
(2014) 01 JH CK 0081
In the Jharkhand High Court
Case No : L.P.A. No. 15 of 2013

Bokaro Steel Limited

APPELLANT

Vs

Shri Ram Naresh Singh and Others

RESPONDENT

Date of Decision : 24-01-2014

Acts Referred:

Constitution of India, 1950 — Article 226
Payment of Gratuity Act, 1972 — Section 5 7
Public Premises (Eviction of Unauthorised Occupants) Act, 1971 — Section 13 14 4
4(6) 7(2)

Citation : (2014) 2 AJR 607 : (2014) 141 FLR 470 : (2014) 1 JLJR 490 : (2014) 1 LLJ 714 : (2014) 3 LLN 151

Hon'ble Judges : R. Banumathi, C.J.;S. Chandrashekhar, J

Bench : Division Bench

Advocate : Indrajit Sinha and Mr. Ajay Kumar Sah, for the Appellant; Manoj Tandon, Advocate for the Respondent No. 1, Mr. Rajiv Ranjan and Mr. Shresth Gautam, Advocates for the Respondent Nos. 2 to 5, for the Respondent

Final Decision : Allowed

Judgement

R. Banumathi, C.J.—This L.P.A. is preferred against the order dated 10.12.2012 passed in W.P. (S) No. 373 of 2012, by which learned Single Judge directed the appellant-company to pay the entire gratuity amount retained by them to the respondent along with interest @ 6% per annum. The respondent was the employee of the appellant-company and he retired from the service of the appellant-company with effect from 30.6.2006. By letter dated 9.6.2006, the respondent made a representation to the appellant-company requesting it to allow him to retain the quarters for a period of one year on the ground that the construction of his house at his native place is under way and it would require sometime. On the basis of the said representation, by an order dated 23.6.2006, the respondent was permitted to retain the quarters on certain terms and conditions. For retention of the quarters after retirement, the respondent voluntarily agreed to pay an amount equal to gratuity as security and to that

effect, the respondent had also executed an undertaking.

2. Permission to retain quarters was extended upto 31.8.2008 with the stipulation that no further extension thereafter would be granted. According to the appellant, with effect from 1.9.2008, the respondent became an unauthorized occupant. Since the respondent had not vacated the quarters, a case under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 was instituted for eviction as well as damages in Case No. A/E 07/2011. The said case was disposed of by the Estate Officer by an order dated 29.8.2012. In exercise of powers u/s 7(2) and 7(2-A) of the Public Premises (Eviction of Unauthorized Occupants) Act, the Estate Officer ordered for payment of damages as under:--

Damages @ Rs. 2700/- per month upto 16.06.09 & @ Rs. 3200/- per month w.e.f. 17.06.09 till the date of vacation/eviction plus electricity and other charges and simple interest thereon @ 10% per annum till its final payment.

According to the appellant, the security amount is refunded only on vacation of quarters after deducting all necessary dues, like rent, damage charges, electricity bill etc.

3. In the above background, the respondent filed writ petition stating that he was not paid all retiral dues including the amount of gratuity. By the order dated 10.12.2012, learned Single Judge held that the appellants themselves have no jurisdiction to determine the penal rent/damages/mesne profit and that the same cannot be deducted from the post retiral benefits without invoking the provision of the Act. On those findings, the learned Single Judge directed the appellant to pay the entire amount retained by them to the respondent forthwith along with interest @ 6% per annum. However, liberty was given to the appellant to invoke the provisions of the Public Premises (Eviction of Unauthorized Occupants) Act for determination/recovery of the penal rent/damages/mesne profit for unauthorized occupation and use of public premises by the respondent.

4. Learned counsel for the appellant submitted that learned Single Judge failed to take into consideration that the gratuity amount was not withheld, rather the amount equivalent to gratuity was withheld as security, that too on being offered by the respondent at his own free will given in writing at the time of seeking retention of quarters after retirement and while so, no direction could have been issued to pay the amount retained by the appellant. It was further submitted that the respondent, having furnished the amount equivalent to gratuity as security deposit, was stopped from claiming refund of the amount as he himself had voluntarily offered for retention of the same. Placing reliance upon the case of Secretary, O.N.G.C. Ltd. and Another Vs. V.U. Warriar, learned counsel submitted that in the light of the undertaking given by the respondent to furnish the amount equivalent to gratuity as security deposit, the appellant has the right to take the amount of rent/damages/penal rent for unauthorized occupation of the quarters.

