
(2010) 03 JH CK 0076
In the Jharkhand High Court

Deobrat Sahay

APPELLANT

Vs

Coal India Limited and Others

RESPONDENT

Date of Decision : 31-03-2010

Acts Referred:

Constitution of India, 1950 — Article 14, 21, 300A

Citation : (2010) 03 JH CK 0076

Hon'ble Judges : Dabbiru Ganeshrao Patnaik, J

Bench : Single Bench

Final Decision : Allowed

Judgement

D.G.R. Patnaik, J.—Heard counsel for the parties.

2. The petitioner in this writ application, has prayed for an order quashing the decision of the competent authority of the CCL, as indicated in the communication vide letter dated 08.08.2007 (Annexure-5) of the Personnel Manager (EE), CCL, Ranchi (Respondent No. 5), whereby a direction has been made for deducting a sum of Rs. 1,47,189/- as House Rent @10% of the basic pay for the period 19.01.1998 to 19.02.2003 for "self lease accommodation".

A further prayer has been made for a direction upon the respondents to refund the deducted amount to the petitioner.

3. The petitioner has assailed the impugned order as being illegal and arbitrary and without jurisdiction and violative of the petitioner's right under Article 14, 21 and 300A of the Constitution of India.

4. Facts of the petitioner's case in brief is as follows:

The petitioner was appointed as Director (Personnel) vide letter of the Ministry of Coal, Government of India dated 24.10.1997, under the specific terms and conditions of appointment.

Clause-V of the Terms and Conditions of appointment and its sub-clauses relate

to residential accommodation / payment of house rent allowance and recovery of rent for the accommodation so provided. The clause postulates three kinds of residential accommodation under Sub-clause (a), (b) and (c) of Clause-V.

Clause-V and relevant sub-clauses relating to residential accommodation are reproduced herein-below:

(a) Company's own accommodation:

Wherever the PSE has built residential flats in the industrial township or purchased residential flats in the cities, arrangements would be made by the PSE to provide a suitable residential accommodation to him.

(b) Lease Accommodation:

If the PSE does not have residential accommodation...or is not able to provide residential accommodation out of the residential flats purchased by it..., then in that situation, accommodation could be arranged by the PSE by taking the premises on lease basis....

(c) Self-lease:

If he owns a house at the place of his posting and is desirous of taking of his own house on self-lease basis, the PSE can permit him to do so provided he executes a lease-deed in favour of the PSE....

Sub-clause (i) of Clause-V provides for "Rent Recovery" in respect of three kinds of accommodation such as, (a) accommodation arranged by the PSE from its own township or own flats, (b) lease accommodation arranged by the PSE, and (c) furnished accommodation arranged by the PSE.

The terms and conditions of appointment also provides that other terms and conditions would be governed by the Rules of the PSE.

5. The petitioner was subsequently transferred to another subsidiary of CIL namely, the Central Coalfields Limited (CCL) as Director (Personnel).

6. As per the terms and conditions of appointment relating to "self lease", the petitioner as lessor, entered into an agreement of lease for his residential house at Ranchi with CCL as lessee with effect from 19.01.1998 and a Memorandum of Lease was executed by and between the petitioner and his employer on 09.09.1998 setting out the terms and conditions of lease including the amount of lease rent agreed upon and commencing from 19.01.1998. Under the terms of lease, the petitioner being the lessor, was obliged to bear the liability for payment of electricity charges, ground rent, municipal taxes and for carrying out periodical repairs and whitewashing of premises.

7. Much later, Ministry of Coal, Government of India vide its letter dated 19th September 2001 (Annexure-4) informed the Chairman, Coal India Limited about the petitioner's pay fixation and terms of appointment as Director (Personnel) and it was also indicated therein for recovery of rent for the "leased

accommodation arranged by the Company to be made @10% of the revised basic pay for unfurnished accommodation and @12.5% for the furnished accommodation.

8. The petitioner retired from service with effect from 31.07.2007 on the post of Chief General Manager (P), CIL, Centralized Cell, CMPDIL, Ranchi.

