

(2014) 11 GUJ CK 0068
In the Gujarat High Court

Case No : Special Civil Application No. 1048 of 2012

Matridutta Shivdutta Mishra

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 27-11-2014

Acts Referred:

Citation : (2015) LabIC 622

Hon'ble Judges : V.M. Sahai, Acting C.J.; R.P. Dholaria, J

Bench : Division Bench

Advocate : Harshal N. Pandya, Advocates for the Appellant; Siraj R. Gori, Advocates for the Respondent

Judgement

V.M. Sahai, Actg. C.J.

1. We have heard Ms. Harshal N. Pandya, learned counsel appearing on behalf of the petitioner and Mr. Siraj R Gori, learned counsel appearing on behalf of the respondents. This petition has been filed by the petitioner to declare the action of the respondent authorities of effecting recovery from the retirement dues of the petitioner towards the damaged rent for the period from 20.3.2006 to 21.7.2007 as illegal, arbitrary and contrary to the policy of the Government and to direct the respondent authorities to refund with interest the amount of recovery of Rs. 1,89,954/- recovered from the retirement dues of the petitioner.

2. The facts leading to the filing of the present petition are as under:--

"1. The petitioner joined the Railway Protection Force ["RPF" for short] as Sub Inspector in the year 1975 and worked as such at various stations like Jabalpur, Nagpur etc. It appears that thereafter, the petitioner was promoted on the post of Inspector and was posted at Solapur Division in September, 1986. Again he was transferred thereafter from Solapur Division to Nagpur Division in the year 1991.

2. It further appears that in July, 1995, the petitioner was transferred from

Nagpur Division and posted to Mumbai Division as an Inspector in Reserve Company of RPF in Mulund. After such posting, the petitioner was transferred and posted at many places in Mumbai Division. Upon transfer to Mumbai Division, the petitioner was allotted a railway quarter in RPF Officers Colony in Mulund[East].

3. The petitioner was again transferred from R-I Company, Mulund, Mumbai Division to Bhusaval Division vide order dated 17.3.2006, which according to the petitioner was contrary to the guidelines and/or standing orders issued by the Railway Board in respect of the transfer of RPF/RPSF personnel as the petitioner had not completed his tenure in one division and the persons who had completed their tenure in Mumbai Division were retained in the same division. The said transfer order was served upon the petitioner vide communication dated 18th March, 2006 and the petitioner was also informed therein he had to resume his duty on 20th March, 2006. Accordingly, the petitioner joined the duty at Bhusaval on 20th March, 2006.

4. It appears that the petitioner made a representation to the Chief Security Commissioner, Central Railway against his transfer to Bhusawal Division on the ground that he was due for promotion and pursuant to such promotion, he will again be transferred. The representation of the petitioner was turned down by the Chief Security Commissioner by communication dated 8th June, 2006.

5. The petitioner again made a detailed representation to the Director General, RPF on 22nd June, 2006 which was considered and vide communication dated 8th September, 2006, the Chief Security Commissioner was intimated to adjust the petitioner in Mumbai area in view of the fact that he was due for promotion in near future. Pursuant thereto, the petitioner was transferred from Bhusawal to Mumbai Division and accordingly, the petitioner joined the duty on 16th September, 2006. In the said order, a note was put up directing to recover the amount of Rs. 15,450/- p.m. towards damage rent from the petitioner. It is the case of the petitioner that during the period of his transfer from 20th March, 2006 to 15th September, 2006 at Bhusawal Division, he retained the official quarter at Mumbai as he was under the bona fide impression that his request will be positively considered by the authorities.

6. It appears that upon transfer of the petitioner again to Mumbai, an order was passed by Sr. Divisional Security Commissioner, Mumbai on 20th September, 2006 thereby regularizing the retention of railway quarter by the petitioner at Mulund. Despite the regularization of retention of quarter vide order dated 20th September, 2006, the Divisional Security Commissioner, Bhusawal directed recovery of penal rent of Rs. 90,210/- at the rate of Rs. 15,450/- p.m. for the said period from 20th March, 2006 to 16th September, 2006 without any prior show-cause notice or affording any opportunity of hearing to the petitioner.

7. In this connection, it appears that the petitioner made a detailed representation dated 26th September, 2006 to the authorities pointing out the

difficulties faced by him during the period of transfer and requested to waive the penal rent which was directed to be recovered from the petitioner at the rate of Rs. 15,450/- p.m. for the above period.

