

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Debangsu Basak
and

The Hon'ble Justice Md. Shabbar Rashidi

FMA No. 801 of 2019

With

FMA No. 802 of 2019

Lallan Thakur

Vs.

Union of India & Others.

For the appellant

in FMA 801 of 2019 : Mr. Debajyoti Basu, Adv.
Mr. Barun Chatterjee, Adv.

For the respondents

in FMA 801 of 2019 : Mr. Asok Bhaumik, Adv.

For the appellants

in FMA 802 of 2019 : Mr. Asok Bhaumik, Adv.

For the respondent

in FMA 802 of 2019 : Mr. Debajyoti Basu, Adv.
Mr. Barun Chatterjee, Adv.

Heard on : August 12, 2024

Judgment on : August 29, 2024

Md. Shabbar Rashidi, J.

1. Two appeals are taken up together as they emanate from a common judgment and order dated September 21, 2017 passed in WP No. 29595 (W) of 2016.
2. By the impugned judgment and order the learned Single Judge partly allowed the writ petition filed on behalf of appellant in FMA 801 of 2019 directing the appellants in FMA 802 of 2019 to release the gratuity of the private appellants within four weeks with interest thereon. The learned Trial Court also directed the private appellants to pay the assessed amount of damage rent for unauthorized occupation of Railway quarters within a period of six weeks failing which the Railway authorities were granted liberty to realize the same from the pension of private appellants.
3. Learned advocate for the private appellant submitted that Rule 15 and Rule 16 of the Railway Services (Pension) Rules, 1993 do not provide for determination of rent and damage rent. The damage rent could not have been assessed and levied except according to the

provisions of Public Premises (Eviction of Unauthorized Occupants) Act, 1971. It was contended that the learned Single Judge erred in applying the provisions of eviction. The private appellant had already vacated the quarters and as such, no question of eviction from Railway quarters was in the issue. In support of his contention, learned advocate for the private appellant relied upon **2008 SCC OnLine Pat 700 (East Central Railway vs CAT Patna)** and **2014 SCC OnLine Del 4054 (Union of India vs Rajinder Singh)**.

4. Learned advocate for the private appellant also submitted that amount of gratuity as well as pension paid to a retired employee is not liable to attachment under any circumstances. On such proposition, learned advocate for the private appellant relied upon **(2009) 1 Supreme Court Cases 376 (Radhey Shyam Gupta Vs. Punjab National bank)**, **(2001) 6 Supreme Court Cases 591 (Gorakhpur University vs Dr. Shitla Prasad)**, **(1981) 1 Supreme Court Cases 449 (Som Prakash Rekhi vs Union of India and Another)**, **(1985) 1 Supreme Court Cases 429 (State of Kerala and others vs M Padmanabhan Nair)**, **(1994) 6 Supreme Court Cases 589 (R. Kapur vs Director of Inspection)**, **(1971) 2**

Supreme Court Cases 330 (Deokinandan Prasad vs State of Bihar and Ors.), (2013) 12 Supreme Court Cases 210 (State of Jharkhand vs Jitendra Kumar Srivastava).

5. Relying upon **(1976)3 Supreme Court Cases 407 (New Delhi Municipal Committee vs Kalu Ram)**, learned advocate for the private appellant contended that even taking recourse to the Act of 1971, the provisions thereof do not authorize the Railway authorities to realize debt which is otherwise time barred, in terms of Article 52 of the Limitation Act.
6. Learned advocate for the private appellant also submitted that eviction of unauthorized occupants of public premises is governed by the provisions of the Act of 1971, the provisions of Railway Act or Rules framed thereunder, cannot be applied. In support of such contention, he relied on **AIR 1966 SC 135 (Damji Valji Shah vs LIC of India)**, **AIR 1981 Bom 72 (Arjun Babloo Thukral vs G. V. Javadkar & Ors.)** and **(2008) 3 Supreme Court Cases 674 (Suresh Nanda vs CBI)**.
7. The authorities of Railway have also preferred appeal against the impugned order. They are aggrieved with the direction in the

impugned order directing realization of arrears of rent and damage rent exclusively from the pension payable to the private appellant.

8. The private appellant/writ petitioner was a Constable under Railway Protection Force. He joined on April 07, 1975 and was posted at Adra Division. He was allotted a Railway quarter and occupied the same on usual rents.

9. On June 15, 1992, the private appellant was transferred to Burnpur under the same division. He, by his letter dated July 27, 1992 applied for retention of his quarter at Adra on the ground of studies of his children. Such request of the private appellant was acceded to by the railway authorities, by a writing dated August 17, 1992, asking him to pay rental at the rate of ₹. 80/- per month for the period between September 10, 1992 and April 30, 1993. By a memo dated October 23, 1992, the rent for the government accommodation of the private appellant was enhanced to ₹. 65/- per month for the period from July 10, 1992 till September 09, 1992 and ₹.130/- per month for the period from September 10, 1992 till September 30, 1992.

10. By a memo dated July 22, 1993, the writ petitioner was informed that he was in unauthorized occupation of Railway

quarter for which he was liable to pay rent as well as damage rent. He was also directed to vacate the quarter. The writ petitioner challenged the said memo in a Writ Petition being C.O. No. 11087 (W) of 1993. By order passed on September 6, 1993 in such Writ Petition, the writ petitioner was directed to pay rent at the rate of ₹. 130/- per month which the railway authorities all along accepted. The railway authorities were also directed to maintain status quo in respect of the possession of the quarters.

