Anr.***, *(2007) 138 DLT 110*. She further relied upon a decision given by the Division Bench of this Court in ***North Delhi Municipal Corporation vs. Kamla Singh*** *2013 SCC Online DEL 4125* wherein the factual position was the same and while setting aside the order of the Tribunal vide which directioin to the Corporation to release the dearness allowance in pension was given and the corporation was directed to claim amount along with the interest by adjusting from the arrears of dearness allowance due to the respondent. SLP filed by the workman against this order was dismissed by Supreme Court, subject to cost of Rs.1 lac. Reliance was also placed on ***Secretary ONGC Ltd & Ors. v. V.U. Warrier***, *(2005) 5 SCC 245* where under similar circumstances, the Department was allowed to realise penal rent from death cum retirement benefits of the employee. Learned counsel also relied upon ***S.D.Bandi vs. Divisional Traffic Officer, KSRTC & Ors.*** *(2013) 12 SCC 631*which also related to unauthorised occupation of the government accommodation and various suggestions were given, one of which was inter alia to make some provision for stoppage or reduction in the monthly pension till the date of vacation of the premises. By placing reliance on this judgment, learned counsel emphasised that even in this judgment Hon'ble Supreme Court observed that the amount of damages etc. can be recovered from the monthly pension. Counsel further submits that the respondent workman cannot be allowed to take advantage of his own wrong doings by not vacating the premises and then not paying the damage charges.

9. On the other hand, Mr.M.N.Singh, Advocate for the respondent submitted that pension is a right of the employee and the same is not a bounty. The legislature, having regard to the fact that the pension in the old age of an employee is the only source of his survival and security and depriving the person of the same would amount to throwing him at the verge of starvation, has made the pension immune from any kind of attachment and deduction on account of any demand against the employee. Reference was made to Section 11 of the Pension Act and Section 60(1)(g) of the Code of Civil Procedure for submitting that pension is immune from any such deduction and cannot be attached. He further submitted that while passing the impugned award the learned Industrial Tribunal relied upon R.R.Hingorani (supra) and Jyoti Chit Fund case (supra). The award of the industrial tribunal does not suffer from any infirmity or error of law apparent on the record. The writ jurisdiction is the discretionary remedy which should be exercised in sparingly rare cases and present case is not at all a fit case to exercise extraordinary writ jurisdiction. Reliance was placed on ***Harjinder Singh vs. Punjab State Warehousing Corporation**,* 2010 (1) SCR 591. He further submits that the judgments relied upon by counsel for the petitioner are not applicable to the facts of the case. Those judgments were confined to the cases which were decided, the same were passed in ignorance of the Pension Act and same cannot be treated as binding precedents. Reliance was placed on ***Dalbir Singh vs. State of Punjab***, AIR 1979 SC 1384; ***A-One Granites vs. State of U.P***., AIR 2001 SC 1203; ***State of U.P. & Anr. vs. M/s Synthetics and Chemicals Ltd.***, 1991 SCR(3) 64. The counsel further submits that Rule 72 (6) of CCS Pension Rules is simply a rule made by the

executive which cannot override the provisions of an Act passed by the Parliament as such, the writ petition is liable to be dismissed.

10. There is force in the submission of learned counsel for the petitioner that there was no discernable reason for the respondent to continue to occupy the accommodation in question after his retirement on 31.05.1996. A concessional period of four months to vacate the premises was given, still he continued to occupy the flat in question till September, 2003. Even at that time, he voluntarily did not vacate the quarter but was forcibly evicted which means, he would have continued to occupy the quarter, if not forcibly evicted. His occupation in the quarter has denied another employee to get an accommodation from the petitioner. When the respondent continued to occupy the quarter and enjoyed the benefit of the same even after he was required to vacate the same on 30.09.1996, he is required to pay the licence fee in terms of the rules which is SLF/damage charges. The respondent cannot be allowed to take advantage of his own wrong. Liability to pay the charges has not even been denied by the learned counsel for the respondent. During the course of argument the only plea taken is that the amount cannot be realised out of his pensionery benefits.

11. The facts in ***Kamla Singh*** *(supra)* were substantially similar as in the instant case. In that case also the workman being the employee of North Delhi Municipal Corporation was in occupation of municipal flat in Neemri Colony. The Neemri Colony Association filed certain cases which was ultimately culminated by the order of the Supreme Court. The Supreme Court dismissed the SLP granting time to the members of the association in terms of the orders of the Supreme Court. Workman gave an undertaking

that he would vacate the flat in question in terms of the time granted by the Supreme Court yet he failed to vacate the flat and was forcibly evicted by the petitioner. A notice was issued to him seeking standard licence fee/damage charges for the period he remained in unauthorised occupation in the flat in question. The action was challenged by the respondent workman before the Tribunal on the ground that he was liable to pay only the normal licence fee and not the SLF/damage charges. The Tribunal allowed the claim of the respondent directing the petitioner to release the dearness allowance in pension which was not paid to the respondent on the ground that he was occupying the flat in question with interest after adjusting the normal licence fee. While setting aside the order of the Tribunal, the petitioner was directed to claim the amount in question from the respondent by adjusting from the "arrears of the dearness allowance" due to the respondent along with interest. SLP filed by the workman challenging this order was dismissed subject to cost of Rs.1 lac.

