

IN THE HIGH COURT OF DELHI AT NEW DELHI

+WP(C) No. 271/2007

Date of Hearing: 01.08.2008

Date of Decision: 20.08.2008

Sh.H.L. Sharma

!

....Petitioner

Through: Mr.R.K. Saini with
Mr.Nikhil Bhalla

Versus

\$Union of India & Others

^

.....Respondents

Through Mr.R.V. Sinha with Mr.R.N. Singh &
Mr.Mukesh Anand for the Union of India.
Mr.Rajiv Bansal for the Delhi High Court.

CORAM :-

***THE HON'BLE MR.JUSTICE A.K.SIKRI**

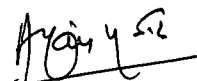
THE HON'BLE MR. JUSTICE MANMOHAN SINGH

- 1.Whether Reporters of Local papers may be allowed to see the Judgment?
- 2.To be referred to the Reporter or not?
- 3.Whether the judgment should be reported in the Digest?

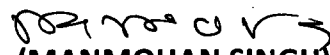
A.K. SIKRI, J.

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For orders, see file of WP(C) No.672/2006.


(A.K. SIKRI)
JUDGE

August 20, 2008
hp.


(MANMOHAN SINGH)
JUDGE

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18

IN THE HIGH COURT OF DELHI AT NEW DELHI

+WP(C) Nos.672/2006, 694/2006, 2416/2006, 2421/2006, 269/2007, 270/2007
271/2007 and 5551/08

Date of Hearing: 01.08.2008

Date of Decision: 20.08.2008

#Sh. P.K. Sharma
Sh.R.K. Mehta
Sh.Rajan Jayant
Sh.S.R. Nautiyal
Sh.D.S. Thakur
Sh.R.K. Joshi
Sh.H.L. Sharma
Sh.Jagdish Lal Nijhawan

....Petitioner in WP(C) No.672/06
....Petitioner in WP(C) No.694/06
....Petitioner in WP(C) No.2416/06
....Petitioner in WP(C) No.2421/06
....Petitioner in WP(C) No.269/07
....Petitioner in WP(C) No.270/07
....Petitioner in WP(C) No.271/07
....Petitioner in WP(C) No.5551/08

Through: Mr.R.K. Saini with
Mr.Nikhil Bhalla

Versus

\$Union of India & Others
^

.....Respondents
Through Mr.R.V. Sinha with Mr.R.N. Singh &
Mr.Mukesh Anand for the Union of India.
Mr.Rajiv Bansal for the Delhi High Court.

CORAM :-

***THE HON'BLE MR.JUSTICE A.K.SIKRI**
THE HON'BLE MR. JUSTICE MANMOHAN SINGH

- 1.Whether Reporters of Local papers may be allowed to see the Judgment?
- 2.To be referred to the Reporter or not?
- 3.Whether the judgment should be reported in the Digest?

Yes

A.K. SIKRI, J.

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1. All the petitioners in these petitions, after their retirement, were appointed as Special Metropolitan Magistrates (in short the 'Special MMs'). Most of

23 19

these petitioners were the employees of the Delhi High Court from where they retired except one or two petitioners, who were employed with other Government Departments. While in service of the Delhi High Court/Government service, they were allotted official accommodation. After their retirement they were entitled to retain the Government accommodation for a period of two months which could be extended by another two months on payment of particular licence fee, as per the rules. Before this period could expire they were appointed as Special MMs. In view of this appointment, the petitioners claim that they have right to continue to occupy the Government accommodation given to them while in regular service. Since the respondents have asked them to vacate the official accommodation on the ground that no such right exists, in these petitions filed by the petitioners their prayer is to quash the action of the respondents in cancelling the retention of the demised flats with further directions to permit them to retain the said official accommodation till they continue to work as Special MMs, under the orders of the High Court of Delhi.

2. The common question of law, on almost identical facts, in all these cases which, therefore, arise for consideration is as to whether such right to retain the residential staff quarter allotted to them while in service, on their appointment as Special MMs. For the sake of convenience we may note of

(25)
70

the facts as they appear in WP(C) No.672/2006.

