

(2019) 03 UK CK 0120

In the Uttarakhand High Court

Case No : Writ Petition No. 203 Of 2014 (S Of B) With Delay Condonation
Application No. 3713 Of 2019, Restoration Application No. 217 Of 2019

Dr. Basant Ram & Another

APPELLANT

Vs

Chancellor G.B. Pant University & Others

RESPONDENT

Date of Decision : 26-03-2019

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2019) 03 UK CK 0120

Hon'ble Judges : Ramesh Ranganathan, CJ;N.S. Dhanik, J

Bench : Division Bench

Advocate : S.S. Yadav, B.S. Parihar, Rajendra Dobhal, Devang Dobhal

Final Decision : Disposed Off

Judgement

Ramesh Ranganathan, CJ

1. The delay in filing the restoration application is not opposed by Mr. Rajendra Dobhal, learned Senior Counsel for the respondent-University, and the delay is, therefore, condoned.

2. The application for restoration is filed requesting that the order of this Court dated 28.02.2018, whereby the Writ Petition was dismissed for non-prosecution, be set-aside and the Writ Petition be restored to file. As this application is not opposed by Mr. Rajendra Dobhal, learned Senior Counsel appearing on behalf of the respondent-University, the said application is allowed, and the Writ Petition is restored to file.

3. The present Writ Petition is filed seeking a writ of mandamus to declare Clauses 2 and 3 of the letter dated 04.08.2010, whereby penal rent was charged at different rates for different periods, as illegal; a writ of certiorari to quash the order dated 03.06.2009 and the notices dated 03.09.2011 and 02.06.2010; a writ of mandamus directing respondent nos.2 to 4 to pay the retiral dues of the first petitioner with 18% interest, after adjusting the normal rent of the house in

question; and for a further direction to respondent nos.2 to 4 to pay HRA to the second petitioner for the period from 24.09.2007 till 30.06.2009.

4. Facts, to the limited extent necessary, are that the first respondent, who was working as a Director Extension/Professor in the respondent-University, was relieved from his post on 23.06.2007 consequent on his appointment as the Vice-Chancellor of the Rajendra Krishi Vishwavidyalay, Pusa, Samastipur, Bihar. He was, thereafter, appointed as the Vice-Chancellor of the Narendra Dev University of Agriculture and Technology, Kumarganj, Faizabad, Uttar Pradesh. The first petitioner retired from the services of the respondent-University on 31.03.2008. When he was working as a Professor in the respondent-University, the first petitioner was allotted House No.1/106 which he continued to occupy from 1998 onwards. The second petitioner (the son of the first petitioner) joined the University as a Subject Matter Specialist on 25.11.1999, but was posted out station of the University where he worked till 23.09.2007. The second petitioner was selected and appointed as Senior Scientist/Associate Professor, Agronomy on 22.09.2007 at the Pantnagar University. He, however, continued to reside in House No.1/106 which was allotted to the first petitioner (i.e. in the accommodation given to his father).

5. By proceedings dated 30.06.2009, the first petitioner was charged normal rent for a period of three months after he left the services of the respondent-University, i.e. from 24.06.2007 till 23.09.2007, at Rs.1,000/-per month. Thereafter, for a period of two months, he was charged a penal rent of Rs.10,000/-; thereafter a penal rent of Rs.18,000/- per month for a period of two months from 24.11.2007 to 23.01.2008; thereafter a penal rent of Rs.34,000/- per month for the period 24.01.2008 till 14.04.2009; and, thereafter, Rs.66,000/- per month from 15.04.2009 to 30.06.2009. Proceedings dated 04.08.2010 was issued by the fourth respondent informing the first petitioner that he was levied normal rent for two months and, thereafter, different rates of penal rent.

6. The first petitioner invoked the jurisdiction of this Court by filing Writ Petition (S/B) No.219 of 2011 and a Division Bench of this Court, by its order dated 11.03.2014, dismissed the Writ Petition. In its order dated 11.03.2014, the Division Bench noted that, by the impugned order, the first petitioner herein had been asked to pay penal rent; while he was working with the University as a Professor, the petitioner was appointed as the Vice-Chancellor of yet another University on 23.06.2007; by reason of the said appointment, the relationship of employer and employee between the first petitioner and the respondent-University came to an end w.e.f. 23.06.2007; under the Rules, for a period of three months, the petitioner could occupy the accommodation, that was given to him, upon payment of Rs.1,000/- per month; subsequent thereto, he had no right to occupy the said quarter; a quarter meant for accommodating a Professor could not be even asked for to be occupied by a Research Assistant; the son of the petitioner, who was a Research Assistant, had made an application to that

effect, and it was contended that no decision was taken thereupon; the said representation was not even to be considered; and w.e.f. 24.09.2007, until the quarter was made available i.e. 30.06.2009, the petitioner was obliged to pay penal rent. The Division Bench observed that it had not been contended that the claim on that account, as made, was contrary to what has been provided in the Rules. Refusing to interfere with the impugned order, the Division Bench dismissed the Writ Petition.

