
(2010) 07 DEL CK 0284
In the Delhi High Court
Case No : Writ Petition (C) 4356 of 2010

Hari Narain Tandon

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 12-07-2010

Acts Referred:

Public Premises (Eviction of Unauthorised Occupants) Act, 1971 — Section 7

Citation : (2010) 07 DEL CK 0284

Hon'ble Judges : Pradeep Nandrajog, J; Mool Chand Garg, J

Bench : Division Bench

Advocate : Manjeet Singh Reen, for the Appellant; Neeraj Atri, for the Respondent

Final Decision : Disposed Off

Judgement

Pradeep Nandrajog, J.—Rule DB.

2. Heard for disposal.

3. A sum of Rs. 2,69,918/- was deducted from the gratuity payable to the petitioner upon retirement, being the penal rent from 25.5.2002 to 5.5.2003.

4. Facts noted by the Tribunal are that the petitioner, posted as Assistant Commercial Manager, Moradabad, was transferred to Chandausi in May 2000. He requested that he be permitted to retain the railway accommodation for a period of two years on normal rent. Said request was allowed. Thus, till 24.5.2002 the petitioner was liable to pay, and did pay, the normal rent.

5. Before 24.5.2002, on 11.4.2002, the petitioner requested for extending the permission up to March 2003, stating that the applicable rules permitted extension to vacate the accommodation on account of the education of the son of the petitioner.

6. Receiving no response, reminders were sent. In the reminders it was pointed out that similarly situated persons were given extension to vacate, on payment

of normal rent.

7. On 30.10.2002 the allotment was cancelled. But, the petitioner continued to occupy the accommodation and in the meanwhile was transferred back to Moradabad in the same capacity on 2.5.2003 from where he retired on superannuation; the date being 31.12.2004.

8. Questioning the deduction from his gratuity, the petitioner urged before the Central Administrative Tribunal that without granting an opportunity of hearing i.e. without issuing a notice to show-cause it was not permissible to effect the deduction. On the other hand, the respondents submitted that by and under the order cancelling the allotment, the petitioner was clearly indicated that he must vacate the accommodation and thus, till re-transfer in the month of May 2003, penal rent had to be paid.

9. The Tribunal has held partly in favour of the petitioner, holding that the penal rent could not be charged from 25.5.2002 till 30.10.2002, for the reason it was on this date that the allotment was formally cancelled.

10. Thus, part relief flowed to the petitioner, in that, the penal rent recoverable from his gratuity for the prior period was directed to be refunded.

11. It is urged by learned Counsel for the petitioner that the Tribunal has erred in negating the principal stand of the petitioner for the reason whether or not amount due and as claimed by a Department of Government could or could be recovered from the gratuity depends upon the applicable service rules. It is urged that insofar the railway is concerned, considering the Pension Rules applicable to railway employees, in the decision reported as 2004 (1) ATJ 481 N.C. Sharma v. UOI and Ors. a Division Bench of the Bombay High Court has considered various decisions of the Supreme Court on the point, being 8 in number, and has held that as far as the railways is concerned the said issue has to be decided u/s 7 of the Public Premises (Eviction of Unauthorized Occupants) Act 1971.

12. We note that the Tribunal has referred to certain decisions of the Supreme Court on the point to hold against the petitioner and as afore-noted.

13. However, what is relevant for our decision is the fact that the said decisions of the Supreme Court relied upon by the Tribunal i.e. in Rampujan's case and Madanmohan Prasad's case, have been considered by the Bombay High Court and distinguished on the ground of the language of the applicable rule.

14. Unfortunately, the Tribunal did not bother to see as to which service rule was being considered in which decision and has blindly followed the decision in Rampujan's case and Madanmohan Prasad's case.

15. At this stage, learned Counsel for the respondents states that the writ petition may be disposed of clarifying that without prejudice to the right of the respondents to initiate proceedings u/s 7 of the Public Premises (Eviction of

Unauthorized Occupants) Act 1971, the respondents may be directed to release the remaining amount of gratuity to the petitioner.

16. We thus dispose of the writ petition directing that the remaining amount withheld by the respondent with respect to the gratuity payable to the petitioner be released to the petitioner within a period of 6 weeks.

17. It would be open to the respondents to initiate recovery proceedings against the petitioner by taking resort to applicable provisions of Public Premises (Eviction of Unauthorized Occupants) Act 1971.

18. No costs.