3. The petitioner in this case was working as the Joint Registrar in this Court at the time when he retired on superannuation with effect from 28.2.2003. He was the allottee and in occupation of Government accommodation bearing flat No.509, Sector IX, R.K. Puram, New Delhi-110 022 at that time. Within two months of his retirement this Court appointed him as a Special MM in terms of the provisions of Delhi Petty Offences (Trial by Special Metropolitan Magistrate) Rules, 1998 vide notification dated 29.4.2003. The appointment was for a period of one year but extended from time to time. He continued to work as Special MM, in this manner, till 28.2.2008 when he attained the age of 65 years.
4. On his appointment as Special MM he wanted to occupy the Government accommodation which was allotted to him while in service of the High Court. The Registrar General of this Court sent communication dated 7.5.2003 to the Director of Estates informing him that since the petitioner was appointed as Special MM vide notification dated 29.4.2003 he be allowed to retain the staff quarter as per sub-rule (4) of S.R. 317-B-11. The Assistant Director of Estates thereafter wrote letter dated 22.10.2003 to the petitioner asking him to clear the rental arrears which were to the tune of Rs.20,939/-. However, vide letter dated 20.1.2004 this amount was corrected as Rs.7,952/-. The petitioner deposited the said amount on

(29) 21

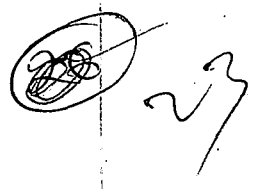
21.1.2004. We may note that earlier the respondents No.1 to 3 had initiated eviction proceedings against the petitioner in respect of the demised flat under the provisions of the Public Premises (Eviction of Unauthorised Occupants) vide notification dated 26.8.2003. These were also withdrawn and letter dated 5.3.2004 was written by the Deputy Director of Estates to the Registrar General, Delhi High Court informing him that it had been decided to allow retention of the staff quarter to the petitioner for a period of one year, on payment of normal licence fee. The initial appointment for a period of one year as Special MM was extended by another year vide notification dated 27.5.2004, i.e., upto 29.4.2005. It was again extended by another year vide notification dated 20.5.2005, upto 29.5.2006.

5. It appears that there was a second thought given to the entire issue. In the month of June 2005, the petitioner received letter dated 30.5.2005 from the Deputy Director of Estates calling upon him to show cause as to why the permission to occupy the staff quarter granted to him earlier be not withdrawn and the damages be not charged for the period already availed of as retention was given on the basis of incorrect and misleading information. The petitioner, vide his letter dated 9.6.2005, sought time to file reply till 11.7.2005. Instead of giving any reply, the petitioner brought this fact to the notice of the Registrar General and thus, this Court sent communication

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dated 1.8.2005 pointing out the factual position regarding appointment of the petitioner as Special MM, which was initially for one year but was extendable on yearly basis upto the age of 65 years. Significantly, in this letter there was no definite stand taken about the entitlement of the petitioner to retain the official flat. Instead, factual narration only was given and the Deputy Director of Estates was requested to take necessary action in the matter in the light of facts stated about the nature of appointment. In response the Deputy Director of Estates wrote letter dated 29.8.2005 to the Registrar General of this Court informing him that the petitioner was issued a show cause notice dated 30.5.2005 but he had not sent any reply till that date. Thereafter, another show cause notice dated 29.7.2005 was also issued asking him to give his response within seven days. However, no reply was received to this notice either. By impugned orders the retention letter dated 4.3.2004 given earlier was withdrawn.

6. After receiving the said cancellation orders, the petitioner made detailed representation dated 6.9.2005 submitting that he had a right to continue to occupy the said General Pool accommodation during his tenure as Special MM. This plea of the petitioner was not acceded to by the respondents and therefore, the matter was referred to the Estate Officer/respondent No.3 for initiating proceedings under the Public Premises (Eviction of Unauthorised Occupants) Act. He sent notice of hearing to the petitioner. The petitioner



was also served with a demand notice asking him to pay a sum of Rs.3,43,850/- as damages calculated at market rate for occupation of the demised premises from 1.7.2003 till November 2005. This demand notice was dated 27.12.2005.