5. Drawing our attention to the provisions of the Payment of Gratuity Act, Mr. Manoj Tandon, the learned counsel for the respondent submitted that the gratuity is earned for the service rendered by the respondent and the same cannot be withheld by the employer for some other dues and the learned Single Judge rightly allowed the writ petition, issuing direction to the appellant to pay the gratuity.

6. We considered the submissions and also the materials on record.

7. The facts are not in dispute. By the order dated 23.6.2006, the respondent was permitted to retain the quarters on certain terms and conditions (i.e. payment of normal rate of rent from 01.07.2006 to 31.08.2006 and double the rent from 01.09.2006 to 28.02.2007 and thereafter the penal rent). Vide order dated 29.1.2008, permission was extended and the respondent was permitted to retain the quarters till 31.08.2008 and no further extension thereafter. With effect from 01.09.2008, the respondent became an unauthorized occupant in the quarters.

8. At the time when the respondent was permitted to retain the quarters, the respondent at his free will gave in writing that an amount equivalent to gratuity may be retained as security deposit in lieu of retention of the company's quarters. The said undertaking of the respondent offering the gratuity as security deposit reads as under:--

It is evident from the above that the amount equivalent to gratuity was offered by the respondent as security deposit.

9. The learned counsel for the respondent Mr. Manoj Tandon submitted that the Payment of Gratuity Act, 1972 is a complete Code covering the essential provisions of scheme for gratuity and that the provisions of the Act must therefore be scrupulously followed and placed reliance upon the decision in the case of Jaswant Singh Gill Vs. Bharat Coking Coal Ltd. and Others, In para 13 of the said judgment, the Hon"ble Supreme Court held as under:--

13. The Act provides for a close-knit scheme providing for payment of gratuity. It is a complete code containing detailed provisions covering the essential provisions of a scheme for a gratuity. It not only creates a right to payment of gratuity but also lays down the principles for quantification thereof as also the conditions on which he may be denied therefrom. As noticed hereinbefore, sub-section (6) of Section 4 of the Act contains a non obstante clause vis-?-vis sub-section (1) thereof. As by reason thereof an accrued or vested right is sought to be taken away, the conditions laid down thereunder must be fulfilled. The provisions contained therein must therefore, be scrupulously observed. Clause (a) of sub-section (6) of Section 4 of the Act speaks of termination of service of an employee for any act, willful omission or negligence causing any damage....

10. By a catena of decisions, it is well settled that the provisions of the Payment of Gratuity Act is no longer in the realm of charity, but a statutory right provided

in favour of the employee. In the facts and circumstances of the case and having regard to the statement in writing given by the respondent offering the gratuity amount as security deposit for retaining the quarters after retirement, the question falling for consideration in this Letters Patent Appeal is whether the respondent can claim payment of the gratuity as a matter of right.

11. Mr. Manoj Tandon, the learned counsel for the respondent, submitted that it is only when an employee's service is terminated on the grounds of the nature specified in Clauses (a) and (b) of Sub-section (6) of Section 4 of the Act, the employee forfeits his right to receive the gratuity under the Act and not otherwise and therefore, the appellant is not entitled in law to effect any deduction from gratuity towards the rent/damage charges/electricity etc. Sub-section (6) of Section 4 reads as under:--

4. Payment of gratuity.--

....

(6) Notwithstanding anything contained in sub-section (1), -

(a) the gratuity of an employee, whose services have been terminated for any act, willful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer shall be forfeited to the extent of the damage or loss so caused;

(b) the gratuity payable to an employee may be wholly or partially forfeited -

(i) if the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part, or

(ii) if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment.

The contention of the respondent is that gratuity can be forfeited only in those three circumstances/eventualities stated in Section 4(6) of the Act and since there is no misconduct alleged as against the respondent, the appellant cannot deny the gratuity payable to the respondent.

12. In the instant case, gratuity is withheld not as a measure of penalty or punitive. Section 4(6) of the Act will come into play only if the payment of gratuity had been withheld as a measure of punishment. As pointed out earlier, gratuity is withheld on account of the respondent's voluntarily agreeing to offer the gratuity amount as security deposit for retention of the quarters after his retirement. The payment of gratuity amount which was offered as security could be refunded only on vacation of quarters and after deduction of all the necessary dues like, rent, damage charges, electricity etc. Having voluntarily agreed to put an amount equivalent to gratuity as security deposit, the respondent cannot contend that the circumstances in Section 4(6) of the Act had not arisen.

