
(2005) 02 MP CK 0036
In the Madhya Pradesh High Court

Smt. Asha Batham

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 11-02-2005

Acts Referred:

Citation : (2005) 105 FLR 334 : (2005) 1 MPLJ 589

Hon'ble Judges : N.K. Mody, J

Bench : Single Bench

Judgement

N.K. Mody, J.

Present petition has been filed by the widow, whose husband was working in Education department with a prayer to direct the respondents to pay the gratuity amount and amount of GIS along with interest

Short facts of the case are that husband of the petitioner was posted as Headmaster and died on 5.3.2002, while in service. The husband of the petitioner was occupying the Government quarter. All the dues were paid to the petitioner and the petitioner was allowed to occupy the Government accommodation till 1.6.2004. So far as amount of gratuity is concerned, vide Annexure-P-1, it was found that the petitioner is entitled for, a sum of Rs. 1,94,387, but it was further observed that petitioner will be entitled for amount of gratuity only after vacating the Government quarter.

Learned Counsel for the petitioner submits that the respondents are charging the penal rent at the rate of Rs. 4000/- per month with effect from 1.7.2004. Further submission of the learned Counsel for the petitioner is that the objection taken for payment of gratuity is illegal. Learned Counsel for the petitioner placed reliance on a decision R. Kapur v. Director of Inspection (Printing and Publication) Income Tax 1994 (69) FLR 1137, wherein the Hon'ble Supreme Court has observed that,

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.

In *State of Kerala and Ors. v. M. Padmanabhan Nair* 1985 (50) FLR 145 (SC), wherein it was observed 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.

Further reliance has been placed by the learned Counsel for the petitioner on a case reported in *Gorakhpur University and Others Vs. Dr. Shitla Prasad Nagendra and Others*, , held as under:

This Court has been repeatedly emphasizing 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 thereof 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 above case, High Court awarded the penal interest @ 18% per annum and the Hon'ble Supreme Court found that no infirmity or illegality could be said to be vitiated the order to call for interference. In the case reported in *H.K. Saxena v. Dr. Harisingh Gaur Vishwavidyalaya, Sagar and Anr.* 2003 (99) FLR 1027, this Court directed to pay the amount of gratuity and provident fund with interest @ 9% P.A.

In view of the facts and circumstances of the case, respondents are charging the penal rent at the rate of Rs. 4,000/- per month and the payment of gratuity has been withheld on account of not-vacating the Government accommodation and further that the petitioner is a widow, who lost her husband untimely when she was only 44 years of age, this petition is disposed of with the following directions:

1. Respondents shall pay the amount of gratuity alongwith penal interest @ 12% P.A. from the date it became due till actual payment.

Petitioner shall vacate the Government accommodation within a period of two months from the date of receipt of the order.

So far as penal rent is concerned the petitioner shall submit a representation before the competent authority, who shall dispose of the same by passing a

speaking order within a period, of one month from the date of its presentation, sympathetically keeping in mind that petitioner is a widow lady and also payment of gratuity could not be withheld on account of occupation of Government Quarter.

No order as to costs.

C.C. as per rules.