

(2008) 10 PAT CK 0001
In the Patna High Court
Case No : CWJC No. 6609 of 2006

The General Manager, East Central Railway, Hajipur and
Others

APPELLANT

Vs

The Central Administrative Tribunal, Patna Bench and Another

RESPONDENT

Date of Decision : 22-10-2008

Acts Referred:

Companies Act, 1956 — Section 3

Public Premises (Eviction of Unauthorised Occupants) Act, 1971 — Section 2(g), 7

Citation : (2008) 10 PAT CK 0001

Hon'ble Judges : R.M. Lodha, C.J.; Kishore K. Mandal, J

Bench : Division Bench

Advocate : Mahesh Prasad, for the Appellant; Surya Kant Mishra for the
Respondent No. 2, for the Respondent

Final Decision : Dismissed

Judgement

1. The Railway authorities have filed this writ petition aggrieved by the order dated 12th August, 2005 passed by the Central Administrative Tribunal, Patna Bench, Patna to the extent it declared that order of recovery of Rs. 29,613/- towards penal rent from retiral benefits was bad in law. The controversy arises from the facts which may be noticed first Subhadra Jha (respondent No. 2) retired from the post of Commercial Superintendent, North Eastern Railway, Sonapur Division on 31st January, 1995. Even after his retirement, he continued to occupy the official quarter which was given to him during the service. While settling his retiral dues, the amount of Rs. 29,613/- was deducted on account of damages for unauthorised occupation of the Railway quarter after his retirement. We need not refer to the facts with regard to the stoppage of increment, non-payment of pension at the pay last drawn by him and the salary for unutilized leave etc. as these aspects which were in issue before the Tribunal, are not for consideration before us in the writ petition. The Tribunal relied upon the decision of the Supreme Court in the case of Gorakhpur University and Others Vs. Dr. Shitla Prasad Nagendra and Others, , and held that penal rent could not be

recovered from the retiral dues and that recovery of Rs. 29,613/- towards penal rent was bad in law. As noticed above, it is only this part of the order that is challenged in the present writ petition.

2. Rule 15 of the Railway Services (Pension) Rules, 1993 makes a provision for recovery and adjustment of Government or railway dues from pensionary benefits which read thus:-

"15. Recovery and adjustment of Government or railway dues from pensionary benefits.-(1) It shall be the duty of the Head Office to ascertain and assess Government or railway dues payable by a railway servant due for retirement.

(2) The railway or Government dues as ascertained and assessed, which remain outstanding till the date of retirement or death of a railway servant, shall be adjusted against the amount of the retirement gratuity or death gratuity or terminal gratuity and recovery of the dues against the retiring railway servant shall be regulated in accordance with the provisions of sub-rule (4).

(3) For the purposes of this rule, the expression "railway or Government dues" includes-

(a) dues pertaining to railway or Government accommodation including arrears of licence fee, if any;

(b) dues other than those pertaining to railway or Government accommodation, namely balance of housebuilding or conveyance or any other advance, over-payment of pay and allowances, leave salary or other dues such as post office or Life Insurance premia losses (including short collection in freight charges shortage in stores (caused to the Government or the railway as a result if negligence or fraud on the part of the railway servant while he was in service.

3. (i) A claim against the railway servant may be on account of all or any of the following:-

(a) loses (including short collection in freight charges, short-age in stores caused to the Government or the railway as a result of negligence or fraud in the part of the railway servant while he was in serve;

(b) other Government dues such as over-payment on account of pay and allowances or other dues such as house rent, post office or Life Insurance premia, or outstanding advance,

(c) non-Government dues.

(ii) Recovery of losses specified in sub-clause (a) of clause (i) of this sub-rule shall be made subject to the conditions laid down in Rule 8 being satisfied from recurring pensions and also commuted value thereof, which are governed by the Pensions Act, 1871 (23 of 1871). A recovery on account of item (a) of sub-para (i) which cannot be made in terms of Rule 8, and any recovery on account of sub-clauses items (b) and (c) of clause (i) that cannot be made from these even with

the consent of the railway servant, the same shall be recovered from retirement, death, terminal or service gratuity which are not subject to the Pensions Act, 1871 (23 of 1871). It is permissible to make recovery of Government dues from the retirement, death, terminal or service gratuity even without obtaining his consent, or without obtaining the consent of the members of his family in case of a deceased railway servant.

