

**In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

**The Hon'ble Justice Sabyasachi Bhattacharyya
And
The Hon'ble Justice Jay Sengupta**

W.P.C.T. No.140 of 2019

**Union of India and others
Vs.
Gurtiboina Appaia V.G. Shankar**

For the petitioners	:	Mr. Rabindranath Bag, Mr. Mukesh Kumar Gupta
For the respondent	:	Mr. Saptarshi Roy, Ms. Kakali Das Chakraborty
Hearing concluded on	:	30.09.2021
Judgment on	:	17.11.2021

Sabyasachi Bhattacharyya, J.:-

1. The Union of India and the South-Eastern Railway Authorities have preferred the instant writ petition against a judgment and order dated July 29, 2019 passed by the Central Administrative Tribunal, Kolkata Bench in Original Application No.350 of 1117 by 2016. Learned counsel for the appellants argues that the Tribunal acted palpably in violation of law in directing the appellants-Authorities to refund the amount of the gratuity of the respondent, deducted in lieu of damages and rent, with interest at the rate of eight per cent per annum.
2. By placing reliance on Rule 16(8) of the Railway Services (Pension) Rules, 1993, learned counsel submits that, in case the Railway accommodation

is not vacated even after the permissible period of retention after superannuation, etc., the Railway Administration shall have the right to withhold, recover or adjust from the Death-Cum-Retirement Gratuity (DCRG), the normal rent and other amounts as may be due from the ex-Railway employee and return only the balance, if any, on vacation of the Railway accommodation. Clause (e) of sub-Rule (8) also provides that dispute, if any, regarding recovery of damages or rent from the ex-Railway employee shall be subject to adjudication by the concerned Estate Officer appointed under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (for short, 'the PP Act'). It is contended that the Estate Officer issued a notice of eviction to the respondent prior to the respondent vacating the accommodation and thereafter started eviction proceedings, which was duly concluded by directing the gratuity dues of the petitioner to be paid after deduction of Rs.3,28,092/- as damage rent and electric and water charges from total DCRG of Rs.5,61,617/- as per Rules. As such, Rule 16(8) of the 1993 Rules was complied with in its entirety.

3. It is further contended that the Estate Officer, by an order dated May 22/23, 2017, clearly ascertained the dues from the respondent and directed such amount to be deducted, pursuant to Rule 16(8)(c). As such, the Tribunal acted without jurisdiction in reversing such deduction.
4. It is next submitted by learned counsel for the appellants that initially, the wife of the appellant was working as Matron and a 'Type-III' quarter

was allotted to her, which was a Medical Pool Quarter. The said quarter was subsequently regularized in favour of the Respondent under the 'husband and wife rule' while the applicant was working in the Commercial Department, on a similar hierarchical footing as his wife. Subsequently, after retirement of the applicant on February 28, 2014, he was requested to vacate the said quarter.

5. Due to demise of the respondent's wife, while in service, their son was appointed as 'Peon' on compassionate ground. As per Rules, permission was given to the respondent to retain the Railway quarter for a maximum period of eight months, that is, up to October 31, 2014.
6. Although the respondent as well as his son had applied for a quarter for the son and for regularizing the occupation being enjoyed by the respondent in favour of his son, it was not possible to grant such request, since the son was employed in a category below the respondent and his wife, and, as such, would not be entitled to the 'Type-III' quarter. Moreover, the said quarter was under the Medical Pool, hence, could not be allotted to the respondent's son.
7. The respondent, it is submitted, vacated the quarter on December 26, 2016, which he was occupying as an unauthorised occupier since November 1, 2014, despite having been served with a notice to vacate prior to the expiry of his extended occupation.
8. As such, there was no illegality in the deduction of gratuity in lieu of damage rent recoverable from the respondent, it is contended.
9. Learned counsel for the respondent places reliance on Section 4(6) of the Payment of Gratuity Act, 1972 (for short, 'the Gratuity Act'). The said

sub-section specifically provides, in Clause (a) thereof, that the gratuity of an employee whose services have been terminated for any act, or destruction of, property belonging to the employer shall be forfeited to the extent of the damage or loss so caused. Under Clause (b), the gratuity payable to an employee may be wholly or partially forfeited:

- (i) if the services of such employee have been terminated for the riotous or disorderly conduct or any other acts of violence on his part; or
- (ii) if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment.