12. The present respondent was also allotted accommodation in Azadpur and according to the petitioner, the residents of Azadpur and Neemri Colony had approached the High Court by way of writ petitions against their eviction which was dismissed vide order dated 21.07.2000. Residents of Azadpur colony went in appeal to the Hon'ble Supreme Court by way of SLP(C) No.13639/2000 which was dismissed vide order dated 21.09.2000. Other writ petitions and appeals were also decided on similar lines rejecting the resident's plea of ownership rights and upholding the petitioner's right to recover possession as well as SLF/damage charges. After orders of the Supreme Court the respondent did not vacate the accommodation. Not only that even after the eviction order was passed by the Estate Officer, he did not

vacate the same. ***V.U. Warrier*** (supra) was also a case where an employee retained the official accommodation unauthorisedly after his retirement. His prayer for extension of time was rejected in view of several officers waiting for quarters. He was also informed that penal rent as per ONGC policy would be recovered from him on his not vacating the quarter within time but he vacated the quarter only after eviction proceedings were initiated against him. ONGC deducted penal rent from gratuity in terms of the regulation. The employee challenged the action of ONGC in the High Court and the High Court took the view that pension and gratuity were rights accrued in favour of employees on their retirement. Those benefits, therefore, could not be withheld even if an employee unauthorisedly occupied accommodation and was, therefore, liable to pay damages or penal rent under the relevant rules. The only remedy available to the employer was to take appropriate action but the amount of pensionary benefit could not be set off against the dues for unauthorised occupation. ONGC preferred appeal before Hon'ble Supreme Court. The appeal was allowed by observing that it is no doubt true that pensionery benefits, such as gratuity cannot be said to be "bounty". Ordinarily, payment of gratuity cannot be withheld by an employer. However, the commission was having a statutory status and regulations were framed which empowered the commission to make recovery of the commission's dues before the payment of death cum retirement gratuity due in respect of an officer even without his consent. While so observing, the Court relied upon an earlier judgment rendered in ***Wazir Chand vs. Union of India*** *(2001) 6 SCC 596* where also the retired employee continuously kept the quarter occupied unauthorisedly. He was charged penal rent in

13. accordance with rules and after adjustment of dues, balance amount of gratuity was paid to him. He contended that it was the bounden duty of the government not to withheld the gratuity amount. The Court, however, dismissed the appeal observing that it was "unable to accept" the prayer of the appellant. The Court observed that the appellant having unauthorisedly kept the government quarters, was liable to pay penal rent in accordance with rules and there was no illegality in adjusting those dues against death cum retirement benefits.

14. ***K.N.Bahuguna*** (supra) was also a case where the employee remained in unauthorised occupation of official premises for more than three years after seeking voluntary retirement. He started his practice of law from official premises allotted to him and sought refuge of process of law to legitimate his illegal occupation of official premises for three years. The Tribunal allowed the employer to adjust the penal licence fee against the gratuity and pensionery amount admissible to the employee and to release the balance to him. Challenging this order writ petition was filed which was dismissed.

15. ***Sudershan Bhagra*** (supra) was again a case where the petitioner sought release of entire superannuation benefits and pension from the respondent-Delhi Cantonment Board. In that case also, the petitioner retired but even after expiry of 12 years of her retirement, she continued to hold the residential accommodation and yet claimed that she should be paid the terminal benefits. A Single Judge of this Court relied upon ***V.U.Warrier*** *(supra)* and ***Sisir Kumar Deb*** *(supra)* wherein the employers were allowed to deduct all dues payable by an employee and which arise on account of the

