

(2012) 03 P&H CK 0512

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 6763 of 2009 (O and M)

Raghubir Singh,
Assistant Secretary
(Retd.)

APPELLANT

Vs

Indian Red Cross
Society, Haryana State
Branch and another

RESPONDENT

Date of Decision: March 1, 2012

Citation: (2012) 03 P&H CK 0512

Hon'ble Judges: K. Kannan, J

Bench: Single Bench

Advocate: B.S. Mittal, for the Appellant; G.S. Bajwa, for the Respondent

Final Decision: Allowed

Judgement

K. Kannan, J.

The petitioner's challenge is to the deduction for the damages for alleged overstay in the official accommodation from out of

the gratuity and leave encashment. An amount of Rs. 3,24,450/- was debited against the petitioner and a demand of Rs. 53,100/- was claimed as

payable from the petitioner by the respondents. The learned counsel points out that the contention as regards the liability for continuance in the

official accommodation came in a situation where on the eve of his completion of 58 years when he apprehended that he was going to be

superannuated against the practice in the respondent-society of allowing for persons to be retained in service upto 60 years, he had approached

this Court against termination of service. This Court had allowed for retention of his premises till the next date of hearing by an order dated

14.01.2003, but the case was getting adjourned from time to time till when on 17.05.2005, the writ petition had been disposed off as having

become infructuous and the right of the respondent to recover the rent as per rules was specifically provided in the order.

2. The learned counsel for the petitioner would contend that the liability could have been, if at all, only to rent and there was no justification for

levying a penalty upto 50 times in the manner contemplated by the State Government Rules. The counsel would contend that the Society had not

adopted the Government Rules and in any event, the Society itself did not have any specific authority under any rule to levy a penalty upto 50 times

the standard rent. If the Government Rules were to be applied, it ought to have even applied to the gratuity amount that was payable under the

Government service which was Rs. 2,50,000/- against the provisions for gratuity only to Rs. 1 lakh in the service of the respondent.

3. As regards the issue of deduction for damages, it is a right which the employer can exercise against any liability from an employee which is not

otherwise protected by law. As regards the gratuity, the law protects the amount from attachment or deduction in any way and, therefore, the

entitlement of the petitioner for the gratuity could never have been defeated and set off against the alleged liability for damages for overstaying in the

official premises. An amount of Rs. 1 lakh payable on account of gratuity was bound to have been paid on the date of his retirement, namely, on

31.10.2002 and the same be released to the petitioner with interest at 18% in the manner provided for by the decision of the Hon"ble Supreme

Court in R. Kapur Vs. Director of Inspection (Painting and Publication) Income Tax and Another,

4. As regards the leave encashment, the amount payable to the petitioner was Rs. 1,71,350/-. There is no law protecting any deduction from such

leave encashment and consequently, the damages for overstaying in the premises would be permissible. In this case, a judicial intervention sought

against a scope for extension of service upto 60 years did not come up for adjudication but allowed to be concluded as having become

infructuous. There was an initial order of the Court allowing for continuation in possession. If the Court had found that he could not have been

retired, then the initial permission granted ought to be subject the ultimate outcome. If the petitioner did not secure such an adjudication, then the

petitioner would certainly render himself liable for appropriate damages. In this case, since no Rules are brought before me of the respondent-

Society as to the manner of fixing the damages payable and the rate at which it could be calculated, I would observe that the levy of 50 times the

standard rent was exceedingly stiff. I would, on the other hand, find 10 times the standard rent would be appropriate and provide for the rent

payable from a period of 23 months and 27 days (taken as 24 months) at Rs. 64,800/-. To that will be added the standard rent payable for that

period at the rate of Rs. 270 for 6 months and 20 days which has been determined already at Rs. 1,800/-. Totally, the amount to which the

petitioner would become liable, would be Rs. 66,600/-. The amount payable to the petitioner towards leave encashment was Rs. 1,71,350/- and

after making a deduction of a balance will be Rs. 1,04,750/-. This will be in addition to the amount of gratuity referred to above. This amount of

Rs. 1,04,750/- will be payable to the petitioner with interest at 9% when he vacated the premises, namely, on 17.05.2005, till date of payment.

Both the amounts shall be appropriately calculated and released to the petitioner within a period of 6 weeks from the date of receipt of copy of this

order. The impugned notice of demand is quashed and the writ petition is allowed on the above terms.