- 10.** Learned counsel contends that, since none of the aforesaid criteria is applicable to the respondent, there is no scope for the appellants-Authorities to deduct any amount from the gratuity.
- 11.** Learned counsel for the respondent further places reliance on Section 13 of the Gratuity Act, which provides that no gratuity payable under the Act and no gratuity payable to an employee in any establishment, factory, mine, oil field, plantation, port, railway company or shop exempted under Section 5 shall be liable to attachment in execution of any decree or order of any civil, revenue or criminal court.
- 12.** Section 5 of the Gratuity Act provides certain powers to the appropriate Government to exempt, by notification, certain establishments from the operation of the provisions of the said Act, which was not done in the present case.
- 13.** Learned counsel next relies on Section 14 of the Gratuity Act, which

stipulates that the provisions of the Act or any rule made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than that act or in any instrument or contract having effect by virtue of any enactment other than the said act.

14. Learned counsel cites the Supreme Court judgment of *Gorakhpur University and others Vs. Dr. Shitla Prasad Nagendra and others*, reported at AIR 2001 SC 2433, in support of the proposition that pension and gratuity are no longer matters of any bounty to be distributed by Government but are valuable rights acquired and property in their hands and any delay in settlement and disbursement whereof should be viewed seriously and dealt with severely by imposing penalty in the form of payment of interest. Withholding of quarters allotted, while in service, even after retirement, without vacating the same, has been viewed to be not a valid ground to withhold the disbursement of the terminal benefits, it was observed by the Supreme Court.

15. Learned counsel next places reliance on a Division Bench judgment of this Court, reported at 2004 (1) CHN 662 [*Eastern Coalfields Limited Vs Kripa Sankar Somany*], wherein the overriding effect of the Gratuity Act, as provided in Section 14, thereof was taken into consideration and it was held that, unless the service regulation comes within the exception provided under Section 4(6) of the said Act, such regulation cannot be sustained for the purpose of withholding gratuity in a case outside the scope and ambit of the exception provided in sub-section (6). Service regulations or rules inconsistent with Section 4(6) cannot be sustained, it was held.

16. Learned counsel for the respondent next relies on a judgment of a learned Single Judge of this Court rendered in *Lallan Thakur Vs. Union of India and others*, reported at MANU/WB/0764/2017. The learned Single Judge, upon considering all the relevant judgments of the Supreme Court holding the field, reiterated the above proposition.
17. Upon considering the contentions of the parties, it is relevant to scrutinize Rule 16(8) of the Railway Services (Pension) Rules, 1993 in proper perspective. Clause (a) thereof provides, *inter alia*, that where a Railway accommodation is not vacated by a railway servant after superannuation, the full amount of retirement gratuity, death gratuity, etc., shall be withheld and such amount shall remain with the Railway Administration in the form of cash, as per Clause (b).
18. Clause (c) provides that, in the case of Railway accommodation not being vacated even after the permissible period of retention after the superannuation, the Railway Administration have the right, *inter alia*, to withhold, recover, or adjust from the Death-Cum-Retirement Gratuity, the normal rent, special licence fee or damage rent, as may be due from the ex-Railway employee and return only the balance, if any, on vacation of the Railway accommodation.
19. Clauses (a) and (c), read in conjunction with Clause (e) of Rule 16(8) of the 1993 Rules, indicates that, if there is no dispute regarding recovery of damages or rent, the same shall be subject to adjudication by the concerned Estate Officer appointed under the PP Act.
20. On the other hand, Section 4(6) provides the specific circumstances under which the gratuity of an employee, whose services have been

terminated for the reasons stated therein, may be wholly or partially forfeited. Section 13 of the Gratuity Act prevents the attachment in execution of any decree or order of any civil, revenue or criminal court in respect of gratuity payable under the Act to employees of various concerns, including a Railway company.

