
(2019) 12 JH CK 0257

In the Jharkhand High Court

Case No : Letter Patents Appeal No. 431 Of 2018

Virendra Pratap Singh

APPELLANT

Vs

Steel Authority Of India Limited

RESPONDENT

Date of Decision : 18-12-2019

Acts Referred:

Citation : (2019) 12 JH CK 0257

Hon'ble Judges : Dr. Ravi Ranjan, C.J.;Sujit Narayan Prasad, J

Bench : Divison Bench

Advocate : Krishna Murari, Piyush Chitresh

Final Decision : Disposed Of

Judgement

1. The instant intra-court appeal has been filed under clause 10 of the Letters Patent against the order/judgment dated 22.06.2018 passed in W.P. (C)

No. 3675 of 2004 whereby and whereunder prayer pertaining to allotment of quarters on long term lease has been negated, however, the decision of

the respondents-authorities for recovery of the amount, by way of rent for occupation of the quarters, has been set aside ""with a direction to refund

the House Rent Allowance, as ordered in the impugned order"".

2. Before entering into the legality and propriety of the impugned decision, it requires to refer certain factual aspects, which are necessary for

reaching to the rightful conclusion of the lis:

The appellant-writ petitioner had filed a writ, being W.P. (S) No. 3675 of 2004, for quashing letter bearing Ref. No. TA/A/2004-282 dated 27.03.2004

issued under the signature of respondent no. 6 whereby the request of the petitioner for post V.R.S leasing out of incumbent company quarters on long

term lease has been refused; further for direction to declare and hold that the

petitioner is in authorized and legal occupation of the company's quarters on the date of retirement, hence the petitioner is entitled for permanent allotment of quarters on long term lease in terms of the scheme, namely, SAIL Scheme for leasing of houses to employees-2003" (in short the 'Scheme, 2003') and in consequence thereof, amount of Rs. 2,23,788/-, which has been withheld in lieu of retaining the said quarters be directed to be refunded in favour of the writ petitioner with interest.

The appellant-writ petitioner, who was working under the Bokaro Steel plant, has opted separation under 'Voluntary Retirement Scheme, 2003', floated vide circular no. 265 dated 25.06.2003, which was accepted and the petitioner was released vide Separation order dated 31.07.2003.

The Steel Authority of India Limited through Bokaro Steel Plant has come out with a scheme, namely, "SAIL Scheme for leasing of houses to employees-2003", making a provision therein that in case of separation on voluntary retirement, the quarters belonging to the respondent-company will be leased out on the basis of long term lease and pursuant thereto, writ petitioner has made application for separation under the Scheme, 2003.

According to the appellant, he although was fulfilling the conditions, as stipulated in the circular dated 31.07.2003 for having authorized occupation of

the company's allotted quarters and as such in view of the provisions of the said circular, the quarters in question was to be leased out on the basis of

long term lease but the claim has been rejected by the impugned order, led the appellant to file writ petition, being W.P. (C) No. 3675 of 2004, which

has been disposed of vide order dated 22.06.2018 by partly allowing the writ petition holding the action of the respondent-company in withholding a

sum of Rs.2,23,788/-, as illegal and in consequence thereof direction to refund the said amount has been passed while negated the claim for allotment

of the quarters on the ground of violation of terms and conditions of the scheme in question.

3. Mr. Krishna Murari, learned counsel appearing for the appellant-writ petitioner, has argued vehemently that learned Single Judge while considering

the case in favour of the appellant so far it relates to refund of the amount under HRA head, there was no reason not to pass positive direction for

leasing out the said quarters in his favour on the basis of applicable circular, even though the appellant-writ petitioner was fulfilling the eligibility criteria

as provided therein.

4. Mr. Piyush Chitresh, learned counsel for the respondents-B.S.L. has defended the order passed by the learned Single Judge. He has demonstrated

before this Court that appellant-writ petitioner was not in authorized occupation of the said quarters rather he has sub-let the said quarters in favour of

third party and further he has not complied with the terms and conditions of the circular dated 18.07.1985, which contains clauses 6.2 and 6.3 of the

House Building Advance Rules. In the light of aforesaid conditions, the writ petitioner since has constructed his own house within the perimeter of 8

KMs from the Bokaro Steel Limited Administrative Building but he has not vacated the said quarters rather sub-let the same, the respondents-

authorities have refused to lease out the said quarter in favour of the appellant, on the pretext that appellant-writ petitioner was not found in authorized

occupation of the company's alleged house, which is a condition precedent for leasing out the quarters in pursuance to the policy decision taken vide

circular dated 01.07.2003. He further submits that the learned Single Judge therefore, has passed order for refunding the amount, which has been

deducted by way of rent in lieu of the occupation of the said quarters by casting liability upon the respondent-company in failing the quarters get

vacated from the occupation of the writ petitioner who has constructed a house in the radius of 8 KMs from the administrative building of the B.S.L.,

has passed an order of refund of the said amount but simultaneously has refused to pass positive order in favour of the writ petitioner for leasing out of

the said quarters in view of non-fulfillment of the conditions making him ineligible for consideration.

5. Mr. Krishna Murari, learned counsel for the writ petitioner-appellant at this juncture in continuation of his argument, has submitted that so far as

amount which has been directed to be refunded by the learned Single Judge, the said amount ought to have been ordered to be refunded along with

statutory interest, as if the amount had been in the possession of the petitioner, some interest would have been accrued and as such submission has

been made to modify the said part of the order by directing the respondents-company to make payment of the said amount along with statutory

interest at the bank rate.

