

Dr. A. P. Mondal @ Ambika Prasad Mondal
Vs.
Union of India & Ors.

Mr. G. C. Chakraborty,
Mr. Kasinath Bhattacharya,
Mr. K. B. S. Mahapatra.
... for the petitioner.

The instant writ petition arises from an order dated 20th January, 2020 passed in OA 1386 of 2016 by the Central Administrative Tribunal, Kolkata Bench, disposing of the tribunal application directing the respondent authorities to issue a notice upon the petitioner and after affording an opportunity of personal hearing shall arrive at the conclusion on the actual amount recoverable in accordance with law.

Admittedly, the petitioner was superannuated from his service with effect from 1st April, 2008. Certain benefits were attached to the post held by the petitioner which includes the furnished accommodation to be provided by the respondent, i.e. the Steel Authority of India Limited, which was supposed to be vacated within the time indicated in the service conditions upon superannuation.

It appears that the petitioner caused a letter to the respondent authorities, the Steel Authority of India Limited, to take over the possession of the said official accommodation, but there was no response to it. There was a complete silence for a period of one year until another letter was issued on 12th January, 2009. In the said letter the petitioner shifted his earlier stand and requested the said authority to grant leasehold right in respect of the said premises and permit the continuance in possession.

Ultimately by a letter dated 19th July, 2011 the respondent authorities called upon the petitioner to hand over the vacant possession of the said premises which was followed by a subsequent order communicated through a letter dated 20th March, 2015 to vacate the official accommodation. Though the petitioner reiterated his stand and expressed his intention to remain in occupation for few days more but ultimately the possession was handed over on 1st April, 2015.

It was found that for his unauthorized occupation in the official residence and for payment of electricity charges and income tax so applicable, the petitioner is liable to pay a sum of Rs.3,94,434/-, which was deducted from the amount of gratuity admissible to the petitioner. It is not in dispute that after deducting the aforesaid amount the gratuity has been paid to the petitioner. The dispute pertains to the deduction made on account of unauthorized occupation, electricity charges and income tax.

The shelter was taken by the respondent authorities before the Tribunal that the SAIL-Gratuity Rules provide for such deduction and, therefore, the act of deduction from the gratuity amount is within the ambit of the aforesaid provisions and, therefore, cannot be faulted with.

Several judgements were cited before the Tribunal including the judgement of this Court rendered in case of *Sardar Sohan Singh vs. Union of India & Ors.* reported in 2007 LAB I.C. 1345; where the Bench held that if an employee continued to occupy the official residence allotted being attached to the service after attaining the age of retirement, it is permissible for the employer to deduct the occupational charges and the other charges, which the said employee enjoyed by

way of availing the facilities and amenities attached to the said official accommodation.

Rule 3.2.1(c) of the SAIL-Gratuity Rules empowers the Company to withhold the gratuity amount payable to an ex-employee for non-compliance of the Company's Rules including non-vacation of the Company's accommodation and no interest would be payable on the gratuity amount so withheld for the period of unauthorized occupation and up to one month after the vacation of the Company's accommodation.

Rule 3.2.1(d) of the said Rules further postulates that the Company shall always have a right to deduct such amount as may be due from the employee from the gratuity payable and admissible under the aforesaid Rules.

It is, thus, manifest from the aforesaid Rules, which has a statutory flavour, that not only an amount calculated for unauthorized occupation by the ex-employee can be withheld from the gratuity amount, but the interest also shall not be payable until one month after the vacation of the Company's accommodation. Ordinarily the employer cannot recover an excess amount paid to the employee from the retiral benefits, unless the employee has fraudulently done something or misrepresented the facts, which lead the employer to recover such amount, believing to be true. Conversely, if the employee has no role to play and at the sole discretion of the employer certain amount has been paid to the employee, such amount cannot be recovered from the retiral benefits, which can find support from the judgement of the Supreme Court rendered in case of *State of Punjab & Ors. vs. Rafiq Maqsih (White Washer) & Ors.* reported in (2015) 4 SCC 334.

It is not a case of such nature but a case, which is covered by *Shardar Sohan Singh (supra)*. The statutory authority cannot do anything unless provided by the statutory law and if the law does not permit such course of action, the statutory authorities cannot assume such powers and do a thing, which is not contemplated therein. The right to deduct the occupational charges and other charges for overstay or unauthorized stay in the official accommodation is manifest from the said statutory provisions and, therefore, we do not find any infirmity or illegality in the order of the Tribunal.

So far as the quantum of occupational charges, electricity charges and the income tax deducted from the said gratuity amount is concerned, the Tribunal has followed the mandate given in the judgement of *Shardar Sohan Singh (supra)* and directed the competent authority to issue a notice and accord a personal hearing to the petitioner to arrive at the final conclusion on the amount so recovered.

We thus do not find that the petitioner has been able to make out a case warranting interference with the impugned order.

The writ petition is thus dismissed.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)

