(2002) 12 KAR CK 0014

In the Karnataka High Court

Case No : W.A. No. 2533 of 2001

Shrirahatti, M.A. APPELLANT

Vs

N.G.E.F. Limited RESPONDENT

Date of Decision : 17-12-2002

Acts Referred:

Fundamental Rules, 1950 — Rule 48A

Citation : (2003) 4 KCCR 2850 : (2003) 2 LLJ 1004

Hon'ble Judges : Kumar Rajaratnam, J;K. Bhakthavatsala, J

Bench : Division Bench

Advocate : Shwetha Anand, for the Appellant; C. Prabhakar, for the Respondent

Final Decision : Allowed

Judgement

Kumar Rajaratnam, J.—The appellant being aggrieved by the order of the learned single Judge dismissing Writ Petition No. 26896/2001(8) dated April 16, 2001 has preferred this writ appeal.

2. The appellant was an employee of N.G.E.F. Ltd.. Bangalore respondent herein. The appellant joined the service in the year 1975 and was appointed as a Section officer. The respondent allotted the company quarters in N.G.E.F. in the year 1990. The appellant was residing in the premises. The respondent issued notice dated March 13, 1996 to vacate the premises within one month. Eviction proceedings were initiated under the provisions of the Karnataka Public Premises (Eviction of Unauthorised Occupants) Act, 1974 against the appellant. The Competent Officer passed an order of eviction on September 10, 1997 directing the appellant to vacate the premises on or before October 25, 1997. The appellant preferred writ petition before this Court. This Court granted six months'' time to the appellant to vacate the premises. Aggrieved by this, the appellant preferred Writ Appeal. The Writ Appeal was dismissed, but the Division Bench granted time to the appellant to vacate the premises on or before March 2, 1999. The'' appellant filed a SLP before the Hon''ble Supreme Court. The Supreme Court passed an interim order of stay of dispossession.

3. Pursuant to the interim order being; vacated, the appellant vacated the premises on March 19, 1999.

4. In fact, a communication was addressed to the appellant enumerating the factual position and ultimately the respondent directed the appellant to give vacant possession on March 13, 1999. The operative portion of the communication at Annexure-B reads as follows:

"Under the circumstances stated above, Company is left with no option but to forcibly evict you from the said premises in accordance with the provisions of the Karnataka Public Premises (Eviction of Unauthorised Occupants) Act, 1974. However purely on humanitarian grounds, you are given time upto 3.00 P. M. on March 13, 1999 for vacating the said premises, failing which the company will forcibly evict you as aforesaid.

As stated earlier, pursuant to the letter the appellant vacated premises on March 19, 1999. Two months thereafter, on May 31, 1999, the appellant superannuated from his service. At the time of superannuation, he was working as Divisional Manager (Finance and Accounts). After retirement, the appellant had submitted Form No. 1 Application for Gratuity claiming a gratuity amount of Rs. 1,55,641.61 paise.

5. To his surprise, the appellant received a letter dated June 29, 2000 from the respondent along with the final bill which reads as follows:

''Final Bill Statement''

NGEF LIMITED FINAL BILL FOR THE MONTH OF AUGUST 1999

CPO-CS

Sl. No.

P. No.

Name/P.F. No.

Particulars

1.

2622660

Shrirahatti M.A. PF No. 4848 P. D.O.B. May 26, 1941 D.O.R. May 31, 1999 D.O.J. August 8, 1975 Actual (sic) Service September 23, 1923

Retired and relieved w.e.f May 31, 1999. Hence Service and Gratuity and PL encashment claimed in this bill

24 Years Service

PL. Encashment

10467 x 19

26

Gratuity

10467 x 15 x 24

26

1,44,927.69

47,906.65

Rates

Earnings

Gross

6,210.00

Service Gratuity

144,27.69

54.00

47,906.65

4,203.00

PL encashment Ps b/f from 4/99

10,467.00

Salary bill

5.41

192,839.76

Bill No. CPO-CS/8/08-0277/99

Dept: AU

Date August 18, 1999

Divn: 01

Deductions

Total Dedn.

