

A SECRETARY, O.N.G.C. LTD. AND ANR.

v.

V.U. WARRIER

APRIL 20, 2005

B [RUMA PAL AND C.K. THAKKER, JJ.]

Service Law :

C *Gratuity—Withholding of—Respondent-officer unauthorizedly occupied residential quarter allotted to him even after his retirement—Penal charges payable by him for such unauthorized occupation—Appellant-employer deducted amount towards such charges from gratuity payable to respondent-employee—Validity of—Held, valid—In exercise of Regulation 5 of the 1969 Regulations, Appellant could recover its dues from any officer without his consent from gratuity—In the facts and circumstances, the action cannot be said to be arbitrary, unlawful or unreasonable—High Court erred in interfering under Art. 226 of the Constitution—Oil and Natural Gas Commission (Death, Retirement and Terminal Gratuity) Regulations, 1969—Regulation 5—Payment of Gratuity Act, 1972—Section 2(e)—Constitution of India, 1950—Article 226—Ambit and scope of.*

E **Respondent-officer unauthorizedly occupied residential quarter allotted to him even after his retirement. Penal charges were payable by him for such unauthorized occupation. Appellant-employer deducted amount towards such charges from gratuity payable to respondent-employee. The question which arose for consideration in the present**

F **appeals is whether such action on part of Appellant-employer is valid.**

Allowing the appeals, the Court

G **HELD : 1.1. Pensionary benefits, such as gratuity, cannot be said to be ‘bounty’. Gratuity is earned by an employee for long and meritorious service rendered by him. Ordinarily, therefore, payment of benefit of gratuity cannot be with held by an employer. [706-D]**

H **1.2. In the instant case, however, in exercise of statutory powers under Section 32(1) of the Oil and Natural Gas Commission Act, 1959, the Oil and Natural Gas Commission (Death, Retirement and Terminal**

Gratuity) Regulations, 1969 have been framed by the Appellant-Commission. Regulation 5 makes it clear that the Commission has right to effect recovery of its dues from any officer without his consent from gratuity. It cannot be said that the Commission had no right to withhold gratuity by deducting the amount which is found 'due' to Commission and payable by the respondent-employee towards penal charges for unauthorized occupation of the residential quarter allotted to him.

[706-E; 707-A-C-D]

Sukhdev Singh v. Bhagatram Sardar Singh Raghuvanshi and Anr., [1975] 1 SCC 421, followed.

Garment Cleaning Works v. Its Workmen, [1962] 1 SCR 711; *Calcutta Insurance Co. Ltd. v. Their Workmen*, [1967] 2 SCR 596; *Jarnail Singh v. Secretary, Ministry of Home Affairs and Ors.*, [1993] 1 SCC 47 and *Wazir Chand v. Union of India and Ors.*, [2001] 6 SCC 596, relied on.

R. Kapur v. Director of Inspection(Painting & Publication) Income Tax and Anr., [1994] 6 SCC 589 and *Gorakhpur University and Anr. v. Shilla Prasad Nagendra (Dr.) and Ors.*, [2001] 6 SCC 591, distinguished.

O.P. Bhandari v. Indian Tourism Development Corporation Ltd. and Ors., [1986] 4 SCC 337 and *State of Kerala v. M. Padmanabhan Nair*, [1985] 1 SCC 429, referred to

2. Clause (e) of Section 2 of the Payment of Gratuity Act defined "employee", from which it is clear that a person can be said to be an "employee" if his wages did not exceed Rs.2500 per month. According to the Commission, the salary of the respondent was more than Rs.2500 and hence, he could not be held "employee" covered by the definition. Though the definition "employee" was no doubt amended subsequently and the provision as to amount of wages had been deleted, but the amendment was made in 1994 and was not retrospective in nature and thus was not applicable in the case of the respondent who retired in 1990.

[707-E-G-H, 708-A]

Union of India v. All India Services Pensioners' Association and Anr., [1988] 2 SCC 580, relied on.

