
(2013) 07 DEL CK 0493

In the Delhi High Court

Case No : Writ Petition (C) No. 4671 of 2013

Prem Lata Dubey

APPELLANT

Vs

Delhi Cantonment Board

RESPONDENT

Date of Decision : 26-07-2013

Acts Referred:

Constitution of India, 1950 — Article 12
Pensions Act, 1871 — Section 11

Citation : (2013) 07 DEL CK 0493

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : Shekhar Nanawaty, for the Appellant;

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J.—This writ petition is filed by the petitioner one Smt. Prem Lata claiming the relief of release of family pension to her, and which pension was payable on account of late husband of the petitioner Sh. N.P. Dubey having worked with the respondent-Delhi Cantonment Board. On behalf of the petitioner, it is claimed that the entitlement to pension is not a bounty by the Government and it is a right in property which therefore cannot be withheld by the Government under any circumstances. This argument is raised because the petitioner, and prior thereto her husband, are illegally holding on to the accommodation given to Sh. N.P. Dubey during the period of N.P. Dubey's service with the employer-Delhi Cantonment Board. Of course, petitioner contends that the petitioner as also her late husband has rights to continue in the accommodation, however, this is disputed on behalf of the respondent.

2. It is an admitted fact in the writ petition itself that proceedings under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, were initiated against Mr. N.P. Dubey and an order was passed by the Estate Officer. Sh. N.P. Dubey, however, appealed against the order of Estate Officer in the court of ADJ and which allowed the appeal by order dated 29.8.2005. A reference to the order

of the ADJ shows that order of the Estate Officer was set aside only on technical grounds that impugned order of the Estate Officer was not a speaking order. The matter was therefore remanded back for passing of the speaking order.

3. Petitioner claims that since entitlement to pension is not a bounty and since the husband of the petitioner was given pension, but now it has been illegally stopped, the petitioner should be granted family pension.

4. I may also note that counsel for the petitioner placed reliance upon the judgment of the Supreme Court in the case of Gorakhpur University and Others Vs. Dr. Shitla Prasad Nagendra and Others, Reliance is placed upon para 5 of the said judgment in which there are observations that even if there is illegal holding of government quarters after retirement, there is no ground to withhold terminal benefits. The facts of the present case show that petitioner, and prior thereto her husband, is stated to be in illegal occupation of the accommodation belonging to the respondent/employer/Delhi Cantonment Board. Petitioner of course, does claim that the petitioner is not in illegal occupation, however, it is a disputed question of fact which would have to be tried either in the proceedings under the Public Premises Act or before an appropriate civil court which would decide the aspect as to whether or not petitioner or her husband were/are in illegal occupation and the consequent charges for damages/illegal use and occupation are or are not payable by the petitioner or now from the estate of her late husband, Sh. N.P. Dubey. I have recently had an occasion to examine more or less similar issue in the case titled as Sudershan Bhagra Vs. Delhi Cantt. Board in W.P. (C) No. 6574/2008 decided on 20.3.2013. The relevant paragraphs of the said judgment are paras 2 to 5 and which read as under:-

2. Before proceeding the facts of the case, I may note that the Supreme Court in the case of Secretary, O.N.G.C. Ltd. and Another Vs. V.U. Warriar, has held that an employer is fully justified to deduct gratuity payable to the employee on account of penal rent which becomes due from an employee, who after retirement does not vacate the official quarter allotted to him. The Supreme Court has thus clearly permitted deducting of penal rent amount from the gratuity payable. Similarly, the Supreme Court in the judgment in the case of Union of India Vs. Sisir Kumar Deb 1999 SCC (L & S) 781 has allowed the employer to deduct all dues payable by an employee and which arise on account of the employee not vacating the government quarter after retirement. The dues were held to be recoverable from the terminal benefits payable to the employee. The Supreme Court in the case of Union of India (UOI) and Another Vs. K. Balakrishna Nambiar, has again held that no interest will be paid on withheld amount of gratuity and which is rightly withheld as the employee illegally kept on holding to the accommodation given to him by the employer during his service period. The Supreme Court in the case of Union of India (UOI) Vs. Ujagar Lal, has held that Railways is entitled to withhold the death cum retirement gratuity till the retired employee surrendered the possession of the quarter allotted to him, when the retired employee unauthorizedly retains the quarter. The Supreme

Court also held that since there was no delay in payment of gratuity, in such circumstances, interest on gratuity withheld was also not payable.

