(2011) 02 MAD CK 0007

In the Madras High Court

Case No : Writ Petition No. 16247 of 2007

Binny Limited APPELLANT

Vs

The Asstt. Commissioner of Labour (Authority under PG Act) and Others RESPONDENT

Date of Decision : 14-02-2011

Acts Referred:

Constitution of India, 1950 — Article 226
Oil and Natural Gas Commission (Death, Retirement and Terminal Gratuity) Regulations, 1969 — Regulation 5
Payment of Gratuity Act, 1972 — Section 4(6), 7, 7(1), 7(4), 7(7)

Citation : (2011) 4 LLJ 420 : (2011) LLR 834

Hon'ble Judges : P. Jyothimani, J

Bench : Single Bench

Advocate : S. Raveendran, for T.S. Gopalan and Company, for the Appellant; R. Murali, Government Advocate for Respondent Nos. 1 and 3, S. Vijay Anand, for the Respondent

Judgement

P. Jyotimani, J.—The writ petition is: directed against the order of the first Respondent/Authority under the Payment of Gratuity Act, 1972

dated 17.2.2005 and the consequential recovery notice issued by the third Respondent dated 19.4.2007 and for a direction against the second

Respondent to hand-over vacant possession of the quarters, namely House No. 6, Block No. ''O'', Venkateshwara Village, Chennai 600 012.

2.1. The Petitioner, which is a company registered under the provisions of the Companies Act, is stated to have ceased to function from

15.6.1996. The second Respondent was working in the'' Petitioner/company and he was occupying quarters, viz., House No. 6, Block No. ''O'',

Venkateshwara Village, Chennai 600 012, pursuant to the deed of licence dated 9.2.1981. As per the licence, the second Respondent should deliver vacant possession of the house to the Petitioner within the time prescribed in the notice of termination of licence.

2.2. The second Respondent has reached the age of superannuation on 13.9.2003. Even prior to that, on 16.8.2003, the Petitioner issued notice

to the second Respondent revoking the licence in respect of the quarters and directed the second Respondent to deliver vacant possession of the

quarters within four weeks from 1.10.2003. However, even after 1.11.2003, the second Respondent continued to be in unauthorised occupation

of the quarters.

2.3. It is stated that the second Respondent has filed a PG Case before the first, Respondent claiming an amount of Rs. 71,747 as gratuity due to

him. That was objected to by the Petitioner stating that unless the second Respondent vacates the quarters, he would have no right to claim

gratuity,

2.4. The Petitioner issued notice on 22.1.2005 to the second Respondent stating that as per the order of this Court in W.P. No. 14856 of 2003,

the workmen residing in the quarters should vacate on or before 2.11.2003 and since the second Respondent is in unauthorised occupation of the

quarters, he- would be liable to pay liquidated damages of Rs. 25,000 and Rs. 2,000 per month as damages from January, 2005. It was also

informed to the second Respondent that the amount will be adjusted from the legal dues to which he would be entitled.

2.5. By order dated 17.2.2005, the first Respondent has rejected the case of the Petitioner and directed that the second Respondent should be

paid the gratuity amount of Rs. 71,747 along with interest at the rate of 10% per annum. Based on the said order, the third Respondent has issued

recovery notice claiming recovery of Rs. 71,747. The said orders are challenged on the following grounds:

(i) that the impugned order of the first Respondent is illegal and perverse;

(ii) that the first Respondent ought to have considered that second Respondent by unlaw-fully squatting in the quarters even after retirement from

service cannot claim benefit of gratuity;

(iii) that the impugned order has been passed by the first Respondent in a mechanical manner; and

(iv) that the first Respondent has committed an error of law in applying the provisions of the Payment of Gratuity Act, 1972 (for brevity, ""the Act"")

in a pedantic manner.

3.1. In the affidavit filed by the second Respondent in support of his petition to vacate the order of stay granted by this Court, it is his case that as

against the order of the first Respondent, the Petitioner has got a right of appeal u/s 7(7) of the Act.

