(2000) 11 OHC CK 0013

In the Orissa High Court

Case No : O.J.C. No. 2491 of 1998

Dibakar Mohanty APPELLANT

Vs

Steel Authority of India Ltd. and Others RESPONDENT

Date of Decision : 14-11-2000

Acts Referred:
Constitution of India, 1950 — Article 226, 227

Citation : (2002) 94 CLT 244 : (2001) 1 OLR 41

Hon'ble Judges : L. Mohapatra, J

Bench : Single Bench

Advocate : Biswajit Mohanty, S. Patra, P.K. Majhi, S. Patnaik and L. Misra, for the Appellant; J. Das, S. Das and S. Mohapatra, for the Respondent

Judgement

L. Mohapatra, J.—The petitioner retired as Senior Loco Operator on 30th June, 1992 on superannuation. His prayer in the writ application is for payment of gratuity, revised scale of pay of L-9 grade for the period from 1.1.92 to 29.6.92, revised scale of pay of L-10 level till 30.6.92, salary for the month of June, 92, leave salary for 5 months, annual bonus for 1991-92 and Ors. pecuniary benefits.

2. Opposite parties have filed a counter stating that the amount claimed by the petitioner has not been disbursed since he has not vacated the Company''s quarter allotted to him even though he has been superannuated since 30th June, 1992. For such unauthorised occupation of the quarter proceeding was initiated in which an order of eviction was passed. The said eviction order was challenged in appeal by the petitioner and an interim order of stay was granted, On the application of the opposite parties the stay order was vacated and the same has been challenged before this Court in OJC No. 18055 of 1998 and an interim order of stay has been granted. Therefore, the petitioner having remained in occupation of the quarter unauthorisedly even after superannuation, a huge amount is due from him towards market rent for such occupation. Such amount is to be calculated only after the petitioner vacates the quarter and after adjusting the said amount the balance amount payable to the petitioner towards

gratuity and Ors. dues can be paid.

3. The learned counsel for petitioner does not dispute the fact that the petitioner has retired on superannuation since 30th June, 92 and that the petitioner is in occupation of the quarter till date. However, he submitted that on the date of retirement there was no due from the petitioner and therefore, there is no justification for withholding payment of gratuity and Ors. dues. He further submitted that if the petitioner remains in unauthorised occupation of the quarter, the proceeding has been drawn up against him and the matter is subjudice before this Court in another writ application. Therefore, for unauthorised occupation of the quarter payment of gratuity and Ors. dues cannot be withheld.

4. Shri Das, learned counsel appearing for the Opposite parties, has referred to certain provisions of the House Allotment Rules, 1995 of the Steel Authority of India Limited, Rourkela Steel Plant. Relying on Rules 11 and 11.1 of the said Rules, Shri Das contends that a person retiring on superannuation or taking voluntary retirement is entitled to retain the quarter for two months from the date of release. Therefore, the petitioner could have only retained the quarter till end of August, 1992 and retention of the quarter beyond August, 1992 became an unauthorised occupation. Relying on Rule 2.18, Shri Das submitted that unauthorised use in relation to quarters means use or occupation of a quarters or part thereof without a valid allotment and includes continuation of use/ occupation of the quarters beyond the period of validity of the allotment and/ or authorised period of retention. He further submitted that since even two months after retirement the petitioner did not vacate the quarter, he was unauthorisedly using the same and as such was liable for market rent as provided under Rule 2.12 of the said Rules. Rule 2.12 of the Rules defines "market rent" as the sum determined from time to time with approval of the competent authority as the minimum compensation per month payable by an unauthorised occupant for unauthorised use/occupation of any class of quarters. Relying on the aforesaid rules, Shri Das submitted that the petitioner having not vacated the quarter within the stipulated period of two months, has to be treated as unauthorised occupant in respect of the said quarter and is liable to pay the market rent. So far he does not vacate the quarter it is not possible for the opposite parties to determine the market rent payable by the petitioner and therefore, the gratuity and Ors. dues payable to the petitioner have been withheld. Only after the petitioner vacates the quarter, the amount payable by him towards retention of the quarter unauthorisedly has to be calculated and deducted from the amount due to the petitioner on account of superannuation. The argument of the learned counsel for petitioner that the gratuity and Ors. dues of the petitioner payable on superannuation cannot be withhold only on the ground of occupation of the quarter is answered by Shri Das by way of citing two decisions reported in Union of India (UOI) Vs. Ujagar Lal, and 2000 Lab.I.C. 2526 Municipal-Corporation, Amritsar v. Jagdamba Dutta (decision of Punjab & Haryana High Court). In the decision of the Apex Court cited by the learned counsel for opposite parties, the

respondent therein was not paid death-cum-retirement gratuity till he surrendered possession of quarters provided to him by the employer while in service. The respondent approached the Industrial Tribunal which granted interest on the gratuity payable. Non-payment of the gratuity was due to the circular of the Railway Board not to pay the amount of gratuity till the employee vacates the residential quarter and not due to any administrative lapse on the part of the appellant! Under such circumstances the Apex Court held that no interest is payable as admittedly the respondent was in unauthorised occupation of the quarter allotted to him. In the decision of the Punjab & Haryana High Court (supra), the employee even after superannuation did not vacate the quarter for a decade and the conduct of the employee was held to be most reprehensible and unbecoming of an officer and it was held that such an employee cannot enforce his right for post-retiral dues in writ jurisdiction. Here is a case where the petitioner has retired since June, 1992 and has been in occupation of the quarter for more than eight years after retirement. Under the House Allotment Rules he should have vacated the quarter within two months from the date on which he retired on superannuation, and occupation of the quarter thereafter has to be treated as unauthorised under Rule 2.18 of the Rules and he is also liable to pay market rent under Rule 2.12 of the said Rules. I, therefore, do not find any fault in withholding payment of gratuity and Ors. dues payable to the petitioner after retirement till he remains in unauthorised occupation of the quarter allotted to him by the opposite parties when he was in service. The petitioner has absolutely no right to occupy the quarter beyond the permissible period under the Rules and he having remained in unauthorised occupation of the quarter for more than 8 years, cannot enforce his right for post-retiral dues in writ jurisdiction.

5. I, therefore, dispose of this writ application directing that only after the petitioner vacates the quarter in question, the opposite parties shall calculate the dues payable by the petitioner for his unauthorised occupation of the quarter and after deducting the said amount the balance payable to the petitioner towards gratuity and Ors. dues shall be made available to him within three months from the date he vacates the quarter.