3. Learned counsel for the petitioner has relied upon two judgments to argue the proposition that an employee can continue to hold a residential accommodation given during service and in spite of not vacating the same, the employee is entitled to the terminal benefits. Reliance is placed upon the judgment of the Supreme Court in the case of Union of India (UOI) and Another Vs. Wing Commander R.R. Hingorani (Retd.), and an order passed by a learned Single Judge of this Court dated 3.11.1999 in C.W.P. No. 4032/1997 titled as Sh. Gurdeep Singh, Ex-Draftsman Grade-I Vs. Delhi Cantonment Board, Delhi Cantt.

4. So far as the judgment in the case of R.R. Hingorani (supra) relied upon by the counsel for the petitioner is concerned, the same does not at all deal with the issue as to the entitlement of an employee to be paid the terminal benefits while continuing to illegally hold the residential accommodation even after retirement. The Supreme Court was in this judgment dealing with Section 11 of the Pension Act, 1871 and which provision pertains to exemption of pension from attachment. Accordingly, the Supreme Court in that case has held that recovery from the retire mental dues of the employee in the form of the penal rent was illegal. In the judgment of the learned Single Judge of this Court in the case of Gurdeep Singh (supra), the learned Single Judge has relied upon the judgment in the case of R.R. Hingorani (supra) and has directed the payment of the pension cum gratuity and retirement benefits. I may however note that the judgment of the learned Single Judge is only an order of two pages relying upon the judgment of R.R. Hingorani (supra) and it does not refer to the four judgments of the Supreme Court referred to above, and which shows that an employer is entitled to continue to hold the terminal benefits in case an employee refuses to vacate the official accommodation which was given at the time of service.

5. In view of the above, there is therefore no merit in the petition, which is accordingly dismissed, leaving the parties to bear their own costs.

5. Therefore, a reading of the aforesaid paras show that it is clear that Supreme Court has repeatedly stated employees who are illegally continuing to stay in the accommodation allotted to them at the time of employment even after retirement, cannot still claim terminal benefits. The judgments of the Supreme Court as stated in para 2 of the aforesaid judgment of Sudershan Bhagra (supra) hold that it is not permissible for an employee to keep on illegally holding on to government accommodation and yet claim payment of terminal benefits.

6. There is also another way of looking into the matter. Admittedly, there is a disputed question of fact that whether or not petitioner is in illegal occupation of the accommodation given during the period of service of Sh. N.P. Dubey by the respondent herein. I cannot decide disputed questions of fact in this writ petition and grant a mandatory injunction thereafter which would in fact be a decree for recovery of money by deciding disputed questions of fact. I have recently in the

judgment of Jagat Singh Vs. Syndicate Bank & Ors. W.P. (C) No. 5177/2011 decided on 8.7.2013 held that every person whether it be a government or instrumentality of State or a private body or an individual is always under the general law entitled to withhold amount lying with it of another person, when the person withholding the money has a claim against another person. The principle of appropriation/adjustment operates by putting money which lies in one's pocket into another's pocket effectively thereby adjusting two claims. The basic principle is that if "A" owes money to "B" and "B" owes money to "A", then in that case when "A" already has money of "B" in his pocket and therefore "A" need not go to a court of law to recover his amount but can simply adjust amount lying with him of "B". The observations in the case of Jagat Singh (Supra) are relevant and which read as under:-

4. I asked the counsel for the respondent No. 1-Bank to show me what are the rules of the respondent No. 1-Bank which entitles the respondent No. 1-Bank either to withhold or appropriate the amounts which are otherwise due to an ex-employee. Learned counsel for the respondent No. 1-Bank says that as of today no rules are filed on the record of this Court. In my opinion, even if no rules are filed on the record, yet, whether for withholding or for appropriation of the amounts, the respondent No. 1-Bank which is a State under Article 12 of the Constitution of India cannot do so without conducting necessary enquiries which hold the petitioner guilty of the alleged losses caused to the bank. Thereafter, it was perfectly permissible for the respondent No. 1-Bank to appropriate or at least withhold the amounts which are now claimed by the petitioner, unless a law mandates payment to the petitioner. I may mention that simple withholding of an amount is not illegal because even if there are no rules of an organization (and a relevant rule is Rule 9 of CCS (Pension) Rules, 1972 entitling withholding of pension and gratuity) even under the general law, an organization can always withhold or appropriate/adjust amounts lying with it because payment in spite of a claim of withholding an appropriation would amount to payment to be made to an ex-employee which would result in payment of a disputed amount which is claimed by the organization on account of losses caused by the employee. In fact there is always a legal right to appropriate amounts already in the hands of a person and which belongs to another person, if the person holding/appropriating the same does it towards his entitlement vide Walchandnagar Industries Ltd. Vs. Cement Corporation of India, The only exception is if law or rules of the employer direct/require the payment and thus disentitles appropriation/adjustment. As already stated above, appropriation is actually adjustment in legal terms and is part of the genre of equitable set off.