(iii) Sanction to pensionary benefits shall not be delayed pending recovery of any outstanding Government dues. If at the time of sanction, any dues remain unassessed or unrealized the following courses should be adopted:-

(a) In respect of the dues as mentioned in sub-clause (a) of clause (i) of this sub-rule. A suitable cash deposit may be taken from the railway servant or only such portion of the gratuity as may be considered sufficient, may be held over till the outstanding dues are assessed and adjusted.

(b) In respect of the dues as mentioned in sub-clause (b) of clause (i) of this sub-rule (1). The retiring railway servant may be asked to furnish a surety of a suitable permanent railway servant. If the surety furnished by him is found acceptable, the payment of his pension or gratuity or his last claim for pay, etc. should not be withheld and the surety shall sign a bound in Form 2.

(2) If the retiring railway servant is unable or not willing to furnish a surety, then action shall be taken as specified in sub-clause (a) of sub-clause (iii).

(3) The authority sanctioning pension in each case shall be competent to accept the surety bound in Form 2 on behalf of the President.

(c) In respect of the dues as mentioned in sub-clause (c) of clause (i) the quasi-Government and non-Government dues, such as amounts payable by a railway servant to Consumer Cooperative Societies, consumer Credit Societies or the dues payable to an autonomous organization by a railway servant while on deputation may be recovered from the retirement gratuity which has become payable to the retiring railway servant provided he gives his consent for doing so in writing to the administration.

(iv) In all cases referred to in subclauses (a) and (b) of clause (i) of this sub-rule, the amounts which the retiring railway servants are required to deposit or those which are withheld from the gratuity payable to them shall not be disproportionately large and that such amounts are not withheld or the sureties furnished are not bound over for unduly long periods.

To achieve this the following principles should be observed by all the concerned authorities:-

(a) The cash deposit to be taken or the amount of gratuity to be withheld should not exceed the estimated amount of the outstanding dues plus twenty-five per centum thereof.

(b) Dues mentioned in clause (i) of this sub-rule should be assessed and

adjusted within a period of three months from the date of retirement of the railway servant concerned.

(c) Steps should be taken to see that there is no loss to Government on account of negligence on the part of the officials concerned while intimating and processing of a demand. The officials concerned shall be liable to disciplinary action in not assessing the Government dues in time and the question whether the recovery of the irrecoverable amount shall be waived or the recovery made from the officials held responsible for not assessing the Government dues in time should be considered on merits.

(d) As soon as proceedings of the nature referred to in Rule 8 are instituted, the authority which instituted the proceedings should without delay intimate the fact to the Accounts Officer."

3. Rule 16 the Railway Services (Pension) Rules, 1993 provides for adjustment and recovery of dues pertaining to Government or railway accommodation. It reads thus:-

"16. Adjustment and recovery of dues pertaining to Government or railway accommodation.-(1) The Directorate of Estates on receipt of intimation from the Head of Office under sub-rule (1) or Rule 98 regarding the issue of No Demand Certificate shall scrutinize its records and inform the Head of Office eight months before the date of retirement of the allottee, if any licence fee was recoverable from him in respect of the period prior to eight months of his retirement. If no intimation in regard to recovery of outstanding licence fee is received by the Head of Office by the stipulated date, it shall be presumed that no licence fee was recoverable from the allottee in respect of the period preceding eight months of his retirement.

(2) The Head of Office shall ensure that licence fee for the next eight months, this is up to the date of retirement of the allottee is recovered every month from the pay and allowances of the allottee.

(3) Where the Directorate of Estates intimates the amount of licence fee recoverable in respect of the period mentioned in sub-rule (1), the Head of Office shall ensure that outstanding licence fee is recovered in instalments from the current pay and allowances of the allottee and where the entire amount is not recovered from the pay and allowances, the balance shall be recovered out of the gratuity before its payment is authorized.