11. The aforesaid writ petition being C. O. 11087 (W) of 1993 was disposed of by an order passed on March 4, 2004 directing the Divisional Security Commissioner, RPF, E. R. to consider the representation of the petitioner and to maintain status quo until disposal of such representation. The aforesaid order dated March 4, 2004 was never communicated by the writ petitioner to the railway authorities.

12. The writ petitioner was again posted at Adra from May 28, 2002 to May 16, 2006 and from April 6, 2012 to January 31, 2015. He finally vacated the Railway quarter on July 2, 2014. The order dated March 4, 2004 passed in C. O. 11087 (W) of 1993 was served

by the writ petitioner upon the authorities on December 19, 2014 when he had already vacated that the quarters.

- 13.** The writ petitioner superannuated from service on January 31, 2015 and his pension payment order was issued on January 30, 2015. His terminal gratuity was withheld. For such reason, the writ petitioner made a representation on July 16, 2015 requesting release of his gratuity amount. He also filed a Writ Petition being W. P. 24290 (W) of 2015 seeking release of his gratuity amount. The said the writ petition was disposed of on October 14, 2015 directing the authorities to consider his representation. The court held thus,

“Let the report in the form of an affidavit filed in Court today be taken on record.

Having heard the learned advocates for the parties and upon perusing the instant application, it appears that the petitioner has approached this Court essentially for release of the gratuity amount payable to him along with other arrears. From the report in the form of an affidavit, it transpires that the writ petitioner had earlier approached this Court sometime in the year 1993. That writ petition was disposed of by an order dated 4th March, 2004. However, pursuant to the

said order, the petitioner at no point of time appeared before the concerned respondent.

In such circumstances, the writ petition is disposed of with an observation that if the petitioner approaches the concerned respondent authority in accordance with the directions as contained in the order dated 4th March, 2004, the said authority, shall consider the grievances of the petitioner, in accordance with law.”

- 14.** Such order passed in W. P. 24290 (W) of 2015 was assailed at the behest of the writ petitioner in MAT 1203 of 2016 which was disposed of by an order dated September 20, 2016 in the following terms, that is to say:

“The grievance of the Appellant is that the learned Single Judge while disposing of the writ petition on 14th October, 2015 has incorrectly mentioned that the Respondent-Authority will consider the Appellant’s representation dated 4th March, 2004 instead of 16th July, 2015.

The representation dated 4th March, 2004 was with respect to damage rent while the representation of 16th July, 2015 was with respect to disbursement of his Gratuity after he retired on

31st January, 2015. Obviously, the payment of Gratuity could not have been considered with the representation dated 4th March, 2004 because the Appellant was still in service at that point of time.

In our opinion, the appeal can be conveniently disposed of by directing the Respondents-Authorities to decide the representations dated 4th March, 2004 and 16th July, 2015 together.

The Respondents-Authorities will afford a personal hearing to the Appellant after communicating to him when he should be present for the hearing. The Respondents-Authorities shall pass an order on the representations within eight weeks from today. With the aforesaid modification of the impugned order, the appeal and the stay application are disposed of.”

- 15.** In pursuance of the order so passed in MAT No. 1203 of 2016, the correct writ petitioner was provided with a personal hearing by the authorities. After such personal hearing, the railway authorities passed a reasoned order on November 18, 2016. By the aforesaid reasoned order, the authorities considered the representations filed on behalf of the writ petitioner and came to a conclusion that the writ petitioner was permitted to retain the quarters until April 30,

1993. After that, the writ petitioner did not vacate the quarter and was to be treated as unauthorized occupant for which he was liable to pay damage rent in terms of the relevant Railway Rules. The reasoned order also specified that the writ petitioner was liable to pay damage rent which was assessed, in accordance with the rules, at ₹.7,11,839/-. It was also observed that the aforesaid amount, towards damage rent, was to be recovered from the writ petitioner from his terminal settlement of dues, in accordance with the extant rules. The reasoned order also contained a calculation sheet showing outstanding dues of ₹. 6, 80, 379/- after deducting the amount already paid by the writ petitioner.

16. The Writ Petitioner challenged the reasoned order passed by the Railway Authorities in Writ Petition being WP No. 29595 (W) of 2016. The said Writ Petition was disposed of with the impugned order.

17. The said writ petition was contested by the railway authorities. In their affidavit in opposition, the railway authorities came up with a specific case that the writ petitioner was directed to vacate the railway quarter but he did not do so. It was also stated in the affidavit that since, there was an order to maintain status quo in

the order dated September 6, 1993 passed in C. O. 11087 (W) of 1993, no steps for eviction of the writ petitioner could be initiated by the Railway authorities.

18. Admittedly, the writ petitioner was a Constable in the Railway Protection Force posted at Adra. It is also not in dispute that being so posted, the writ petitioner applied for and was allotted with a Railway quarter at Adra. He occupied the said quarter since its allotment in the year 1992. Later on, owing to his transfer to Burnpur, the writ petitioner, by his letter dated July 27, 1992, applied for retention of the quarter so allotted in his favour at Adra on the ground of studies of his child.

