

(2013) 04 DEL CK 0154
In the Delhi High Court
Case No : W.P. (C) 7054/2003

Radhey Lal

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 11-04-2013

Acts Referred:

Citation : (2013) 04 DEL CK 0154

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Judgement

Valmiki J Mehta, J.—This writ petition is filed by the petitioner Radhey Lal seeking reliefs that the respondent No. 1/State of Haryana/Employer release to the petitioner his various retiral benefits. The defense of respondent No. 1 is that whatever amount has been withheld from the retiral benefits is on account of the claim for penal rent payable by the petitioner for the quarter/premises in which the petitioner over stayed as also an amount towards the water charges for that premises. The claim of the respondent for adjustment claimed can be understood by referring to the impugned order dated 30.01.2003, and therefore, the said order is reproduced in its entirety a below:-

From

Director

Hospitality Organisation, Haryana,

Chandigarh

To

Shri Radhey Lal supervisor (Retd.)

139, Krishna Nagar, Goverdhan Chauraha,

Madhuban Enclave,

Mathura (U.P.)

Memo No. DHOH-2002/427

Dated Chandigarh, the 30.01.2003.

Sub: Waive off penal Rent Kindly refer to the subject cited above.

2. In this regard, you are, informed that the case of waived off of Penal Rent relating to you, was under consideration of the Govt. Deptt, some time past. Now Chief Secretary to govt. Haryana vide his letter No. 14/57/97-9pp, dated 31.07.2002 has decided the case as below:-

Government (in Finance Deptt.) regrets its inability to accept the proposal of the Hospitality Organisation, Haryana.

It is brought to your notice that as per information of the PWD, Haryana, Haryana Bhawan, New Delhi the pending amount of Penal Rent and pending water charges is as under:-

As per the record of this department, a sum of Rs. 22,052/- has already been recovered from your pay against Rent/Penal Rent. As a result of this now (308851-22052) = Rs. 2,86,799 (Rupees Two Lacs eighty six thousand seven hundred & ninety nine only(A) are still pending for recovery towards you.

The amount of following benefits is being withheld by the dependent:-

Out of this amount, the amount of G.I.S. Rs. 7,070/- is being released to you shortly. After this (183354-7070) = Rs. 1,76,284/- (B) (Rupees One lac seventy six thousand two hundred eighty four only) have been withheld by the department.

On the basis of the decision of the Govt. the amount recoverable from you (Rs. 2,86,799/-) will be adjusted from your withheld amount of Rs. 1,76,284/- Balance amount of Rs. 1,10,515/- (B-A) will be recovered from your pension.

In addition to this, it is also made clear to you that the case of recovery of credit sale from you is under consideration of the deptt. If you are found responsible for any recovery of credit sale, the same also be recovered from your pension.

Accounts Officer.

For Director, Hospitality Org., Haryana.

3. A reference to the impugned order shows that the total claim towards the penal rent and the water charges was a sum of Rs. 3,08,851/-. Out of this amount, the respondent No. 1 had recovered a sum of Rs. 1,27,818/- out of the gratuity amount and an amount of Rs. 46,466/- out of entitlement of the petitioner for leave encashment.

4. Respondent No. 1 in this impugned letter had claimed that the balance of Rs. 1,10,515/- would be recovered from pension however, counsel for respondent

No. 1 states that the respondent No. 1 is no longer insisting on recovering of this balance amount of Rs. 1,10,515/- inasmuch as, from the regular pension of an employee, amounts cannot be deducted. Counsel for respondent No. 1 states that the petitioner is being paid his normal pension.

5. So far as the issue of the challenge laid by the petitioner to dispute the claim of penal rent, the same is wholly misconceived since the petitioner was posted at Gurgaon, however, he continued to occupy the quarter at Delhi, and thus penal rent obviously had to be paid. It does not lie in the mouth of the employee to illegally overstay in Government Quarters and yet claim that no penal rent will be paid by him. Petitioner all along knew that he had overstayed in the government quarter and will be liable for its consequences. Therefore, no ground can be urged today that there was delay in calculation of penal rent to the petitioner and therefore, the claim of penal rent must fail. I may note that in fact the adjustment which is shown by respondent No. 1 falls under the category of equitable adjustment as is known in law. Any person who has moneys in his pocket of another person is always legally entitled to adjust such amounts for his claims even if there is no such rule whereby adjustment is permissible. Reference in this behalf is invited to a Division Bench judgment of this Court in a case of Walchandnagar Industries Ltd. Vs. Cement Corporation of India, which holds that entitlement of adjustment in fact continues even during the pendency of legal proceedings. The respondent No. 1 is in fact statutorily also entitled to do so as the counsel for respondent No. 1 rightly urges that the respondent No. 1/ employer can do so under the Punjab Civil Services Rules Volume II, Finance Department, more particularly in Rule 9.10(4)(ii), and which reads as under:-

(ii) authorize the difference between the final amount of gratuity and the amount of provisional gratuity paid under sub-clause (ii) of clause (a) of sub-rule (4) after adjusting the Government dues, if any, which may have come to notice after the payment of provisional gratuity. If the Government employee was an allottee of Government accommodation, the amount of gratuity withheld under sub-clause (ii) of clause (a) of sub-rule (4) should be refunded on receipt of no demand certificate from the Accounts Officer (Rent)/Rent Assessing Authority.