7. The said order of the Division Bench in Writ Petition (S/B) No.219 of 2011 dated 11.03.2014 attained finality as the first petitioner herein chose not to prefer an appeal thereagainst. The present Writ Petition is filed, in effect, questioning the very same action of the respondent-University in levying penal rent albeit along with the second petitioner; and, in addition, the second petitioner claims that he was denied HRA, and the said amount should be re-paid to him with 18% interest.

8. The order of the Division Bench in Writ Petition (S/B) No.219 of 2011 dated 11.03.2014 is a judgment inter-parties and, since the said order attained finality as no appeal had been preferred thereagainst, it was not open to the first petitioner herein to re-agitate the very same issue, decided in Writ Petition (S/B) No.219 of 2011, by way of the present Writ Petition. The judgment of a competent Court is binding inter-parties and cannot be re-agitated in collateral proceedings. An order or judgment of a Court/Tribunal, even if erroneous, is binding inter-parties. The binding character of judgments, of Courts of competent jurisdiction, is in essence a part of the rule of law on which administration of justice is founded. (The Direct Recruit Class-II Engineering Officers' Association & others vs. State of Maharashtra & others: (1990) 2 SCC 715; U.P. State Road Transport Corporation vs. State of U.P. & another: (2005) 1 SCC 444). Matters in controversy, in writ proceedings under Article 226, decided after full contest, after affording fair opportunity to the parties to prove their case, by a Court competent to decide it and which proceedings have attained finality, is binding inter-parties. (Gulabchand Chhotalal Parikh vs. State of Bombay (Now Gujarat): AIR 1965 SC 1153; State of Punjab vs. Bua Das Kaushal: AIR 1971 SC 1676). Once a matter, which was the subject-matter of a lis, stood determined by a competent Court, no party can thereafter be permitted to reopen it in a subsequent litigation. (Swamy Atmananda & others vs. Sri Ramakrishna Tapovanam & others: AIR 2005 SC 2393; Ishwar Dutt vs. Land Acquisition Collector & another: (2005) 7 SCC 190). Issues which have been concluded inter-parties cannot be raised against in proceedings inter-parties. (State of Haryana vs. State of Punjab & another: (2004) 12 SCC 673).

9. As the very same contention, as is urged before us, was urged earlier before the Division Bench in Writ Petition (S/B) No.219 of 2011, the order passed therein on 11.03.2014 would disentitle the first petitioner from being granted the relief sought for as Prayers 1 and 2 and a part of Prayer 3.

10. That leaves us with the second limb of Prayer 3 wherein the second

petitioner has sought a direction to the respondents to pay him HRA for the period 24.09.2007 to 30.06.2009. In the counter-affidavit filed by the respondent-University, it is stated that the accommodation facility in the University was being provided as per seniority of the employees in the same cadre; the son of the first petitioner (petitioner no.2) was also allotted department accommodation as per his entitlement; the second petitioner did not initially occupy the same, and had requested for allotment of another accommodation; considering his request, House No.1/307, Category II was allotted, and was occupied by him on 02.08.2008; he later vacated the said building on 23.09.2008; and the second petitioner's endeavour was to somehow retain occupation of the building allotted to the first petitioner as a Professor, which the first petitioner was entitled to occupy only till he left the University on 23.06.2009, and not thereafter. The contents of the counter-affidavit do not disclose whether for the entire period, for which the first petitioner was levied penal rent, the second petitioner was paid HRA or not. Since the second petitioner's claim for payment of HRA was not the subject matter of Writ Petition (S/B) No.219 of 2011 dated 11.03.2014, suffice it to permit the second petitioner to make a representation to the second respondent regarding his claim for payment of HRA for the period he was not provide accommodation by the respondent-University. If any such representation is made within three weeks' from today, the second respondent shall consider the same, pass a reasoned order thereupon, and communicate the same to the second petitioner at the earliest and, in any event, not later than three months from the date of receipt of the representation of the second petitioner.

11. Needless to state that if the second respondent is satisfied, for reasons to be recorded in writing, that the second petitioner is due certain amounts towards HRA, the said amount shall then be paid to the second petitioner within two months thereafter.

12. In so far as the first petitioner is concerned, the Writ Petition fails and is, accordingly, dismissed. In so far as the claim of the second petitioner, regarding non-payment of HRA, is concerned the Writ Petition is disposed of. No costs.