- 21.** The aforementioned two provisions clearly lay down the limited periphery within which gratuity of employees, including Railway employees, may be wholly or partially forfeited.
- 22.** However, Section 14 of the Gratuity Act contains a *non obstante* clause, providing that the said Act or any Rule made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than the said Act or in any instrument or contract having effect by virtue of any enactment other than the Gratuity Act.
- 23.** Moreover, the Supreme Court, as well as this Court, has consistently held that the deduction of gratuity and superannuation is not permissible and has to be seriously dealt with, if necessary, by imposing interest.
- 24.** Hence, there is no iota of doubt that, as per the relevant provisions of the Gratuity Act, that is, Sections 4(6) and 13, provide for the Gratuity Act to override any subordinate legislation, including the Railway Services (Pension) Rules, 1993 as well as other statutes.
- 25.** Read in such context, in order to be *intra vires*, the Clause (a) of Rule 16(8) of the 1993 Rules has to be read down to the extent that, if the Railway accommodation is not vacated after termination of the Railway servant, as envisaged in Section 4(6) of the Gratuity Act, the gratuity

may be withheld. Apart from such interpretation, Clause (a) of sub-rule (8) of Rule 16 has to be declared *ultra vires*.

- 26.** That apart, Clauses (b), (c) and (d) also have to be read down to the extent that withholding or adjustment from the Death-Cum-Retirement Gratuity in lieu of dues can only be done from the Death-Cum-Retirement Gratuity in the event there is a termination as contemplated in Section 4(6) of the Gratuity Act.
- 27.** Any other interpretation of Rule 16(8) of the 1993 Rules will render the same open to be overridden by the Gratuity Act, in view of Section 14 of the said Act.
- 28.** In the present case, whatever might have been the explanation for not regularizing the accommodation-in-question in favour of the respondent, as advanced on behalf of the appellants-Authorities, the same could not be a justification of deducting/withholding any amount of gratuity even if the Railway employees did not vacate his/her accommodation after superannuation or after the permissible period of retention after the superannuation.
- 29.** Even looking into Clause (e) of Rule 16(8) of the 1993 Rules, the dispute regarding recovery of damages or rent from the ex-Railway employee shall be subject to adjudication by the concerned Estate Officer appointed under the PP Act. Section 7 of the PP Act specifically empowers the Estate Officer to require payment of rent or damages in respect of public premises where any person is in arrears of rent payable in respect of the public premises. Without due compliance with the detailed procedure as laid down chronologically in the various sub-

sections of Section 7 of the PP Act, no other recourse is open to the Railway Authorities to recover the dues.

- 30.** However, in the present case, no such proceeding was taken out at all by the Estate Officer.
- 31.** On the contrary, an eviction proceeding under the specific provisions of Section 5 of the PP Act, but eviction of the respondent was directed in the month of May, 2017, that too, *suo moto*, although the respondent had already vacated his quarters on December 26, 2016.
- 32.** Thus, the proceeding under Section 5 of the PP Act had already become infructuous and could not provide a handle to the appellants-Authorities to bye-pass the provisions of Section 7 of the PP Act and direct damage rent to be deducted from the gratuity of the respondent as per the latter's legal entitlement.
- 33.** Hence, on a conjoint reading of Sections 4(6) and 13 of the Gratuity Act and Sections 5 and 7 of the PP Act, together with the proposition laid down by the Supreme Court and this Court in several judgments, it is evident that the appellants acted *de hors* the law and exceeded its powers in deducting an arbitrary amount of Rs.3,23,092/- towards damage rent to be deducted out of the amount of Rs.5,61,617/-, payable to the respondent.
- 34.** Hence, the Tribunal was justified in passing the judgment and order impugned herein.
- 35.** Accordingly, W.P.C.T. No.140 of 2019 is dismissed on contest. The appellants are directed to pay the deducted sum of Rs,3,28,092/- in lieu of damage rent, along with the interest accrued thereon in view of the

investment, if any, made with a nationalised bank in terms of the ad interim Order dated September 21, 2020 passed by a co-ordinate Bench in this matter.

- 36.** Such entire sum, including the interest actually accrued and, in the event no such deposit has been made, with interest at the rate of eighteen per cent per annum, shall be disbursed by the appellants in favour of the respondent at the earliest, latest by November 15, 2021. In default, the appellants shall pay further interest at the rate of six per cent per annum on the total decretal sum (including interest) accrued till the date of such payment.
- 37.** Both parties and all concerned shall act on the written communication of the learned Advocates for the parties, accompanied by a server copy of this order, without insisting upon prior production of a certified copy thereof.
- 38.** There will be no order as to costs.
- 39.** Urgent certified server copies shall be supplied to the applying parties, subject to due compliance with the necessary requisites.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Jay Sengupta, J.)