

R. Kapur vs Director Of Inspection (Painting And ... on 29 September, 1994

Equivalent citations: JT1994(6)SC354, (1995)ILLJ884SC, 1994(4)SCALE349, (1994)6SCC589, (1995)1UPLBEC89, AIRONLINE 1994 SC 267

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Bench: M.N. Venkatachaliah, S. Mohan

JUDGMENT

S. Mohan, J.

1. Leave granted.
2. The facts in brief in this appeal are as under:
3. The appellant retired as Director General of Income Tax on 28.2.1986. He was informed that his payment of gratuity could not be made till the receipt of 'No Demand Certificate' from the Directorate of Estates.
4. While he was working in Delhi, he occupied a pooled Central Government accommodation. The licence fee was fixed at Rs. 88 per month. The rules relating to charging of licence fee were amended in June 1976. So, he had to pay damages for use and occupation of the accommodation equal to the market licence fee as might be determined by the Government from time to time. In May 1979, appellant was transferred out of Delhi. However, he continued to retain the official residence notwithstanding the fact that the allotment was cancelled from 1.7.1979. He was re-transferred to Delhi in 1983 and the allotment was regularised. During the period of his unauthorised occupation, proceeding under Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (hereinafter referred to as 'the Act'), the Estate Officer levied damages against the appellant. Against this order of levy of damages, an appeal was preferred to the District Judge. By order Dt. 25.7.1984, the damage came to be reduced from Rs. 1070/- to Rs. 176/-.
5. During the pendency of the appeal before the District Judge under the Act, the appellant preferred Civil Writ Petition No. 665 of 1984 in the High Court of Delhi challenging the recovery from him for the period 1.1.1976 to August 1979. By an order dated 9.8.1984, the High Court took the view that it was open to the appellant to approach the department concerned inasmuch as the damages have been reduced to Rs. 176 per month by the District Judge in appeal. Notwithstanding

these two proceedings since the Directorate of Estate did not order the refund, the appellant wrote a letter dated 19.12.1984 requesting orders be passed in relation of refund. There was no response. Without deciding the same and refusing to issue a No Demand Certificate if the appellant's gratuity was withheld, the appellant would be entitled to interest at the rate of 18% per annum. On these allegations, he moved an application under Section 19 of the Administrative Tribunals Act, 1985 before the Central Administration Tribunal, Principal Bench, New Delhi in O.A. No. 399 of 1987. The respondent contested the same stating that the appellant ought to have vacated the Government accommodation allotted to him by 31.12.1975, that he did not do. Therefore, he was informed that he would be charged market rent w.e.f. 1.1.1976. When he was transferred to Meerut in June, 1979, he ought to have vacated the premises within two months from the date of transfer, even this was not done. With effect from 1.9.1979 for his unauthorised occupation, he became liable to pay damages under the Allotment Rules for overstay. The Estate Officer by his order dated 12.3.1983 passed an order for damages. That, however, came to be reduced to Rs. 176 per month. That has not been cleared. Therefore, the final 'No Demand Certificate' could not be issued. It is under these circumstances, the gratuity came to be withheld.

6. The Tribunal on a consideration of the above held that death-cum-retirement gratuity (hereinafter referred to as 'D.C.R.G.') could not be withheld merely because the employee had not vacated the allotted premises during the course of his employment. Inasmuch as the appellant continued to retain the allotted residence even after retirement, interest at the rate of 10% could be paid to the appellant.

7. As regard the refund of the excess damages i.e. Rs. 1070 less Rs. 176 for the period 1.10.1979 to 20.11.1981, it was directed to be refunded and the recovery of damages could be made under Fundamental Rule 48A(iv)(c)(ii)(8).

8. In this appeal before us the appellant urges that he would be entitled to 18% interest at least in view of judgment of this Court in *State of Kerala and others v. M. Padmanabhan Nair*. Relying on this ruling, it is submitted that there is unjustified culpable delay in issuing the No Demand Certificate. The Tribunal having held that D.C.R.G. cannot be withheld because of the pendency of the claim for damages should have awarded interest at the rate of 18% per annum.

9. The respondent has not entered appearance.

10. This Court in *M. Padmanabhan Nair's case* (supra) has held as under: "Tension and gratuity are no longer any bounty to be distributed by the Government to its employees on their retirement but 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 rates till actual payment."

11. The Tribunal having come to the conclusion that D.C.R.G. cannot be withheld merely because the claim for damages for unauthorised occupation is pending, should in our considered opinion have granted interest at the rate of 18% since right to gratuity is not dependent upon the appellant vacating the official accommodation. Having regard to these circumstances, we feel that it is a fit

case in which the award of 18% is warranted and it is so ordered. The D.C.R.G. due to the appellant will carry interest at the rate of 18% per annum from 1.6.1986 till the date of payment. Of course this shall be without prejudice to the right of the respondent to recover damages under Fundamental Rule 48A. Thus, the civil appeal is allowed. However, there shall be no order as to costs.