3.2. It is stated that the Petitioner has filed this writ petition after waiting for two years from the date of the order of the first Respondent, when the

third Respondent has issued notice to recover the amount as per the order of the first Respondent and therefore, the Petitioner has approached this

Court belatedly.

3.3. It is also stated that the mere fact that the second Respondent is in occupation of the quarters given by the Petitioner while he was in

employment under the Petitioner/company, does not take away his right to get gratuity, which is payable and accrued to him in law.

4.1. Mr. S. Raveendran, Learned Counsel for the Petitioner would submit that while in law the payment of gratuity is a statutory amount liable to

be paid, inasmuch as under the licence granted to the second Respondent the Petitioner/company has clearly retained its right of deducting the

damages or amount due for continuing occupation of the quarters after the termination of the licence, the Petitioner should be entitled to recover the

amount by way of deduction from the lawful amount due to the second Respondent and the first Respondent ought to have taken note of the same.

He would add that for the purpose of conferring statutory benefit to the second Respondent, the valuable right of the Petitioner cannot be taken

away and the second Respondent shall not be allowed to be an usurper of a property to which he is not entitled.

4.2. It is his submission that the second Respondent cannot be expected to get two benefits/viz., the gratuity as well as the usurping of the property

by way of unauthorised retention of the accommodation granted to him. He would rely upon the judgment of the Calcutta High Court in Hindustan

Cables Ltd., Burdwan v. The Appellate Authority under the Payment of Gratuity Act, 1972 and Ors. 2005 (3) LLN 242.;

4.3. He would also submit that even if the amount of gratuity can be held to be an amount accrued to the employee, this Court while exercising equitable jurisdiction under Article 226 of the Constitution of India, must balance the issue to see that the employee should not be permitted to

unauthorisedly occupy the quarters by way of retention. In this regard, he would rely upon the judgment of the Supreme Court in Secretary, Oil

and Natural Gas Commission Ltd and Anr. v. V.U. Warrier, 2005 (3) LLN 74.

5.1. On the other hand, it is the contention of Mr. S. Vijay Anand, Learned Counsel appearing for the second Respondent that the

Petitioner/company itself has entered a memorandum of understanding with the Madras Labour Union and B&C Mills Staff Union/or the purpose

of settlement of workers issues and one such understanding was that the individual plots measuring 500 sq. ft. each can be allotted by way of

drawal and the Petitioner/company, which has been closed, has also passed a resolution in this regard authorising the Company Secretary of the

Petitioner/company to execute sale deeds in favour of the members as per the memorandum of understanding and in respect of at least one person,

Arumugam, such sale deed has been executed. Therefore, according to him, when the Petitioner/company itself is taking efforts to allot the plots, it

cannot be said that the second Respondent is an unauthorised occupant.

5.2. It is his submission that the amount of gratuity payable to him is a statutory amount, which cannot be withheld under any circumstances. He

would rely upon the judgments in Padmanabhan A. Vs. Joint Commissioner of Labour and Another, , Neyveli Lignite Corporation Limited v. O.

Raju and Ors. 2010 [1] CTC 595 and an unreported judgment of the Calcutta High Court in Steel Authority of India and Anr. v. Taraknath

Sengupta and Ors. (order dated 3.4.2009 in W.P. No. 22336(W) of 2008) to substantiate his contention.

6. Admittedly, the Petitioner/company has ceased to function from 15.6.1996. As far as the contention of the Learned Counsel for the second

Respondent that there has been a memorandum of understanding entered, a reference to the communication of the Petitioner/company addressed

to one allottee shows that there has been a memorandum of understanding entered between the management and the Madras Dock Labour Union

and B&C Mills Staff Union with regard to the settlement of issues pertaining to workmen. In respect of that there has been some decision arrived

at. One such resolution appears to be ""draw layout of the Carnatic Mill Vilalge with 249 individual plots of 500 sq. ft. each, serially numbered, and

provide a copy of the layout plan to the unions"". It is not the case of the second Respondent that he belongs to any of the unions. In the absence of

any such averment that he belongs to a particular union, he has no right to claim the benefit of the memorandum of understanding for the purpose of

remaining in occupation even after the licence is terminated.