19. Such request of the writ petitioner was acceded to and he was allowed by the authorities to retain the quarter for a period from July 10, 1992 till April 30, 1993 i.e. from July 10, 1992 till September 9, 1992 at usual rates of rent at ₹. 40/- per month and from September 10, 1992 till April 30, 1993 at special rent of ₹. 80/- per month which was later modified to ₹. 65/- per month and ₹. 130/- per month respectively.

20. On expiration of such period, the authorities, by a writing dated July 22, 1993, directed realization of damage rate of rent for

the unauthorized occupation of Railway quarters with effect from May 1, 1993 at the rate of ₹. 15/- per square meter of plinth area assessed at ₹. 675/- per month. The assessment was made in consonance with the relevant circular in this regard dated January 19, 1991.

21. It is also not disputed that the writ petitioner challenged the writing dated July 22, 1993 in a writ petition, the writ petition being C.O. No. 11087 (W) of 1993 and obtained an order of status quo. While disposing of the said writ petition, the High Court, in its order dated March 4, 2004 held that,

“None appears on behalf of the Railways. Mr. Soumitra Banerjee appears for the Union of India.

This writ application is disposed of after hearing the submission of the petitioner and on perusing of materials before this Court with a direction upon the Respondent No.3 to take into account the representation made before him and also in the event petitioner is still posted in the same station where he was at the time of filing the writ application, the said respondent shall come to his conclusion after giving the petitioner an

opportunity of hearing in accordance with law within the permissible legal framework.

Status quo as on the date when the application was moved and interim order was granted will remain in force till the disposal of the representation made by the petitioner.”

22. There is serious allegation against the writ petitioner that he never communicated such order dated March 4, 2004 upon the Railway authorities nor did he approach such authorities seeking consideration of his representation, as directed until December 19, 2014. Such allegation has neither been denied by the writ petitioner nor has anything been brought forth that the order dated March 4, 2004 was communicated by the writ petitioner to the Railway authorities seeking consideration of his representation.

23. Apparently, the writ petitioner obtained an order of status quo in respect of occupation of the quarters and deliberately withheld the order preventing the consideration of his representation. He continued to occupy the quarters. He superannuated from service on January 31, 2015 with his pension payment order already issued on January 30, 2015.

24. It is when his gratuity was withheld for adjustment of due rent and damage rent, the writ petitioner jumped into action, seeking release of gratuity by yet another writ petition. The said writ petition also ended in a direction upon the Railway authorities to consider the representations of the writ petitioner. In pursuance of such directions, the Railway authorities considered the representations of the writ petitioner and came to a conclusion, by dint of a reasoned order, that the writ petitioner was liable to pay the damage rent for unauthorized occupation of the quarters. They also directed to recover such rent from the writ petitioner by adjustment from his terminal gratuity amount in terms of the extant Rules.

25. By another writ petition, the writ petitioner assailed the reasoned order challenging the manner of assessment of damage rent and also its realization upon adjustment against the terminal gratuity amount which culminated into the impugned order.

26. At the time of hearing, learned advocate for the Railway relied upon the relevant circulars governing the assessment of damage rent per square meter of plinth area, modified from time to time. It was argued that assessment of damage rent for unauthorised occupation of railway quarters was done in compliance of such

circulars. Learned advocate for the private appellant could not point out any fault with such assessment.

27. We have noted hereinbefore that the writ petitioner was granted permission to retain the quarters for an extended period up to April 30, 1993. Thereafter, he was asked to vacate the quarters but he did not do so. He continued in occupation of the quarters and stalled any attempt for his eviction therefrom by obtaining a restraining order of status quo. Not only that, he deliberately suppressed information. He neither communicated the directions of this court nor approached the authorities, as directed, regarding consideration of his representation in this regard for over 10 years. For the aforesaid reasons, the writ petitioner cannot be allowed to garner the benefits of his own fault. His actions also disentitle him of any sympathetic consideration.

28. Learned advocate for the Railways also relied upon various provisions of Railway Service (Pension) Rules, 1993 in support of his contention that the Rules permit Recovery and adjustment of Government or railway dues from pensionary benefits. Reliance is specifically placed on Rule 15 and Rule 16. The aforesaid rules are *reproduced hereunder:*

15. Recovery and adjustment of Government or railway dues from pensionary benefits:

- 1. It shall be the duty of the Head of Office to ascertain and assess Government or railway dues payable by a railway servant due for retirement.**
- 2. The railway or Government dues as ascertained and assessed, which remain outstanding till the date of retirement or death of the railway servant, shall be adjusted against the amount of the retirement gratuity or death gratuity or terminal gratuity and recovery of the dues against the retiring railway servant shall be regulated in accordance with the provisions of sub-rule (4).**
- 3. For the purposes of this rule, the expression "railway or Government dues" includes**
 - a. dues pertaining to railway or Government accommodation including arrears of license fee, if any;**
 - b. dues other than those pertaining to railway or Government accommodation, namely balance of house-building or conveyance or any other advance, overpayment of pay and allowances, leave salary or other dues such as Post Office or Life Insurance premia,**

losses (including short collection in freight charges shortage in stores) caused to the Government or the railway as a result of negligence or fraud on the part of the railway servant while he was in service.