7. On the initiation of eviction proceedings and the said demand notice, the petitioner approached this Court and filed this petition on 14.1.2006. As pointed out earlier, during the pendency of this petition another extension was given to the petitioner by one year and in this manner, he continued as Special MM till 28.2.2003 when he ceased to hold that position on attaining the age of 65 years. On almost similar facts other petitioners have also filed the petitions praying for same kind of relief. Interim directions were passed staying the operation of impugned cancellation orders.
8. The undisputed facts are that these petitioners were allotted Government accommodation when they were in regular service of this Court or with the Government. After their retirement they were appointed as Special MM's within the period they were entitled to hold the official accommodation from the date of their retirement. On this basis, the submission of the petitioners is that they are entitled to continue to occupy the staff accommodation in terms of SR-317-B-11. As the right is predicated on this provision, it would be apposite to reproduce the relevant portion thereof:-

"S.R. 317-B-11. (1) An allotment shall be effective from the date on which it is accepted by the officer and shall

27
24

continue in force until,-

(a) the expiry of the concessional period permissible under sub-clause (2) after the officer ceases to be on duty in an eligible office in Delhi.

(b) it is cancelled by the Director of Estates or is deemed to have been cancelled under any provision in these rules;

(c) it is surrendered by the officer, or

(d) the officer ceases to occupy the residence.

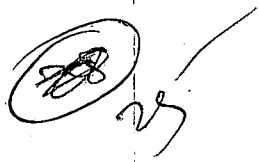
(2) xxxxx

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(4) An officer who has retained the residence by virtue of the concession under Item (i) or Item (ii) of the Table below sub-rule (2) shall, on re-employment in an eligible office, within the period specified in the said Table, be entitled to retain that residence and he shall also be eligible for any further allotment of residence under these rules:

Provided that if the emoluments of the officer on such re-employment do not entitle him to the type of residence occupied by him, he shall be allotted a lower type of residence."

9. As per sub-rule (a) of sub-rule (1) of S.R. 317-B-11, the Government officer is permitted to occupy the staff quarter for a particular period mentioned in sub-rule (2). In case of retirement, the period prescribed is two months on normal licence fee and another two months on double licence fee. Sub-rule (4), however, provides that if such an officer is re-employed in an eligible office within the aforesaid permissible period, which is four months in those



cases when Government servant retires, he would be entitled to retain the residence. The conditions which need to be satisfied are:-

- (a) such retired Government employee gets **re-employment**;
- (b) this re-employment is given in an **eligible** office; and
- (c) he is able to secure the re-employment within the period he is entitled to retain the staff quarter after his retirement as mentioned in column (2) of the Table provided in rub-rule (2).

10. The petitioners fulfill the third condition. However, the moot question is as to whether the appointment of Special MM would amount to "re-employment" and whether it is in an "eligible office".

11. Mr. Saini, learned counsel appearing for the petitioners, submitted that the appointment of the petitioners was treated under S.R. 317-B-11 as not only after their employment the Registrar General of this Court wrote letter to the Estate Officer that they were entitled to retain the demised flats under the said provision, even the Director of Estates held the same view, as only normal licence fee was demanded from the petitioners and the action taken for eviction was also withdrawn. In support, he referred to the communications exchanged between the Registrar General of this Court and the Director of Estates, which has already been narrated above. Mr. Saini also referred to Swami's Compilation on "Re-employment of Pensioners (Civilians and Ex-Servicemen)", Chapter V whereof deals with the procedure

(24) 26

for re-employment of civil pensioners and, *inter alia*, stipulates as under:-

"Terms 'extension' and 're-employment' distinguished.-A need has been felt to distinguish the cases in which retention of the services of Government servant beyond the date of his superannuation is to be treated as 'extension of service' as also those in which it shall be treated as 're-employment' and the following decisions have been reached:-