employee not vacating the government quarter after retirement. In that case, learned single Judge placed reliance on ***Union of India and Anr. vs. K.Balakrishna Nambiar*** *1998 (2) SCC 706* where it was held that no interest will be paid on withheld amount of gratuity, which was rightly withheld, as the employee illegally kept on holding the accommodation given to him by the employer during his service period. Reliance was also placed on ***Union of India vs. Ujagar Lal*** *(1996) 11 SCC 116* where the Supreme Court held that railways is entitled to withhold the death cum retirement gratuity till the retired employee surrender the possession of the quarter allotted to him, when the retired employee unauthorisedly retained the quarter. In that case also, the petitioner had relied upon ***R.R.Hingorani*** *(supra)* and while distinguishing the judgment it was observed that the same does not deal with the issue as to the entitlement of an employee to be paid the terminal benefits while continuing to illegally hold the residential accommodation even after retirement. In ***Hirubhai M.Patel*** (supra), again order of deduction from petitioner's pension was under challenge before the Gujarat High Court. In that case also reliance was placed on ***R.R.Hingorani*** (supra) however it was observed that in a later decision and that too of a larger bench in ***Sisir Kumar Deb*** (supra) the Apex Court set aside the order of Central Administrative Tribunal directing the refund of the deductions made out of pensionary benefits on account of damages payable for overstaying in the government accommodation after retirement. That was a case in which the incumbent, an employee of railway who had retired but failed to vacate the quarter occupied by him for which an order was made by the Central Administrative Tribunal to vacate the premises. Still the incumbent did not vacate the premises. Thereafter, when the railway administration sought to deduct the amount due as payable as damages for use and occupation of the government accommodation by deducting the same from the pensionery relief admissible to the incumbent he again approached the Central Administrative Tribunal which stayed the recovery of further sums by deduction from the pensionery relief and also directed the refund of the amount already deducted. Union of India preferred an appeal against the said order of the Tribunal. While observing that apart from the undue advantage resulting to the incumbent for continued unauthorised occupation of the premises as a consequence of the order, no valid ground has been given for not permitting the deduction to the Department. Hon'ble Supreme Court held that they found it difficult to comprehend the rationale for the view taken by the judicial member. Instead of ensuring delivery of possession from a person who in violation of the Tribunal's order, was continuing to occupy the quarter and who could not have been said to have approached the Tribunal with clean hands. While allowing the appeal and setting aside the order of the Tribunal, the Court directed the incumbent to hand over the vacant possession of the premises within 15 days and left the railway administration free to recover its dues from any amount payable to the incumbent.

16. By relying upon this decision it was held by the Gurjarat High Court that this decision supports the plea of the respondent that the amount which is due from the retired employee as damages for use and occupation of the government accommodation for overstaying after retirement can be recovered from the pensionery reliefs payable to the incumbent. It went on stating that though the earlier decision of the Supreme Court in

R.R.Hingorani's case** (supra)* have not been referred to in ***Sisir Kumar Deb's case. This case being of a later date and of a larger bench, binds this Court and must be taken to govern the present case.

17. ***S.D.Bandi** (supra)* was a case where the employee was allotted government accommodation. Despite his transfer to another place he did not vacate the quarter. The competent officer under the Public Premises Act passed an order of eviction against the appellant. After exhausting all the remedies he came to Supreme Court. While dismissing the appeal, the officer of the corporation was directed to at once evict the appellant from the quarter. Taking note of the fact that in government quarters, unauthorisedly, people are continuing for years together to the detriment of the persons who are entitled to occupy the same and also that the same is the position in most of the State capitals and headquarters of the Union Territories notices were issued to Union of India, all the States and Union Territories. After taking response from them various guidelines were laid down for better utilization of the premises. One of the guidelines relevant for the present purpose is;

> *"(xiv) to make it more stringent, there must be some provision for stoppage or reduction in the monthly pension till the date of vacation of the premises."*

18. Although the issue before Hon'ble Supreme Court was not regarding the recovery of the amount from the pensionery benefit yet the suggestion is indicative of the fact that the damages can be recovered from the monthly pension of the employee.

19. Learned counsel for the petitioner has also placed reliance on a circular dated 20.01.1995 which is to the following effect:-

> *"Subject: Withholding of DCRG due to non-vacation of Municipal Accommodation beyond permissible*

period after retirement/death instructions regarding

Attention is invited to Chief Accountant's Circular No.CA/Pen./Misc.-55-97/93/6059 dated the 15th April, 1993, on the above captioned subject.

2. On a review of the matter, in deference to judgment of the Hon'ble Supreme Court dated 29th September, 1994 in Civil Appeal No. 6342/1994, wherein it was, inter-alia, held that right of DCRG is not dependent upon the retiree vacating the official accommodation. It is hereby directed that in future DCRG of a retired/deceased employee shall not be withheld due to non-receipt of 'No demand Certificate' from the Lands & Estate Department. Of course, this shall be without prejudice of the right of the MCD to recover damages under FR 48-A as also eviction action under the Public Premises (Eviction of Unauthorised Occupants Act, 1971, as upheld by the Apex Court in the judgment as aforesaid.