4. i. *A claim against the railway servant may be on account of all or any of the following: -*
 - a. *losses (including short collection in freight charges, shortage in stores) caused to the Government or the railway as a result of negligence or fraud on the part of the railway servant while he was in service;*
 - b. *other Government dues such as over-payment on account of pay and allowances or other dues such as house rent, Post Office or Life Insurance Premia, or outstanding advance,*
 - c. *non-Government dues.*
- ii. *Recovery of losses specified in sub-clause (a) of clause (i) of this sub-rule shall be made subject to the conditions laid down in Rule 8 being satisfied from recurring pensions and also commuted value thereof, which are governed by the Pension Act, 1871 (23 of 1871). A recovery on account of item (a) of sub para (i) which cannot be made in terms of Rule 8, and any recovery on account of sub-clauses items (b) and (c) of clause (i) that cannot be made from these even with the consent of the railway servant, the same shall be recovered from retirement, death, terminal or service gratuity which*

are not subject to the Pensions Act, 1871 (23 of 1871). It is permissible to make recovery of Government dues from the retirement, death, terminal or service gratuity even without obtaining his consent, or without obtaining the consent of the member of his family in the case of a deceased railway servant.

iii. Sanction to pensionary benefits shall not be delayed pending recovery of any outstanding Government dues. If at the time of sanction, any dues remain unassessed or unrealised the following courses should be adopted: -

a. In respect of the dues as mentioned in sub-clause (a) of clause (i) of this sub-rule. A suitable cash deposit may be taken from the railway servant or only such portion of the gratuity as may be considered sufficient, may be held over till the outstanding dues are assessed and adjusted.

b. In respect if the dues as mentioned in sub-clause (b) of clause (i) of this sub-rule-

1. The retiring railway servant may be asked to furnish a surety of a suitable permanent railway servant. If the surety furnished by him is found acceptable, the

payment of his pension or gratuity or his last claim for pay, etc. should not be withheld and the surety shall sign a bond in Form 2.

2. If the retiring railway servant is unable or not willing to furnish a surety, then action shall be taken as specified in sub-clause (a) of sub-clause (iii).

3. The authority-sanctioning pension in each case shall be competent to accept the surety bond in Form 2 on behalf of the President.

c. In respect of the dues as mentioned in sub-clause (c) of clause (i) The Quasi-Government and non-Government dues, such as amounts payable by a railway servant to Consumer Cooperative Societies, Consumer Credit Societies or the dues payable to an autonomous organisation by a railway servant while on deputation may be recovered from the retirement gratuity which has become payable to the retiring railway servant provided he gives his consent for doing so in writing to the administration.

iv. In all cases referred to in sub-clauses (a) and (b) of clause (i) of this sub-rule, the amounts which the retiring railway servants are required to deposit or those which

are withheld from the gratuity payable to them shall not be disproportionately large and that such amount are not withheld or the sureties furnished are not bound over for unduly long periods. To achieve this the following principles should be observed by all the concerned authorities: -

- a. The cash deposit to be taken or the amount of gratuity to be withheld should not exceed the estimated amount of the outstanding dues plus twenty-five per centum thereof.*
- b. Dues mentioned in clause (i) of this sub-rule should be assessed and adjusted within a period of three months from the date of retirement of the railway servant concerned.*
- c. Steps should be taken to see that there is no loss to Government on account of negligence on the part of the officials concerned while intimating and processing of a demand. The officials concerned shall be liable to disciplinary action in not assessing the Government dues in time and the question whether the recovery of the irrecoverable amount shall be waived or the recovery made from the officials held responsible for*

not assessing the Government dues in time should be considered on merits.

d. As soon as proceeding of the nature referred to in Rule 8 are instituted, the authority which instituted the proceedings should without delay intimate the fact to the Account Officer.

16. Adjustment and recovery of dues pertaining to Government or railway accommodation

(1). The Directorate of Estates on receipts of intimation from the Head of Office under sub-rule (1) or Rule 98 regarding the issue of "No Demand Certificate" shall scrutinise its records and inform the Head of Office eight months before the date of retirement of the allottee, if any licence fee was recoverable from him in respect of the period prior to eight months of his retirement. If no intimation in regard to recovery of outstanding licence fee is received by the Head of Office by the stipulated date, it shall be presumed that no licence fee was recoverable from the allottee in respect of the period preceding eight months of his retirement.

(2). The Head of Office shall ensure that licence fee for the next eight months, that is up to the date of retirement

of the allottee is recovered every month from the pay and allowances of the allottee.

(3). Where the Directorate of Estates intimates the amount of licence fee recoverable in respect of the period mentioned in sub-rule (1), the Head of Office shall ensure that outstanding licence fee is recovered in instalments from the current pay and allowances of the allottee and where the entire amount is not recovered from the pay and allowances, the balance shall be recovered out of the gratuity before its payment is authorised.

(4). The Directorate of Estates shall also inform the Head of Office the amount of licence fee for the retention of Government accommodation for the permissible period of four months beyond the date of retirement of the allottee. The Head of Office shall adjust the amount of that licence fee from the amount of the gratuity together with the unrecovered licence fee, if any, mentioned in sub-rule (3).

(5). If in any particular case, it is not possible for the Directorate of Estates to determine the outstanding licence fee, that Directorate shall inform the Head of Office that ten per cent of the gratuity or one thousand

rupees, whichever is less, may be withheld pending receipt of further information.

