
(2014) 12 MP CK 0054
In the Madhya Pradesh High Court
Case No : WA 323/2011

State of M.P.

APPELLANT

Vs

Randheer Singh Bhadoria

RESPONDENT

Date of Decision : 12-12-2014

Acts Referred:

Citation : (2014) 12 MP CK 0054

Hon'ble Judges : Sheel Nagu, J;M.C. Garg, J

Bench : Division Bench

Advocate : Praveen Newaskar, Government Advocate, Advocate for the Appellant; R.B.S. Tomar, Advocate for the Respondent

Judgement

1. Heard.

2. This writ appeal has been filed by the appellants against the order dated 15.12.2010. In that order, the learned Single Judge has allowed the writ petition filed by the petitioner by accepting the plea that his son is in possession of the government quarter, therefore, the gratuity due to him may be released. The order passed by learned Single Judge is as under :

"The petitioner has filed this petition against the recovery of an amount of Rs.1 lac on account of unauthorized occupation of government quarter after retirement. However, as per the petitioner, the government quarter was allotted to his son after his retirement and notices were issued to the son of the petitioner in regard to vacant the government quarter.

In this view of the matter, the petition is allowed and the recovery of the gratuity amount from the petitioner is hereby quashed. It is hereby further observed that the respondents are free to recover from the son of the petitioner, if it is found that the son of the petitioner is in unauthorized occupant of the government quarter. The order be complied with within a period of three months from the date of receipt of certified copy of this order No order as to costs".

Before us, learned counsel for the respondents submits that he was never allotted any quarter and services of his son who was only engaged as daily rated employee, stands terminated. His submission that the house was never allotted or that it was never in possession of his son is contradicted by the averments made in sub paras (iii) and (iv) of the writ petition which read as under :

"That, the petitioner was old age citizen and he was not in a position to come Gwalior for drawing his pension therefore, he was moved an representation before the treasury officers to transfer his account in treasury Bhind. The treasury officer, Gwalior has considers the application filed by the petitioner, sent his account in treasury officer Bhind. A copy of the documents dated 10.2.1998 is annexed as annexure P/2.

That, petitioner sent many representations before the authorities for making payment of his gratuity amount but they have not paid the amount of the petitioner and on the contrary, they have issued one letter dated 3.10.1996 stating there in that petitioner has not vacate the premises. A copy of the letter sent by the respondent no.2 in the treasury officer Gwalior is annexed as Annexure P/3".

The aforesaid averments establish that the house in question was never allotted to the petitioner and after his retirement, his son has been residing therein. The pleading made in the written statement is as under :

"When the petitioner was in service, he was allotted Government quarter situated at Thatipur. The petitioner is still retaining the quarter and inspite of repented demand, he is not vacating the Government quarter. Therefore, the payment of gratuity has not been made till today. After the retirement, the show cause notice was issued to the petitioner to vacate the Government quarter on 3.10.1996. because, the petitioner is retaining the quarter in spite of his retirement. Therefore, the gratuity amount has not been paid. The Conservator of Forest issued a letter on 30.10.1996, which is annexed as annexure P/3 itself in which, it has been specifically mentioned that the gratuity amount is not paid to the petitioner until he vacate the premises before the Government quarter."

In view of the aforesaid and contradictory stand taken by the respondent that the house was not allotted to him which is contrary to the records and his own averments in the writ petition filed by him and also taking into consideration that his son is in service of the respondent, the order of learned Single Judge is recalled and the appellants are allowed to recover the amount of rent payable by the Respondent from the gratuity, if any available with them or by other modes as may be available as per law.

3. We have gone through the judgment cited by the respondent in the case of 966139--> wherein, it has been held as under :

"Withholding of gratuity for not vacating the quarter, Gratuity which an employee earns cannot be withheld. Provisions contained in the Act of 1972 nowhere

stipulates the withholding of gratuity for non vacating of quarter or for non-issuance of no objection certificate by the department concerned. Order of the Authorities to pay gratuity and the interest upheld".

However, in the present case, it is not a case of vacating the quarter. According to the respondent, the quarter was never allotted to him. He stood retired from service of the appellants in the year 1996. His son who was given only temporary employment, started residing in the said premises along with the respondent, is also not in service. Counsel appearing for the appellants submits that after the house has been vacated, the only question of recovery of rent subsists and for the aforesaid purpose, the gratuity can be used. The judgment cited by the respondent does not help the case of the Respondent.

4. With the aforesaid, this appeal stands dismissed.