Project Development India Ltd. Vs. Union of India (Uoi) and ors.

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Court : Patna

Decided On : Mar-18-1997

Judge : S.K. Chattopadhyaya, J.

Acts : Service Law

Appeal No. : CWJC No. 2462 of 1994(R)

Appellant : Project Development India Ltd.

Respondent : Union of India (Uoi) and ors.

Advocate for Def. : A.K. Trivedi, SCCG

Advocate for Pet/Ap. : S.K. Dwivedi, Adv.

Judgement :

S.K. Chattopadhyaya, J.

1. This application is directed against the judgment dated 11.8.1994 and the order dated 12.8.1994 passed by respondent No. 2 directing the petitioner/management to pay the amount of gratuity along with interest at the rate of 10%.

2. Inspite of several notices both under ordinary process and registered post, the respondent No. 3 did not respond and, as such, by order dated 29.6.1995 notice on him was deemed to have been served.

3. It is not in dispute that the petitioner company is a sister concern of the Fertilizer Corporation of India and the quarters belong, to FCI which are given to the employees of the petitioner company. The rent for such quarters are being deducted by the petitioner company from its employee and sent to the FCI. But as the respondent No. 3 has retired and occupying the quarter without payment of rent. The petitioner-company has to pay the rent to the FCI.

4. It appears that the respondent No. 3 submitted an application on 27.9.1993 under Sub-rule (1) of Rule 10 of Payment of Gratuity Rules (Central Rules,) 1972 for a direction to his employer to make payment of gratuity amount to him. Respondent No. 3 retired on 1.12.1990, and, as such, he was entitled for the said amount without any hindrance. The management took a plea that respondent No. 3 was an employee under the exempted category and he is governed by the company's own scheme of payment of gratuity. The management/ petitioner though admitted that respondent No. 3 was entitled to get the amount of gratuity under the company's scheme but the same was not paid because even after his retirement, respondent No. 3 has refused to give vacant possession of the quarter which was allotted to him when he was in service. Respondent No. 2 rejecting the plea of the petitioner-company, held that non-vacation of quarter cannot be a ground for refusal to pay the amount of gratuity.

5. It appears that the petitioner/company has its own 'Death-cum-Retirement Gratuity Scheme' which provides that on superannuation the whole time employee including the Chief Executive and full time Financial Directors and Ex-Service man will be entitled for gratuity for good, efficient and faithful service. A circular dated 6.6.1983 was issued by the company which, inter alia, contemplates that till the allotted quarter/bunglow is vacated by the employee, after termination of services, the terminal dues of retired/deceased employee including gratuity etc. shall be withheld in full. This circular was issued by the company on consideration of the factual aspect that even after retirement or cessation of extension, retention of allotted quarters/bunglow was increasing at alarming rate. This has resulted in hardship to the employer who are waiting for years together on the line for due allotment but the management is helpless in providing them suitable quarters/bunglows because the retired employees are not vacating their allotted

quarters.

6. On this background the said circular was issued directing therein to produce a certificate in writing from the Administrative Department showing therein that the Quarter has been vacated. This circular further provides that apart from taking this step of withholding the amount usual practices of imposing of penal rent and other legal proceedings under the Public Premises (Acquisition of unauthorized encroachment) Act can be taken against such employees.

7. The question as to whether for not vacating an allotted quarter by a retired employee, gratuity amount can be withheld, has been dealt with by this Court times without number. In the case of Mukh Ram Sharma v. Project and Development India Ltd. and Ors., 2003 (4) JCR 706 (Pat)(RB) a Division Bench of this Court by order dated 13.4.1993 passed in CWJC No. 3022/92(R) has, inter alia, held as follows :--

'We are of the opinion that after superannuation from service, the petitioner had no legal right to continue in the quarters and, therefore, he is liable to pay rent including penal rent as per rules and other charges.'

However, as the petitioner of that case already had vacated the quarter the Division Bench did not pass any positive order Directing the petitioner to vacate the quarter.

8. In the present case by order dated 8.11.1994 while, staying the operation of the impugned order, liberty was given to respondent No. 3 to vacate the premises after payment of necessary charges and then to claim payment of gratuity. Similarly, in the case of Janak Raj Kapuria and Ors. v. The State of Punjab and Ors., reported in 1989 (3) SLJ 124, the High Court of Punjab and Hariyana has also held that the authorities are justified in refusing to grant 'no demand certificate' when the petitioner though retired in 1980 was illegally occupying the Government accommodation to which he was not entitled.

9. In the aforesaid backgrounds this Court can well imagine the difficulty on the part of the employer like the petitioner herein to allot the quarters to its employees

who are legally entitled for the same but are in que for a long period only because of non-cooperative attitude of the retired employees. It is very common experience in these days that once a quarter is allotted to an employee, not only after retirement but even after his transfer from one place to another, he does not vacated the quarter. In my view of these circumstances, some punitive steps may be taken by the employer by withholding the amount of gratuity. This aspect of the matter has not been considered by respondent No. 2 and he has merely been swayed by technicality of law.

10. In the result, this application is allowed. The impugned orders as contained in Annexure 1 and 2 are set aside. The respondent No. 3 may, as directed by the Division Bench earlier, claim payment of gratuity after vacating the premises on payment of necessary charges.