- (6). The recovery of licence fee for the occupation of the Government accommodation beyond the permissible period of four months after the date of retirement if allowed shall be the responsibility of the Directorate of Estates. Any amount becoming due on account of licence fee for retention of Government accommodation beyond four months after retirement and remaining unpaid licence fee may be recovered by the Directorate of Estates through the concerned Accounts Officer from the dearness relief without the consent of the pensioner. In such cases no dearness relief should be disbursed until full recovery of such dues have been made.*

NOTE: *For the purpose of this rule, the licence fee shall also include any other charges payable by the allottee for any damage or loss caused by him to the accommodation or its fittings.*

“(6A) The Directorate of Estates shall ensure that “No Demand Certificate” shall be given to the Government employee within a period of fourteen days from the actual date of vacation of the Government

accommodation and the allottee shall be entitled to payment of interest (at the rate applicable to General Provident Fund deposit determined from time to time by the Government of India) on the excess withheld amount of gratuity which is required to be refunded, after adjusting the arrears of licence fee and damages, if any, payable by the allottee and the interest shall be payable by the Directorate of Estates through the concerned Accounts Officer of the Government employee from the actual date of vacation of the Government accommodation up to the date of refund of excess withheld amount of gratuity.

(6B) On account of licence fee or damages remaining unpaid after adjustment from the withheld amount of gratuity mentioned under sub-rule (5) above, may be ordered to be recovered by the Directorate of Estates through the concerned Accounts Officer from the Dearness Relief without the consent of the pensioners and in such cases no Dearness Relief shall be disbursed until full recovery of such dues has been made.

NOTE:- For the purpose of this rule, the licence fee shall also include any other charges payable by the allottee for any damage or loss caused by him to the accommodation or its fittings.”

7. A railway servant shall vacate the railway accommodation immediately after his retirement.

8. a. In case where a railway accommodation is not vacated after superannuation of the railway servant or after cessation of his services such as on voluntary retirement, compulsory retirement, medical invalidation, or death, then, the full amount of retirement gratuity, death gratuity or special contribution to provident fund, as the case may be, shall be withheld.

1. The amount withheld under clause (a) shall remain with the railway administration in the form of cash.

c. In case the railway accommodation is not vacated even after the permissible period of retention after the superannuation, retirement, cessation of service or death, as the case may be, the railway administration shall have the right 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.

d. Any amount remaining unpaid after the adjustment made under clause (c), may also be recovered without the consent of the pensioner by the concerned Accounts Officer from the dearness relief of the pensioner until full recovery of such dues has been made.

e. 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 Unauthorized Occupants) Act, 1971 (40 of 1971)."

In case where a railway accommodation is not vacated by a railway servant after superannuation or after cessation of service such as voluntary retirement or death, the full amount of the retirement gratuity, death gratuity or special contribution to Provident Fund, as the case may be, shall be withheld. The amount so withheld shall remain with the administration in the form of cash, which shall be released immediately on the vacation of such railway accommodation.

29. The aforesaid Rules do specifically authorize the Railway authorities to withhold the gratuity amount due to the writ petitioner and adjust the same against the unpaid dues towards damage rent for unauthorized occupation of the government accommodation. Such damage rent was duly assessed by the authorities, by a reasoned order, while considering the representations of the writ petitioner in terms of directions of this Court. The assessment so made, has also not been interfered with.

30. In the facts of **Jitender Kumar Srivastava (supra)**, a portion of the pension and salary was withheld pending outcome of the criminal case/departmental enquiry. In such circumstances, the Hon'ble Supreme Court noted that a person cannot be deprived of his pension without authority of law, which is the constitutional mandate enshrined in Article 300 A of the Constitution.

31. In **Radhey Shyam Gupta (supra)**, the creditor bank sought to realise loan amount from the debtor. In a Civil Suit, the creditor sought attachment of the fixed deposit of the debtor which was made with the amount received by the debtor by way of pension and gratuity. Hon'ble Supreme Court noted that in view of Section 60 (1) (g) of the Code of Civil Procedure, the High Court erred in

directing that a portion of the decretal amount be satisfied from the fixed deposit receipts of the debtor held by the bank. It was noted that the pension and gratuity of the debtor which had been converted into fixed deposits, could not be attached under the provisions of the Code of Civil Procedure.

32. In the case of **Gorakhpur University (Supra)**, it was observed by that,

“5. We have carefully considered

.....

This Court has been repeatedly emphasizing the position that pension and gratuity are no longer matters of any bounty to be distributed by the Government but are valuable rights acquired and property in their hands and any delay in settlement and disbursement thereof 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. Such is the position with reference to amounts due towards provident fund, which is rendered immune from attachment and deduction

or adjustment as against any other dues from the employee. In the context of this, mere reliance on behalf of the appellant upon yet another decision of a different Division Bench of the very High Court rendered without taking note of any of the earlier decisions of this Court but merely proceeding to decide the issue upon equitable considerations of balancing conflicting claims of respective parties before it does not improve the case of the appellant any further. Reliance placed for the appellant University on the decision reported in Wazir Chand [(2001) 6 SCC 596 : JT 2000 Supp (1) SC 515] does not also sound well on the facts and circumstances of this case. It is not clear from the facts relating to the said decision as to whether the person concerned was allowed to remain in occupation on receipt of the normal rent as in the present case. As noticed earlier, the case of the contesting respondent in this case is that the university authorities regularly accepted the rent at normal rates every month from the petitioner till the quarters were vacated and that in spite of request made for the allotment of the said quarters in favour of the son of the respondent, who is in the service of the University, no decision seems to have been taken and communicated though it is now