8. It further appears that in the meantime, the petitioner was promoted as Assistant Security Commissioner/Assistant Commandant Group "A" and was posted at Thakurli vide orders dated 28th September, 2006 and 6th October, 2006 and the petitioner was relieved from Mumbai on 11th October, 2006 to enable him to join his duty at Thakurli. Accordingly, the petitioner joined the place of new posting. It is the case of the petitioner that as there was no facility of railway quarter at Thakurli, the petitioner was constrained to continue the railway quarter at Mulund in Mumbai.

9. In response to the request of the petitioner for retention of railway quarter, he received a communication dated 18th October, 2006, whereby he was directed to vacate the quarter first and then to apply for regularization of the same. Thereupon, the petitioner met the officer concerned personally and made a representation for regularization of retention of railway quarter and for waiver of damage rent of Rs. 90,210/- in view of the circular permitting retention of quarter by an employee/officer upon their transfer for six months on medical ground.

10. Pursuant thereto, it appears that an order dated 25th January, 2007 was passed by the Sr. Divisional Security Commissioner, Mumbai, whereby the occupation of quarter by the petitioner was declared to be unauthorized occupation from 12th October, 2006, i.e. the date of joining of petitioner at Thakurli upon his promotion and under the said order, the authority at Thakurli was directed to recover the outstanding amount of Rs. 90,210/- from the salary of the petitioner and further amount of Rs. 15,450/- p.m. till vacation of quarter by the petitioner.

11. Being aggrieved by the said order dated 25th January, 2007, the petitioner preferred an appeal before the Director General, RPF requesting for regularization of quarter retained by him and permitting him to retain the same as also to cancel the order of recovery. The petitioner also drew attention of the Director General to the order dated 18th March, 2004 as well as to the decision of the Railway Board relaxing the rules and regulation of occupation of quarter.

12. The petitioner was, in the meantime transferred from Thakurli, Mumbai Division to Vadodara Division and upon such transfer, he immediately vacated the quarter at Mumbai on 21st July, 2007. It is the case of the petitioner that as the retention of the official quarter at previous place was extended by the Railway Board by relaxing the rules and the that Thakurli was in the retention zone of Mumbai, the petitioner was not required to vacate the quarter. Despite the same, by communication sent by the authorities at Thakurli, addressed to Vadodara Division, it was directed to recover the amount of Rs. 2,34,244/- towards damage rent from the petitioner from 20th March, 2006 to 21st July, 2007.

13. It appears that against the said order of recovery for amount of Rs. 2,34,244/- the Chief Security Commissioner, in view of the letter of the Railway Board dated 17th December, 2007, issued a clarification dated 15th January, 2008 clarifying therein that instead of Rs. 2,34,244/-, an amount of Rs. 1,89,954/- be recovered from me petitioner. It appears that by communication dated 29m January, 2008, the Chief Security Commissioner directed that in absence of any provision for waiver of penal rent, necessary action be initiated for recovery of amount.

14. The petitioner made several representations thereafter pointing out the circulars issued by the Railway Board about retention of quarter even after transfer from one zone/division to another zone/division, but to no avail.

15. It appears that the petitioner retired voluntarily from the service w.e.f. 27th January, 2010. During the service tenure of the petitioner, no recovery was effected by the respondent authorities, however, the same was recovered from me retirement dues of the petitioner and that too, an amount of Rs. 2,34,244/- despite the communication of the Chief Security Commissioner pursuant to clarification of the Railway Board to recover an amount of Rs. 1,89,954/-. However, it appears that in May, 2010, the respondent authorities have refunded the amount of Rs. 44,290/- in view of the above clarification for recovery of Rs. 1,89,954/-.

16. It is this recovery which is made from the retirement dues of the petitioner, which is under challenge by the petitioner in this petition and the petitioner has also prayed to refund the same to him."

3. Learned counsel for me petitioner submitted that the action of the respondent authorities of recovering the amount in question from the petitioner towards the damage rent is illegal, arbitrary and contrary to the policy and/or guidelines issued by me Railway Board. It is also submitted that the guidelines issued by the Railway for retention of official quarter upon transfer of RPF personnel provides that upon transfer, a railway employee can retain quarter at the former station for a period of two months on payment of normal rent and on medical and/or educational ground for a further period of six months on payment of special license fee, viz. double the flat rate. It is submitted that the authorities ought to have considered the fact that the request of the petitioner against the wrongful transfer was accepted by the authorities and he was transferred to Mumbai and therefore, it was not open to the authorities to make recovery of the period of his wrongful transfer. The Chief Security Commissioner himself, upon transfer of the petitioner regularized the retention of quarter and therefore, there was no question of making recovery from the petitioner for the period which was already regularized. The Central Railway has declared the stations like Dadar, Thane, Kalyan, Thakruli, Igatpuri etc. in one retention zone of Chhatrapati Shivaji Terminal, Mumbai vide order dated 18th March, 2004 and as the retention of quarter within the same zone was permissible, the petitioner ought not to have been required to vacate the official quarter even after joining at Thakurli.