7. Indisputably, the Petitioner/company has terminated the licence granted to the second Respondent in the year 2003 itself and the claim of the

Petitioner is that from that date onwards the Petitioner/company is entitled to damages for use and occupation and in that regard, the amount has

been claimed by the Petitioner, which, according to the Petitioner/ company, it is entitled to deduct from the gratuity amount payable to the second

Respondent.

8. In the impugned order dated 17.2.2005 passed by the first Respondent u/s 7 of the Act, the Petitioner was directed to pay the gratuity amount

of Rs. 71,747 along with interest at the rate of 10% per annum to the second Respondent. This order which has been passed u/s 7(4) of the Act is

appealable to the Government u/s 7(7) of the Act, which is as follows:

Section 7: Determination of the amount of gratuity:

(1)to(6)...

(7) Any person aggrieved by an order under Sub-section (4), may, within sixty days from the date of the receipt of the order, prefer an appeal to

the appropriate Government or such other authority as may be specified by the appropriate Government in this behalf:

Provided that the appropriate Government or the appellate authority, as the case may be, may, if it is satisfied that the Appellant was prevented by

sufficient cause from preferring the appeal within the said period of sixty days, extend the said period by a further period of sixty days.

Provided further that no appeal by an employer shall be admitted unless at the time of preferring the appeal, the Appellant either produces a

certificate of the controlling authority to the effect that the Appellant has deposited with him an amount equal to the amount of gratuity required to

be deposited under Sub-section (4), or deposits with the appellate authority such amount.

9. The period of limitation for filing appeal to the Government has been stipulated as 60 days, which can be extended by another 60 days by the

Government and for filing of an appeal, a certificate must be obtained by the management to the effect that the gratuity amount has been deposited.

10. The impugned order having been passed by the first Respondent under-Section 7(4) of the Act, when there is a statutory appeal available

against the said order, the writ petition cannot be ordinarily entertained. But, in the present case, the writ petition was admitted in the year 2007

and there has been an order of interim stay on condition that the amount should be deposited"" with the authority. Since the amount was deposited,

the interim order was also made absolute on 23.12.2008 and the second Respondent was permitted to withdraw 50% of the amount deposited

and the remaining amount was directed to be deposited in a nationalised bank and the said order continues as on date.

11. The question that has to be considered at this stage is whether it will be proper for this Court to drive the Petitioner to file an appeal, especially

when the Petitioner/company has not disputed its obligation of payment of gratuity, but has only raised a point as to whether the second

Respondent can be shown indulgence when the quarters allotted to him by virtue of his employment under the Petitioner/company has not been

handed over to the company, when the company itself has been liquidated. In other words, the question for consideration is as to whether the

second Respondent can get the benefit conferred under the Act and also at the same time get the benefit of quarters, which he has got by way of

licence only due to the employment, and whether in such circumstances, the order of this Court while exercising its jurisdiction under Article 226 of

the Constitution of India, which is equitable in nature, can be extended to help the second Respondent to continue to be an usurper of the quarters.

12.1. In this regard, it is relevant to refer to the judgment of the Supreme Court in Secretary, Oil and Natural Gas Commission Ltd. and Anr. v.

V.U. Warrier, 2005 (3) LLN 74, wherein the Supreme Court while deciding about the Oil and Natural Gas Commission (Death, Retirement and

Terminal Gratufty) Regulations, 1969 in the light of the Payment of Gratuity Act, 1972, has explained the extent of the equitable jurisdiction of this

Court under Article 226 of the Constitution of India. While holding that under Article 226 of the Constitution of India the powers conferred on this

Court are discretionary and there can be no limit, it was held that it must be exercised on the recognized lines and not in an arbitrary manner. The

Supreme Court has held as follows:

31. The matter can be considered from another angle also. It is well-settled that the jurisdiction of the High Court under Article 226 of the

Constitution is equitable and discretionary. The'' power under that Article can be exercised by the High Court ""to reach injustice wherever it is

found"". Before more than fifty years, in Veerappa Pillai Vs. Raman and Raman Ltd. and Others, , the Constitution Bench of this Court speaking

through Chandrasekhara Aiyer, J., observed that the writs referred to in Article 226 of the Constitution are obviously intended to enable the High

Court to issue them ""in grave cases where the subordinate tribunals or bodies or officers act wholly without jurisdiction, or in excess of it, or in

violation of the principles of natural justice, or refuse to exercise a jurisdiction vested in them, or there is an error apparent on the face of the

record, and such act, omission, error, or excess has resulted in manifest injustice.

