

PETITIONER:
ANIRUDH PANDEY

Vs.

RESPONDENT:
THE BIHAR STATE ROAD TRANSPORT CORPORATION & ANR.

DATE OF JUDGMENT 07/12/1994

BENCH:
AGRAWAL, S.C. (J)
BENCH:
AGRAWAL, S.C. (J)
FAIZAN UDDIN (J)

CITATION:
1995 AIR 1129 1995 SCC Supl. (1) 212
JT 1995 (1) 407 1994 SCALE (5)190

ACT:

HEADNOTE:

JUDGMENT:

1. Leave granted.
2. We have heard learned counsel for the parties.
3. Anirudh Pandey, the appellant herein, was employed with the Bihar State Road Transport Corporation, respondent No.1 [hereinafter referred to as 'the Corporation'. While he was thus employed, he was allotted House No. 32772-2 on Road No. 26 at Adityapur Colony in Jamshedpur on June 7, 1970. The said house belongs to the Bihar State Hosing Board [hereinafter referred to as 'the Board']. The appellant retired on attaining the age of superannuation on January 31, 1992. Since he was not paid his post retiral benefits, viz., provident fund, gratuity, etc. by the Corporation he filed a writ petition (C.W.J.C. no 3038/92) in the Patna High Court. The said writ petition was contested by the Corporation. The stand of the Corporation was that the appellant had not vacated the house which was allotted to him while he was in service of the Corporation and that the Corporation was ready to pay all the legal dues of the appellant after he vacates the said quarter. The writ petition was disposed of by the High Court by order dated April 21, 1993 on the view that unless the house was vacated by the appellant he was not entitled to his post-retiral benefits. The High Court directed the Appellant to vacate the house and hand over the vacant possession of the same to the Corporation and that the Corporation, after taking the vacant possession of the house would pay the post-retiral benefits to the appellant within a period of three weeks from the date of the vacation of the house. Feeling aggrieved by the said order of High Court the appellant has filed this appeal.
4. While the matter was pending before this Court, it was pointed out that the allotment of the house which was in occupation of the appellant has been house which was in occupation of the appellant

has been cancelled by the Board and allotment of the house has been made by the Board in favour of Shradha Kumar Pandey, son of the appellant. Notice was, therefore issued to the Board to explain the circumstance in which the said allotment was made. In response to the said notice an affidavit of Shobha Kant Mishra was filed on behalf of the Board. From the said affidavit filed on behalf of the Board it appears that House No. 327/2-2 has been constructed by the Board under the Subsidised Industrial Housing meant for industrial workers. The said scheme envisages (i) sale of houses on hire purchase basis to workers; and (ii) letting out of the houses on rent to the workers. For letting out a house on rent the Scheme provides for allotment of the house to the worker who is required to submit an application through his employer. Although, under the Scheme, the allottee, i.e., the worker, is liable to pay the rent of the house and other rates and taxes payable to the municipality or the Government but these same are required to be paid every month by the employer after deducting the same from the monthly wages of the worker under the Payment of Wages Act. In the affidavit of Shobha Kant Mishra, it is stated that at the end of June, 1992 a sum of Rs. 9,231.85p was due as rent for the house in question and that the Divisional Manager of the Corporation was required to pay the amount but the same having not been paid, the Executive Engineer of the Board, on July 3, 1992, cancelled the allotment of the said house and, thereafter, by letter dated July 31, 1992 the said house was allotted in favour of M/s Ambika Rubber Product, Adiyapur for the residence of their employee, Shradha Kumar Pandey, on rental basis. It is further stated that the said allotment is subject to the condition that the allottee will have to pay the sum of Rs. 9,231.85p, the total arrear against rent till June 1992.

5. The learned counsel for the appellant has submitted that rent of the house was deducted from the salary of the appellant by the Corporation from July 1, 1970 to December 31, 1990 and in spite of such deduction the Corporation failed to deposit the rent with the Board and on account of the said default on the part of the corporation in depositing the rent the allotment of the house was cancelled by the Board and that the appellant cannot be held responsible for the same and that the Corporation cannot withhold the post-retiral benefits of the appellant on the ground on the ground that the appellant had failed to vacate and surrender the house to the Corporation.

6. In our opinion, the said submission of learned counsel for the appellant must be accepted. Since the allotment of the house which was in occupation of the appellant has been cancelled by the Board on account of the failure on the part of the Corporation to pay the rent and other charges for the same it is not open to the Corporation to blame the appellant for not having surrendered the house to the Corporation. In the circumstance the Corporation was not justified in withholding the post-retiral benefits of the appellant on the ground that he has failed to surrender the possession of the house to the Corporation.

7. The appeal is, therefore, allowed, the order passed by the High Court is set aside and the writ petition filed by the appellant is allowed with the direction that the Corporation will pay the post-retiral

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benefits legally payable to the appellant as well as the amount of the house rent deducted from the salary of the appellant which was not paid to the Board. The said dues shall be paid by the Corporation to pay the said dues within

this period, the Corporation would be liable to pay interest @ 15% per annum on the same from the date of expiry of the said period of four months till the said dues are paid. The appellant will be entitled to his costs which is assessed at Rs. 5,000/-.

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JUDIS