

(2011) 07 UK CK 0111
In the Uttarakhand High Court
Case No : Special Appeal No. 72 of 2008

Jagdish Chandra Arya

APPELLANT

Vs

The Union of India (UOI) and Others

RESPONDENT

Date of Decision : 25-07-2011

Acts Referred:

Citation : (2011) 07 UK CK 0111

Hon'ble Judges : Barin Ghosh, C.J.;V.K. Bist, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Barin Ghosh, C.J.—At the time of retirement of the Appellant, a sum of Rs. 63,494.75/- was deducted from the retiral/terminal dues of the Appellant. Being aggrieved thereby, the Appellant filed a writ petition. In the counter affidavit to the writ petition, it was contended that the Appellant was given a rent free accommodation at his place of posting at Kichha, which the Appellant could retain until after fifteen days from the date of his being relieved from his said place of posting, but the Appellant did not do so and, accordingly, in accordance with Rules, Appellant was liable to pay penal rent and such rent has been recovered. While the writ petition was considered, it was held that out of Rs. 63,494.75/-, penal rent accounted for Rs. 40,847.75/- and that such recovery, having been made under the Rules, there is no scope of interference. Being aggrieved thereby, the Appellant has preferred present special appeal. In the appeal, it was the contention of the Appellant that his order of transfer was stayed by this Court in another round of litigation. We, accordingly, called the record of said writ petition and found therefrom that in the said round of litigation, the Appellant was aggrieved by the transfer order dated 3rd May, 2001, whereby and under, the Appellant was transferred from Kichha to Haldwani, whereas, in the counter affidavit, that was filed in the later writ petition, it was contended that the Appellant was transferred from Kichha on 25th June, 2001. In the writ petition, it was contended that in lieu of rent free

accommodation, Appellant was entitled to house rent allowance at the applicable rate and during the period in question, for which penal rent has been recovered from the salaries of the Appellant, no house rent allowance was paid to the Appellant. This assertion has not been dealt with in the counter affidavit, at all. In the appeal, at one stage, the Appellant had also filed a recall application and therewith brought on record many a documents suggesting that the Appellant remained on leave right from 4th May, 2001 untill 27th March, 2002 with a gap of about a few days in the month of August, 2001. It is the contention of the Appellant that in accordance with the Rules, as has been highlighted in SWAMY's Publication, in course of leave, the Appellant was entitled to retain the house, allotted in his favour. We think that these are the matters, which are required to be looked at, which have not been looked at by the learned Single Judge nor the same have been looked at by the Department. We, accordingly, allow the appeal and set-aside the judgment and order under appeal and at the same time permit the Appellant to make a representation to his employer in respect of penal rent amounting to Rs. 40,847.75/- deducted for the period 11th July, 2002 to 1st April, 2002 on the ground that such deduction could not be made in terms of Rules in vogue, as during that time, the Appellant was on leave. The representation must accompany all necessary documents supporting the contention of the Appellant that he was granted leave for the period in question or for the substantial part of the period in question, and he shall also bring on record appropriate documents suggesting that in terms of the Rules applicable, made by the employer, because of such leave, the Appellant was entitled to retain the accommodation in question. In the event, the Appellant fails to substantiate that in terms of Rules, he was not entitle to retain the accommodation in question during the period he was on leave, the employer must ascertain, whether for the said period the Appellant was entitled to house rent allowance and, if so, whether the same has been deducted from the penal rent and, if not, to pay the same to the Appellant. In the event, such representation is made by the Appellant within a period of four weeks from today, let the representation be decided in accordance with law, after giving an opportunity of hearing to the Appellant, within a period of twelve weeks from the date of making the representation.