claimed in the court proceedings that he is not entitled to this type of accommodation. Further, the facts disclosed such as the resolutions of the University resolving to waive penal rent from all Teachers as well as that of the Executive Council dated 18-7-1994 and the actual such waiver made in the case of several others cannot be easily ignored. The lethargy shown by the authorities in not taking any action according to law to enforce their right to recover possession of the quarters from the respondent or fix liability or determine the so-called penal rent after giving prior show-cause notice or any opportunity to him before ever even proceeding to recover the same from the respondent renders the claim for penal rent not only a seriously disputed or contested claim but the University cannot be allowed to recover summarily the alleged dues according to its whims in a vindictive manner by adopting different and discriminatory standards. The facts disclosed also show that it is almost one year after the vacation of the quarters and that too on the basis of certain subsequent orders increasing the rates of penal rent, the applicability of which to the respondent itself was again seriously disputed and to some extent justifiably too, the appellant cannot be held

to be entitled to recover by way of adjustment such disputed sums or claims against the pension, gratuity and provident fund amounts indisputably due and unquestionably payable to the respondent before us. The claims of the University cannot be said to be in respect of an admitted or conceded claim or sum due. Therefore, we are of the view that no infirmity or illegality could be said to have vitiated the order, under challenge in this appeal, to call for our interference, apart from the further reason that the disbursements have already been said to have been made in this case as per the decision of the High Court.”

33. The decision rendered in the case of **Som Prakash Rekhi (Supra)** deals with a situation with regard to payment of gratuity and provident fund in the event of transfer of the ownership of the company from one authority to another. The facts of such case, has no bearing with the facts of the case at hand. As such, the ratio laid down in the said case is not attracted in the present case.

34. The decision in **Padmanabhan Nair (supra)** was rendered in the context of delay in making payment of gratuity on account of delayed issuance of Last Pay Certificate and held that delay in settlement of such entitlement of the employee must be visited with

penal interest. In the case before us, no such delay in settlement is in issue. Therefore, the ratio in **Padmanabhan Nair (supra)** cannot be brought to service in the instant case.

35. In the case of **R. Kapoor (supra)**, the Hon'ble Supreme Court relying on the ratio laid down in the case of **Padma Nagan Nair (supra)**, held that,

“11. The Tribunal having come to the conclusion that DCRG cannot be withheld merely because the claim for damages for unauthorised occupation is pending, should in our considered opinion, have granted interest at the rate of 18% since right to gratuity is not dependent upon the appellant vacating the official accommodation. Having regard to these circumstances, we feel that it is a fit case in which the award of 18% is warranted and it is so ordered. The DCRG due to the appellant will carry interest at the rate of 18% per annum from 1-6-1986 till the date of payment. Of course this shall be without prejudice to the right of the respondent to recover damages under Fundamental Rule 48-A.”

36. In the instant case, however, the claim for damage rents for unauthorised occupation of Government quarters is not pending; rather it has been assessed finally. The Railway Authorities have

not withheld the gratuity payable to the private appellant pending the settlement of damage rents. It is in the form of realisation of such rent strictly in compliance of the extant rules i.e. Railway service (Pension) Rules, 1993 which specifically authorises realisation of damage rent or other dues from the gratuity payable.

37. In the case of **Deoki Nandan Prasad (supra)**, it was held by the Hon'ble Supreme Court that the right of the petitioner to receive pension was a property under Article 31(1) of the Constitution and the State had no power to withhold the same as a mere executive order. In the facts of the said case, the pension of the petitioner therein was withheld owing to his conviction in a departmental proceeding. The facts appearing in the aforesaid case are totally different from the facts of the case before us and therefore such ratio cannot be applied in this case.

38. In the case of **Garment Cleaning Works (supra)**, the Hon'ble Supreme Court observed that an employee who rendered long meritorious service and earned gratuity for such service would not be disentitled from such gratuity even if he was found guilty of misconduct which entitled in his dismissal from service. There is no misconduct or dismissal from service issue in the case at hand.

There is also no denial that the private appellant was not entitled for gratuity in the facts of the present case. In such circumstances, the ratio laid down in *Garment Cleaning Works (supra)* does not come to help to the aid of the private appellant.

39. Learned advocate for the private appellant relied upon the case of **Damji Valji Shaw (supra)** on the proposition that the provision of the Railway Service (Pension) Rules, 1993 could not come in the way of a proceeding for eviction of the private appellant in terms of public premises (Eviction Act, 1971). It was contended that Railway Authorities did not take any action under the Act of 1971 for his eviction and as such they were not entitled to claim damage rent. However, in the facts of the present case, the private appellant admittedly, challenged the memorandum by which he was directed to vacate the Government quarters and was informed that he was liable to pay the damage rent, in writ petition. He obtained restraining order of maintenance of status quo in respect of occupation of the quarters. We have noted earlier that the private appellant deliberately did not communicate the authorities of the direction passed in the said application for long 10 years and thereby prevented the authorities from taking appropriate legal

recourse for eviction of the private appellant from the unauthorised occupation of Government quarters. The private appellant cannot be allowed to take advantage of the intentional fault committed by him.