13. As per Section 7(3) of the Act, the employer shall arrange to pay the amount of gratuity within thirty days from the date it becomes payable to the person to whom the gratuity is payable. As per Section 7(3A), if the amount of gratuity payable under sub-section (3) is not paid by the employer within the period specified in sub-section (3), the employer shall pay simple interest from the date on which the gratuity becomes payable. As per proviso to Section 7(3A), no interest shall be payable if the delay in the payment is due to the fault of the employee and the employer has obtained permission in writing from the controlling authority for the delayed payment on this ground.

14. The learned counsel for the respondent submitted that in case the employer/appellant thought that the respondent was at fault, as per proviso to Section 7(3A), the appellant/employer ought to have obtained permission in writing from the controlling authority for the delay in payment of gratuity. The above contention does not merit acceptance. Obtaining of permission from the controlling authority would arise only if the amount of gratuity is payable and there is delay in payment of gratuity which is due to the fault of the employer. In the instant case the gratuity amount became payable only on 30.06.2006 i.e. the date of retirement of the respondent. Even on 23.06.2006, while seeking for retention of quarters after retirement, the respondent had given the statement in writing that the amount equivalent to gratuity could be withheld as security. On his own free will when the respondent had given in writing offering the gratuity amount as security deposit for the rent/damage charges, there arose no occasion for the employer to obtain permission in writing from the controlling authority.

15. Contending that the Payment of Gratuity Act is a welfare legislation and the amount of payment of gratuity cannot be withheld for non-vacation of quarters, the learned counsel for the respondent submitted that there is protection of gratuity u/s 13 of the Act. By virtue of Section 13 of the Act, the gratuity amount payable to an employee of an industrial concern is exempted from attachment in execution of any decree or order of any civil court, revenue court or criminal court. Section 14 thereof further envisages that the provisions of Payment of Gratuity Act, 1972 shall have overriding effect on the provisions of any other enactment. The learned counsel for the respondent submitted that the provisions of the Act will have overriding effect over other provisions on the subject or contract and that the statutory right of the respondent for payment of gratuity is not forfeited on account of the statement given by the respondent. Section 14 of the Act reads as under:--

14. Act to override other enactment, etc.--The provisions of this Act or any rule made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument or contract having effect by virtue of any enactment other than this Act.

The provisions under Sections 13 and 14 of the Act reinforce that the gratuity payable under the Act is a valuable right protected by the provisions of the Act.

16. The learned counsel for the respondent submitted that in view of Section 14, an overriding provision, the right to receive the gratuity would be available notwithstanding anything contrary contained in any other statute or instrument or contract and merely because the respondent had given an undertaking permitting the employer to retain the gratuity amount as security deposit, the said statement will not amount to waiver of the statutory right. The learned counsel further submitted that the provisions of the Payment of Gratuity Act will have overriding effect notwithstanding any contract between the parties.

17. The expression "contract" occurring in Section 14 of the Act is "not mere contract" but "contract having effect by virtue of any enactment other than this Act". In the instant case, the statement in writing given by the respondent "is not a contract having effect by virtue of any enactment other than this Act". The respondent had given the statement out of his own free will tendering the gratuity amount as security for the rent/damage/electricity charges for the retention of quarters after his retirement and thus, the respondent has waived his right of gratuity. Not only by virtue of the agreement, but also by virtue of his conduct the respondent has waived his right of claiming gratuity. As per Rule 7 of the Payment of Gratuity (Central) Rules, 1972, an employee who is eligible for payment of gratuity, shall apply within thirty days from the date the gratuity became payable, in Form "I" to the employer. As per proviso to Rule 7, where the date of superannuation or retirement of an employee is known, the employee may apply to the employer before thirty days of the date of superannuation or retirement. Even though the respondent attained the age of retirement on 30.06.2006, as contemplated under Rule 7, the respondent has not filed any application for payment of gratuity; the reason being that the respondent was conscious of the statement in writing given by him offering the gratuity amount as security for retention of quarters. As held by the Hon"ble Supreme Court in the case of Krishna Bahadur Vs. Purna Theatre and Others, "a right can be waived by the party for whose benefit certain requirement or conditions had been provided for by a statute subject to the condition that no public interest is involved therein.