32. Similarly, in the leading case of Sangram Singh Vs. Election Tribunal, Kotah, Bhurey Lal Baya, , dealing with the ambit and scope of powers of

High.Courts under Article 226 of the Constitution, Bose, J., stated--

That, however, is not to say that the jurisdiction will be exercised whenever there is an error of law. The High Courts do not, and should not, act as

Courts of appeal under Article 226. Their powers are purely discretionary and though no limits can be placed upon that discretion it must be

exercised along recognized lines and not arbitrarily; and one of the limitations imposed by the Courts on themselves is that they will not exercise

jurisdiction in this class of cases unless substantial injustice has ensued, or is likely to ensue. They will not allow themselves to be turned into Courts

of appeal or revision to set right mere errors of law which do not occasion injustice in a broad and general sense, for, though no legislature can

impose limitations on these constitutional powers it is a sound exercise of discretion to bear in mind the policy of the legislature to have disputes

about these special rights decided as speedily as may be. Therefore, writ petitions should not be lightly entertained in this class of case.

33. The above principle has been reiterated and followed by this Court in several subsequent cases.

34. As already adverted to by us hereinabove, the facts of the present case did not deserve interference by the High Court in exercise of equitable

jurisdiction under Article 226 of the Constitution. The Respondent-Petitioner before the High Court was a responsible officer holding the post of

Additional Director (Finance-& Accounts).''He was, thus, ""gold collar"" employee of the Commission. In the capacity of employee of the

Commission, he was allotted a residential quarter. He reached the age of superannuation and retired after office hours of February 28, 1990. He

was, therefore, required to vacate the quarter allotted to him by the Commission. The Commission, as per its policy, granted four months'' time to

vacate. He, however, failed to do so. His prayer for continuing to occupy the quarter was duly considered and rejected on relevant and germane

grounds. The residential accommodation constructed by him by taking loan at the concessional rate from the Commission was leased to

Commission, but the possession of that quarter was restored to him taking into account the fact that he had retired and now he will have to vacate

the quarter allotted to him by the Commission. In spite of that he continued to occupy the quarter ignoring the warning by the Commission that if he

would not vacate latest by June 30, 1990, penal rent would be charged from him. In our judgment, considering all these facts, the High Court was

wholly unjustified in exercising extraordinary and Jequitable jurisdiction in favour of the Petitioner - Respondent herein and on that ground also, the

order passed by the High Court deserves to be set aside.

12.2. In that case, while referring to Regulation 5 of the Regulations, as stated above, which enables the appointing authority or any other authority

empowered by the Oil and Natural Gas Commission to have the right to make recovery of 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 the deceased officer, it was held that in the light of the said Regulation, there is no doubt that the Commission has right to effect

recovery of its dues from any officer without his consent from the gratuity. That was also the case where the residential quarters was not vacated

by an employee and it was vacated only after the eviction proceedings were initiated by the Commission and the Commission intended to deduct penal charges for unauthorised occupation from the gratuity payable. It was approving the said conduct of the Commission and by setting aside the

judgment of the High Court, the Supreme Court has rendered the said judgment. The Supreme Court has also held that while gratuity cannot be

held to be a matter of boon, it is a statutory right and if the workman commits a misconduct causing financial loss to the employer, the employer

would under the general law have a right of action against the employee for the loss caused by making a provision for withholding payment of

gratuity.

