

Sheela vs Delhi Cantonment Board on 12 January, 2021

Author: V. Kameswar Rao

Bench: V. Kameswar Rao

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ W.P.(C) 9277/2020

SHEELA Petitioner
Through: Mr. Shekhar Nanavaty, Adv.

versus

DELHI CANTONMENT BOARD Respondent
Through: Mr. Ankur Mishra, Adv. &
Mr. Tarveen Singh, Adv.

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO
ORDER

% 12.01.2021 This matter is being heard through video-conferencing.

1. The present petition has been filed by the petitioner with the following prayers:

"In facts and circumstances stated herein above, it is therefore most respectfully prayed that this Hon'ble Court may kindly be pleased to:

(a) Issue a Writ of Mandamus thereby directing the respondent release the pension and other benefits including gratuity to the petitioner herein.

(b) Issue a Writ of Mandamus thereby directing the respondent to release provisional pension in favour of the Petitioner till the disposal of the present Writ Petition.

(c) Issue such other further writ, order or direction, which this Hon'ble Court may deem fit and proper under the facts and circumstances of the case."

2. The facts as noted from the petition are that the husband of the petitioner, who was working as Class IV employee with the respondent, died while in service on December 26, 2008. On his death, the petitioner was appointed in the respondent department. On October 16, 2009, the petitioner was allotted the same quarter which was allotted to her husband i.e. H.No.6 Pakki Line, Village Jharera, Delhi Cantt. The petitioner retired from the services of the respondent on August 31, 2016.

3. Pursuant to the retirement, the respondent on September 06, 2016 had released an amount of Rs.3,83,994/- against the EPF contribution. However, they did not release the pension and other

retiral benefits payable to the petitioner. Till the filing of the petition, the position remained the same, inasmuch as the respondent neither released the pension / terminal benefits nor initiated any action against the petitioner under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971.

4. It is the contention of the learned counsel for the petitioner that in the absence of any statutory rule, the respondent could not have withheld the pension / terminal benefits of the petitioner. He has relied upon the judgment of the Supreme Court in the case of State of Jharkhand and Ors. v. Jitendra Kumar Srivastava and Ors., 2013 (12) SCC 210 and the judgment of this Court in Texmaco Limited v. Roshan Singh and Ors., (2001) Volume 2 LLJ 982 Delhi in support of his submissions.

5. A short affidavit has been filed by the respondent and so contended by its counsel that the husband of the petitioner was employed with the respondent as a Sanitary Guide and he passed away on December 26, 2008 while in service. During his service, the Cantonment Fund Property No. Quarter No.6, Village Jharera, Delhi Cantonment Delhi-110010 was allotted to him.

6. According to the counsel, the allotment letter issued to the husband of the petitioner clearly stated that he has to handover the vacant possession of the quarter when he ceases to be in the service of the respondent. After the death of her husband, the petitioner was, vide letter dated September 14, 2009, of the respondent, appointed in service of the respondent, and was allotted the same quarter, on the same terms of allotment as previously allotted to her husband, including that she would hand over the possession of the quarter, upon cessation of her service under the respondent.

7. A reference is made in the counter affidavit about a Public Interest Litigation filed by one Arpit Bhargava titled as Arpit Bhargava & Anr. v. North Delhi Municipal Corporation & Ors., wherein the Division Bench directed the respondents therein including the respondent herein to implement the action plan formulated by the each local bodies on the Seismic Structural Stability of buildings. In the light of Section 297 of the Cantonments Act, 2006, the Board vide its Resolution No. 33 dated March 21, 2020 resolved to demolish staff quarters at Village Jharera, Delhi Cantt on account of them being in a dilapidated condition. A reference is also made to a suit filed by the petitioner being Civil Suit No. 299 of 2020 titled as Sheela v. Delhi Cantonment Board before the Patiala House Court District Courts Delhi, however, no notice has been issued to the respondent in the said suit.

8. It is further stated that the post-retirement benefits of the petitioner have been withheld in view of the guidelines / directions issued by the Director General Defence Estate, Ministry of Defence on May 21, 1993, wherein it is directed to withhold the post-retirement benefits of the employees, who do not vacate and handover the peaceful possession of the official accommodation allotted to them during their employment period.

9. Mr. Ankur Mishra, learned counsel appearing for the respondent has heavily relied upon the said instructions to contend that there is a justification for the respondent not to release the retiral benefits of the petitioner, on not vacating the official accommodation allotted to her.

10. He has also stated that a notice under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 has since been issued to the petitioner, whereby the respondent has initiated eviction proceedings against the petitioner in respect of quarter in question.

11. Having heard the learned counsel for the parties, the issue which arises for consideration is whether the respondent could have withheld the retirement benefits of the petitioner on the ground that she has not vacated the quarter allotted to her. Learned counsel for the petitioner has stated that there are no statutory rules which permit the respondent to withhold the retiral dues of the allottee on not vacating the quarter, so allotted. He has heavily relied upon the judgment of the Supreme Court in the case of State of Jharkhand and Ors. (supra) wherein paras 8, 16 & 17 the Supreme Court has stated as under:

"8. It is an accepted position that gratuity and pension are not the bounties. An employee earns these benefits by dint of his long, continuous, faithful and un-blemished service. Conceptually it is so lucidly described in D.S. Nakara and Ors. Vs. Union of India; (1983) 1 SCC 305 by Justice D.A. Desai, who spoke for the Bench, in his inimitable style, in the following words:

