
(2013) 03 DEL CK 0146
In the Delhi High Court
Case No : Writ Petition (C) 6574 of 2008

Sudershan Bhagra

APPELLANT

Vs

Delhi Cantt. Board

RESPONDENT

Date of Decision : 20-03-2013

Acts Referred:

Pensions Act, 1871 — Section 11

Citation : (2013) 03 DEL CK 0146

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : S.C. Singhal and Mr. Mridul Chawla, for the Appellant; Sunil Satyarathi, for the Respondent

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J.—By this writ petition, the petitioner seeks release of the entire superannuation benefits and pension from the respondent-Delhi Cantt. Board. Petitioner claims the release of the terminal benefits in spite of the fact that the petitioner most contumaciously and obdurately has refused to vacate the accommodation given to the petitioner by the respondent on account of employment of the petitioner with the respondent, originally as a teacher and thereafter as a Head Mistress. I note that the petitioner has retired way back on 30.11.2001, however she continues to hold the accommodation given to her during her service and has not vacated the same in spite of proceedings under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 being initiated. Therefore, the petitioner now for over as long as 12 years, no less, after her retirement continues to hold the residential accommodation, but yet claims that she still should be paid the terminal benefits. Before proceeding the facts of the case, I may note that the Supreme Court in the case of Secretary, O.N.G.C. Ltd. and Another Vs. V.U. Warriar, has held that an employer is fully justified to deduct gratuity payable to the employee on account of penal rent which becomes due from an employee, who after retirement does not vacate the

official quarter allotted to him. The Supreme Court has thus clearly permitted deducting of penal rent amount from the gratuity payable. Similarly, the Supreme Court in the judgment in the case of Union of India Vs. Sisir Kumar Deb 1999 SCC (L & S) 781 has allowed the employer to deduct all dues payable by an employee and which arise on account of the employee not vacating the government quarter after retirement. The dues were held to be recoverable from the terminal benefits payable to the employee. The Supreme Court in the case of Union of India (UOI) and Another Vs. K. Balakrishna Nambiar, has again held that no interest will be paid on withheld amount of gratuity and which is rightly withheld as the employee illegally kept on holding to the accommodation given to him by the employer during his service period. The Supreme Court in the case of Union of India (UOI) Vs. Ujagar Lal, has held that Railways is entitled to withhold the death cum retirement gratuity till the retired employee surrendered the possession of the quarter allotted to him, when the retired employee unauthorizedly retains the quarter. The Supreme Court also held that since there was no delay in payment of gratuity, in such circumstances, interest on gratuity withheld was also not payable.

2. Learned counsel for the petitioner has relied upon two judgments to argue the proposition that an employee can continue to hold a residential accommodation given during service and in spite of not vacating the same, the employee is entitled to the terminal benefits. Reliance is placed upon the judgment of the Supreme Court in the case of Union of India (UOI) and Another Vs. Wing Commander R.R. Hingorani (Retd.), and an order passed by a learned Single Judge of this Court dated 3.11.1999 in C.W.P. No. 4032/1997 titled as Sh. Gurdeep Singh, Ex-Draftsman Grade-I Vs. Delhi Cantonment Board, Delhi Cantt.

3. So far as the judgment in the case of R.R. Hingorani (supra) relied upon by the counsel for the petitioner is concerned, the same does not at all deal with the issue as to the entitlement of an employee to be paid the terminal benefits while continuing to illegally hold the residential accommodation even after retirement. The Supreme Court was in this judgment dealing with Section 11 of the Pension Act, 1871 and which provision pertains to exemption of pension from attachment. Accordingly, the Supreme Court in that case has held that recovery from the retirement dues of the employee in the form of the penal rent was illegal. In the judgment of the learned Single Judge of this Court in the case of Gurdeep Singh (supra), the learned Single Judge has relied upon the judgment in the case of R.R. Hingorani (supra) and has directed the payment of the pension cum gratuity and retirement benefits. I may however note that the judgment of the learned Single Judge is only an order of two pages relying upon the judgment of R.R. Hingorani (supra) and it does not refer to the four judgments of the Supreme Court referred to above, and which shows that an employer is entitled to continue to hold the terminal benefits in case an employee refuses to vacate the official accommodation which was given at the time of service. In view of the above, there is therefore no merit in the petition, which is accordingly dismissed, leaving the parties to bear their own costs.