3.1. The matter can be considered from another angle also. It is well-settled that the jurisdiction of the High Court under Article 226 of the Constitution is equitable and discretionary. The power under that

A Article can be exercised by the High Court “to reach injustice wherever it is found”. The facts of the present case did not deserve interference by the High Court in exercise of equitable jurisdiction under Article 226 of the Constitution. [710-C; 711-C]

B 3.2. The respondent was a responsible officer holding the post of Additional Director (Finance & Accounts). He was, thus, “gold collar” employee of the Commission. In the capacity of employee of the Commission, he was allotted a residential quarter. He reached the age of superannuation and retired after office hours of February 28, 1990. He was, therefore, required to vacate the quarter allotted to him by the Commission. The Commission, as per its policy, granted four months’ time to vacate. He, however, failed to do so. His prayer for continuing to occupy the quarter was duly considered and rejected on relevant and germane grounds. The residential accommodation constructed by him by taking loan at the concessional rate from the Commission was leased to Commission, but the possession of that quarter was restored to him taking into account the fact that he had retired and now he will have to vacate the quarter allotted to him by the Commission. In spite of that, he continued to occupy the quarter ignoring the warning by the Commission that if he did not vacate latest by June 30, 1990, penal rent would be charged from him. Considering all these facts, the High Court was wholly unjustified in exercising extraordinary and equitable jurisdiction in favour of the respondent. It cannot be said that the action of the Commission was arbitrary, unlawful or unreasonable. [711-C-F; 707-C]

F *G. Veerappa Pillai, Proprietor, Sathi Vilas Bus Service, Porayar, Tanjore District, Madras v. Raman & Raman Ltd., Kumbakonam, Tanjore District and Ors., [1952] SCR 583 and Sangram Singh v. Election Commissioner, Kotah and Anr., [1955] 2 SCR 1, relied on.*

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 2766-2767 of 2005.

G From the Judgment and Order dated 15.2.2003 of the Bombay High Court in W.P. No. 3947/94 and R.P.S. No. 33103 of 2003.

B. Datta, Additional Solicitor General, S. Borthakur and Sunil Kumar Jain with him for the Appellants.

H Ashwani Kumar for the Respondent.

The Judgment of the Court was delivered by

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C.K. THAKKER, J. Leave granted.

The present appeals are directed against the judgment and order passed by the High Court of Judicature at Bombay dated February 15, 2003 in Writ Petition No. 3947 of 1994 and also against an order dated January 14, 2004 passed in Civil Application No. 63 of 2003.

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To understand the controversy raised in the appeals, relevant facts in brief may be stated.

The respondent herein - petitioner before the High Court - was in service of Oil and Natural Gas Commission, ("Commission" for short) appellant herein. He was holding the post of Additional Director (Finance and Accounts) prior to his retirement. As an employee of the Commission, he was allotted quarter on December 10, 1982. He retired from service on reaching the age of superannuation with effect from February 28, 1990. It is the case of the appellant that after the retirement, an employee has to vacate the residential accommodation given to him by the Commission. The respondent, therefore, was informed by the Commission that he had to vacate the quarter. It was the policy of the Commission to grant four months' time to retain a quarter by an employee after his retirement. Accordingly, the respondent was asked to handover vacant and peaceful possession of the quarter to the Commission latest by 30th June, 1990. It is an admitted fact that the respondent did not vacate the quarter. It has come on record that he made representations to permit him to continue to occupy the quarter but those representations were rejected. Since the respondent did not vacate the quarter, proceedings were also initiated by the Commission under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. In those proceedings, an undertaking was given by the respondent that he would vacate the quarter latest by May 30, 1991. Pursuant to the said undertaking, the respondent vacated the quarter on May 16, 1991. Eviction proceedings were then dropped.

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The respondent claimed an amount of gratuity payable to him. According to the respondent, he was entitled to Rs. one lakh towards payment of gratuity. The Commission, however, deducted an amount of Rs.53,632 towards unauthorized occupation charges of official accommodation from July 01, 1990 to May 15, 1991 at the rate of Rs.5,100 being 75 per cent of the basic pay of Rs.6,800 per month. According to the respondent, it was not open to

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A the Commission to deduct any amount payable to him towards gratuity. He, therefore, approached the High Court of Judicature at Bombay challenging the action. He prayed for quashing of an order of appropriation of Rs.53,632 as unauthorized occupation charges of official accommodation from July, 1990 to May, 1991 at the rate of Rs.5,100 by permanently restraining the Commission from recovering the said amount. A prayer was also made to direct the Commission to pay the amount of gratuity with interest.