40. The decision in **Suresh Nanda (Supra)**, the Hon'ble Supreme Court laid down as follows:

“10. Thus, the Act is a special Act relating to a matter of passport, whereas Section 104 CrPC authorises the court to impound document or thing produced before it. Where there is a special Act dealing with specific subject, resort should be had to that Act instead of general Act providing for the matter connected with the specific Act. As the Passports Act is a special Act, the rule that “general provision should yield to the specific provision” is to be applied. See Damji Valji Shah v. LIC of India [AIR 1966 SC 135], Gobind Sugar Mills Ltd. v. State of Bihar [(1999) 7 SCC 76] and Belsund Sugar Co. Ltd. v. State of Bihar [(1999) 9 SCC 620 : AIR 1999 SC 3125]

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11. The Act being a specific Act whereas Section 104 CrPC is a general provision for impounding any document or thing, it shall prevail over that section in CrPC as regards the passport. Thus, by necessary

implication, the power of court to impound any document or thing produced before it would exclude passport.”

41. In the facts of the present case, the writ petitioner although, challenged the demands made on behalf of the railways towards the damage rent but by his own conduct, prevented the railway authorities from realising the unpaid dues by suppressing the directions passed by the writ court and also by not approaching the authorities for redressal of his representation. Moreover, the gratuity payable to the writ petitioner was withheld and sought to be adjusted by the railway authorities towards unpaid damage rent for unauthorised occupation of railway quarters. Such action on the part of railway authorities was amply circumscribed by specific rules. Such Rules were well within the knowledge of the writ petitioner from the very inception.

42. Furthermore, taking into account that the private appellant had already vacated the quarters in 2014 itself, prior to his superannuation, there was no question of the Act of 1971 coming into action. Prior to that, it was the private appellant himself who

stalled the consideration of his representation and assessment of damage rent, though, he was put on sufficient notice that he was liable to pay damage rent for unauthorized occupation of quarters. The entire period for which damage rent has been sought to be realized pertains to a time span before his superannuation.

- 43.** The provisions of Railway Service (Pension) Rules, 1993 vis-a-vis that of Public Premises (Eviction of Unauthorized Occupants) Act, 1971 came under scrutiny by the High Court in **General Manager, East Central Railway (Supra)**. The High Court held that,

“6. Incidentally, we may notice here that the controversy is not with regard to non-payment of rent of the official accommodation during the service, nor the recovery of rent is for the unauthorised occupation at the rate being paid by the employee during the service. The controversy is with regard to damages (penal rent) for unauthorised occupation of the Railway quarter by the respondent no. 2 after his retirement. Neither Rule 15, nor Rule 16 of the Rules provide for determination of penal rent. Obviously, until that exercise is done, the question of adjustment or recovery of that amount from retiral benefits cannot arise.”

44. The High Court in the facts of the case where the employee, after his superannuation, remained in unauthorised occupation of railway quarter further held that,

“12. For want of any provision in Railway Services (Pension) Rules, for determination of damages/penal rent in respect of a railway accommodation in unauthorised occupation of the railway employee, obviously recourse has to be taken by the railway authorities under the Act of 1971 for determination of damages/penal rent in respect of public premises. The said recourse having not been taken, unilaterally determination of damages/penal rent of Rs. 29,613/- and then deducting the said amount from the retiral benefits of the respondent no. 2 cannot be justifiably sustainable.”

45. In the case at hand, the damage rent upon the private appellant has been charged for a period when he was still in service. The damage rent was assessed in terms of existing circulars and guidelines issued by the authorities in this regard from time to time and that too, upon affording an opportunity to the private appellant of hearing. The case of the appellant was decided by the authorities by a reasoned order on his representations, in terms of an order dated October 4, 2015 passed in Writ Petition WP 24290(W) 2015

and order dated September 20, 2016 in MAT 1148 of 2016. In view of the aforesaid facts, we are of the opinion that there was no necessity to resort to the Act of 1971.

46. In the case of **Rajinder Singh (supra)**, the High Court observed that the rent arrears and damages ought to have been assessed and ascertained in proceeding under the Act of 1971 and claimed within three years they became due. It was also noted that even assuming that arrears and damages were owed on a continuing process, a claim could only be made for arrears due over the last three years of unauthorised occupation. Similarly, in the case of **Kaluram (supra)**, it was observed by the Hon'ble Supreme Court that Section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1958 did not create any right to realise arrears of rent which was otherwise barred by limitation.

47. As noted in the instant case, the private appellant was served with notice regarding permission to occupy the quarters for extended period. He was also made aware of the rate of rent he was liable to pay for such extended time. The modifications in the rate of rent and demand for payment of the due rent together with notice to vacate the quarters from time to time was served upon him. The

private appellant, by filing three several writ applications at different times prevented the Railway Authorities from taking steps for realisation of the dues and for eviction of the appellant in due course. In such view of the facts, the claim of the Railway Authorities against the private appellant cannot be said to be barred by limitation.

48. The case of **Arjun Babloo Thukaral (supra)** was rendered with regard to the eviction of Railway employee from the quarters allotted to him during the tenure of his service. The authorities proceeded against the employee under Section 138 of the Railways Act to which it was held that the Railways Act dealing with the limited principle of classes of premises is special Act as against the Public Premises (Eviction of unauthorised Occupants) Act, 1971 which was a general Act. It was further held that the special provision were made in Section 138 of the Railways Act for speedy and expeditious recovery of Public Premises for its utilisation for the other Railway services of duty and is made in public interest. The Hon'ble Court observed that having regard to the object of the Act, the special procedure prescribed by the Railways Act cannot be held either drastic or prejudicial. The provisions of section 138 of the

Railways Act was held not to be violative of Article 14 of the Constitution and the proceedings taken to evict employees from the quarter allotted to him was held to be perfectly legal and valid.

