CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No. OA 350/00255/2015

Present: Hon'ble Ms. Bidisha Banerjee, Judicial Member

BHARAT PRASAD YADAVA

VS

UNION OF INDIA & ORS.

For the applicant : Ms. M.Roy, counsel

For the respondents : Mr.B.L.Gangopadhyay, counsel

Order on : 1.6.16.

O R D E R

This matter is taken up in the Single Bench in terms of Appendix VIII of Rule 154 of CAT Rules of Practice, as no complicated question of law is involved, and with the consent of both sides.

2. This application has been filed seeking inter alia the following reliefs :

"An order directing the respondents to release and/or to pay the amount of Rs.2,60,000/- which was withheld from the gratuity amount of the applicant, without any delay, along with interest thereon."

3. The facts in a nutshell would be that the applicant was appointed as a Primary Teacher in 1989 in a school under the respondent authorities at Radhanagar where he was also allotted a quarter. The school got closed due to non-availability of students. Due to closure of the school the applicant got transferred to Adra Girls Higher Secondary School on 30.7.02 and retired upon attaining the age of superannuation on 31.8.12. After his transfer the applicant sought for retention of the quarter at Radhanagar. The authorities never rejected the prayer but went on deducting normal rent from his salary for occupying the said quarter. After retirement the applicant found that a sum of Rs.2,60,000/- was deducted from his gratuity on account of damage rent for occupying the quarter from 30.7.02 to 31.8.12. Hence the present OA.

4. The questions that fell for consideration in this OA are –

i) Whether damage rent could be deducted from the payable DCRG of the pensioner?

ii) Whether a pensioner could be saddled with the recovery from the DCRG?

5. It has been submitted that Radhanagar is a quarter surplus area and therefore there was no impediment in considering his prayer for retention and having allowed him to retain the quarter without eviction notice the authorities impliedly regularised the quarter in his favour. The authorities have failed to produce any order demonstrating that the authorities had cancelled the quarter at Radhanagar allotted to the applicant after he was transferred out of Radhanagar and as such the plea of the respondents that he was in unauthorised occupation of the quarter in question cannot be countenanced. Admittedly, neither any eviction proceedings were initiated against the applicant nor assessment of damage rent made by Estate Officers. Therefore impliedly the respondents allowed the applicant to occupy the quarter. On the contrary the respondents never suffered any financial loss because all along they deducted normal rent from the applicant, for occupying the quarter.

6. In ***Rashila Ram -vs- UOI & Ors. [(1989) 10 ATC 737]*** a Full Bench of the Tribunal explaining the scope of service matter held that

> "in order to have harmonious interpretation between section 33 of the Administrative Tribunals Act and section 51 of the P.P. Act, it would be proper that when a person is aggrieved against an order of cancellation by the administrative authorities, he can approach the Tribunal at that stage if he is aggrieved by such orders after making necessary representations to the P.P. Act. It would be proper for the aggrieved employee to contest his case before the Estate Officer and may approach the Tribunal only after final orders have been passed by the Estate Officer under the P.P. Act."

The Hon'ble Apex Court did not approve of the aforesaid view of the Tribunal. In ***UOI & Ors. -vs- Rashila Ram [2002 SCC (L&S) 1016]*** the Hon'ble Apex Court categorically held that the matter is not a service matter and the Tribunal would have no jurisdiction to interfere. The words of the Hon'ble Apex Court ~~would be~~ is as under :

> *"The Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (hereinafter referred to as the 'Eviction Act') was enacted to provide for the eviction of unauthorized occupants from public*

provision, it must be held that the premises was a public premises, as defined under the said Act, and the occupants must be held unauthorized occupants as defined in the said Act. Once a government servant is held to be in occupation of a public premise as an unauthorised occupant within the meaning of the Eviction Act, and appropriate order passed thereunder, the remedy to such occupant lies, as provided under the said Act. By no stretch of imagination the expression 'any other matter' in section 3(q)(v) of the Administrative Tribunals Act would confer jurisdiction on the Tribunal to go into the legality of the order passed by the competent authority under the provisions of the Public Premises (Eviction of Unauthorized Occupants) Act 1971. In this view of the matter the impugned assumption of jurisdiction by the Tribunal over an order passed by the competent authority under the Eviction Act must be held to be invalid and without jurisdiction."

7. When provisions of the Public Premises (Eviction of Unauthorized Occupants) Act 1971 was available for eviction of unauthorised occupants and assessment of damages for their unauthorised occupation, deduction of a hefty sum from DCRG without taking recourse to the Act, was highly improper. No materials suggest that the sum was assessed by a competent authority in terms of the Act and in accordance with law. No departmental proceedings were initiated either.

8. Since no appropriate proceedings were ever initiated for eviction and assessment or misconduct, the applicant was deprived of his right to assail such proceedings, which was again contrary to law. Such outright deduction from payable gratuity of a pensioner was therefore improper.

Here it would be useful to quote the decision of Hon'ble Apex Court in ***Gorakhpur University & Ors. -vs- Dr. Shitla Prasad Nagendra***, Civil Appeal No. 1874/99 decision rendered on 7.8.01, extracted infra :

"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 was vacated and that in spite of request made for the allotment of the said quarters in favour of the son of the respondent, 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 ever 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 quarter 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 be 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.

The appeal fails and, therefore, shall stand dismissed. No costs. We make it clear that this shall not have the effect of foreclosing the rights of the university, if any, if the appellant chose to workout the same, as is permissible in law."

(emphasis supplied)

9. In the present case it could be noted that the respondents all along deducted normal rent from the applicant for occupying the quarter in question. Therefore they suffered no loss. Suddenly after retirement of the employee they deducted Rs.2,60,000/- from the payable gratuity without any proceedings for eviction, assessment or misconduct, therefore the ratio of ***Sitla Prasad*** supra would apply on all fours to the present factual matrix.

10. That apart, in regard to recovery from payable gratuity of a pensioner, in a recent decision in ***State of Punjab & Ors. –vs- Rafiq Masih (White Washer)*** ***[AIR 2015 SC 696]***, Hon'ble Apex Court has held as under :

"It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from employees belonging to Class III and Class IV service (or Group 'C' and Group 'D' service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."

11. In view of the aforesaid legal backdrop where ratio of Sitla Prasad (supra) would apply, in my considered opinion recovery of an amount of Rs.2,60,000/- from the gratuity amount arbitrarily which would also be unduly harsh and iniquitous, and hence impermissible.

12. Accordingly I would allow the OA with a direction upon the authorities to refund the recovered amount with interest @ 8% per annum, with liberty to act in accordance with law. No costs.

(BIDISHA BANERJEE)
MEMBER (J)

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