IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.17616 of 2015(O&M)
Date of Decision: 06.04.2017

Kishore Singh ...Petitioner

Vs.

The Presiding Officer & another ...Respondents

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

Present: Mr. Gaurav Chopra, Advocate,
for the petitioner.

Mr. P.K. Mutneja, Advocate,
for the respondent No.2.

RAJIV NARAIN RAINA, J. (Oral)

1. As a special measure and looking to the special facts and circumstances of this case with litigation pending for 6 years in proceedings under Section 33 (2) (b) of the Industrial Disputes Act, 1947 this Court heard this matter at length on more than one occasion and lastly, extensively on March 30, 2017 after hearing Mr. Chopra and Mr. Mutneja for the respective parties, and the following interim order was passed:-

> *"This Court is indeed grateful for the magnanimity shown by the Tribune Trust to help settle this matter in order to bring a just end to the litigation on instructions brought by Mr. Mutneja. I have heard learned counsel and <u>am of opinion that the order passed under Section 33 (2) (b) of the Industrial Disputes Act, 1947 suffers from no infirmity and deserves to be upheld.</u> The Trust has reluctant what more than law required but there is a point of debate left for*

consideration of the Trust.

Mr. Mutneja states that the question of House Rent Allowance and penal rent arises due to unauthorized occupation of Tribune accommodation by the petitioner from 03.06.2009 till present. He submits that assuming the petitioner stayed in his own accommodation during this period and was employed he would be entitled to HRA @ Rs. 2763/- per month provided, of course, if he was in service, which amount he would have to pay back. If this amount is calculated it will add to a tidy sum of money which in all likelihood may be too steep and difficult for the petitioner to bear looking at his station in life.

To compound this amount, the issue of penal rent necessarily arises in addition and which has without any doubt its own justification in law. Mr. Mutneja says that the quantum of rates of penal rent have been increasing from time to time and at present stands at Rs.28,000/- per month payable as per the Trust rules which the petitioner is bound by. This compounds the financial burden which when called may cripple the petitioner and his family financially for all times to come when multiplied by the number of years of use and occupation. The amount when calculated may be staggering. Remedy of recovery tardy.

As debated at the hearing, the periods to be accounted for can be put broadly into three distinct periods. The first is from 03.06.2009 when the dismissal order was passed but could not be *given effect to in the presence of Section 33 (2) (b) for which the management had to apply to the Labour Court for permission/approval. For some inexplicable reason it took six years of litigation in what should have been a summary disposal of stay matter which was required to be concluded within three months in terms of Section 33 of the Act itself. Alas, the approval came on 19.03.2015 against which order the petitioner has approached this Court in the present petition assailing it on the grounds taken. Accordingly, the first period is 03.06.2009 to 19.03.2015 which is covered by litigation in the Labour Court, Chandigarh.*

The next period is from 24.08.2015 when the interim stay was granted qua accommodation which has continued till today. This is the second period. The third period is the interregnum between 19.03.2015, the date of POLC order ending 24.08.2015 when the stay was granted.

Without doubt during the period falling between 19.03.2015 and 24.08.2015, the petitioner was most certainly an authorized occupant liable for rent/penal rent under the rules since the question of HRA no longer existed. For this period of inactivity this law would require the petitioner to pay penal rent.

As far as the period 24.08.2015 till today is concerned this is a period covered by notice and an interim order passed in the present case. Though it is well settled that an interim order does not create any rights as it only postpones implementation of an order, but still the Trust may *consider if it is possible to waive this period under stay order as it represents a period spent in petitioner knocking the door of this Court to seek judicial review of the approval order dated 19.03.2015. If the stay order is vacated only further magnanimity of the Trust can be of help and not the law as when the petition fails then the approval of the dismissal order takes effect from 03.06.2009. So far as the period 03.06.2009 and 19.03.2015 is concerned this deserves to be taken as a period of bona fide litigation still pending since the Tribune had a right to seek approval and the petitioner the right to challenge the order. He should lawfully and normally have vacated the accommodation to litigate and did but came to be protected by a stay order with notice to the respondent Trust. Assuming that the approval had not been granted then this period would stand regularized and when it turned out as it has, then should this period accumulate penal rent by the day and be recoverable is also a matter for the Trust to consider benignly and if it can be excused wholly or in part, restricted from Zero to HRA to penal rent?*

