IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.3805 of 2016 (O&M)
Date of Decision: 30.05.2016

Om Wati

... Petitioner

Versus

The State of Punjab and others ... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Peeush Gagneja, Advocate, for the petitioner.

Mr. Piyush Bansal, DAG, Punjab.

Mr. Neetish Handa, Advocate, for respondent No.4.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

<u>RAJIV NARAIN RAINA, J.</u>

<u>CM No.5930 of 2016</u>

The application is allowed. Additional affidavit is taken on record.

<u>Main Case</u>

Admittedly, the amounts towards unpaid gratuity, leave encashment and provident fund amounting to ₹ 10,34,466/- have been paid vide cheques dated July 10, 2014, March 30, 2016 and again on March 30, 2016 respectively. From this amount, the respondent – Municipal Council has deducted a sum of ₹ 2,70,508/- towards rent for use and occupation of Government accommodation from 2005 to 2016. This Court is satisfied with the averment in the written statement that penal rent has not been charged from the petitioner but only usual rent for use and occupation of

Government quarters. That clarifies the interim order dated April 08, 2016. It would thus be justified for the respondents to have deducted rent due from gratuity.

To support this, Mr. Handa appearing for the Council relies on the decision of the Delhi High Court in CWP No.6574 of 2008 titled *Sudershan Bhagra v. Delhi Cantt. Board* decided on March 20, 2013 that penal rent is deductable from gratuity of an employee who does not vacate official quarter allotted to him or her. The Delhi High Court has relied on several decisions of the Supreme Court noticed in the order. That satisfies the question of gratuity and rent. However, withholding of leave encashment amount and provident fund subscriptions after retirement is not justified and, therefore the petitioner would have a right to assert that she is entitled to interest on these two amounts. It is settled that provident fund cannot be touched even with a bargepole since it is part of salary earned as remarked by the Supreme Court. Therefore, this writ is partially allowed. It is held that the gratuity could have been withhold to offset rent and if Government did not pay gratuity it committed no error except to the extent that an amount over and above the rent should have been paid to the petitioner but since that was not done, the petitioner would be entitled to interest on the balance amount of gratuity after deducting the rent due. This is for the reason that the Council could have paid the amounts after deduction and proceeded under the Public Premises Act for eviction of the tenant and recover penal rent though those provisions. However, since one lac was paid ad hoc on July 10, 2014 that sum of money will be deducted from the principal amounts payable and interest worked out accordingly at the rate of interest payable by Nationalized Banks on long term deposits. It may be recorded that the petitioner has vacated the premises on March 31, 2016.

(RAJIV NARAIN RAINA)
JUDGE

30.05.2016
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