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E An affidavit in reply was filed by the Commission. In the counter, the Senior Deputy Director (Personnel and Administration), stated that the Commission was a statutory Corporation established in 1960 under the Oil and Natural Gas Commission Act, 1959. The said Act was repealed by the Oil and Natural Gas Commission (Transfer of Undertaking and Repeal) Act, 1993. It was stated that the respondent (petitioner before the High Court), had concealed several material facts. He was working as Additional Director and retired at the age of 58 years on superannuation after office hours on February 28, 1990. As Additional Director, he belonged to "gold collar" class of employee as observed by this Court in *O.P. Bhandari v. Indian Tourism Development Corporation Ltd. and Ors.*, [1986] 4 SCC 337. In the capacity of an employee of the Commission and for efficiently discharging his duties, he was allotted accommodation in Building No. D/63, Vidya Vihar, ONGC Colony, Chittaranjan Nagar, Bombay vide allotment letter dated December 10, 1982. The said accommodation was on certain terms and conditions.

Clauses 11 and 12 read as under—

F "Cl.11 If the employee to whom a residence is allotted retires or resigns or is dismissed or removed from service, the allotment shall be cancelled with effect from two months after the date of his retirement, and one month after the date of his resignation, dismissal, or removal as the case may be, or with effect from any date after such dismissal or removal or retirement on which the residence is vacated, whichever is earlier."

G Cl.12 After cancellation of the allotment, if the premises are not vacated, the occupation thereof shall be considered unauthorized, and the ex-allottee shall be liable to pay liquidated damages for occupation of the premises either twice of the standard rent or at the rate of the rent as may be determined by the Commission from time to time."

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It was also stated by the deponent that the Commission had issued Allotment of Residences Instructions, 1970. Clause 14(1) of 1970-Instructions reads as under— A

“After cancellation of the allotment, if the premises are not vacated, the occupation thereof shall be considered unauthorized and the ex-allottee shall be liable to pay liquidated damages for occupation of the premises either at the rate of twice of the standard rent or at the rate of the rent as may be determined by the Commission from time to time.” B

On retirement from the service of the Commission, the respondent was entitled to the following benefits : C

“(i)	Provident Fund	Full Paid	
“(ii)	TTA Advance for settling at Home Town	Rs.17,000	
“(iii)	Leave encashment 253 days	Rs.49,083	D
“(iv)	Gratuity payable under the Commission’s Death-Cum-Retirement payment of Gratuity Regulations 1969, as amended from time to time.	Rs.1,00,000	E

According to the Commission the gratuity payable on the retirement of respondent had been paid and appropriated as under :

Total amount of Gratuity payable under the 1969 Regulations as amended :	Rs.1,00,000	F
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Less Appropriations

(i) Outstanding House Building Advance/Loan as on 28/2/1990	Rs.(-)23,000	G
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(ii) Cumulative overdue interest at 6% p.a. as on 28.2.90	Rs.(-)27,744	
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Net amount payable	Rs.49,256	H
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A	(iii) Permissive occupation of staff accommodation from 1/3/1990 to 30/6/1990 @ Rs.205 p.m. i.e. 205 x 4	Rs. 820
B	(iv) Unauthorised occupancy from 1/7/90 to 16/5/91 @ Rs.5100 p.m. (being 75% of the basic pay of Rs.6800 p.m.) Deficit amount Recoverable	Rs.53,632 (-) Rs.54,452 (-) Rs.5,196