The Court appreciates the very fair stand of the Trust and mercy shown in a spirit of give and take to broadly agree as a special concession to convert dismissal into discharge so that the petitioner and the Trust-Tribune part ways without acrimony and without remorse retrospectively by legal fiction from 03.06.2009. This Court further appreciates the concession prepared to be given as an exception to rule to *allow the petitioner to stay in the Trust accommodation for three months to enable him to find alternative accommodation for which he would give an undertaking to this Court to peacefully give vacant possession. In this also, the question of penal rent would necessarily arise with liability on the petitioner, which may also be sympathetically considered by the Trust on humanitarian grounds, the petitioner I understand being not a man of means and that his family [for the petitioner's acts and conduct] does not suffer punishment of unbearable debt that may follow payment of recurring outstanding dues, if the letter of the law is enforced.*

This order has been passed only in special circumstances presented mostly because of time wasted by the Labour Court. This Court has examined the areas of concerns broadly on the touchstone of 'humanism' in Article 51A (h) of the Constitution of India. This Court assures the Trust that any order passed in this case will not be treated as a precedent.

The case is adjourned to 06.04.2017 for Mr. Mutneja to seek further instructions from the Trust as to the constructive way forward, if there is one.

At the same time, the respondent Trust will be well within its rights to demand from the Court an order on the merits in the areas of divergence which may be irreconcilable in the management and the Court would be duty bound to pass judgment without adverting to anything said in the present and previous orders. Least I am *misinterpreted, the process in this order and the previous one is only mediatory and conciliatory and not binding on parties.*

A copy of the order be given to Mr. Mutneja attested by the Bench Secretary."

2. Today, Mr. Mutneja has brought good tidings from the Trust that as a special case, which is not to be treated as a precedent, the trust would gracefully agree to convert the dismissal order into discharge from the date of the original order by passing a fresh retrospective order. The Trust has travelled to the extent of agreeing to waive off the rent/penal rent towards the Tribune accommodation occupied by the petitioner which was once allotted to him awaiting approval of dismissal from service with those proceedings tried for an inordinately long time.

3. No recoveries from the petitioner, as assured by Mr. Mutneja on instructions from the Trust will be made. The petitioner would be permitted to stay till July 31, 2017 in the accommodation and hand over its peaceful vacant possession on that date. The petitioner is present in person with his counsel Mr. Chopra and give an undertaking to the Court that he would do the needful by peacefully handing over Quarter No. 3060-A, Tribune Colony, Sector 29-D, Chandigarh and hand over the keys to the General Manager, The Tribune, Chandigarh on or before July 31, 2017 by 5.00 PM. His statement is taken as an undertaking to Court.

4. The Trust has only one request which is wholly justified that if the concessions given by the Trust are agreed to and acted upon by the petitioner then with the conversion of the dismissal order into a discharge order the petitioner will not litigate against the Trust in any Court which has

had anything to do with its employment in the Tribune. To the Court this appears to be a very small price for bringing the dispute to an end. It is so ordered that this will be the end of litigation and the parties would have nothing to do with each other henceforth.

5. Mr. Chopra states that in case, there are any outstanding dues standing outside this litigation then those may be paid to the petitioner on or before 31.07.2017. Mr. Mutneja says that the entire accounts arising out of the snapping of the employer-employee relationship have been paid. However, the Tribune may look into the old papers, if they are available and this Court has no doubt that the extent of grace shown by the Trust may be extended not a step further. With this, the curtain of the litigation is drawn. The file is disposed of and consigned to the record room. The impugned order is upheld. The interim order dated March 30, 2017 is made part of the order as in sync with the final disposal of the case.

(RAJIV NARAIN RAINA)
JUDGE

06.04.2017
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Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*