Net Reco Ack verable

For clearing the bills of KEB and BWSSB As Per P-2

5000.00

(2,104.03)

Towards unauthorised

68,418.00

Occupn. of quarters market rent at Rs. 6516.00 per month from September 1, 1997 to March 20, 1999

121,491.87

One day diff. amount

32.92

Stamp

1.0

194,943.79

(2,104.03)

Round off to Rs

(2,104. 00)

Gross Rs

192,839.76

According to the final bill at Annexure-A, the total amount owing to the appellant as service gratuity was Rs. 1,44,927.69 paise, leave encashment was Rs. 47,906.65 paise and a small amount of Rs. 5.41 was added to the bill and a total amount credited to the Rs. 1,92,839.76. Against that credit, a sum of Rs. 1,94,943.79 was sought to be adjusted towards Gratuity and leave encashment. Ultimately a sum of Rs. 2,104.03 was to be treated as arrears still owing to the Company-respondent.

6. In other words, the amount that was owing to the appellant in the form of gratuity and leave encashment was Rs. 1,92,839.76. Y Against that, the Company claimed Rs. 1,94,943.79 in the form of penal rent and this was sought to be set off against the gratuity and leave encashment and the appellant was left with arrears to clear amounting to Rs. 2,104.03.

7. This bill at Annexure-A dated June 29, 2000 was challenged by the Appellant on various grounds unsuccessfully before the learned single Judge.

8. Aggrieved by the dismissal of the writ petition, the appellant is before us.

9. The only substantial question of law that arises for consideration in this writ appeal is whether the pension and other terminal/retirement benefits can be adjusted or appropriated for the satisfaction of any other dues outstanding against a retired employee without due process of law?

10. The matter is fully covered by the judgment of the Supreme Court in Gorakhpur University and Others Vs. Dr. Shitla Prasad Nagendra and Others, . The Supreme Court had pronounced at Paras 5 and 6:

"We have carefully considered the submissions on behalf of the respective parties before us. The earlier decision pertaining to this very University reported in 1996 (2) ESC 211 (supra) is that of a Division Bench rendered after considering the principles laid down and also placing reliance upon the decisions of this Court reported in R. Kapur Vs. Director of Inspection (Painting and Publication) Income Tax and Another, which, in turn, relied upon earlier decision in State of Kerala and Others Vs. M. Padmanabhan Nair, . This Court has been repeatedly emphasising the position that pension and gratuity are no longer matters of any bounty to be distributed by Government but are valuable rights acquired and property in their hands and any delay in settlement and disbursement whereof should be viewed seriously and dealt with severely by imposing penalty in the form of payment of interest. Withholding of quarters allotted, while in service, even after retirement without vacating the same has been viewed to be not a valid ground to withhold the disbursement of the terminal benefits. Such is the position with reference to amounts due towards provident fund, which is rendered immune from attachment and deduction or adjustment as against any other dues from the employee. In the context of this, mere reliance on behalf of the appellant upon yet another decision of a different Division Bench of the very High Court rendered without taking note of any of the earlier decisions of this Court but merely proceedings to decide the issue upon equitable consideration of balancing conflicting claims of respective parties before it does not improve the case of the appellant any further. Reliance placed for the appellant-University on the decision reported in JT 2000 (1) (SC) 515 (supra) does not also sound well on the facts and circumstances of this case. It is not clear from the facts relating to the said decision as to whether the person concerned was allowed to remain in occupation on receipt of the normal rent as in the present case. As noticed earlier, the case of the contesting respondent in this case is that the University authorities regularly accepted the rent at normal rates every month from the petitioner till the quarters was vacated and that in spite of request made for the allotment of the said quarters in favour of the son of the respondent, who is in the service of the University, no decision seems to have been taken and communicated though it is now claimed in the Court proceedings that he is not entitled to this type of accommodation. Further, the facts disclosed such as the resolutions of the University resolving to waive penal rent from all Teachers as well as that of the Executive Council dated July 18, 1994 and actually (sic) such waiver made in the case of several others cannot be easily ignored. The lethargy shown by the authorities in not taking any action according to law to enforce their right to recover possession of the quarters from the respondent or fix liability or determine the so-called penal rent after giving prior show cause notice or any opportunity to him before ever even proceeding to recover the same from the respondent renders the claim for penal rent not only a seriously disputed or contested claim but the University cannot be allowed to recover summarily the alleged dues according to its whims in a vindictive manner by adopting different and discriminatory standards. The facts disclosed also show that it is almost one year after the vacation of the quarter and that too on the basis of certain subsequent orders increasing the rates of penal rent, the applicability of which to the respondent itself was again seriously disputed and to some extent justifiably too, the appellant cannot be held to be entitled to recover by way of adjustment such disputed sums or claims against the pension, gratuity and provident fund amounts indisputably due and unquestionably payable to the respondent before us. The claims of the University cannot be said to be in respect of an admitted or concerned claim of sum due. Therefore, we are of the view that no infirmity or illegality could be said to vitiate the order, under challenge in this appeal to call for our interference, apart from the further reason that the disbursements have already been said to have been made in this case as per the decision of the High Court. The appeal fills and, therefore, shall stand dismissed. No costs. We make it clear that this shall not have the effect of foreclosing the rights of the University, if any, if the appellant chose to workout the same, as is permissible in law."