C The Commission was paying 30 per cent basic pay as HRA to those employees who could not be allotted accommodation by the Commission at selected centres like Delhi, Bombay, etc., but used to recover only 7 ½ per cent basic pay as HRA from the employees on allotment of accommodation. In the event of unauthorized occupation of staff accommodation, liquidated damages are recoverable as double the rent i.e. $37\frac{1}{2} \times 2 = 75\%$ of basic pay till the accommodation is vacated by the incumbent. A copy of the office order dated January 30, 1990 was also annexed to the affidavit in reply. It was submitted that though the respondent retired on February 28, 1990 and was allowed four months' time to occupy the quarter as per the policy of the Commission, he failed to vacate the quarter. His prayer for retention of quarter was considered by the Commission but in view of non-availability of quarters to several other employees, the prayer was rejected and the respondent was asked to vacate it. He was also informed that in case, he would not vacate the quarter, penal rent at the rate of 75% of basic salary would be recovered from him. In spite of such communications and letters, the respondent failed to vacate the quarter. The Commission was required to initiate eviction proceedings and only thereafter an undertaking was filed and possession of quarter was given back to Commission. In the circumstances, the Commission was within its power to deduct the amount recoverable from the respondent towards unauthorized occupation of residential quarter from July 1, 1990 till May 15, 1991 and the employee had no reason to make grievance against it.

G It was also the case of the Commission that the respondent was not covered by Payment of Gratuity Act, 1972 as amended from time to time. Statutory regulations framed by the Commission are more liberal and beneficial than the provisions of the Payment of Gratuity Act. It was further stated that the respondent had constructed a flat bearing No. B-209, Dewan Mansion, Plot No. 29/36, Vasai, Bombay by taking concessional loan at the rate of 6%

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per annum from the Commission. The said quarter was leased by him to the Commission at the rate of Rs.880 per month. In view of the retirement of the respondent on February 28, 1990 and in view of the fact that he had to vacate the residential quarter of the Commission, possession of the quarter that belonged to the respondent and let out to the Commission was given back to him on June 3, 1990. For four months from March 1, to June 30, 1990, the respondent was charged nominal rent of Rs.205 per month. Since the respondent did not vacate the quarter, the impugned action of charging penal rent was taken and the amount was appropriated from gratuity benefits payable to the respondent. The said action was legal and valid. It was further stated that there was a list of senior officers waiting for years for allotment of staff accommodation in Bombay. The Commission was paying 30 per cent of basic pay as HRA to twelve officers for non-allotment of residential quarter. Particulars thereof had also been annexed to the affidavit in reply.

At the time of hearing of the petition, an advocate appeared for the respondent (petitioner before the High Court). None, however, appeared for the Commission. According to the High Court, the legal position was no more *res integra* that pension and gratuity were rights accrued in favour of employees on their retirement. Those benefits, therefore, could not be withheld even if an employee unauthorisedly occupied accommodation and was, therefore, liable to pay damages or penal rent under the relevant rules. The only remedy available to the employer was to take appropriate action but the amount of pensionary benefit could not be set off against the so-called dues for unauthorized occupation. The Court also referred to *State of Kerala v. M. Padmanabhan Nair*, [1985] 1 SCC 429, *R. Kapur v. Director of Inspector (Painting & Publication) Income Tax and Anr.*, [1994] 6 SCC 589 and *Gorakhpur University and Ors. v. Shilla Prasad Nagendra (Dr.) and Ors.*, [2001] 6 SCC 591.

The writ petition was accordingly allowed and the following directions were issued by the Court;

“(a) It is declared that appropriation of a sum of Rs.53,637 towards unauthorized occupancy of the official accommodation by the petitioner from 1st July 1990 to 16th May, 1991 at the rate of Rs.5100 per month was illegal. However, this will not preclude the Respondents from proceeding against the petitioner for recovery of due amount of unauthorized occupancy of the official quarter for the period from 1st July 1990 to 16th May, 1991 in accordance with law.

- A (b) The Petitioner is entitled to payment of Rs.49,924 towards gratuity under the relevant Regulations along with interest at the rate of 6% per annum from 1st March 1990 until payment is made. We grant time of two months to Respondent for making the aforesaid payment to the petitioner.
- B (c) Since the respondent have not chosen to appear today at the time of hearing of Writ Petition, we direct the parties to bear costs."

