Devendra Kumar Vs Steel Authority of India Limited

W.P.(S) No. 4703 of 2009

Court: Jharkhand High Court

Date of Decision: July 18, 2014

Acts Referred:
Payment of Gratuity Act, 1972 â€" Section 4(6)

Citation: (2014) 07 JH CK 0087

Hon'ble Judges: Aparesh Kumar Singh, J

Bench: Single Bench

Advocate: Ram Kishore Prasad and Praful Jojo, Advocate for the Appellant; Rajiv Ranjan, Shresth Gautam and Piyush Chitresh, Advocate for the Respondent

Judgement

Aparesh Kumar Singh, J.
Heard counsel for the parties.

2. The writ petition was filed by the petitioner who has retired from Bokaro Steel City on 30th June 2003, seeking for the following relief(s).

(i) to pay the Gratuity amount of Rs. 2,67,231/- with 12% interest with effect from 01st July 2003 and adjust the Gratuity amount and interest

therein on the sale of the quarter No. 2274 D-type 4G situated in B.S.L. City, Bokaro.

(ii) to quash the order contained in Memo No. 7562 dated 03rd/12th September 2009 and 23rd September 2009 by which the petitioner has

been directed to vacate the quarter on or before 15th September 2009 earlier allotted to him since 1991.

3. Counsel for the petitioner however, during the course of argument, has straightaway made a submission that the petitioner had earlier moved this

Court in WPS No. 4181/2007 for a direction upon the respondents to consider his representation dated 20th June 2007 filed by the petitioner and

further to pay the Gratuity amount as aforesaid. It is submitted that the representation of the petitioner dated 01st October 2009 (Annexure-8) has

not yet been disposed of by the respondents in spite of the direction passed in the judgment dated 20th May 2009. Respondents should therefore

decide the petitioner'' representation in accordance with law after giving due opportunity to the petitioner. It is further submitted that the respondent

cannot withhold any gratuity which is a statutory right. Reference has been made to the judgment of the Hon''ble Supreme Court in the case of

D.V. Kapoor Vs. Union of India and others, thereof. It is submitted that the gratuity and pension of the employee is a statutory right and

withholding/withdrawal of such gratuity can be made only on the basis of a grave misconduct and irregularity. The petitioner has not been charged

with any grave misconduct or irregularity. Therefore, retention of the gratuity is bad. Further, by referring to the rejoinder to the counter affidavit

filed on 10th March 2014, it has been submitted that in the calculation of penal rent also, a different yardstick has been adopted and there is no

uniformity in the same vis-Ã¯Â¿Â½-vis other similarly situated employees. Counsel for the petitioner therefore submits that the respondents may be

directed to take a decision on his representation and also release the gratuity amount withheld till date. By referring to the supplementary affidavit

filed by the petitioner, counsel for the petitioner submits that the undertaking furnished by the petitioner was only till 31st December 2003 itself and

the respondent should have returned the gratuity amount thereafter.

4. Counsel for the respondent-Bokaro Steel Plant, straightaway brings to the notice of this Court the averments made in paragraph-14 and 15 of

the writ petition where the petitioner is said to have stated that the orders dated 03rd/12th September 2009 and 23rd September 2009 have been

issued by the respondents which is obviously in compliance of the Court''s order which is referred to at para-14 itself. He submits that annexure-6

order dated 03rd September 2009 itself shows that the pending representation of the petitioner has been considered and rejected by giving

specific reasons that the petitioner has been allowed to retain occupation of the quarter on an undertaking executed by him up to 30th June 2005.

After lapse of the period when the petitioner did not vacate the quarter, Eviction Suit was instituted in the Estate Court, BS City for declaration of

the petitioner as an unauthorized occupant and the Estate Court after due compliance of the procedure of law, has passed the judgment dated 12th

May 2006 directing him to vacate the quarter within fifteen days. The petitioner has not complied with the order passed in the aforesaid judgment

and had remained in unauthorized occupation. It has been further observed in the said order that the retention of the amount equivalent to gratuity

was made in order to adjust the house rent, electricity charges and other incidental expenses on the basis of the petitioner''s undertaking and there

is no scheme under which the quarter under occupation could be leased to the petitioner. Pursuant to the said order of 23rd September 2009,

once again petitioner has been directed to vacate the quarter failing which process of law shall be adopted. Counsel for the respondent further

relies upon the a Division Bench judgment rendered by this Court in the case of Bokaro Steel Limited vs. Shri Ram Naresh Singh & others [L.P.A.

No. 15/2013] dated 24th January 2014. By referring to paragraphs-5, 9 and other paragraphs of the judgment, it has been submitted that the

petitioner has also given an undertaking in the same format for retention of the amount equivalent to the gratuity for occupying the quarter after his

retirement. It has been submitted that the learned Division Bench considered the judgments rendered by the Hon''ble Supreme Court and

categorically came to the conclusion that the retention of the amount equivalent to the gratuity, was not in the nature of punishment, rather on

undertaking of the employee himself. It is submitted that in such circumstances, the plea that the gratuity amount cannot be withheld, was rejected

and the judgment of the learned Single Judge to the contrary was set aside. Further reference has been made to the judgment rendered in the case

of Gauri Chakraborty Vs. Tata Iron and Steel Co. Ltd. and Others, to the same effect. Therefore, learned counsel for the respondents has

submitted that the writ petition deserves to be dismissed and the petitioner may be directed to vacate the quarter forthwith.