11. Mr. B.C. Prabhakar, learned Counsel for the respondent, relied on the judgment of the Supreme Court in Wazir Chand Vs. Union of India (UOI) and Others, , the Supreme Court held that at p. 604:

"The employee having unauthorisedly occupied the Government quarters, was liable to pay the penal rent in accordance with the Rules and, therefore, there is no illegality in those dues being adjusted against the death-cum-retirement dues of the appellant."

12. We may usefully refer to the Judgment of the Supreme Court in State of Kerala and Others Vs. M. Padmanabhan Nair, . The Supreme Court pronounced that:

"Pension and gratuity are no longer any bounty to be distributed by the Government to its employees on their retirement but have become, under the decisions of this Court, valuable rights and property in their hands and any culpable delay in settlement and disbursement thereof must be visited with the penalty of payment of interest at the current market rate till actual payment."

13. The Supreme Court in R. Kapur Vs. Director of Inspection (Painting and Publication) Income Tax and Another, pronounced at p. 886 of LLJ:

"11. The Tribunal having come to the conclusion that DCRG cannot be withheld merely because the claim for damages for unauthorised occupation is pending, should in our considered opinion, have granted interest at the rate of 18% since right to gratuity is not dependent upon the appellant vacating the official accommodation. Having regard to these circumstances, we feel that it is a fit case in which the award of 18% is warranted and it is so ordered. The DCRG due to the appellant will carry interest at the rate of 18% per annum from June 1, 1986 till the date of payment. Of course this shall be per annum from June 1, 1986 till the date of payment. Of course this shall be without prejudice to the right of the respondent to recover damages under Fundamental Rule 48-A. Thus, the civil appeal is allowed. However, there shall be no order as to costs."

14. The facts of this case clearly indicate that the appellant was given time till March 13, 1999 for vacating the premises on humanitarian grounds by the respondents as per Annexure-B. In compliance with Annexure-B, the appellant vacated the premises on March 19, 1999 without much delay. On May 31, 1999, the appellant had superannuated from service.

15. Even before superannuation, the appellant had vacated premises.

16. The entire amount owing to the appellant by way of gratuity and leave encashment was sought to be adjusted towards a disputed penal rent. In the light of the letter written by the respondent company giving time for the appellant to vacate the premises on humanitarian ground and the appellant having complied with the request in the letter, it is certainly a disputed question of fact whether the amount that was sought to be set off can be termed as penal rent.

17. It is common ground that the appellant has been paying the actual rent that was demanded by the Company till he vacated the premises.

18. Gratuity cannot be a bounty to be distributed by the Employer to his employee on his retirement. They have become valuable rights and any delay in the settlement and disbursement of gratuity on one pretext or the other cannot be countenanced by the Court.

19. The law laid down by the Supreme Court reported in Gorakhpur University''s case (supra) squarely applies to the facts of this case. In the present case before us is also where a Company had permitted the appellant to give vacant possession of the premises on March 13, 1999 and the premises was vacated by him on March 19, 1999 within a few days. No right was reserved in the letter addressed by the respondent to the appellant at Annexure-B that the appellant was also liable for penal rent. Mr. Prabhakar, the learned senior counsel for the respondent, however, submitted that the eviction order had become final and conclusive and, therefore, there is a liability on the part of the appellant as such was bound to settle the dues and such adjustments are permissible.

20. We are not able to persuade ourselves to accept the submissions of the learned counsel for the respondent since as the judgment of the Supreme Court in Gorakhpur University''s case (supra) applies squarely to the facts of this case.

21. All that we can do is to steer clear of on the question of whether penal rent is due to be paid by the appellant. But, certainly such penal rent cannot be the subject matter of wholesale adjustment of the gratuity that was owing to the appellant on his retirement.

22. In that view of the matter, the impugned order at Annexure-A and the order passed by the learned single Judge is set aside and the respondent-N.G.E.F. Ltd, Bangalore is directed to settle dues of gratuity and leave encashment owing to the appellant in accordance with law. We, however, make it clear that this order will not have the effect of foreclosing the rights of the respondent-N.G.E.F. Ltd., Bangalore, if any, if the respondent chooses to workout rights, as is permissible in law. No order as to costs.