- (i) Where the services of a Government servant beyond the age of his superannuation are required in the same cadre/post which he is holding at the time of superannuation, then such retention shall be treated as "extension of service";
- (ii) Any proposal for retaining the services of a Government servant in the parent cadre beyond the normal age of superannuation in a post different from the one which he was holding at the time of superannuation, should be strongly discouraged. If, however, such retention is for very exceptional reasons considered to be unavoidable, the same shall be treated as "re-employment"; and"

12. He laid emphasis on clause (ii) above in his endeavour to show that it was "re-employment". His submission was that the appointment was made by the High Court, that too vide notification. The petitioner was under the disciplinary control of the High Court and should be treated as employee of the High Court when he was working as Special MM. Reference in this behalf was also made to the Delhi Petty Offences (Trial by Special Metropolitan Magistrate) Rules, 1998. He also submitted that Member of

267

the National Consumer Disputes Redressal Commission are allowed to retain the staff quarters.

13. We are unable to accept the aforesaid submission of Mr. Saini, learned counsel for the petitioners. The appointment as Special MM cannot be treated as extension of service or "retention" after retirement in the "parent cadre." Complete answer to all these submissions is provided in the judgment of the Supreme Court in Kadra Pahadiya and others v. State of Bihar, AIR 1997 SC 3750 which gives unequivocal description about the nature of appointment of Special MMs. It is on the basis of directions of the Supreme Court contained in the said judgment that Schemes were formulated by the High Courts for appointment of Special MMs.

14. The Supreme Court in that case was concerned with the over-flowing dockets of the Magistrates all over the country. It was noticed that the main reason for which the Magistrates were over-burdened was number of petty cases assigned to them. The Court was of the view that if these petty cases are taken out of the courts of regular Magistrates and disposed of by the appointment of Special MMs in sufficient numbers, the regular courts would be free to dispose of serious cases faster and that would meet the requirement of speedy justice. The Supreme Court traced the powers of the High Court under Section 13(1) and 18(1) of the Code of Criminal Procedure to make such appointments and confer such of the powers as it deems



proper from the whole bundle of powers conferrable by and under the Court of Judicial Magistrates of the First and Second Class or conferrable on a Metropolitan Magistrate, as the case may be. With this objective in mind notices were issued to all the State Governments except Jammu and Kashmir as well as the Central Government to indicate whether or not the concerned States had invoked the aforesaid provisions and if not, the reasons therefor. The various State Governments, Union Territories as well as the Central Government provided requisite information to the Supreme Court, which is taken note in the said judgment on the basis of which it was observed that practically every State had paid attention to the provisions of Sections 13 and 18 of the Cr.P.C. In para-23 of the said judgment the Court underlined the nature of appointment of these Special MMs. As we are concerned with precisely this very aspect in these petitions, we deem it proper to reproduce this para in its entirety:-

“23. There can be little doubt that when the calendars of criminal courts (magistracy) in most of the States, barring a few geographically small States, are clogged and as a result, trial of cases is delayed, there is no justification for not setting a part of the machinery envisioned by the Code into motion. The basic idea in providing for the appointment of Judicial Magistrates, second class, is to ensure that petty cases do not occupy the time of the regular magisterial courts. So also the idea underlying the provisions for the appointment of Special Judicial Magistrates/Special Metropolitan Magistrates under Sections 13(1) and 18(1) respectively, is to relieve the regular courts of the burden of trying those

