

(2003) 09 JH CK 0128

In the Jharkhand High Court

Case No : Writ Petition (S) No. 3060 of 2002

Union of India (UOI) and Others

APPELLANT

Vs

Dr. Swaran Singh

RESPONDENT

Date of Decision : 19-09-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 1 JCR 22

Hon'ble Judges : P.K. Balasubramanyan, C.J;R.K. Merathia, J

Bench : Division Bench

Advocate : P.K. Prasad, CGSC, V.K. Prasad and Ratnesh Kumar, for the Appellant; M.M. Pal and Mahua Palit, for the Respondent

Final Decision : Allowed

Judgement

1. This writ petition has been filed by the respondents in O.A. No. 61 of 1996 against the order of the Central Administrative Tribunal at Patna. That O.A No. 61 of 1996 was filed by the applicant, the respondent herein, praying for disbursement of the retiral benefits, alleged to be due to him with interest thereon. There was also a prayer for declaring that the demand of penal rent from the respondent herein on the ground of non-vacation of the quarter, admittedly occupied by him even after his retirement was illegal. The employer took stand that the penal rent recoverable from the employee-respondent herein, was liable to be adjusted towards the amount due to the respondent by way of retirement benefits and consequently the application before the Tribunal was liable to be dismissed. It was also contended that the penal rent was being charged in terms of the relevant Rules and the amount was liable to be adjusted in view of the Undertaking given by the respondent herein while accepting the allotment of the quarter. The Tribunal only held that the writ petitioner, the employer was not entitled to adjust the retiral benefits due to the applicant before it against the penal rent or licence fee due to it in respect of the quarters occupied by the respondent herein. It did not hold that penal rent was not

payable by the respondent herein but only decided that the same should not be adjusted, apparently meaning that it will be recovered independently by writ petitioner, the employer. It did not award any interest to the respondent but ordered that retiral benefits amounting to Rs. 1,54,179.10 ps. be disbursed to the respondent herein within four weeks from the date of receipt of a copy of its order.

2. Learned counsel for the writ petitioners submitted that the Tribunal was not justified in ignoring the decision of the Principal Bench of the Central Administrative Tribunal, Patna relating to the same employer and another employee, similarly situated, interpreting the Rule in question. The Tribunal should not have taken a different view in this case and the earlier judgment has been produced as Annexure-6. Counsel further submitted that on the facts and in the circumstances of the case, the Tribunal was in error in following the ratio of the decision of the Supreme Court in Gorakhpur University and Others Vs. Dr. Shitla Prasad Nagendra and Others, since that case was clearly distinguishable on facts. Counsel submitted that this is a case, which was governed by the ratio of the decision of the Supreme Court in Wazir Chand Vs. Union of India (UOI) and Others, and the Tribunal completely failed to consider the applicability of the ratio of that judgment, on the facts of this case. Counsel also contended that going by the Rules governing the allotment and the undertaking, Annexure/5, given by the respondent, while going into occupation of the building or quarters, the writ petitioner was clearly entitled to adjust the amount as penal rent against the retiral benefits due to the respondent. It can be seen that the penal rent was payable as per the Rules and the undertaking given by the respondent herein and the Tribunal was not justified in disposing of the Original Application in the manner in which it has done.

3. Learned counsel for the respondent, on the other hand, contended that the Tribunal was fully justified in following the ratio of the decision in Gorakhpur University and Others Vs. Dr. Shitla Prasad Nagendra and Others, and in holding that the writ petitioner was not entitled to adjust the amount due by way of licence fee and penal licence fee from the respondent against the retiral benefits due to the respondent. Counsel further submitted that Annexure-5, undertaking, relied on by the writ petitioner was not liable to be given effect to in the light of the principles enunciated by Supreme Court in Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, . Counsel also submitted that the principles laid down by the Supreme Court in Secretary-cum-Chief Engineer, Chandigarh Vs. Hari Om Sharma and Others, wherein it was held that an undertaking not to claim the salary of the promotional post, was not binding on the employee, would apply. According to the counsel, applying the said principle, the undertaking should be ignored in this case. Counsel also contended that even if the respondent was liable for penal licence fee, he was not liable for enhanced penal licence fee, since the enhancement was never brought to the notice of the respondent. It was thus contended that no interference with the order of the Tribunal was called for.

4. The respondent was appointed as a Scientist "C*" in the Central Fuel Research Institute. After he was appointed as Scientist, he was offered allotment of a quarter. He accepted the allotment as proposed. Annexure-5 is a communication containing the undertaking, which the respondent was to give prior to occupying the quarters. It will be appropriate to quote the undertaking, which is as follows :

"I hereby undertake to abide by CSIR Rules for allotment of Staff Quarters, as amended from time to time.