3. As per provisions of Rule 72(6) of the CCS (Pension) (Amendment) Rules, 1991, the recovery of licence fee for the occupation of Municipal Accommodation beyond the permissible period of four months after the date of retirement of the allottee shall be the responsibility of the Lands & Estate Deptt. which stipulates that any amount becoming due on account of licence fee for retention of official accommodation beyond the permissible period after retirement and remaining unpaid shall be recovered by the Lands & Estate Deptt. through the Accounts Officer (Pension) from the dearness relief without the consent of the pensioner. In such cases, no dearness relief shall be disbursed until full recovery of such dues has been made.

4. Prompt action for recovery of licence fee or damages, as the case may be, and initiation of eviction proceedings under PF Act shall, however, be taken by the Lands & Estate Deptt. in all such cases where Municipal Accommodation beyond permissible period after retirement/death has not been vacated.

5. Past cases, if any, be also regulated in the light of these instructions."

20. This circular is almost the same as Regulation (5) of Oil and Natural Gas Commission (Death, Retirement and Terminal Gratuity) Regulations, 1969 framed by the ONGC in ***V.U.Warrier's*** case. Although, the Commission had a statutory status and the regulations framed by the Commission were statutory in nature and, therefore, enforceable in a Court of law. The circular issued by the Municipal Corporation of Delhi is not

having the statutory status yet it is a guideline as to how the Municipal Corporation of Delhi is to recover the licence fee from the occupants who does not vacate the official accommodation even after retirement.

21. It is the submission of learned counsel for the respondent that the aforesaid judgments relied upon by counsel for the petitioner are not applicable to the facts of the present case and some judgments have been passed either *sub-silentio* or have to be treated as *per incuriam* as held in ***Dalbir Singh*** *(supra)****; A-One Granites*** *(supra)* and ***M/s Synthetics and Chemicals Limited*** *(supra)*. In ***M/s Synthetics and Chemicals*** *(supra)*, it was observed that a decision passed sub-silentio in the technical sense means when the particular point of law involved in the decision is not perceived by the Court or present to its mind a decision which is not express and is not founded on reasons nor it proceeds on consideration of issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 141. *Per incuriam* means per *ignoratium* meaning thereby if it is rendered in *ignoratium* of a statute or binding authority. None of the judgments relied upon by the counsel for the respondent can be said to be rendered *per incuriam* or *per ignoratium* as the issue raised in those cases was substantially the same and reasoned orders with precedents were passed.

22. Lastly, the submission of counsel for the respondent is that as laid down in ***Harjinder Singh's case*** while exercising jurisdiction under Article 226 and 227 of the Constitution, the High Court is duty bound to keep in mind that the Industrial Dispute Act and other similar legislative instruments are social welfare legislations and same are required to be

interpreted keeping in view the guidelines set out in the preamble of the Constitution and the provisions contained therein. The proposition laid down in this judgment is undisputed, at the same time as held in ***V.U.Warrier's*** case the jurisdiction of the High Court under Article 226 of the Constitution is equitable and discretionary. The power under that article can be exercised by the High Court "to reach injustice wherever it is found." The Apex Court further observed that *"more than fifty years before, in Veerappa Pillai v. Raman & Raman Ltd., the Constitution Bench of this Court speaking through Chandrasekhara Aiyar, J., observed (at SCR p.594) that the writs referred to in Article 226 of the Constitution are obviously intended to enable the High Court to issue them in grave cases where the subordinate tribunals or bodies or officers act wholly without jurisdiction, or in excess to it, or in violation of the principles of natural justice, or refuse to exercise a jurisdiction vested in them, or there is an error apparent on the face of the record, and such act, omission, error, or excess has resulted in manifest injustice."*

23. Present is a clear case where the respondent continued to hold the government accommodation unauthorisedly for a period of seven years till he was forcibly vacated from the premises. During the course of arguments, learned counsel for the petitioner submitted that a sum of Rs.94,724/- remains to be recovered towards the damages. Counsel for the respondent was enquired as to whether respondent is willing to pay this amount to the petitioner if the same be not recovered from his retiral benefits, however, the counsel for the respondent stated that the respondent has no means to pay this amount. That being so, even otherwise, in case the petitioner is not

allowed to recover the amount from the dearness allowance payable to the respondent, there will be no other means to recover the amount.

24. Under the circumstances, the writ petition is allowed. The impugned award dated 13.08.2013 holding the action of the petitioner in making deduction from the pension of the workman to be illegal and unjustified and directing the petitioner to refund the entire amount so deducted by him within three months is set aside. The petitioner is allowed to recover the amount in question from the dearness allowance due to the respondent. The writ petition stands disposed of as allowed in terms of the above. No order as to cost. Pending applications, if any, also stand disposed off.

(SUNITA GUPTA)
JUDGE

AUGUST 18, 2015
rs/mb