5. I also asked the counsel for respondent No. 1-Bank to show me the enquiry proceedings and the orders which were passed entitling the respondent No. 1-Bank to withhold the amount as stated in the communication dated 27.07.1999, however, counsel for the respondent No. 1-Bank has failed to show me any Departmental Proceedings i.e. issuance of show cause notice, holding of an enquiry and thereafter passing of an order holding the petitioner guilty of causing

losses to the respondent No. 1-Bank and, therefore, the entitlement of respondent No. 1-Bank to appropriate this amount.

6. Therefore, the order which is required to be passed in the facts of the present case is that before appropriating the amount i.e. deciding that the amount has not to be paid to the petitioner, the respondent No. 1-Bank will have to hold enquiry against the petitioner. Respondent No. 1-Bank is entitled to conduct an enquiry to find out whether petitioner is liable for the losses as stated in the letter dated 27.07.1999. However, on a query put to the counsel for the petitioner, counsel for the petitioner on instructions from petitioner who is present in the Court, states that petitioner will not participate in the enquiry which is to be conducted by the respondent No. 1-Bank. If that be so, it will be a futility to direct respondent No. 1-Bank to conduct an enquiry proceeding for determining the amounts which are stated as having been appropriated in the letter dated 27.07.1999.

7. In view of the aforesaid position, there are disputed questions of facts which require trial as to whether or not petitioner has caused losses to the respondent No. 1-Bank or that no loss is caused to the respondent No. 1-Bank. If loss is caused, under the general law, respondent No. 1-Bank can always withhold and appropriate the amount due to it from the person who caused loss to the respondent No. 1-Bank. Allowing of the writ petition would therefore amount to passing of a money decree for an amount when there exists disputed questions of facts. It is only after such disputed questions of facts are decided by an appropriate civil court in favour of the petitioner can then there be issued the direction as being prayed by the petitioner.

8. In view of the above, the writ petition is dismissed reserving liberty to the petitioner to file a civil suit for recovery of the amounts which are claimed by him and the amount respondent No. 1-Bank is held presently entitled to withhold the amounts of the petitioner with it subject to the final decree of the civil court.

7. Therefore, looking at other point of view of the fact that there cannot be illegal occupation of accommodation of an employee, and that too from 1991 in this case i.e. over 22 years, and yet the employee or his legal representatives can claim terminal benefits including pension from the employer. Also, in any case, there are clear cut disputed questions of fact requiring trial and which are basis to decide either in the proceedings under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 or before the civil court and no mandatory injunction in a case like this which will amount to passing of a money decree on disputed questions of fact.

8. Reliance which is placed upon by the petitioner in the case of Gorakhpur University (supra) is misconceived for the reason that the facts of the said case are clearly distinguishable. The Constitution Bench judgment in the case of Padmasundara Rao and Others Vs. State of Tamil Nadu and Others, has held that the ratio of a case is dependent on the facts of each individual case, and

difference of even a single fact can make difference to the ratio of two cases. The Supreme Court cautioned against reading of language of judgment as if it was the language of a statute. When we refer to the facts in the case of Gorakhpur University (supra), cited on behalf of the petitioner, in that case in spite of illegal occupation normal rent was received and in fact the University passed a resolution in Executive Council dated 18.7.1994 for waiver of penal rents. Accordingly, including for the reason that since in many cases penal rent was waived, therefore, the Supreme Court in the facts of the said case made observations with respect to entitlement of the employee to pension in that case. In view of the above, the writ petition is dismissed, giving liberty to the petitioner to file appropriate civil proceedings, if petitioner so thinks fit, for recovery of amounts which the petitioner states are due and payable to her from the respondent.