18. In Wazir Chand Vs. Union of India (UOI) and Others, , the ex-employee unauthorisedly occupied the official quarter for which he was charged penal rent and after adjustment of dues, only balance amount of gratuity was paid to him. The Hon"ble Supreme Court observed that there was no illegality in adjusting the dues against the gratuity payable to the retired employee. In the present case, in view of the fact that the respondent herein had already signed an agreement authorising the appellant-SAIL to retain the amount equivalent to the gratuity for payment of rent for the quarter, the contention raised by the learned counsel for the respondents that the amount of gratuity has been illegally withheld by the appellant, is factually incorrect.

19. In the case Secretary, O.N.G.C. Ltd. and Another Vs. V.U. Warriar, , the respondent therein was an officer in ONGC and he, after attaining the age of

superannuation, as per the policy of ONGC, was granted four months time to vacate the quarters. However, the respondent failed to do so. His prayer for continuing in the quarters was rejected. He was informed that penal rent as per the ONGC policy would be recovered from him and ONGC deducted the penal rent from gratuity but the respondent vacated the quarters only after eviction proceedings were initiated against him. The Hon''ble Supreme Court held that ONGC had a right to withhold gratuity by deducting the amount found due to it and payable by the employee towards penal charges for unauthorized occupation of the quarters. Referring to Wazir Chand's case, the Hon''ble Supreme Court held that the action of the ONGC deducting penal rent from gratuity in terms of the Regulations was not arbitrary, unlawful and unreasonable. Pointing out that exercise of jurisdiction under Article 226 of the Constitution of India is equitable and discretionary, in ONGC case the Hon''ble Supreme Court held that when the employee continued to occupy the quarters ignoring the warning given by the ONGC and in the light of the default committed by the respondent thereof, the High Court was unjustified in exercising extra ordinary and equitable jurisdiction.

20. In Veerappa Pillai Vs. Raman and Raman Ltd. and Others, , the Constitution Bench of the Hon''ble Supreme Court has held that the High Court issues writ in 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 refused to exercise the jurisdiction vested in them, or there is an error apparent on the face of the record, and such act, omission, error, or excess had resulted in manifest injustice. The facts brought on record in the present proceeding do not establish that injustice is caused to the respondent. In the present case, the respondent consciously signed the bond authorising the appellant to retain the amount of gratuity. This is not a case where the respondent waived his legal right to receive gratuity. The reliance placed by the counsel for the respondent on Section 7 of the Payment of Gratuity Act, 1972 is thus, misplaced.

21. The ratio of the decision in ONGC case and Wazir Chand's case are squarely applicable to the case on hand. In the instant case the learned Single Judge allowed the writ petition mainly on the ground that the appellant ought to have approached the prescribed authority for determination of the penal rent/damages/mesne profits and that the appellants have no jurisdiction to determine the same themselves and to deduct the same from the post retiral benefits, without invoking the provision of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971. The learned Single Judge was not right in saying that the appellants have no jurisdiction to determine the penal rent/damages/mesne profits. Before the Estate Officer, the appellant has filed Case No. A/E 07/2011 u/s 5, for eviction, and u/s 7, for payment of damages, of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971. Vide order dated 29.08.2012, the Estate Officer passed the order of eviction and also quantified the damages payable by the respondent. Even though the Estate Officer passed the order on 29.08.2012, the same was not kept in view by the learned Single Judge when the writ court allowed the writ petition on 10.12.2012 and thus, the order of the

learned Single Judge is liable to be set aside.

22. The matter is to be considered from another angle also. It is also pertinent to note that in the writ petition the respondent had not disclosed the statement given by him in writing and also his continued retention of quarters and initiation of eviction proceedings by the appellant. The respondent has filed the writ petition on the only premise that the employer had not paid the gratuity amount.

23. The jurisdiction under Article 226 of the Constitution of India is purely discretionary. Considering the facts and circumstances of the case, we are of the view that the learned Single Judge was not right in exercising the extra ordinary and equitable jurisdiction in favour of the respondent and on that ground also the order of the learned Single Judge is liable to be set aside. For the foregoing reasons, the order of the learned Single Judge dated 10.12.2012 passed in W.P. (S) No. 373 of 2012 is set aside and this L.P.A. is allowed.