According to the Commission, it was not aware of the decision of the High Court dated 15th February, 2003, since none appeared on behalf of the Commission in the High Court at the time of hearing of the petition and the decision was *ex parte*. It, therefore, made necessary enquiry. As soon as it came to know about the decision of the High Court, it addressed a letter dated May 22, 2003, to the advocate appearing for the Commission and asked him under what circumstances he could not attend the matter which came to be decided *ex parte* against the Commission. The advocate vide his letter dated May 24, 2003 informed the appellant that he had been advised to take rest as he was suffering from Filariasis. According to the appellant, thus, absence of the advocate appearing for the Commission was neither intentional nor deliberate but due to his ill health. The appellant thereafter applied for certified copy of the judgment which was sent to Head Office, Dehradun. Relevant papers were then collected from the office of the advocate. After getting approval from the Head Office, new advocate was appointed on August 11, 2003, who was asked to file Review Petition which was filed on December 12, 2003. There was thus delay of 116 days in filing the review petition. The Division Bench rejected the Review Petition observing that there was no explanation for the period from May 24, 2003 to September 6, 2003. In the opinion of the Court, there was no cause much less sufficient cause for condonation of delay. The review application was, therefore, rejected.

On March 29, 2004, this Court issued notice on the Special Leave Petition as well as on the prayer of interim relief. On October 25, 2004, an order was passed to place the matter for final disposal on any miscellaneous day. The matter was accordingly placed for hearing on January 31, 2005 and remained part heard. On February 4, 2005, the matter was heard and the learned counsel for the parties completed their arguments.

The learned counsel for the appellant contended that the High Court was clearly wrong in allowing the petition and in directing the Commission

to pay the amount of gratuity to the respondent with interest at the rate of 6% per annum. According to the counsel, it was perfectly within the powers of the Commission to deduct the amount of liquidated damages towards unauthorized occupation of quarter by the respondent. Such action cannot be said illegal, unlawful or otherwise improper. The Commission is a statutory Corporation established by an Act of Parliament and in exercise of statutory powers it has framed regulations. Those regulations, therefore, are statutory in character, they are having force of law and are enforceable. It was also submitted that the provisions of Payment of Gratuity Act would not apply to the respondent. The counsel urged that sufficient quarters are not available to the Commission in cities like Delhi and Bombay. If the employees who had been allotted quarters do not vacate even after their retirement, it would create serious problems to the Commission as well as its employees. In the instant case, admittedly the respondent retired on February 28, 1990. He was allowed four months' time up to June 30, 1990 to vacate the quarter. His prayer for retention of quarter was duly considered and rejected expressly informing him that in view of several officers waiting for quarters it would not be possible to accede to the request and he must vacate the quarter by June 30, 1990. He was specifically intimated that in case he did not vacate the accommodation within the stipulated time, penal rent would be charged from him. He ignored all those letters and continued to occupy the quarter. So much so that eviction proceedings had to be initiated against him. It was only thereafter that the respondent gave an undertaking and vacated the quarter. The counsel also submitted that the respondent applied for loan for residential accommodation at concessional rate which was given to him. He had constructed a house. He let that house to the Commission at the rate of Rs.880 per month as against Rs.205 per month which he was paying towards rent. Considering the fact that the respondent had retired on February 28, 1990 and was to vacate the quarter allotted to him by the Commission by June 30, 1990, the possession of the quarter belonged to the respondent and let out to the Commission was given back to him on June 3, 1990. In spite of that, the respondent did not vacate the quarter. In the circumstances, the High Court was wholly wrong in granting relief to the respondent. The High Court was also wrong in not reviewing the order passed *ex parte* observing that no 'sufficient cause' had been made out for condonation of delay. It was, therefore, submitted that the appeal deserves to be allowed by quashing and setting aside the order of the High Court and by upholding the order passed by the Commission.

