IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9596 OF 2010

Binoy Gupta … Petitioner

V/s.

Union of India & Anr. … Respondents

Mr. Sandeep Jalan for the Petitioner.

Mr. Omprakash Jha i/by The Law Point for Respondents.

CORAM : DEVENDRA KUMAR UPADHYAYA, CJ. &
ARIF S. DOCTOR, J.

DATE : 22nd APRIL, 2024

P.C.:

1. Heard Mr. Jalan, learned counsel for the Petitioner and Mr. Jha, learned counsel representing the Respondents.

2. This Petition filed under Article 226 of the Constitution of India seeks to challenge the order dated 30th June, 2010 passed by the Chief Commissioner of Income Tax, Chennai whereby it has been held that the amount payable by the Petitioner for occupation of the official residential flat from

1st October, 2005 to 17th July, 2006 at the rate of Rs.1,07,250/- per month, which works out to Rs.10,26,025/-, is due to be paid to the department by the Petitioner and in addition thereto, an amount of Rs.7,110/- is also payable to the department on account of normal licence fee for the said official accommodation for the period from 11th December, 2004 to 30th September, 2005 and as such the gratuity amount cannot be released. The gratuity payable, otherwise to the Petitioner was to the tune of Rs.3,50,000/- whereas the amount due against the Petitioner is more than Rs.10,00,000/-.

3. The impugned order dated 30th June, 2010 has been passed by the Chief Commissioner of Income Tax in compliance of an order dated 18th March, 2010, passed by the Central Administrative Department whereby two Original Applications namely Original Application No.557 of 2009 and 558 of 2009 filed by the Petitioner were disposed of by the Tribunal directing the authority concerned to take decision in respect of retirement benefits such as gratuity and to grant the Petitioner appropriate interest at the rate of 12% thereon.

4. The Chief Commissioner considered the matter and found that amount payable by the Petitioner to the department is much more than the gratuity being claimed by him and accordingly he is not entitled to seek any amount of gratuity. Impugned order recites that on conclusion of disciplinary proceedings against the Petitioner, certain retirement benefits were released in his favour which included a sum of Rs.21,96,447/- towards the amount of GPF, a sum of Rs.89,280/- towards the insurance scheme, another sum of Rs.4,44,880/- towards encashment of Earned Leave and Rs.7,94,952/- as the commuted value of the pension.

5. The matter relating to claim of the Petitioner for payment of gratuity amount has also been considered and it was found by the Chief Commissioner, which is reflected from the impugned order dated 30th June, 2010, that the amount of Rs.10,26,025/- was due against the Petitioner on account of not only the licence fee payable by him for residential accommodation for the period from 11th December, 2004 till 30th September, 2005, but also the amount of licence fee at the rate of market rent of Rs.1,07,250/- per month, amounting to

Rs.10,26,025/-. Accordingly, it has been observed by the Chief Commissioner in the impugned order that since the amount payable by the Petitioner is much more than the amount of gratuity claimed by him, the claim of the Petitioner is not tenable.

6. The order dated 30th June, 2010 also mentions a very relevant fact in respect of the amount due against the licence fee for the period for which the Petitioner is said to have retained the official accommodation beyond the permissible period after retirement. It is said that the Petitioner though attained the age of superannuation on 20th September, 2005, however, he retained the official accommodation beyond four months period after retirement for which, as per the rules, he was liable to make payment of licence fee at the rate of market rent. By means of an order dated 21st February, 2006, the Petitioner was directed to make payment of the said licence fee at the rate of market rent, however, he instead of paying the said amount, he challenged the order dated 21st February, 2006 by instituting Original Application No.283 of 2006 which was dismissed by the Tribunal. There is no denial by the Petitioner

that the order of the Central Administrative Tribunal, whereby challenge to the order dated 21st February, 2006 was rejected has not been assailed by the Petitioner in any further proceedings. Accordingly, the order in respect of payment of lincence fee at the rate of market rent passed by the authority concerned on 21st February, 2006 has attained finality.

7. In view of the law laid down by Hon'ble Supreme Court in the case of ***L. Chandra Kumar Vs. Union of India & Ors***[1] any challenge to an order passed by the authorities concerned in respect of service matter of a central government employee, straight away in a Writ Petition under Article 226 of the Constitution of India is not permissible; instead the government servant has to challenge such an order by instituting appropriate proceeding before the Central Administrative Tribunal in terms of Section 14/19 of the Administrative Tribunals Act, 1985. In the instant case, instead of challenging the order dated 30th June, 2010 by filing Original Application before the Central Administrative Tribunal, the Petitioner has straight away filed this Writ Petition before this Court. Thus the Petition would not be maintainable.

1 (1997) 3 SCC 261

8. Even otherwise, the entire claim of the Petitioner is based on Rule 72(4) of Central Civil Services (Pension) Rules, 1972 which, according to the Petitioner, though permits adjustment of the amount of licence fee for retention of government accommodation for permissible period of four months beyond the date of retirement of the employee concerned from the amount of gratuity, however it does not permit recovery of any licence fee for a period beyond expiry of the period of four months from the date of retirement.

9. In the peculiar facts and circumstances of the case, we are unable to agree with the said submission made by the learned counsel for the Petitioner. The amount of market rent is payable or not was already decided by the department by passing the order dated 21st February, 2006, challenge against which was though made by the Petitioner by instituting the proceedings by Original Application No.283 of 2006, however, the said Original Application stands dismissed. It is also noticeable that the order passed by the Tribunal in the Original Application No.283 of 2006 has not been challenged further by

the Petitioner. Accordingly, there cannot be any denial at this stage that the Petitioner is liable to make payment of the market rent for the accommodation which he retained even after expiry of the period of four months from the date he attained the age of superannuation. Secondly, in absence of any prohibition in any Rule including Central Civil Services (Pension) Rules, 1972, to the effect that no such recovery of market rent can be made for retaining the official accommodation beyond permissible period, in our opinion, the said amount may be recovered by taking various recourses including adjustment against the amount of gratuity.

10. Reliance in this regard has been placed by learned counsel for the Respondents to an order passed by the Hon'ble Supreme Court in the case of ***Steel Authority of India Limited Vs. Raghbendra Singh & Ors.***[2], wherein, though the matter related to an employee of Steel Authority of India Limited, the Hon'ble Supreme Court observed that if an employee occupies official quarters beyond the specified period, the penal rent would be the natural consequence and such penal rent can be

2 (2021) 18 SCC 272

adjusted against the dues payable to the employee, including gratuity.

11. Learned counsel for the Petitioner has stated that market rent cannot be termed to be penal rent. We are unable to accept the said submission for the reason that ordinarily the licence fee is charged from an employee in lieu of the use and occupation of an official accommodation which employee is entitled to retain for a period of four months beyond the age of superannuation as well, however under the Rules if such an employee retains the house beyond expiry of a period of four months from the date he attains superannuation, he is liable to make payment of the licence fee at the market rent. Any payment required to be made over and above the normal licence fee, in our view, has to be termed to be penal in nature.

12. For the aforesaid reasons, we are not inclined to entertain the instant Writ Petition, which is hereby dismissed. However cost is made easy.

(ARIF S. DOCTOR, J.) **(CHIEF JUSTICE)**