13.1. The said view was also magnified by the Calcutta High court in Hindustan Cables Ltd., Burdwan v. The Appellate Authority under the

Payment of Gratuity Act, 1972 and Ors. 2005 (3) LLN 242. In the said case, when an employee after retirement under the voluntary retirement

scheme and having received the benefits under the scheme, failed to vacate the quarters and when a question arose as to whether the gratuity can

be withheld in respect of the penal rent, the High Court has framed the following question for consideration:

The question before this Court is that as to whether such amount can be released by the authority without vacating the quarter which has been

illegally withheld by the concerned employee or not, as against the claim of the Respondent No. 3-applicant/employee in respect of the gratuity

along with interest

13.2. The Calcutta High Court has referred to the judgment of the Supreme Court in Wazir Chand v. Union of India and Ors. 2001 (3) LLN 822,

wherein it was held that an employee who is unauthorisedly occupying the government quarters is liable to pay penal rent and such amount is

adjustable against the death-cum-retirement dues, and held as follows:

3...... Admittedly, the gratuity amount has been deposited by the company with the appropriate authority or the appellate authority under the Act

wherefrom the same will be recovered by the employee. In the judgment reported in 2001 (3) LLN 822, Wazir Chand v. Union of India and Ors.,

the Supreme Court categorically viewed that an employee who unauthorisedly occupied the Government quarters, is liable to pay the penal rent in

accordance with rules, and, therefore, there is no illegality in those dues being adjusted against the Death-cum-Retirement dues of the Appellant.

Therefore, there is no illegality in the impugned order which requires the interference by the Supreme Court. The gravity of the situation is to be

understood on the basis of such judgment. No question of voluntary scheme available there but even then on the basis of superannuation the

Supreme Court was pleased to say that there is no illegality of recovery of penal rent in accordance with rules to get it adjusted with the Death-

cum-Retirement Rules of the employees. There should be a balance in between getting the superannuation benefits by the employees and getting

release of the quarters in favour of the employer. Instant case stands on a much better position. In the judgment reported in Union of India (UOI)

and Another Vs. K. Balakrishna Nambiar, , it was held by a three-Judges Bench of the Supreme Court that the payment of Death-cum-Retirement

Gratuity to an employee can be withheld for unauthorised retention of the Government accommodation after his retirement. Here, it was

categorically held that the interest was not payable along with the gratuity amount in respect of the period when the employee unauthorisedly

occupied the Government accommodation. In the judgment reported in 2002 (1) LLN 456, Dibakar Mahanty v. Steel Authority of India Ltd. and

Ors., the same ratio was followed by the Orissa High Court as regards withholding the payment of gratuity and other dues payable after retirement

fill he remains in unauthorised occupation of the quarters allotted to him by the management when he was in service.

13.3. The Calcutta High Court has ultimately narrated the entire case law on the subject and held as follows:

4...... In this circumstances, the Respondent No. 3-applicant/employee is admittedly a defaulter. Such employee cannot get any equity only on the

ground that the gratuity cannot be withheld for any reason of withholding quarters. Here the employee wants to get double benefit when one is

lawful and other is unlawful. In the judgment reported in R. Kapur Vs. Director of Inspection (Painting and Publication) Income Tax and Another, ,

the Supreme Court held that the right of the retired employee to get gratuity cannot be depended for overstaying of the Government

accommodation. Again such case has arisen out of the terminal benefits as per the statute. Moreover, the ratio of the Supreme Court judgments in

the years 1994 and 1995 cannot be accepted at this stage. In the judgment of our High Court reported in 2004 (1) CLJ (Cal) 191, Atul Chandra

Mahata v. State of West Bengal and Crs., a Bench of our High Court has also held in the similar manner as held in the case of the Supreme Court

that the terminal benefits like gratuity etc. cannot be held to be bounty. However such case is not under V.R.S. Scheme but as regards terminal

benefits. There is a distinguishing feature in both the cases. At the time of actual retirement there might be necessity of keeping the accommodation

for some reason or other to have alternative arrangement by an employee at the earliest. Law is also providing time to overcome the situation. This

action is independent of payment of gratuity. On the otherhand, V.R.S. Scheme is a composite action giving option to the employers. Therefore

there might be element of difference. When any of such employees opted for V.R.S., it should be presumed that he has considered all the

alternative measures. Moreover in this case gratuity amount has already been deposited by the employer with the authority. Therefore there is no