The learned counsel for the respondent, on the other hand, supported

A the order passed by the High Court. He submitted that as rightly held by the High Court, pensionary and retrial benefits are the "right accrued" in favour of an employee and not in the nature of "bounty". It was, therefore, not open to the Commission to withhold any amount payable to the employee from gratuity and other terminal benefits. The point is covered by several decisions of this Court. Following those decisions, an order was passed which deserves no interference. It was also submitted that the High Court has granted liberty to the Commission by reserving right to the Commission to take appropriate proceedings in accordance with law to recover the amount of unauthorized occupation charges from the respondent. So far as review is concerned, the counsel submitted that according to the High Court there was no sufficient cause for recalling/reviewing the order passed *ex parte* and even that order also cannot be said to be illegal. He, therefore, prayed for dismissal of appeals.

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Having heard the learned counsel for the parties, in our opinion, the appeals deserve to be allowed. It is no doubt true that pensionary benefits, such as gratuity, cannot be said to be 'bounty'. Ordinarily, therefore, payment of benefit of gratuity cannot be withheld by an employer. In the instant case, however, it is the specific case of the Commission that the Commission is having a statutory status. In exercise of statutory powers under Section 32(1) of the Act, regulations known as the Oil and Natural Gas Commission (Death, Retirement and Terminal Gratuity) Regulations, 1969 have been framed by the Commission. In *Sukhdev Singh v. Bhagatram Sardar Singh Raghuvanshi and Anr.*, [1975] 1 SCC 421 the Constitution Bench of this Court held that regulations framed by the Commission under Section 32 of the Oil and Natural Gas Commission Act 1959 are statutory in nature and they are enforceable in a court of law. They provide for eligibility of grant of gratuity, extent of gratuity, etc.

Regulation 5 deals with recovery of dues of the Commission and reads thus :

"Recovery of Dues :

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The appointing authority, or any other authority empowered by the Commission in this behalf shall have the right to make recovery of Commission's dues before the payment of the death-cum retirement gratuity due in respect of an officer even without obtaining his consent or without obtaining the consent of the members of his family in the case of the deceased officer, as the case may be."

The above regulation leaves no room of doubt that the Commission has right to effect recovery of its dues from any officer without his consent from gratuity. In the present case admittedly the respondent retired after office hours of February 28, 1990. According to the Commission, he could be allowed four months' time to occupy the quarter which was granted to him. His prayer for extension was considered and rejected stating that it would not be possible for the Commission to accept the prayer in view of several officers waiting for quarters. He was also informed that if he would not vacate the quarter, penal rent as per the policy of the Commission would be recovered from him. But the respondent did not vacate the quarter. It was only after eviction proceedings were initiated that he vacated the quarter on May 16, 1991. In the circumstances, in our opinion, it cannot be said that the action of the Commission was arbitrary, unlawful or unreasonable. It also cannot be said that the Commission had no right to withhold gratuity by deducting the amount which is found 'due' to Commission and payable by the respondent towards penal charges for unauthorized occupation of the quarter for the period between July 1, 1990 and May 15, 1991.

So far as the Payment of Gratuity Act is concerned, according to the appellant, the said Act was not applicable to the respondent. We are concerned with the position as in 1990. Clause (e) of Section 2 of the Act defined "employee". The said definition read as under :

"S 2(e) - 'employee' means any persons (other than an apprentice) employed on wages, not exceeding *two thousand five hundred rupees per mensem*, in any establishment, factory, mine, oilfield, plantation, port, railway company or shop, to do any skilled, semi-skilled, or unskilled, manual, supervisory, technical or clerical work, whether the terms of such employment are express or implied, but does not include any such person who is employed in a managerial or administrative capacity, or who holds a civil post under the Central Government or a State Government, or who is subject to the Air Force Act, 1950, the Army Act 1950, or the Navy Act, 1957."

(emphasis supplied)

From the above definition, it is clear that a person can be said to be an "employee" if his wages did not exceed two thousand five hundred rupees per month. According to the Commission, the salary of the respondent was Rs.6800 approximately which was more than Rs.2500 and hence, he could not be held "employee" covered by the definition. The definition of

A “employee” was no doubt amended subsequently and the provision as to amount of wages had been deleted. But the amendment was made in 1994 and was not retrospective in nature and thus was not applicable in the case of the respondent who retired in 1990.