6. This Court, having heard learned counsel for the parties and on going across

the materials available on record, deem it fit and proper to first refer

the Scheme by which the respondents-company has floated the policy of separation from service under Voluntary Retirement Scheme-2003, which

was issued on 25.06.2003 whereby and whereunder the decision has been taken to invite applications from the intending employees for separation

under the said scheme, which shall be effected from 01.07.2003 and be operational till 31.09.2003 and the last date for receipt of applications has been

fixed till 25.09.2003. The applications had been decided to be scrutinized by the scrutiny committee and thereafter final decision would be taken

subject to approval of the competent authority, as would be evident from Annexure 1 to the writ petition. The aforesaid scheme also stipulates about

retention of company's quarter, which will be allowed only up-to six months.

One another circular was issued on 01.07.2003, floated in the name of 'SAIL Scheme for Permanent Leasing of House to Its Employee 2003'.

7. This Court has gathered from the aforesaid scheme that buildings/flats will be leased out to its employees, who are superannuating or opting for

VR/ex-employees and spouses/legal heirs of deceased employees on 'as is where is basis'.

It is evident from the condition, as referred above, that company's quarters can be leased out even in favour of the employees, who have opted for

separation under Voluntary retirement scheme but the said employees is to remain in authorized occupation of the company's alleged house.

8. It further appears from the circular dated 18.07.1985, wherein a specific provision has been made at clauses 6.2 and 6.3 that employees, who have

constructed their own house within the radius of 8 KMs from the company's administrative building, they will require to vacate the quarters.

For ready reference, the relevant clauses, 6.2 and 6.3 of the said circular is reproduced herein below:

'Circular Dated 18 July, 1985

Clause 6.2 and 6.3 of the House Building Advance Rules: 6.2 Employee will be required to vacate the company accommodation/Company

leased accommodation as the case may be, in the following eventualities:-

(a) Employee constructing/acquiring house in the Company's townships or within the municipal limits of the town/city of his posting with financial

assistance from the Company; or

So far as first prayer, which pertains to leasing out of said quarters is concerned, this Court has gone across the impugned decision of the respondents-

authorities wherefrom it is found that the claim of the appellant-writ petitioner has been negated on the ground that the appellant was not found to be

in authorized occupation of the company's quarters since it was sub-let in favour of other.

The question herein is that when the respondent-BSL came with a policy decision way back in the year 1985, in particular 6.3 of the circular dated

18.07.1985, which provides for vacating of the quarters in case the employee constructs his own house within the radius of 8 KMs from company's

administrative building and once the employee has constructed his own house, the onus is upon the employee concerned to vacate the company's

quarters.

Herein, it is the admitted case of the appellant-writ petitioner that the house has been constructed, which is situated within 8 KMs radius from the

administrative building and hence in compliance of the conditions as contained in clause nos. 6.2 and 6.3 of the circular dated 18.07.1985, it was

incumbent upon the appellant-writ petitioner to vacate the quarters forthwith but he has failed to do so rather the petitioner has sub-let the house in

favour of the third party.

The appellant's request for leasing out of the quarters was to be decided on the basis of circular dated 1.07.2003 (Annexure 3 to the writ petition),

which contains one of the eligibility conditions about ""authorized occupation"".

The meaning of 'authorized' is required to be seen in the present context. 'Authorized' means within the authority of law. As has been referred herein

above, as per clause 6.2 and 6.3 of the circular dated 18.07.1985, the appellant was to vacate the quarters but he has not vacated rather sub-let the

same, therefore, occupation/retention of the quarter by the petitioner will be said to be contrary to the policy decision of 18.07.1985.

11. In view thereof, this Court has come to the conclusive finding that the retention of the quarters by the appellant-writ petitioner will not be said to

be authorized occupation. As such, the appellant-writ petitioner cannot be held to be eligible for leasing out of the said quarters. The authorities on the

pretext of such factual background has taken decision refusing to lease out the company's quarters, which was rightly refused to be interfered with by

the learned Single Judge.

12. In view of the discussions made herein above, this Court is of the view that there is no infirmity in the order passed either by the respondents-

authorities in taking such decision dis-entitling the appellant for leasing out of the said quarters or by the learned Single Judge who has refused to

interfere with the said decision on the basis of applicability of the circular dated 18.07.1985 as also not finding the writ petitioner eligible in terms of the

circular dated 01.07.2003.

Therefore, we are not inclined to interfere with the said part of the order.

13. Though the part of the order by which the learned Single Judge has directed to refund the amount of House Rent Allowance in favour of the

petitioner has not been questioned by the respondent-BSL by preferring appeal but learned counsel for the appellant-writ petitioner has submitted with

vehemence that the said amount is to be refunded with the statutory interest.

14. This Court finds substance in his argument, it is for the reason that admittedly the amount has been recovered from the gratuity head of the

appellant-writ petitioner and it is settled position of law that there cannot be any recovery from the gratuity, save and except, in consonance with the

provisions of the Gratuity Act, 1972, if applicable or other law made applicable in this regard by the respondent-BSL. It is also equally settled that the

gratuity carries statutory interest as per the Payment of Gratuity Act, 1972.

15. Therefore, this Court is also of the view that the amount, which has been directed to be refunded requires to be refunded along with statutory

interest.

16. Accordingly, the order passed by the learned Single Judge is modified to the extent that the amount which was directed to be refunded i.e., to the

tune of Rs. 2,23,788/-, is to be refunded with statutory interest, as applicable, to the appellant-writ petitioner.

17. With the aforesaid modification in the impugned order dated 22.06.2018, the present appeal stands disposed of.