(24)
19

cases which could be disposed of by such Magistrates. Parliament has advisedly left the decision as to the choice of power to be conferred on such Magistrates with the High Court. Once a request is received from the Central/State Government by the High Court, the ball is entirely in the High Court, and it is the High Court and the High Court alone which has to decide on the number of appointments to be made, the choice of personnel to be entrusted with such power, and the extent of power to be conferred on such persons. It is the High Court which has to specify the qualification and/or experience that would be required for the discharging of duties by such Magistrates. As pointed out earlier, the period for which such appointments may be made must not exceed one year at a time, which shows that these are not appointments by way of regular entry into service, and are meant to be short-duration appointments to reduce the burden of pendency in regular Courts. In our view, the appointees should view the call as a social obligation and not employment; indeed as a social service to society. That is the spirit of Sections 13 and 18 and every appointee must take the call in that spirit and not expect payment as if they are in the service of the concerned State/Union Territory. That is the reason why the said two provisions expect persons who have retired or are about to retire from Government service to be appointed to help clear the pendency. Viewed from this angle it seems fairly clear to us that retired Judicial Officers, officers of the Registry of District Courts and High Courts, as well as other Government servants who have the specified experience and qualification, can be requested to accept appointments as part of social service and they may be paid a fee to meet their out-of-pocket expenses and honorarium. We are sure that the High Courts will find any number of public spirited, retired persons available to extend a helping hand to the Criminal Justice System in the country. The High Court, we must add by way of caution, must be extremely careful in the

(30)

conferment of power and should do so based on the qualification and experience of each appointee."

15. Following aspects are clearly discernible from reading of the aforesaid para:-

- a) The appointments were not to exceed one year at a time.
- b) These were not to be treated as regular entry into service and were meant to be short duration appointments to reduce the burden of pendency in regular courts.
- c) In loud and clear terms the court expressed the view that the appointees should view the call as a social obligation and not employment, indeed as a social service to society. The retired judicial officers, officers of the registry of District Courts and High Courts as well as other Government servants who have a specified experience and qualification can be considered for this job. Such officers "can be requested to accept appointments as part of social service."
- d) The appointees are to be paid a fee to meet their out of pocket expenses and honorarium. This clearly shows that what is being offered is not pay but only honorarium.



e) The Court expressed the hope that High Courts will be able to find any number of public spirited retired persons available to extend a helping hand.

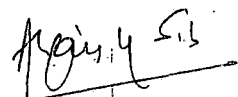
16. If one has regard to the aforesaid scheme formulated by the Supreme Court pursuant to which rules are framed and appointments made, it leaves no manner of doubt that the appointment in question cannot be treated as "re-employment." In any case, there is no manner of doubt that the appointments are not in the "regular service." Provisions of S.R. 317-B-11, therefore, would not be applicable and these petitioners would not be entitled to retain the Government accommodation.

17. Term of most of these petitioners as Special MM has come to an end and consequently, they have since surrendered the official accommodation after vacating the same. The question in their cases, therefore, is about the rate at which they are to pay the licence fee. We feel that they should be made to pay only normal licence fee. Reason is simple. Initially even the High Court as well as the Directorate of Estates had taken the view that the cases of these petitioners are covered by S.R. 317-B-11. It is for this reason that they were allowed to retain the accommodation. Subsequently, it dawned upon the Directorate of Estates that this was not correct legal position and therefore, show cause notices for cancellation of the retention orders was issued. Thus, the respondents are also responsible, to a great extent, in

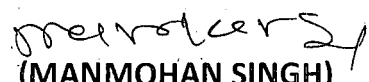
32

allowing the petitioners to stay in the residential quarter and representation was held out that it would be on normal licence fee which was being recovered from time to time. In these writ petitions the Court had stayed the operation of the impugned decision vide, which permission granted earlier was cancelled. Thus, the petitioners had reasonable belief that they were allowed to stay in the premises in question on normal licence fee. Asking them to pay the rent at market rate from back date, after they have vacated the premises, would be unjust to these petitioners. Those of the petitioners who are still in possession would vacate the staff quarters and handover vacant and peaceful possession thereof to the Directorate of Estates. On doing so, they will also be governed by the aforesaid direction in so far as the payment of rental during this period is concerned. However, in case they fail to vacate within the aforesaid period, they shall be treated as unauthorized occupants and be liable for penal rent for the entire period in their occupation.

18. Subject to the above, the writ petitions are dismissed with no order as to costs:


(A.K. SIKRI)
JUDGE

August 20, 2008
hp.


(MANMOHAN SINGH)
JUDGE