5. I have heard learned counsel for the parties and gone through the relevant materials on record. The petitioner admittedly had come before this

Court earlier in WPS No. 4181/2007 to direct the respondents to pay the gratuity amount of Rs. 2.67 lakhs (approximately) with 12% interest

with effect from 01st July 2003 and also to direct the respondents to consider his representation. The said writ petition was disposed of by

considering the prayer of the petitioner in the following manner.

This writ petition has been preferred for issuance of an appropriate writ, order of direction to the respondents to consider the representation dated

20.6.2007 filed by the petitioner. The further prayer is for a direction to pay the gratuity amount Rs. 2,67,231/- with 12% interest w.e.f. 1.7.2003

and adjust all the gratuity amount and interest therein on the sale of quarter No. 2274 D-Type 4G situated in B.S.L. City, Bokaro, Jharkhand.

The main prayer of the petitioner is to dispose of his pending representation which was lying before the authority concerned.

Considering the aforesaid facts and circumstances of the case, it will be in the interest of justice to direct respondent No. 2 to take a decision in this

regard in accordance with law and communicate it to the petitioner within a period of three months from the date of receipt/production of a copy of

this order.

This writ petition is accordingly disposed of.

6. From the said judgment, it is obvious that the petitioner''s prayer was to dispose of his pending representation lying before the authority

concerned. Respondent, in compliance of the judgment dated 20th May 2009 passed in the petitioner''s case, have rejected the petitioner''s

representation taking note of all the relevant facts such as, that the petitioner himself had given undertaking to retain the quarter in question. After

the permission to retain the quarter up to 30th June 2005 lapsed, respondent initiated eviction proceeding before the Estate Court in which the

judgment was also passed on 12th May 2006 directing him to vacate the quarter. The order at annexure-6 also indicates that the amount

equivalent to the gratuity was retained to adjust the house rent, electricity charges and other incidental expenses on the petitioner''s undertaking and

that, there was no scheme under which the quarter could be leased out to him. Contention of the petitioner that his representation (Annexure-8)

has not been decided by the respondent, is therefore not correct.

7. From perusal of the supplementary affidavit to the I.A. No. 1359/2014 filed by the respondents for vacation of the interim order dated 15th

October 2009 passed earlier in the instant case, it is evident that the petitioner had himself given such an undertaking in the same format as has

been quoted at paragraph-9 of the judgment rendered by the learned Division Bench of this Court in the case of Bokaro Steel Limited (supra). The

petitioner apparently had continued beyond the period of permission which he was granted to retain the official quarter and in the proceeding

before the Estate Court, an order of eviction was also passed on 12th May 2006 itself against the petitioner. The petitioner apparently has

remained in the official quarter after his retirement on 30th June 2003, till date. Learned Division Bench of this Court in the judgment rendered in

the case of Bokaro Steel Limited (supra) i.e. in the case of present respondent themselves, and in relation to retention of the official quarter by an

employee of the respondents, had the occasion to consider the nature of the undertaking furnished in the light of the provisions of the Payment of

Gratuity Act. After considering the judgment rendered by the Hon''ble Supreme Court which have been referred to therein, the learned Division

Bench came to the definite conclusion that there was no illegality in retention of the amount equivalent to the gratuity by the employer due to the

fact that the employee had himself signed an agreement authorizing the employer to retain the said amount for retention of the quarter and payment

of rent thereof. Para-13 of the said judgment reads as under:

13. In the instant case, gratuity is withheld not as a measure of penalty or punitive. Section 4(6) of the Act will come into play only if the payment

of gratuity had been withheld as a measure of punishment. As pointed out earlier, gratuity is withheld on account of the respondent''s voluntarily

agreeing to offer the gratuity amount as security deposit for retention of the quarters after his retirement. The payment of gratuity amount which was

offered as security could be refunded only on vacation of quarters and after deduction of all the necessary dues like rent, damage charges,

electricity etc. Having voluntarily agreed to put an amount equivalent to gratuity as security deposit, the respondent cannot contend that the

circumstances in Section 4(6) of the Act had not arisen.

8. Judgments rendered by the Hon''ble Supreme Court in the case of Krishna Bahadur Vs. Purna Theatre and Others, , in the case of Wazir

Chand Vs. Union of India (UOI) and Others, and in the case of Secretary, O.N.G.C. Ltd. and Another Vs. V.U. Warrier, were also considered

by the learned Division Bench in coming to such a conclusion.

9. In the wake of the aforesaid legal position, the judgment relied upon by the petitioner in the case of D.V. Kapoor (supra), would not apply to

the petitioner''s case, as withholding of the gratuity of the petitioner on his own undertaking, was not as a measure of punishment but by way of

voluntary act on the part of the petitioner.

10. In the aforesaid facts and circumstances of the case, the petitioner has failed to make out any case for interference in the instant writ petition.

The writ petition is accordingly dismissed. The interim order dated 15th October 2009 stands vacated. Respondents are at liberty to take steps for

eviction of the quarter in question in accordance with law.