refusal of payment, In the judgment reported in 1997 (4) LLN 556, Union of India v. Ujagar Lal, the Supreme Court held that the question of

interest can only arise when there is an administrative lapse. In that case, in view of the circular issued directing not to-make payment of Death-

cum-Retirement gratuity till the retired employee surrenders possession, the delayed payment therein occurred due to any administrative lapse on

account of the circular of the Board. The judgment reported in Shangrila Food Products Ltd. and another Vs. Life Insurance Corporation of India

and another, , has been cited to establish that the Writ Court can complete the justice. Yes, the Court can do such justice. But at the time of doing

so, the Court has to make a balance between the person who is asking relief for the ends of justice and the person who is trying to abuse the

process of Court of Law. Person who is seeking equity must bow to equity. Therefore, the appropriate analysis is to be made herein in the facts

and circumstances of the case. In the matter of employer and employee it is for more sensitive issue. In the instant case the employee has received

all his benefits including the provident fund amount. The employer has deposited the arrears, if any, and gratuity with the appropriate authority.

Therefore, the sum cannot be said to be withheld. The retention of the Government quarters by the employee is not out of any need.He has an

alternative accommodation. Therefore, keeping the Government accommodation with a lock and key cannot be any desirable action on the part of the employee and for such reason, the employer cannot be held to be responsible for non-payment of gratuity amount, if any.

14. The reliance placed by the Learned Counsel appearing for the second Respondent on the judgment of this Court in Padmanabhan A. Vs. Joint

Commissioner of Labour and Another, has no relevance to the facts of the case. That was a case where this Court was posed with a question as

to whether the manipulation of records by an employee in entering number of cylinders can be termed as an act of moral turpitude so as to enable

the employer to withhold the payment of gratuity. Holding that such conduct is not an act involving moral turpitude, this Court observed that

withholding of gratuity was invalid, by referring to Section 4(6) of the Act which provides for certain circumstances where gratuity can be forfeited.

In the case on hand, it is not the question of forfeiture of gratuity, but as to whether the second Respondent can be permitted by this Court, while

exercising equitable jurisdiction, to have two benefits.

15. The employer by resorting to eviction of unauthorised occupation of a residential quarters by an employee after the period of licence is over is

not, in effect, making attachment of the gratuity amount. It is no doubt true that the liability of payment of gratuity u/s 7(1) of the Act by the

employer is outstanding, which does not even require an application to be made, and the gratuity amount, as per the provisions of the Act, cannot

be attached in execution of a decree of a Court. However the larger question to be decided, as posed by the Supreme Court, as also by the

Calcutta High Court, as elicited above, is as to whether such employee, who is prepared to continue to be in possession of residential quarters

refusing to vacate the quarters even after termination, who would refuse to pay the damages for the unlawful occupation of the quarters, and who

demands the statutory dues under the provisions of the Act, can be granted equitable relief by this Court under Article 226 of the Constitution of

India.

16. Under such circumstances, to meet the ends of justice, while exercising the discretionary jurisdiction of this Court, I am of the firm opinion out

the order of the first Respondent should be confirmed but at the same time a direction should be given to the second Respondent to vacate the

residential quarters within a stipulated time, however subject to his right to claim allotment as per the memorandum of understanding stated to have

been entered between the Petitioner/company and the unions.

17. Accordingly, the impugned order of the first Respondent stands confirmed with a direction to the second Respondent to vacate the residential

quarters, viz.. House No. 6, Block No. ''O'', Venkateshwara Village, Chennai-600 012 and hand over the same to the Petitioner/company within

a period of four months from-the date of receipt of a copy of this order. On the second Respondent vacating the quarters as stated above, it is for

the first Respondent to release the balance amount of gratuity deposited by the Petitioner to the second Respondent. It is made dear that the said

direction shall be without prejudice to the right of the second Respondent to claim any allotment of plot to be made, by the Petitioner as per the

memorandum of understanding stated to have been entered between the Petitioner and the employees'' unions. In the result, this writ petition is

disposed with the above direction. No costs. Consequently, M.P. No. 1 of 2008 is closed.