

Janak Raj Kapuria and Ors. v. The State of Punjab through Secretary to Government, Punjab and Ors. (G. R. Majithia, J.)

Before G. R. Majithia, J.

JANAK RAJ KAPURIA AND ORS.,—*Petitioners.*

versus

THE STATE OF PUNJAB, THROUGH SECRETARY TO GOVERNMENT, PUNAJB AND ORS.,—*Respondents.*

Civil Writ Petition No. 527 of 1986.

June 20, 1989.

Constitution of India, 1950—Art. 14, 226—Pension—Determination of—Pension whether right to property—writ of Mandamus—Writ of Prohibition—Issuance of such Writs—Competency of Writ against a Party not impleaded.

Held, that the pension is a right to property and a Government servant cannot be deprived of his right, saved by legislation, which, too, has to satisfy the test of Article 14 of the Constitution. The petitioner's entitlement for pension has to be determined under the service rules and they cannot be deprived of this right. Mandate cannot be issued since the State of Haryana has not been impleaded as a party-respondent to the petition. (Para 5)

Held, that the writ of prohibition can be issued to interdict an authority when it is proceeding contrary to law. The purpose is preventive. In the instant case, the authorities are proceeding under the Act and it cannot be urged that they are acting contrary to law. Interdiction is not required in the instant case. Moreover, issuance of high prerogative writs is discretionary. The conduct of the party can disentitle it from the relief. (Para 6)

Writ Petition under Articles 226/227 of the Constitution of India praying that this Hon'ble Court may be pleased to issue :

- (a) *appropriate writ, order or direction commanding upon the respondents to release the gratuity of the petitioners and also sanction commutation pension benefits alongwith interest at market rate;*
- (b) *direct respondents to stay the vacation proceedings till the claims of pension and pensionary benefits are settled;*
- (c) *direct respondent No. 2 to pay back the excess rent recovered from the petitioners beyond double of the actual rent;*
- (d) *it may further direct that respondent No. 2 should implement its decisions dated 3rd April, 1985;*

- (e) grant any other appropriate relief deemed fit and proper in the circumstances of the case;
- (f) cost of the petition be awarded;
- (g) Advance notices to the respondents may be dispensed with.

It is further prayed that pending decision of the writ petition, the vacation proceedings against the petitioners before respondent No. 3 be stayed forthwith.

S. D. Bansal, Advocate, for the Petitioners.

N. S. Bawa, Advocate, for Arun Mehra, Advocate, for the Respondents.

JUDGMENT

G. R. Majithia, J.

(1) The petitioners have approached this Court for issuance of a mandate to respondent No. 2 to release the gratuity and other pensionary benefits to them. They also want a declaration that the eviction proceedings commenced against them by respondent No. 2 under the Punjab Public Premises (Eviction of Unauthorised Occupants) Act (for short 'the Act') are illegal and respondents Nos. 2 and 3 be restrained from recovering excess rent and the recovery already made be refunded to them.

(2) The facts; the petitioners were the employees of respondent No. 2, Bhakra Beas Management Board. They were allotted residential accommodation as per the terms and conditions of their services. They retired from service and the dates of their retirement are as under :—

Sr. No.	Name of retiree	Date of retirements
1.	Janak Raj Kapuria	30-11-1983
2.	Ram Lal Gupta	31-5-1982
3.	Narinder Nath Seth	28-2-1983
4.	Harbans Singh	30-11-1984
5.	Nirmal Singh	30-11-1982
6.	Balbir Singh	31-1-1985
7.	Surain Singh	31-12-1983
8.	Krishan Lal Sharma	30-6-1981
9.	Dharam Bir Sethi	30-11-1982
10.	H. R. Bhalla	30-6-1984
11.	Jagdish Ram	30-4-1985
12.	Bachan Singh	31-1-1983
13.	Paras Ram	31-12-1980
14.	Mohinder Singh	31-12-1984
15.	Hari Krishan	30-9-1983
16.	Ved Parkash Sharma	31-12-1985

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(3) After their retirement, they were not granted gratuity or pension. Under the Punjab Civil Service Rules, Vol. II, which was applicable to them, it is incumbent for the employer to determine the gratuity and pension and release the same. The petitioners did not vacate the residential quarters which were allotted to them when they were in service. Proceedings under the Act for recovery of damages for unauthorised use and occupation of public premises were initiated against them which were not warranted.

