
(2004) 05 AHC CK 0163
In the Allahabad High Court
Case No : C.M.W.P. No. 9640 of 2001

Smt. Marjaddi

APPELLANT

Vs

Central Administrative Tribunal, Allahabad Bench and Others

RESPONDENT

Date of Decision : 13-05-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 4 AWC 3485 : (2005) 1 LLJ 850 : (2005) 3 SLJ 328

Hon'ble Judges : Umeshwar Pandey, J;S.P. Srivastava, J

Bench : Division Bench

Advocate : Sanju Ram, for the Appellant; Govind Saran, for the Respondent

Final Decision : Allowed

Judgement

Umeshwar Pandey, J.—The petitioner's husband Late Kam Singh, while working as a Cabin Man with the Railways died in harness on 26.2.1990. The sanction of pension, etc. except the death-cum-retirement gratuity was made to the petitioner by the department. The gratuity was withheld on the pretext of the petitioner having retained the Railway quarter till 1992. It is contended that she had initially requested the authorities for retention of the quarter for a period of six months, which was allowed. But later on, when she was to vacate it, she gave the intimation to the authorities after the expiry of six months' period. Nobody from the department came to take the possession from her. The authorities, however, took possession of the Railway quarter from the petitioner only on 27.8.1992. The death-cum-retirement gratuity was not paid for several years even after the petitioner made repeated requests to that effect to the D.R.M. concerned. The authorities later on gave direction for deduction of damages for retention of the quarter by the petitioner from out of the death gratuity amounts. The request of the petitioner when did not yield results, she filed the Original Application before the respondent- Tribunal.

2. The Original Application was contested by the respondents before the Tribunal, which after giving due hearing to the parties, gave findings that the gratuity

should be paid after deduction of the dues and claims which are to be recovered by the department as damages for the retention of the Government quarter and passed the impugned judgment.

3. Aggrieved with the aforesaid judgment of the Tribunal, the petitioner has approached this Court under Article 226 of the Constitution of India.

4. We have heard the learned counsel for the parties and have gone through the records.

5. It is not disputed that the petitioner's husband had died-in-harness. The Tribunal, while recording the findings in the impugned order, has held that as the petitioner had retained the house beyond the period she was allowed, the occupation should be treated as unauthorised occupation and she was liable to pay the damages to the department.

6. While challenging the aforesaid observation of the Tribunal, the learned counsel for the petitioner has strenuously urged that the payment of death gratuity cannot be withheld for the purpose of deduction of damages therefrom. The pension and gratuity are no longer matters of any bounty to be distributed by the Government but are valuable rights acquired by the retired employee or his successor, which is a property in his hand. While relying upon the case law of *Gorakhpur University and Ors. v. Dr. Shitla Prasad Nagendra and Ors.*, 2001 (3) AWC 2436 (SC) : 2001 SCC (L & S) 1032, the learned counsel has further emphasised that any delay in settlement and disbursement of gratuity must be viewed seriously and should be dealt with severely by the Courts by imposing penalty in the form of payment of interest. If a retired employee or the heirs of the deceased employee does not vacate an official accommodation given to him even after the retirement or after the death of the employee, it will not be a valid ground to withhold the disbursement of such terminal benefits.

7. The Apex Court, while dealing with an identical matter in the aforesaid case of *Gorakhpur University (supra)*, has observed as below :

"We have carefully considered the submission on behalf of the respective parties before us. The earlier decision pertaining to this very University, in *S. N. Mathur* is that of a Division Bench, rendered after considering the principles laid down and also placing reliance upon the decisions of this Court in *R. Kapoor* which, in turn, relied upon earlier decisions in *State of Kerala v. M. Padmanabhan Nair* and *Som Prakash*. This Court has been repeatedly emphasising the position that pension and gratuity are no longer matters of any bounty to be distributed by the Government but are valuable rights acquired and property in their hands and any delay in settlement and disbursement whereof should be viewed 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."

8. It was also a case in which the University Authorities had directed some adjustment of the recoveries calculated as damages for retaining the possession of the official quarters beyond the permissible period. The Hon"ble Supreme Court found that such conduct of withholding the allotted quarter by the retired employee beyond the permissible period could not be said to be a valid ground to withhold the disbursement of terminal benefits. In this context, reliance has also been placed upon the case law of *Som Prakash Rekhi v. Union of India*, 1981 SCC (L & S) 200 and *R. Kapoor v. Director of Inspection (Painting and Publication) Income Tax*, 1995 SCC (L&S) 13.

9. Thus, the findings recorded by the Tribunal that the gratuity should have been released after deduction of dues recoverable by way of damages for the retention of the official quarter, appear to be quite erroneous in law. If the damages had to be recovered under law, it could be done in accordance with the procedure established in law. Deduction cannot be done on the whims of the respondent. A proper forum is provided for that purpose.

10. In the aforesaid facts and circumstances, we find that the order of the Tribunal being erroneous cannot be sustained and has to be quashed.

11. The writ petition is allowed with no order as to costs and the impugned order dated 4.12.2000 passed by the Tribunal, a copy of which has been filed as Annexure-I to the petition, is hereby quashed. The respondent Nos. 2 to 6 are hereby directed to make the payment of entire balance of gratuity amount with compound interest at the rate of 18% per annum within a period of two months hereinafter. It is further made clear that this order shall not have the effect of foreclosing, the rights of the respondents, if any, if they chose to work out for the purposes of recovery of damages as may be permissible in law.