

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18337 of 2008

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Anandi Prasad, son of Late Prayag Prasad, resident of village- Amarsingh
Bigaha, Police Station-Asthawan, District- Nalanda

.... Petitioner

Versus

1. The State of Bihar
2. Commissioner-cum- Secretary, Deptt. of Water Resources, Govt. of Bihar, Patna
3. Chief Engineer, Department of Water Resources, Dihri, Rohtas
4. Superintending Engineer, Water Road Circle, Bhabhua, Kaimur
5. Executive Engineer, Sone High Level Canal Division, Sasaram, Rohtas
6. Sub Divisional Officer, Sone High Level Canal Sub Division, Tulsipur Camp, Sasaram District- Rohtas

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Raghunandan Kumar Singh

For the Respondent/s : Mr. AC to GA-13

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
ORAL ORDER

2 17-03-2017 Heard Sri Raghunandan Kumar Singh, learned
counsel for the petitioner and learned AC to GA-13.

The petitioner, who superannuated in the year 2007 as Class-III employee, has approached this Court with a prayer to set aside an office order, contained in Memo No.194 dated 12.02.2008 passed by the Executive Engineer, Sone High Level Canal Division, Sasaram (Respondent no.5), whereby an amount of Rs.39,700/- was deducted from the gratuity amount of the petitioner.

It was submitted by learned counsel for the petitioner that the said amount has been deducted from the gratuity



amount of the petitioner by the Respondents as penal rent in respect of a government quarter, which was occupied by the petitioner and subsequently allotment was made by the authority concerned with retrospective effect. In the writ petition, it has been pleaded that initially, the petitioner was appointed against Class-IV post and while he was in service as Class-IV employee, he was allotted I-type quarter(temporary shed of Karkat known as Khalasi shed) having one room without facilities of water, toilet, electric etc. While occupying the said room, he was subsequently promoted to Class-III post on 31.05.1978 in the same office. Even though the petitioner had attained the status of Class-III employee, the authority concerned had not allotted the quarter, which was earmarked for Class-III post and, as such, the petitioner continued in the said premises, which was earlier allotted. However, in the month of April, 1987, in a furious storm, the shed Karkat/Ashbestos sheet of the quarter was damaged and to get shelter, the petitioner shifted in a vacant quarter of G-Type Quarter no.11. While he was occupying the said quarter, subsequently penal rent was raised. Thereafter, the petitioner was constrained to approach this Court by filing a writ petition vide C.W.J.C.No.8942 of 2005, which was disposed of on 14.05.2007(Annexure-11 to the writ petition).



Learned counsel for the petitioner admits that even this Court had not appreciated the unauthorized occupancy of the quarter, but even then this Court had left the matter to be decided by the authority concerned. He has specifically referred to last paragraph of the order dated 14.05.2007 passed in C.W.J.C.No.8942 of 2005 , which is quoted herein below:

“However, inasmuch as the self same quarter was allotted in favour of the petitioner at a subsequent point of time, I would request the State Government to consider whether the penal rent for the period in question can be converted into ordinary rent. With such request, the writ petition is disposed of.”

Taking aid of the aforesaid observation, it has been argued that once this Court used the word ‘request’ to the State Government to consider whether the penal rent for the period in question can be converted into ordinary rent, it will be deemed that it was direction of this Court, but ignoring the same observation, after superannuation of the petitioner the impugned order has been issued, i.e the order contained in Letter No.194 dated 12.02.2008(Annexure-12 to the writ petition) and huge amount in the garb of penal rent has been deducted from the gratuity amount from a retired employee. It was submitted by



learned counsel for the petitioner that after the order of the Single Bench i.e. Annexure-11 to the writ petition, the petitioner had preferred an appeal, vide L.P.A. No. 339 of 2008. However, the said appeal was dismissed as withdrawn. It was submitted by learned counsel for the petitioner that the petitioner had withdrawn the appeal with expectation that the Respondent State may abide by observation of the order of the Single Bench and consider to convert penal rent into ordinary rent.

Learned AC to AAG-4 by way referring to the averments made in the counter affidavit, submits that once the issue, which has been raised in the present writ petition, was already set at rest by a Bench of this Court vide Annexure-11 to the writ petition, the petitioner is not entitled to re-agitate the same before this Court. However, he was not in a position to dispute that the same Bench, while disposing of the writ petition requested the State Government to consider to convert the penal rent into ordinary rent. Meaning thereby that the observation of this Court, which was in the nature of a direction, has not been taken into correct perspective.

The Court is of the view that the last paragraph of the observation of this Court in C.W.J.C.No.8942 of 2005 was virtually a direction, which was required to be followed by the



Respondents. However, in the impugned order, nothing has been indicated as to whether the Respondents have taken any pain to consider to convert the penal rent into ordinary rent. Considering the fact that the petitioner has retired as Class-III employee, certainly after superannuation deduction of such a huge amount in the garb of penal rent was excessive in nature and, as such, the impugned order is required to be interfered with.

Accordingly, the order, contained in letter no.194 dated 12.02.2008(Annexure-12 to the writ petition) is hereby set aside with a direction to the Respondents to realize only ordinary rent for the period in question and refund the rest amount, which has been deducted from the gratuity amount as penal rent. All the formalities must be completed within a period of eight weeks from the date of receipt/production of a copy of this order.

The writ petition stands allowed.

(Rakesh Kumar, J)

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