9. After his retirement, he received a copy of the letter dated 08.08.2007 of the Personnel Manager (EE), CCL addressed to the Finance Manager (EPR), CCL conveying sanction of the competent authority for payment of EL & HPL encashment. However, a direction was also contained in the letter that such payment may be made after making deduction of Rs. 1,47,189/- towards house rent @10% of the basic pay for the period 19.01.1998 to 19.02.2003 for "self lease accommodation". Apprehending that the respondent would deduct the amount from his retiral benefits, though according to him, he is not liable to pay any such amount, the petitioner filed his representation before the concerned authorities of the respondents, but when no favourable response was received, he filed a writ application vide W.P.(S) No. 3531 of 2007 before this Court. The writ application was disposed of by order dated 31.07.2007 allowing withdrawal of the petition with liberty to file a fresh application, since the respondents had till then, not proceeded to recover any amount from the petitioner's retiral dues.

10. It was after withdrawal of the writ application that the decision to deduct the amount from the petitioner's retiral dues was conveyed to the petitioner vide the impugned order dated 08.08.2007 (Annexure-5) and the amount was deducted from the retiral dues of the petitioner.

11. Learned Counsel for the petitioner submits that as per the terms and conditions of appointment, rent recovery can be made only under two circumstance namely, (i) when the employer company provides its own flat, or (ii) when the employer company arranges lease accommodation. Learned Counsel adds that the "lease accommodation" is quite distinct and separate from the "self lease accommodation", as would be evident from the relevant clauses of the terms and conditions of appointment. Learned Counsel argues further that the terms and conditions of appointment and terms of "self lease" do not postulate recovery of any house rent and the petitioner has been prejudiced on account of such deduction. Had the petitioner been informed at the time of settlement of terms of appointment or the terms of "self-lease" that he would have to bear the liability to pay house rent, then he would have opted for stay in the company's own accommodation or in leased accommodation arranged by the company from a third party landlord and he would have leased out his own house to a third party at a much higher rent.

12. Per contra, the stand taken by the respondents, both as appearing in the their counter-affidavit and explained by the counsel for the respondents is that the matter of applicability of deduction of house rent for "self leased accommodation of the petitioner" was deliberated at different levels in the

respondents company and a final decision was taken for recovery of house rent @10% of the basic and personal pay, as per the same terms and conditions as applicable in the case of leased accommodation. The approval and sanction on the basis of the decision taken by the department of Public Enterprises, was conveyed by the Ministry of Coal to the respondent company vide letter dated 05.12.2006.

Learned Counsel for the respondents would explain that there was some ambiguity in the terms and conditions of the petitioner's appointment and upon clarification sought for in respect of deduction of House Rent Allowances, the decision was taken for recovery of the amount of house rent from the petitioner @10% of the basic pay and the arrears thereon.

13. From the rival submissions, the undisputed facts which emerge are,

i. The petitioner was appointed on the post of Director (Personnel) of Eastern Coalfields Limited with effect from 02.06.1997 on specific terms and conditions as laid down by the Central Government in the Ministry of Coal.

ii. The terms and conditions as recorded in a Memorandum dated 24.10.1997 (Annexure-1) provides for residential accommodation to the employees of the Public Sector Enterprise and it provides for three separate kinds of accommodation as per clause-V of the agreement.

Clause-V(c) of the agreement provides for "self lease" and it postulates that if the employee owns a house at the place of his posting and is desirous of taking his own house on "self-lease" basis for his residential purposes, the PSE can permit him to do so provided he executes a lease-deed in favour of the PSE. It however provides a ceiling of Rs. 5,400/- per month towards rent for "self lease".

Clause-V(e) provides for payment of House Rent Allowance by the employer if the PSE is not in a position to arrange residential accommodation to the employee out of its residential quarters or even on lease basis or he if prefers to stay in a house taken by him on rent basis. The amount of house rent which is payable would then be on the basis of the ratable value of the self-occupied portion of the house certified by the municipal authority of the area where the house is situated and the employee shall pay @10% of the basic pay and personal pay towards rent.

Sub-clause (i) of Clause (V) of the terms and conditions provides for rent recovery and it stipulates for the recovery of rent for the accommodation arranged by the company in its own township or from the pool of flats purchased by it in cities and towns and so allotted to the employee, which shall be @10% of the basic pay and personal pay from the standard rate whichever is lower. Such recovery of house rent can also be made from the leased accommodation as per clause-i(b) at the same rate in respect of the leased accommodation arranged by the PSE.