49. In addition, in a case reported in **2020 SCC online Supreme Court SC 1063 (Steel Authority of India Ltd. versus Raghbindra Singh)** the Hon'ble Supreme Court observed that,

2. We, however, set aside the observations made in paras 19 and 21 qua the principles of penal rent being charged as we are of the view that if an employee occupies a quarters beyond the specified period, the penal rent would be the natural consequence and such penal rent can be adjusted against the dues payable including gratuity. This is so in view of the judgment in ONGC Ltd. v. V.U. Warriar [ONGC Ltd. v. V.U. Warriar, (2005) 5 SCC 245 : 2005 SCC (L&S) 676] and the reliance placed in the impugned judgment on the case of Ram Naresh Singh v. Bokaro Steel Ltd. [Ram Naresh Singh v. Bokaro Steel Ltd., 2017 SCC OnLine SC 2019] is misplaced as is not even a judgment but an order in the given facts of the case.

50. Similarly, in the case reported in (2005) 5 Supreme Court Cases 245 (Secretary., ONGC Ltd. v. V.U. Warriar), the Hon'ble

Supreme Court held that an employer could deduct from the gratuity payable to the employee, penal rent in terms of such statutory rules/regulations.

“17. Having heard the learned counsel for the parties, in our opinion, the appeals deserve to be allowed. It is no doubt true that pensionary benefits, such as gratuity, cannot be said to be “bounty”. Ordinarily, therefore, payment of benefit of gratuity cannot be withheld by an employer. In the instant case, however, it is the specific case of the Commission that the Commission is having a statutory status. In exercise of statutory powers under Section 32(1) of the Act, regulations known as the Oil and Natural Gas Commission (Death, Retirement and Terminal Gratuity) Regulations, 1969 have been framed by the Commission. In Sukhdev Singh v. Bhagatram Sardar Singh Raghuvanshi [(1975) 1 SCC 421 : 1975 SCC (L&S) 101] the Constitution Bench of this Court held that regulations framed by the Commission under Section 32 of the Oil and Natural Gas Commission Act, 1959 are statutory in nature and they are enforceable in a court of law. They provide for eligibility of grant of gratuity, extent of gratuity, etc. Regulation 5 deals with recovery of dues of the Commission and reads thus:

“5. Recovery of dues.—The appointing authority, or any other authority empowered by the Commission in this behalf shall have the right to make recovery of the Commission's dues before the payment of the death-cum-retirement gratuity due in respect of an officer even without obtaining his consent or without obtaining the consent of the members of his family in the case of a deceased officer, as the case may be.”

The above regulation leaves no room for doubt that the Commission has right to effect recovery of its dues from any officer without his consent from gratuity. In the present case admittedly the respondent retired after office hours of 28-2-1990. According to the Commission, he could be allowed four months' time to occupy the quarters which was granted to him. His prayer for extension was considered and rejected stating that it would not be possible for the Commission to accept the prayer in view of several officers waiting for quarters. He was also informed that if he would not vacate the quarters, penal rent as per the policy of the Commission would be recovered from him. But the respondent did not vacate the quarters. It was only after eviction proceedings were initiated that he vacated the quarters on 16-5-1991. In the circumstances, in our opinion, it cannot be said that

the action of the Commission was arbitrary, unlawful or unreasonable. It also cannot be said that the Commission had no right to withhold gratuity by deducting the amount which is found “due” to the Commission and payable by the respondent towards penal charges for unauthorised occupation of the quarters for the period between 1-7-1990 and 15-5-1991.”

51. As has been noted hereinbefore, in the instant case, the railway authorities assessed the damage rent in terms of circulars issued by the authorities from time to time with regard to rate of rents and damage rent and acted in accordance with specific Rules of 1993. The writ petitioner/private appellant was provided with ample opportunities of hearing. The authorities then came to decide the quantum and manner of realization which also was communicated to him in due course. We therefore, find no fault in the assessment and realization of dues on account of unauthorized occupation of railway quarters from the gratuity payable to the private appellant. Such order for realization of damage rent is based on well defined statutory rules.

52. In the light of discussions made hereinbefore, we find no merit in the appeal filed on behalf of the private appellant/writ petitioner being FMA 801 of 2019. So far as the appeal filed on behalf of Union of India being FMA 802 of 2019 is concerned, the same is allowed. We do hereby affirm the judgment and order of the learned Single Judge in so far as it relates to the finding negating the plea of private appellant/ writ petitioner for setting aside the order of the authorities passed on November 18, 2016. However, the impugned order directing release of gratuity to the writ petitioner is hereby set aside. The due amount of damage rent can be realised either from the pension or gratuity.

53. Consequently, both the appeals being **FMA 801 of 2019** and **FMA 802 of 2019** are disposed of accordingly. Connected applications, if any, shall also stand disposed of.

[MD. SHABBAR RASHIDI, J.]

54. I agree.

[DEBANGSU BASAK, J.]