(4) The Directorate of Estate shall also inform the Head of Office the amount of licence fee for the retention of Government accommodation for the permissible period of four months beyond the date of retirement of the allottee. The Head of Office shall adjust the amount of that licence fee from the amount of the gratuity together with the unrecovered licence fee, if any, mentioned in sub-rule (3).

(5) If on any particular case, it is not possible for the Directorate of Estates to determine the outstanding licence fee, that Directorate shall inform the Head of

Office that ten per cent of the gratuity or one thousand rupees, whichever is less, may be withheld pending receipt of further information.

(6) The recovery of licence fee for the occupation of the Government accommodation beyond the permissible period of four months after the date of retirement if allottee shall be the responsibility of the Directorate of Estates. Any amount becoming due on account of licence fee for retention of Government accommodation beyond four months after retirement and remaining unpaid licence fee may be recovered by the Directorate of Estates through the concerned Accounts Officer from the dearness relief without the consent of the pensioner. In such cases no dearness relief should be disbursed until full recovery of such dues has been made.

Note.-For the purpose of this rule, the licence fee shall also include any other charges payable by the allottee for any damage or loss caused by him to the accommodation or its fittings.

[8. (a) In case where a railway accommodation is not vacated after superannuation of the railway servant or after cessation of his services such as on voluntary retirement, compulsory retirement, medical invalidation, or death, then the full amount of retirement gratuity, death gratuity or special contribution to provident fund, as the case may be, shall be withheld.

(b) the amount withheld under clause (a) shall remain with the railway administration in the form of cash.

(c) In case the railway accommodation is not vacated even after the permissible period of retention after the superannuation, retirement, cessation of service or death, as the case may be, the railway administration shall have the right to withhold, recover, or adjust from the Death-cum-retirement Gratuity, the normal rent, special licence fee or damage rent, as may be due from the ex-railway employee and return only the balance, if any, on vacation of the railway accommodation.

(d) Any amount remaining unpaid the adjustment made under clause (c), may also be recovered without the consent of the pensioner by the concerned Accounts Officer from the dearness relief of the pensioner until full recovery of such dues has been made.

(e) Dispute, if any, regarding damages or rent from the ex-railway employee shall be subject to adjudication by the concerned Estate Officer appointed under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (40 of 1971).]

(9) In case where a railway accommodation is not vacated by a railway servant after superannuation or after cessation of his services such as voluntary retirement or death, the full amount of the retirement gratuity, death gratuity or special contribution of provident fund, as the case may be, shall be withheld. The amount so withheld shall remain with the administration in the form of cash

which shall be released immediately on the vacation of such railway accommodation."

4. Incidentally, we may notice here that the controversy is not with regard to non-payment of rent of the official accommodation during the service, nor the recovery of rent is for the unauthorised occupation at the rate being paid by the employee during the service. The controversy is with regard to damages (penal rent) for unauthorised occupation of the Railway quarter by the respondent No. 2 after his retirement. Neither Rule 15, nor Rule 16 of the Rules provide for determination of penal rent. Obviously, until that exercise is done, the question of adjustment or recovery of that amount from retiral benefits cannot arise.

5. The Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (For short, "Act of 1971") defines "public premises" thus:-

"2(e). "public premises" means-

(1) any premises belonging to, or taken on lease or requisitioned by, or on behalf of the Central Government, and includes any such premises which have been placed by that Government, whether before or after the commencement of the Public Premises (Eviction of Unauthorised Occupants) Amendment Act, 1980 (61 of 1980), under the control of the Secretariat of either House of Parliament for providing residential accommodation to any member of the staff of that Secretariat;

(2) any premises belonging to, or taken on lease by, or on behalf of,-

(i) any company as defined in Section 3 of the Companies Act, 1956 (1 of 1956), in which not less than, fifty-one per cent of the paid up share capital is held by the Central Government or any company which is a subsidiary (within the meaning of that Act) of the first-mentioned company;

(ii) any corporation [not being a company as defined in Section 3 of the Companies Act, 1956 (1 of 1956) or a local authority] established by or under a Central Act and owned or controlled by the Central Government;-

(iii) any University established or incorporated by any Central Act;