B As held by this Court in *Union of India v. All India Services Pensioners' Association and Anr.*, [1988] 2 SCC 580, an incumbent is entitled to those benefits as he could claim on the date of retirement. He could not claim any benefit prior to his appointment or subsequent to his retirement.

C It is well settled that gratuity is earned by an employee for long and meritorious service rendered by him. Gratuity is not paid to the employee gratuitously or merely as a matter of boon. It is paid to him for the service rendered by him to the employer [vide *Garment Cleaning Works v. Its Workmen*, [1962] 1 SCR 711]. In *Calcutta Insurance Co. Ltd. v. Their Workmen*, [1967] 2 SCR 596, after considering earlier decisions, this Court observed that “long and meritorious service” must mean long and unbroken
D period of service meritorious to the end. As the period of service must be unbroken, so must the continuity of meritorious service be a condition for entitling the workman to gratuity. If a workman commits such misconduct as causes financial loss to his employer, the employer would under the general law have a right of action against the employee for the loss caused and making a provision for withholding payment of gratuity where such loss
E caused to the employer does not seem to aid to the harmonious employment of labourers or workmen. The Court proceeded to state that the misconduct may be such as to undermine the discipline in the workers - a case in which it would be extremely difficult to assess the financial loss to the employer.

F In *Jarnail Singh v. Secretary, Ministry of Home Affairs and Ors*, [1993] 1 SCC 47, this Court had an occasion to consider the provisions of the Central Civil Services (Pension) Rules, 1972. The definition of “pension” included gratuity under Rule 3. Rule 9 conferred on the President right to withhold or withdraw pension in certain circumstances. The order was passed against the appellant withholding pension and the entire amount of death-
G cum- retirement gratuity otherwise admissible to him. The direction was given on serious irregularities found to have been committed by the appellant. The appellant challenged that order unsuccessfully before the Central Administrative Tribunal. He, therefore, approached this Court. His contention was that an amount of gratuity could not have been withheld. Negating the
H contention, the Court held that the power to withhold gratuity was conferred

on the President under the relevant rules and hence, such action could not be said to be illegal. According to the Court, there could be adjustment of Government dues against the amount of death-cum-retirement gratuity payable to Government servant. A

The ratio in *R.Kapoor*, in our opinion, does not help the respondent as in that case, the claim for damages for unauthorized occupation against the appellant-retired employee was “pending” and the proceedings were not finally disposed of. In the present case, the facts clearly reveal that the last day of lawful occupation of quarter by the respondent was June 30, 1990 and before that date, the appellant Commission had informed the respondent that his prayer for extension or retention of quarter had not been accepted and he should vacate by June 30, 1990. If he would not vacate the quarter, penal rent would be recovered from him. He did not challenge the action of not extending the period nor the recovery of penal rent. He, therefore, cannot make grievance against the action of the Commission. B C

Similar is the case of *Gorakhpur University*. There retrial benefits were withheld to adjust amount due from the employee but “disputed” by him. This Court noted that the employee was keeping a quarter allotted to him and continued to occupy after retirement. It was, *inter alia*, observed by this Court that after the employee retired, his request and application as per practice for allotment of quarters in the name of his son who was also an employee in the University remained pending and no orders were passed thereon. Moreover, there were resolutions of the University to waive penal rent and such benefits were granted to other employees, but different treatment was shown to him which constituted “hostile discrimination” and the act was thus ‘unreasonable’. Though the employee retired in 1990 and continued to keep the quarter up to 1996, the University did not choose to take any action to evict him. On the contrary, it acquiesced in his occupation “by accepting regularly the normal rent”. Thus, there was lack of *bona fides* on the part of the University. D E F

In *Wazir Chand v. Union of India and Ors.*, [2001] 6 SCC 596, a retired employee continuously kept the quarter occupied unauthorisedly. He was charged penal rent in accordance with rules and after adjustment of dues, balance amount of gratuity was paid to him. He contended that it was bounden duty of the Government not to withhold the gratuity amount. The Court, however, dismissed the appeal observing that it was “unable to accept” the prayer of the appellant. The Court observed that the appellant having G H

A unauthorisedly kept the government quarter was liable to pay penal rent in accordance with rules and there was no illegality in adjusting those dues against death-cum-retirement benefits.