Attention of the Court is also drawn to the notification dated 18th March, 2004 as also to the Master Circular No. 49 dated 20th April, 2007 issued by the Railway Board, which provides for allotment and retention of railway quarter by an employee posted in the suburban area. Thus, the learned counsel for the petitioner has prayed to allow the petition and quash the action of the respondent authorities of recovering the amount from the retirement dues of the petitioner for the period in question. It is also prayed to quash the orders dated 22nd October, 2007 and 27th September, 2010 and to refund the recovery of Rs. 1,89,954/- recovered from the retirement dues of the petitioner with interest.

4. The respondent No. 3 has filed affidavit-in-reply pursuant to the notice issued by this Court denying the averments made in the writ petition. This Court, by order dated 19th February, 2014, directed the petitioner to clarify whether the petitioner has received HRA while he was occupying the official quarter at the time when he was transferred to other place, which quarter was required to be vacated by him according to the respondents. The Court also observed that if the HRA was paid to the petitioner and the official quarter was not vacated, the petitioner could not be entitled for both HRA as well as for retaining the quarter.

5. Pursuant to the said order, the petitioner has filed supplementary affidavit clearly stating therein that at the transferred place, there was no official accommodation available and therefore, the petitioner's family could not be shifted at the transferred place and that he did not receive HRA during the period while he was occupying the official quarter. It is also stated that if an employee is occupying any official quarter, he would not be entitled for HRA. It appears that in compliance of the order dated 18th September, 2013 passed by this Court, the respondent No. 3 has filed further affidavit stating therein that at the relevant point of time, the unit where the petitioner was posted at Thakurli was newly established and no accommodation or railway quarters were available for officers at that place. It is further stated in the said additional affidavit that in such circumstances, an employee would be entitled to get HRA which would not be substantial amount and that it would be incumbent upon the transferred employee to stay on rental accommodation at the place of transfer.

6. In view of the aforesaid factual position, it is clear that whenever the petitioner was transferred from Bombay, he was not provided the official quarter as the same was not available at the transferred place nor was the petitioner paid any rent during that period. On the contrary, rent was deducted from the salary of the petitioner for retaining the official quarter at Mulund, Bombay Division. Once the official quarter was not available at the transferred place, the petitioner was constrained to retain his official quarter at Mulund, Bombay Division and for the same, rent was deducted by the respondent authorities from the salary of the petitioner, which amounted to giving approval by the authorities permitting the petitioner to retain the official quarter at Mulund, Bombay Division till he was not allotted official quarter at the transferred place. Therefore, since the respondent authorities themselves permitted the petitioner to retain the

official quarter at Mulund by charging rent for the said official quarter, it was not open to the respondents to charge any penal rent or rent at market rate from the petitioner. Therefore, we are of the considered opinion that the respondents have illegally deducted the HRA at market rate from the post retirement dues of the petitioner and the said action of the respondent cannot be maintained in view of the implicit permission by the respondent authorities to retain the official quarter at Mulund till he was allotted official quarter at the transferred place.

7. It is relevant to point out that vide Circular dated 18th March, 2004, zones were revised and the whole Mumbai Division became one retention zone. Therefore, even if the petitioner was transferred from one Division to another Division, he was transferred within the same zone of Mumbai Division and therefore, he could have retained the official quarter allotted to him.

8. For the aforesaid reasons, the petition succeeds and the order dated 22nd October, 2007 Annexure-A to the petition, passed by the respondent authority is hereby quashed and set aside and the respondent authorities are directed to refund the amount of Rs. 1,89,954/- to the petitioner which was recovered from his retirement dues within a period of four months from today. In case, the aforesaid amount is not refunded to the petitioner within the aforesaid period, the petitioner shall be entitled for interest at the rate of 9% per annum from the date of this judgment.

9. Learned counsel for the petitioner prayed for interest upon the above amount which was deducted from his retirement dues. In view of the peculiar facts and circumstances of the case, we do not think it proper to award interest. However, as observed above, the petitioner shall be entitled to interest if the amount is not paid within the aforesaid period. Thus, the petition is allowed. Rule is made absolute to the aforesaid extent. The parties to bear their own costs.