2. I further undertake to vacate the staff quarters/Hostel accommodation, which is under my occupation, on the determination of licence for any reason whatsoever, failing which I shall be liable to pay the penal licence fee as provided under the Rules, which may be recovered from my salary or any other dues including DCRG & Leave encashment & other pensionary benefits.

3. I hereby authorize CSIR to withhold my DCRG and Leave encashment till I vacate the staff quarter allotted to me on determination of the licence for any reason whatsoever.

4. I am giving this Undertaking of my free will without any coercion & knowing fully well the consequences".

5. The Rule that governs the allotment of a quarter is Rule 11, which provides that after retirement, an employee is permitted to continue to occupy the quarter for four months on normal licence fee and thereafter for an additional period of four months on payment of double the standard licence fee and for occupation thereafter, he was liable to pay penal rent, as was prevalent at the relevant time. The very Rules that govern the allotment clearly show that for the period of occupation beyond eight months, the respondent was bound to pay penal licence fee. In fact, that aspect which is clear from the Rules itself, was not seriously controverted. The Tribunal followed the decision of the Supreme Court in *Gorakhpur University v. Dr. Sheetla Prasad Nagenedra and Ors.* (supra) but distinguishable features are available in this case. In the case on hand, admittedly, for the period subsequent to his compulsory retirement on 5.10.1989, the respondent had not any licence fee at all. In other words, there was no acceptance of the normal licence fee from the respondent. The acceptance of the normal licence fee, was the distinguishing feature in *Gorakhpur University's* case, the decision in *Wazir Chand Vs. Union of India (UOI) and Others*, was distinguished only on that basis, as can be seen from paragraph 5 of that decision. That was also a case where the son of the retired employee continued to be an employee of the employer. In the case on hand, there was no payment and acceptance of any regular or normal licence fee or tender of licence fee by the employee to the employer subsequent to the compulsory retirement of the respondent. The ratio of the decision in *Gorakhpur University's* case is, therefore, not attracted. We are inclined to think that the ratio of the decision in *Wazir Chand* would apply in the light of the relevant Rules governing the allotment of quarters to the respondent.

6. The principles of Central Inland Water Transport Corporation's relied on by the learned counsel for the respondent cannot be of any assistance to the respondent in this case. It was in the option of the respondent, either to accept the allotment of quarters on the terms on which it was offered or not to accept it. It was not as if the employee was being compelled to accept the allotment as a part of the condition of service. It was a case where an employee subsequent to his employment had an option of occupying an official quarter provided he was willing to abide by the conditions of such allotment. The parties were at arms length. Therefore, it could not be said that the contract was something that was not unconscionable in terms of Section 23 of - the Contract Act. We are not pursuing this aspect further since the respondent has taken a stand that he had not given the undertaking. But then normally such undertakings were given while accepting the allotment, we are inclined to think that in all probability, he would have given the undertaking. Since we are satisfied on the Rules and in the circumstances of the case that the recovery was not illegal, we are not further pursuing this aspect.

7. We are, therefore, satisfied that the Rules are binding on the respondent and the writ petitioner is entitled to recover penal rent for the continued occupation by the respondent after 5.10.1989 till 6.1.1994, subject to the rates payable for the first four months and second four months, as per the Rules.

8. The respondent, apparently, a well qualified person, had occupied the quarter in question till 6th January, 1994 though he was compulsorily retired on 5.10.1989. He had not paid or even tendered the normal licence fee towards the quarter occupied by him. It appears that even as on 5.10.1989 the licence fee was in arrears for some months. Certain amounts were also due to him by way of retiral benefits and those amounts were in hands of the writ petitioner. In a situation like this, ordinarily, any creditor will be entitled to appropriate the amount belonging to the debtor in his hands towards the liability of the debtor. We think that this principle can not be kept out merely because it was a service contract between an employer and the employee. In such a situation, especially when there is no acquiescence or special circumstance like the son continuing in employment as available in Gorakhpur University case, the employer would normally be entitled to set off the amounts due to the employee towards the amount due from him.

9. Thus, we are satisfied that this is not a fit case where the Tribunal should have allowed the application filed by the respondent. We also think that Tribunal was not justified in not following Annexure-6, decision of the Principal Bench of the same Tribunal interpreting the identical Rules and relating to the same aspect. Even if the Tribunal felt that the decision in Gorakhpur University's case covered the situation, it should have referred to that aspect and should have given a reason for not following the decision of the Principal Bench.

10. Thus, we allow this writ petition and setting aside the decision of Central Administrative Tribunal, dismiss the Original Application filed by the respondent.

Con sidering the nature of case, we direct the writ petitioner not to recover any further amount towards penal rent from the respondent. Writ allowed.