Wazir Chand was considered in *Gorakhpur University* but the Court stated that it was not clear from the facts whether the person was allowed to retain the accommodation on receipt of normal rent as in the University case.

The matter can be considered from another angle also. It is well-settled that the jurisdiction of the High Court under Article 226 of the Constitution is equitable and discretionary. The power under that Article can be exercised by the High Court "to reach injustice wherever it is found". Before more than fifty years, in *G. Veerappa Pillai, Proprietor, Sathi Vilas Bus Service, Porayar, Tanjore District, Madras v. Raman & Raman Ltd., Kumbakonam, Tanjore District and Ors.*, [1952] SCR 583, the Constitution Bench of this Court speaking through Chandrasekhara Aiyer, J., observed that the writs referred to in Article 226 of the Constitution are obviously intended to enable the High Court to issue them "in grave cases where the subordinate tribunals or bodies or officers act wholly without jurisdiction, or in excess of it, or in violation of the principles of natural justice, or refuse to exercise a jurisdiction vested in them, or there is an error apparent on the face of the record, and such act, omission, error, or *excess has resulted in manifest injustice.*"

(emphasis supplied)

Similarly, in the leading case of *Sangram Singh v. Election Commissioner, Kotah & Anr.*, [1955] 2 SCR 1, dealing with the ambit and scope of powers of High Courts under Article 226 of the Constitution, Bose, J., stated-

"That, however, is not to say that the jurisdiction will be exercised whenever there is an error of law. The High Courts do not, and should not, act as Courts of appeal under Art. 226. Their powers are purely discretionary and though no limits can be placed upon that discretion it must be exercised along recognized lines and not arbitrarily; and one of the limitations imposed by the Courts on themselves is that they will not exercise jurisdiction in this class of cases unless substantial injustice has ensued, or is likely to ensue. They will not allow themselves to be turned into Courts of appeal or revision to set right mere errors of law which do not occasion injustice

in a broad and general sense, for, *though no legislature can impose limitations on these constitutional powers it is a sound exercise of discretion to bear in mind the policy of the legislature to have disputes about these special rights decided as speedily as may be. Therefore, writ petitions should not be lightly entertained in this class of case.*

(emphasis supplied).

The above principle has been reiterated and followed by this Court in several subsequent cases.

As already adverted to by us hereinabove, the facts of the present case did not deserve interference by the High Court in exercise of equitable jurisdiction under Article 226 of the Constitution. The respondent-petitioner before the High Court, was a responsible officer holding the post of Additional Director (Finance & Accounts). He was, thus, "gold collar" employee of the Commission. In the capacity of employee of the Commission, he was allotted a residential quarter. He reached the age of superannuation and retired after office hours of February 28, 1990. He was, therefore, required to vacate the quarter allotted to him by the Commission. The Commission, as per its policy, granted four months' time to vacate. He, however, failed to do so. His prayer for continuing to occupy the quarter was duly considered and rejected on relevant and germane grounds. The residential accommodation constructed by him by taking loan at the concessional rate from the Commission was leased to Commission, but the possession of that quarter was restored to him taking into account the fact that he had retired and now he will have to vacate the quarter allotted to him by the Commission. In spite of that, he continued to occupy the quarter ignoring the warning by the Commission that if he would not vacate latest by June 30, 1990, penal rent would be charged from him. In our judgment, considering all these facts, the High Court was wholly unjustified in exercising extraordinary and equitable jurisdiction in favour of the petitioner - respondent herein - and on that ground also, the order passed by the High Court deserves to be set aside.

For the foregoing reasons, the appeals deserve to be allowed and are accordingly allowed. The order passed by the High Court is set aside and the petition filed by the respondent-petitioner is ordered to be dismissed. In the facts and circumstances, however, there shall be no order as to costs.

B.B.B.

Appeals allowed.