".....The antiquated notion of pension being a bounty a gratuitous payment depending upon the sweet will or grace of the employer not claimable as a right and, therefore, no right to pension can be enforced through Court has been swept under the carpet by the decision of the Constitution Bench in Deoki Nandan Prasad v. State of Bihar and Ors.[1971] Su. S.C.R. 634 wherein this Court authoritatively ruled that pension is a right and the payment of it does not depend upon the discretion of the Government but is governed by the rules and a Government servant coming within those rules is entitled to claim pension. It was further held that the grant of pension does not depend upon any one's discretion. It is only for the purpose of quantifying the amount having regard to service and other allied matters that it may be necessary for the authority to pass an order to that effect but the right to receive pension flows to the officer not because of any such order but by virtue of the rules. This view was reaffirmed in State of Punjab and Anr. V. Iqbal Singh (1976) IILLJ 377SC. It is thus hard earned benefit which accrues to an employee and is in the nature of "property". This right to property cannot be taken away without the due process of law as per the provisions of Article 300 A of the Constitution of India.

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16. The fact remains that there is an imprimatur to the legal principle that the right to receive pension is recognised as a right in "property". Article 300A of the Constitution of India reads as under:

300A Persons not to be deprived of property save by authority of law.-No person shall be deprived of his property save by authority of law.

Once we proceed on that premise, the answer to the question posed by us in the beginning of this judgment becomes too obvious. A person cannot be deprived of this pension without the authority of law, which is the Constitutional mandate enshrined in Article 300A of the Constitution. It follows that attempt of the Appellant to take away a part of pension or gratuity or even leave encashment without any statutory provision and under the umbrage of administrative instruction cannot be countenanced.

17. It hardly needs to be emphasized that the executive instructions are not having statutory character and, therefore, cannot be termed as "law" within the meaning of aforesaid Article 300A. On the basis of such a circular, which is not having force of law, the Appellant cannot withhold-even a part of pension or gratuity. As we noticed above, so far as statutory rules are concerned, there is no provision for withholding pension or gratuity in the given situation. Had there been any such provision in these rules, the position would have been different."

(emphasis supplied)

12. Reliance is also placed on the judgment of this Court in the case of Texmaco Limited (supra) wherein this Court has in paras 28 & 36 held as under:

"28. The learned counsel for the appellant in reply to the submissions of the learned counsel for the respondent placed reliance on a large number of cases. The learned counsel for the respondent in order to strengthen his submission to demonstrate that the gratuity is not dependent on vacating the government accommodation, he placed reliance on various judgments. In R. Kapur Vs Director of Inspection (Painting and Publication) Income Tax and another; (1194) 6 Supreme Court Cases 589. While relying on the judgment in 'State of Kerala Vs. M. Padmanabhan Nair;

' stated that "pension and gratuity are no longer any bounty to be distributed by the Govt. to its employees on their retirement out have become, under the decisions of this Court, valuable rights and property in their hands and any culpable delay in settlement and disbursement thereof must be visited with the penalty of payment of interest at the current market rate, i.e. 18% till actual payment". The Court observed that gratuity is not dependent on vacating the government accommodation and not paying damages levied under relevant rules to other State.

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36. We have carefully considered the provisions of the Payment of Gratuity Act, its aims and objects and cases cited at bar. From the aims and objects of the Gratuity Act, it is abundantly clear that the legislature did not want that the gratuity amount should be withheld for any reason except for the reasons specifically incorporated in the Act. The Courts have to translate the intention of the legislature. This Act has been enacted as a welfare legislation. There are some cases where the Courts have taken the view that the amount of gratuity can be withheld even for non-vacation of the

quarter. But in view of the number of direct and categorical judgment of the Apex Court that the Payment of Gratuity Act is a welfare legislation, the amount of payment of gratuity cannot be withheld for non-vacation of the quarter. It may be pertinent to mention that the appellant has taken separate proceedings of eviction in this case and in other connected cases and those cases are pending in various courts."

Further, the Supreme Court in the case of Secretary, ONGC Ltd. and Anr. v. V.U. Warriar, (2005) 5 SCC 245 had observed, "it is no doubt true that pensionary benefits, such as gratuity, cannot be said to be "bounty". Ordinary, therefore, payment of benefit of gratuity cannot be withheld by an employer." The same principle was relied upon by a Coordinate Bench of this Court in the judgment given in the case of North Delhi Municipal Corporation v. Devi Dutt Sharma, 2015 SCC OnLine Del 11414.

13. Insofar as the guidelines / directions issued by the Director General Defence Estate, Ministry of Defence on May 21, 1993 which I have referred above are concerned, they are in the nature of administrative instructions without having the statutory force. Suffice to state that the law on the subject is very clear in terms of the judgments referred above. In the absence of any statutory rules, the respondent could not have withheld the retiral benefits of the petitioner on the ground that the petitioner has not vacated the quarter allotted to her. The case of the petitioner is squarely covered by the said judgments. In the given facts, the present petition is liable to be allowed. It is ordered accordingly. The respondent is directed to release the pensionary / terminal benefits to the petitioner, as due and payable to her on her retirement within a period of eight weeks from today.

14. It is made clear that this Court has not expressed itself on the proceedings initiated by the respondent under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971.

15. The petition is disposed of. No costs.

V. KAMESWAR RAO, J JANUARY 12, 2021/aky