(4) On behalf of the respondents, respondent No. 2 filed the written statement, *inter alia*, pleading that on the retirement of the petitioners, pension papers were sent to the respective parent States of Punjab and Haryana and the pension has to be sanctioned by the respective States. Gratuity could not be released for want of 'no demand certificate' from the petitioners. The petitioners could not retain the Government accommodation after the expiry of one month from the date of retirement. Rule 5.51-A of the Punjab Civil Services, Vol. I, Part-1, reads as under;

"If a Government employee to whom a residence is allotted dies, is dismissed from the Services or retires from the service, the allotment to him of the residence shall be cancelled, with effect from one month after the date of his death, dismissal or retirement, as the case may be or with effect from any date after such death, dismissal or retirement on which the residence is actually vacated, whichever is earlier."

And it is mandatory for the employee to vacate the public premises. They did not vacate it. Proceedings for recovery of possession and damages of use and occupation were correctly initiated under the Act. The gratuity will be released on furnishing a no demand certificate after vacation of the quarters by the petitioners and payment of damage charges for the period of unauthorised occupation of the public premises as well as water and electricity charges. It was further pleaded that since the petitioners did not vacate the quarters allotted to them, the arrears of damage charges in some cases mounted to thousands of rupees and these will continue mounting till the quarters are vacated by the petitioners and it was in these circumstances that 'no demand certificate' could not be issued by the Board.

(5) There is no dispute that pension is a right to property and a Government servant cannot be deprived of his right, saved by legislation, which, too, has to satisfy the test of Article 14 of the Constitution. The petitioners' entitlement for pension has to be determined under the statutory rule applicable to them. The Board has submitted that the petitioners were the permanent employees of the State of Punjab or Haryana and this is so pleaded by the petitioners also. It was stated in para No. 1 as under :

“That the petitioners are retired employees from the States of Punjab and Haryana, permanently residing at Nangal Township, as such, are competent to present this writ petition in this Hon'ble Court.”

As observed earlier, the petitioner's entitlement for pension has to be determined under the service rules and they cannot be deprived of this right. Mandate cannot be issued since the State of Haryana has not been impleaded as a party-respondent to the petition. As per allegations made by the petitioners, they were the employees of the States of Punjab and Haryana. It is not stated in the petition as to which of the petitioners was the employee of the State of Punjab or Haryana. The petitioners are permitted to move this Court by a separate petition for the release of pensionary benefits by the respective States. No action can be taken since the necessary party is not before the Court and the correct particulars of the petitioners have not been given to show as to who are the employees of State of Punjab and who are of the State of Haryana. Thus, this relief is declined in the instant petition.

(6) As regards the second relief is concerned the conduct of the petitioners disentitle them from moving this Court. At the hearing, Law Officer of the Board brought to my notice that the order of eviction and for recovery of damages was passed by respondent No. 2 against the petitioners on October 17, 1986, but the order remained uncomplished. Some of the petitioners moved the Civil Court in a suit for declaration that the Board had no right to evict them or recover damages under the Act and along with the suit, an application under Order 39 rules 1 and 2 of the Code of Civil Procedure was also filed. This application was declined by the Subordinate Judge but some of the petitioners took the matter to the District Judge, Ropar, and obtained an order restraining the Board from dispossessing them from the Government quarters. The Law Officer

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further brought to my notice that more than 50 per cent of the employees of the Board will retire this year and new incumbents have to be appointed and residential accommodation will be required for providing them shelter. Residential colony was establish to provide residential accommodation to the employees of the Board. The petitioners are putting all obstacles in the way of the Board for recovering possession. The Law Officer further submitted that for want of 'no demand certificate', gratuity could not be released. The petitioners want this Court to issue a writ of prohibition restraining the Board from effecting recoveries under the Act. The writ of prohibition can be issued to interdict an authority when it is proceeding contrary to law. The purpose is preventive. In the instant case, the authorities are proceeding under the Act and it cannot be urged that they are acting contrary to law. Interdiction is not required in the instant case. Moreover, issuance of high prerogative writs is discretionary. The conduct of the party can disentitle it from the relief. As stated above, some of the petitioners retired in 1980. Still they are illegally occupying the Government accommodation to which they are not entitled to. The authorities are justified in refusing to grant 'no demand certificate' and till the certificate is granted, they are not entitled to the release of gratuity.

(7) For the reasons aforesaid, except where the rights of the petitioners have been safeguarded, this petition is dismissed. However, I leave the parties to bear their own costs.

S.C.K.

Before N. C. Jain, J.

REWATI, SON OF RATTAN LAL, AND OTHERS,—*Appellants.*

versus

THE STATE OF HARYANA THROUGH THE LAND ACQUISITION COLLECTOR, FARIDABAD,—*Respondent.*

Regular First Appeal No. 1497 of 1982.

11th July, 1989.

Land Acquisition Act (Act 1 of 1989) Sections 18 and 25—Reference—Power of the Civil Court to determine compensation—Technical view should not be taken by Civil Court—Principles of law stated.