(36)

NAFR

HIGH COURT of CHHATTISGARH, BILASPUR

Writ Petition No. 3874 of 2006

Rajendra Shrivastava S/o Shri R. L. Shrivastava, Rtd. Employee Retd. Sr. P.O., MECCON Ltd. R/o 23/10, Neharu Nagar (East), Bhilai – Pin 490020 District Durg (CG)

---- Petitioner

Versus

1. MECON Ltd., through Chairman cum Managing Director, MECON Ltd. Vivekananda Path, Doranda, Ranchi - 834002
2. General Manager, MECON Ltd. Ispat Bhawa Bhilai – 490001, District Durg, (CG)

---- Respondents

For Petitioner	:	Shri Amiyakant Tiwari, Advocate
For Respondents	:	Shri V. G. Tamaskar, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order On Board

07/04/2017

At the outset both the counsel make a statement that identical issue has already been adjudicated upon by the Co-ordinate Bench of this Court and that the present dispute can also be disposed of in similar terms.

2. In view of the submission made by the counsel for the parties, the present petition is also being disposed of accordingly.

3. This petition has been filed by a retired employee of the respondent MECON Limited assailing legality and validity of the action of the respondents in withholding his retiral dues and benefits for a long time.

4. Case of the petitioner is that the petitioner was entitled to all the payments immediately after voluntary retirement came into effect as per the Voluntary Retirement Scheme (In short "VRS") in force at the time when the retirement was taken by the petitioner.

5. Submission of learned counsel for the petitioner is that the respondents have recovered an amount of Rs.67,093/- towards levy of penal rent without the authority of law. According to learned counsel for the petitioner, the recovery of penal rent is not recoverable under any contract of service between the parties nor the recovery is authorized under any other law for the time being in force.

6. On the other hand, learned counsel for the respondents submits that the petitioner has suppressed many material facts. It was argued that the petitioner accepted the VRS under a clear stipulation of tentative payment schedule subject to various conditions as enumerated in order dated 30-08-2003 (Annexure P/2) addressed by the respondents to the petitioner. The petitioner did not raise any demeanor or protest and proceeded to happily accept the voluntary retirement under the VRS and tentative schedule of payment contained in letter dated 30-08-2003 (Annexure P/2). In the tentative schedule, it was provided that while first two payments towards ex-gratia and provident fund were to be released within the time stipulated, the payment of other benefits was dependent upon vacation of Company's quarter, if in the occupation of the employee. He submits that the petitioner received the amount of ex-gratia and provident fund as per the tentative schedule. Without any permission, the petitioner overstayed in the quarter and when he vacated the quarter, immediately thereafter, other payments were made. Therefore, the petitioner has no legitimate grievance in this regard. With regard to recovery, it is submitted that the respondent-employer had taken various quarters from Bhilai Steel Plant, in respect of which, it is required to pay rent. Since the respondent-employer had to pay huge amount of rent to the Bhilai Steel Plant in respect of accommodation overstayed, the same was required to be reimbursed from the petitioner.

According to respondents, overstay of accommodation invited liability for payment of penal rent which was recovered from the petitioner.

7. As far as first grievance of the petitioner with regard to delayed payment of retiral dues are concerned, I find that the petitioner has not come with clean hands. In fact, the petitioner was sent a letter on 30-08-2003, in which, it was clearly mentioned that the petitioner would be benefited by voluntary retirement under the scheme of tentative schedule of payments of benefits given overleaf. In the tentative schedule of payments, while ex-gratia and provident fund were to be paid on the date of release and within one month of release respectively, all other benefits were payable subject to the employee vacating the quarter. From the admitted pleadings of the parties, it is clear that as far as amount of ex-gratia and provident fund are concerned, that amount was paid to the petitioner according to tentative payment schedule. However, the petitioner did not vacate the quarter. There is no material on record to satisfy the Court that the petitioner was authorized by the respondent-employer to continue in the occupation of quarter beyond available period of three months of stay after retirement. Therefore, the petitioner could not raise any legitimate grievance on account of non-payment of remaining several benefits. In fact, as soon as the petitioner vacated the premises, other payments which were withheld, were also paid to the petitioner. Therefore, on that count, no relief can be granted to the petitioner.

8. However, in so far as deduction of Rs.67,093/- from the retiral dues of the petitioner is concerned, I do not find that the respondent had any authority either under the contract of service or any other law to deduct that amount from the retiral dues of the petitioner. May be that the respondent may have a claim of Rs.67,093/-, but for recovery of that amount, there has to be authority either under the terms of contract of service or under the

Voluntary Retirement Scheme or law in force at the time when the recovery was made. None of these material could be brought to the notice of this Court by the respondents. As to what would be the amount of penal rent for the period of overstay in the quarter, that matter would require enquiry and verification. Once the petitioner had overstayed in the quarter, at least, the rent which was liable to be paid, will have to be paid, if already not paid. This aspect may be verified by the respondents and subject to payment of rent by the petitioner in respect of the period of overstay, the amount, which has been recovered from the petitioner, shall be refunded to the petitioner within a period of three months from the date of receipt of a copy of this order.

9. Accordingly, the petition is partly allowed. This order shall not come in the way of respondents in taking steps towards recovery under the law.

Sd/-
P. Sam Koshy
Judge

Bhola