(iv) any Institute incorporated by the Institutes of Technology Act, 1961 (59 of 1961);

(v) any Board of Trustees constituted under the Major Port Trusts Act, 1963 (38 of 1963);

(vi) the Bhakra Management Board constituted u/s 79 of the Punjab Reorganisation Act, 1966 (31 of 1966), and that Board as and when renamed as the Bhakra-Beas Management Board under sub-section (6) of Section 80 of that Act;

(vii) any State Government or the Government of any Union Territory situated in the National Capital Territory of Delhi or in any other Union Territory;

(viii) any Cantonment Board constituted under the Cantonments Act, 1924 (2 of 1924); and

(3) in relation to the National Capital Territory of Delhi-

(i) any premises belonging to the Municipal Corporation of Delhi, or any Municipal Committee or notified area committee;

(ii) any premises belonging to the Delhi Development Authority, whether such premises are in the possession of, or leased out by, the said Authority; and

(iii) any premises belonging to, or taken on lease or requisitioned by, or on behalf of any State Government or the Government of any Union Territory."

6. That the railway quarter is covered by definition of "public premises" under the Act of 1971 is not in dispute.

7. The Act of 1971 defines "unauthorised occupation" thus:-

"2(g). "unauthorised occupation", in relation to any public premises, means the occupation by any person of the public premises without authority for such occupation, and includes the continuance in occupation by any person of the public premises after the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever."

8. That after his superannuation, the respondent No. 2 remained in unauthorised occupation of railway quarter at Muzaffarpur also does not appear to be in dispute.

9. Section 7 of the Act of 1971 empowers the estate officer to determine damages in respect of public premises. Sub-Section 2 of Section 7 which is relevant for us reads thus:-

"(2) Where any person is, or has at any time been, in unauthorized occupation of any public premises, the estate officer may, having regard to such principles of assessment of damages as may be prescribed, assess the damages on account of the use and occupation of such premises and may, by order, require that person to pay the damages within such time and in such instalments as may be specified in the order."

10. For want of any provision in Railway Services (Pension) Rules, for determination of damages/penal rent in respect of a railway accommodation in unauthorised occupation of the railway employee, obviously recourse has to be taken by the railway authorities under the Act of 1971 for determination of damages/penal rent in respect of public premises. The said recourse having not been taken, unilaterally determination of damages/penal rent of Rs. 29,613/- and then deducting the said amount from the retiral benefits of the respondent No. 2 cannot be justifiably sustainable.

11. In the case of Gorakhpur University and Others Vs. Dr. Shitla Prasad

Nagendra and Others, , although in relation to different provision governing employees of Gorakhpur University, the Supreme Court made the following observations:-

"5. We have carefully considered the submission on behalf of the respective parties before us. The earlier decision pertaining to this very University, reported in S.N. Mathur, (1996)2 ESC 211(AI.) 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 decisions in State of Kerala and Others Vs. M. Padmanabhan Nair, and Som Prakash Rekhi Vs. Union of India (UOI) and Another, . This Court has been repeatedly emphasizing 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 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 earlier decisions of this court but merely proceeding to decide the issue upon equitable considerations 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 Wazir Chand Vs. Union of India (UOI) and Others, 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 were vacated and that in spite of request made for the allotment of the said quarters in favour of the son of the respondents, 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 18.7.1994 and the actual 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 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 quarters 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 conceded claim or sum due. Therefore, we are of the view that no infirmity or illegality could be said to have vitiated 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."

12. The observations made by the Supreme Court that not taking any action according to law to determine the so-called penal rent after giving prior show cause notice or any opportunity before even proceeding to recover the same renders the claim for penal rent not only seriously disputed or contested claim, but the University cannot be allowed to recover summarily the alleged dues according to its whims; equally applies to the fact situation of the present case.

13. Moreover, we are informed by the counsel for the respondent No. 2 that subsequent to the decision given by the Tribunal, an amount of Rs. 21,938/- has already been paid out of Rs. 29,613/- which was deducted as penal rent from the retiral benefits. In this view of the matter, even otherwise the order passed by the Tribunal does not call for any interference. Writ petition is, accordingly, dismissed with no order as to cost.