6. The government dues which can be adjusted are defined in Rule 9.17(3) and which reads as under:-

(3) The expression, "Government dues" includes:-

(a) dues pertaining to Government accommodation including arrears of licence fee, if any;

(b) dues other than those pertaining to government accommodation, namely, balance of house building or conveyance or any other advance, overpayment of pay and allowances or leave salary and arrears of income tax deduction at source under the Income Tax Act, 1961 (43 of 1961).

7. Therefore, looking it from the point of view of first principle pertaining to

entitlement of adjustment as also from the fact that when the rules so permit, the respondent No. 1/employer was fully justified in deducting from the amounts payable to the petitioners the penal rent which was payable by the petitioner with respect to his overstaying in the government accommodation.

8. Counsel for the petitioner also did argue vehemently as to how the figure of Rs. 15,284/- without any details has been taken towards pending water charges because the counsel for the petitioner states that petitioner was using only a hand pump and did not have a water connection. It is argued that the respondent No. 1 has not even produced the bill of the water department. If I would look at the case from normal civil law, of the principle of discharge of onus of proof, I would have been inclined to accept the argument of the petitioner, but, exercising writ jurisdiction and which is discretionary remedy, I do not think that the facts of the case are such that I must go into the amount of Rs. 15,284/- of water charges once the Government of Haryana has put on affidavit such a figure and has passed an impugned order that such amount was payable towards water charges.

9. Counsel for the petitioner had very strongly argued two further aspects before me to challenge the claim of penal rent. The first aspect was that the petitioner was entitled to relaxation from the claim of penal rent and that penal rent should not be claimed by respondent No. 1. The second aspect was of discrimination against the petitioners when compared to other persons who are said to have received the benefit of not being charged penal rent.

10. So far as the first aspect is concerned, I made repeated queries but learned counsel for the petitioner could not point out any relevant rule as to how a person, who overstays in a government accommodation on mere asking can be entitled to exemption from penal rent. Obviously this rule is not pointed out because I am sure that there is no such rule because if such rule exists, if a person overstays the government accommodation, a simple request would entitle him to waive the penal rent. This argument raised on behalf of the petitioner is thus rejected.

11. So far as the second argument is concerned, counsel for the petitioner has drawn my attention to the communications at running pages No. 321 and 322 of the paper book which show that two persons namely Smt. Suman Bala Swagati and Sh. Arun Kumar Gupta have got the benefits whereby they have not been charged with penal rent.

12. In my opinion, each case of relaxation and for exemption of penal rent sought by employees will have to be judged as per the facts of each individual case, and in this case, it was for the petitioner to show how the petitioner's case is identical to that of Smt. Suman Bala Swagati and Sh. Arun Kumar Gupta. I do not find anything in the letters at pages No. 321 and 322 which can show as to how petitioner can be equated to the cases of Smt. Suman Bala Swagati and Sh. Arun Kumar Gupta.

13. So far as the case of Sh. Arun Kumar Gupta is concerned, the accommodation in question is not the accommodation at the Haryana Bhawan in Delhi (and where the petitioner overstayed) but is in an officers' colony in Gurgaon. So far as the case of Smt. Suman Bala Swagati is concerned, the letter at page No. 321 does not show for which accommodation Smt. Suman Bala Swagati got exemption.

14. Entitlement of parity is only if parity is shown by means of facts. In my opinion, no parity of facts have been shown for the petitioner to claim parity or equality with the cases of Smt. Suman Bala Swagati and Sh. Arun Kumar Gupta.

15. That only leaves me with the aspect that petitioner has made various claims towards retirement benefits including gratuity, leave encashment, group insurance of pension etc. In this regard the reply of respondent No. 1 does not give particulars as to how such amounts are or are not such which the petitioner can claim. In my opinion, though the petitioner has failed to give details as to the calculations yet the respondent No. 1 was bound to give details and rules as to how the amounts in the prayer clause would become due to the petitioner and how they were adjusted. Therefore, since there is complete lack of clarity on the various retirement dues, which are payable to the petitioner, while dismissing the writ petition, I order that the respondent No. 1 within a period of six weeks from today will send the details/calculations showing what were the amounts which the petitioner became entitled to under different heads as retiring benefits and what were the amounts which the respondent No. 1 had adjusted towards its claims. In case, the petitioner is not satisfied with the calculations, the petitioner can file independent proceedings as available in law with respect to any balance amount which according to the petitioner still is payable but is not paid. Of course, I may state that if the respondent No. 1 finds that as per its calculations for different amounts payable under different heads to the petitioner as retirement benefits, if amounts after adjustments are due to the petitioner then such amounts would be paid to the petitioner along with interest @ 9% per annum for the period of the pendency of this petition and till the dues (if any) are paid to the petitioner. Accordingly, the writ petition is dismissed by holding that the respondent No. 1 was entitled to the adjustments detailed in the impugned order dated 30.01.2003. The respondent No. 1 will however be bound to comply with the observations just above mentioned with respect to providing details to the petitioner with respect to retire mental benefits under different heads and the adjustments/recoveries which have been made by respondent No. 1.

Parties are left to bear their own costs.