On the basis of the above noted terms and conditions related to residential

accommodation and self leased accommodation, the petitioner was appointed under the respondent company in 1997.

iii. On the basis of the terms relating to "self lease", the respondent company had agreed to the petitioner's proposal to take his own house on the "self lease" basis for his residential purposes and an agreement of lease was executed by and between him and the respondent company.

iv. As per the terms of the lease agreement, the petitioner was entitled only to receive the stipulated lease rent @6,600/- per month and was obliged to bear the liability of paying charges towards electricity, municipal taxes, whitewashing and repairs of the house.

14. From the terms and conditions of the petitioner's appointment relating to the residential accommodation, it is evident that there is a marked distinction between "accommodation on self lease" and "leased accommodation". Such distinction is accentuated by the fact that in case of company's own accommodation provided to the employee or leased accommodation which the company had taken and provided to its employee, the liability to pay electricity charges, municipal taxes, etc. vests with the employer company and not with the employee. But in the case of self lease, the privilege of shifting the burden towards payment of electricity charges, municipal taxes, etc. in respect of the accommodation provided to the employer company, cannot be made and such liability has to be borne by the employee himself who has opted for "self lease". The clause relating to recovery of house rent, as specified in the terms and conditions of appointment, stipulate for recovery of 10% of the basic pay and personal pay of the employee towards house rent, only in respect of such house which the company had obtained on lease and provided as residential accommodation to the employee. The terms and conditions certainly do not stipulate for recovery of rent from the employee in respect of "self lease". It appears that though, the terms and conditions of appointment relating to the "residential accommodation", "self lease" and "recovery of house rent", as observed above, do not contain any ambiguity and treating the same as such therefore, no recovery of any house rent was ever sought to be made from the petitioner. Yet after more than six years, a controversy has been raised by the respondents on the ground of some ambiguity in the terms and conditions and a change was introduced in the terms and conditions of the petitioner's appointment unilaterally, imposing thereby the liability upon the petitioner to pay 10% of his basic pay and personal pay towards house rent. It also appears that such unilateral decision was communicated to the petitioner and the assessed amount of house rent including arrears from the date of execution of the "self lease" agreement till the date of the petitioner's retirement, was recovered from his retiral dues.

15. Thus, from the above facts, two significant aspects appear. First, that the petitioner was appointed under a contract on stipulated terms and conditions of his appointment which include a provision for "self lease" of his own house. The

terms and conditions of appointment did not stipulate that the petitioner would be liable to pay house rent on the self leased accommodation and neither was the petitioner informed of any such liability either at the time of his appointment or at the time of acceptance of his offer of self lease of his own house.

16. The contract of appointment governs the rights and obligation of both the employer and employee and the terms and conditions cannot be unilaterally altered to the disadvantage of the employee. Even otherwise, the relevant clause would indicate that the terms and conditions of appointment do not stipulate that the employer company would be entitled to recover the house rent at the stipulated rate from the petitioner in respect of his self leased accommodation in the same manner as stipulated in respect of the company's leased accommodation. The unilateral decision of the employer to recover 10% of the petitioner's basic and personal pay towards house rent in respect of self leased accommodation, has therefore to be declared as illegal, arbitrary and violative of the terms and conditions of the contract of appointment. For the same reason, the deduction of the amount towards arrears of house rent from the retiral dues of the petitioner made after the petitioner had retired from service, and that too, without prior notice to him, has also to be declared as illegal, arbitrary and violative not only of the rights of the petitioner, but also violative of the principles of natural justice.

17. In the light of the above discussions, I find merit in this application. Accordingly, this writ application is allowed. The impugned order dated 08.08.2007 whereby the deduction of house rent @10% of the petitioner's basic pay and personal pay has been directed to be made, and the order of deduction of the purported arrears of such amount of house rent from the petitioner's retiral benefits, are hereby quashed. The respondents are directed therefore to refund the entire amount of Rs. 1,47,189/- to the petitioner within two months from the date of receipt / production of a copy of this order. In the event the amount is not refunded within the period stipulated above, then the same shall carry interest @6% per annum payable from the date after lapse of the stipulated period of two months, till the date of final payment.

A copy of this order be given to the counsel for the respondents.