

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P. (Civil) No. 187/2009**

% Reserved on: 26th November, 2009

Decided on: 21st December, 2009

K.L. AHUJA Petitioner

Through: Mr. S.P. Chadha, Advocate.

versus

THE DIRECTOR GENERAL CSIR & ANR. Respondents

Through: Mr. Ayushya Kumar, Advocate.

Coram:

HON'BLE MR. JUSTICE MADAN B. LOKUR

HON'BLE MS. JUSTICE MUKTA GUPTA

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

MUKTA GUPTA, J.

1. The present petition has been filed seeking quashing of the order dated 29th July, 2008 passed by the Central Administrative Tribunal, in Original

Application No. 1931/2007, dismissing the Petitioner's application and also a direction to the Respondent to refund the penal rent already recovered from the retiral dues of the Petitioner.

2. The Petitioner is a retired technical officer of Respondent No. 2 National Physical Laboratory (hereinafter referred to as NPL), which is a constituent office directly under the control of Respondent No. 1, the Council for Scientific Research (CSIR). The Petitioner was allotted a quarter No. 9C/1, N.P.L. Colony, New Delhi.

3. Despite his retirement on 31st January, 2001 he continued to retain the quarter on the pretext that his wife was sick. As per the Petitioner as his wife was very sick, he sought further extension of retention of quarter vide letters dated 24th May, 2001, 4th November, 2003 and 29th April, 2004, but the same were not replied by the Respondents.

4. On the other hand, the Respondents gave the Petitioner notices dated 20th June, 2001, 26th December, 2001 and 15th March, 2002 to vacate the quarter. As the Petitioner did not vacate the premises despite notices, the Respondents filed Original Application No. 3046/2002 before the Central Administrative Tribunal, seeking directions to the Petitioner herein, to vacate the premises and for the recovery of its dues. The same was dismissed by the

Tribunal on 21st October, 2003 for want of jurisdiction. The Respondents challenging the order of Central Administrative Tribunal dated 21st October, 2003 filed a writ petition before this Court being W.P. (C) No. 2429-30/2004 which was disposed of on 30th August, 2007 as the first relief had become infructuous, since the Petitioner had vacated the premises. With regard to the second relief of deduction of penal license fee it was observed by this Court that:

“Neither the Central Administrative Tribunal nor the Writ Court should enter into any controversy regarding the computation of dues payable by one party to another including the amounts due to the Respondent on account of gratuity and leave encashment etc. If the Petitioner is entitled to claim any adjustment or set-off in respect of these heads, the same would have to be adjudicated by a competent court, as and when a dispute arises.”

5. The Petitioner finally vacated the premises in October, 2006 and the grievance of the Petitioner before the Central Administrative Tribunal in Original Application No. 1931/2007 and in the present petition is that the Respondents have deducted penal license fee from his retiral dues without following the due process as mentioned in the Public Premises (Eviction of Unauthorized Occupants) Act, 1971.

6. We have heard both the parties. The Petitioner's contentions before us are twofold, that is, firstly that the Petitioner has not been declared as

“unauthorized occupant” in the first instance as per the provisions of Public Premises (Eviction of Unauthorised Occupants) Act, 1971, where after the imposition of the rental license fee/damages could be decided by the Estate Officer and secondly, that the CSIR (Residence and Allotment) Rules, 1997 are not applicable as they have not been notified in the gazette.

7. It is contended by the learned counsel for the Respondents that CSIR is not governed by the Public Premises (Eviction of Unauthorized Occupants) Act, since it is not notified under the notification issued under the said Act. As per the learned counsel for the Respondents the employees of CSIR are governed by the CSIR (Residence Allotment) Rules, 1997 and that there is no requirement of gazette notification of the Rules as CSIR is a society registered under the Societies Registration Act. Learned counsel for the Respondents has also relied on the decision in the case of *Secretary, ONGC Ltd. and Anr. vs. V.U. Warriar reported as 2005 (5) SCC 245*.

8. The main contention of the Petitioner is that since these rules have not been notified in the gazette they cannot be acted upon. We do not find any merit in this contention. It may be noted that the National Physical Laboratory is a constituent office of the Council for Scientific Research. CSIR is an autonomous body registered under the Societies Act, 1860 having its own rules known as CSIR (Residence Allotment) Rules, 1997 approved by *WP (C) No. 187/2009*

its governing body. The governing body frames its rules which are to be followed by its employees. There is no requirement of any gazette notification of such rules. The short title, commencement and application clearly shows that these rules will come into force from the date of notification and supersede the allotment rules either to enforce and these rules shall apply to the employees of the laboratory/institute under CSIR and the CSIR head quarter. The notification mentioned above does not imply gazette notification but notification by the society. The relevant rules in this regard are Rules 11, 12, 13 and 19 which are reproduced as under:

**“11.0 PERIOD FOR WHICH ALLOTMENT
SUBSISTS AND THE CONCESSIONAL PERIOD FOR
FURTHER RETENTION.”**

11.2 A residence allotted to an employee may be allowed to be retained on the occurrence of any of the events mentioned below for the period specified against each from the date of such occurrence subject to the condition that the residence is required for the bona fide use of the employee or the members of his family.

S. NO.	EVENTS	PERMISSIBLE PERIOD FOR RETENTION OF RESIDENCE
-------------------	---------------	--

b.	Retirement or terminal leave	4 months
----	------------------------------	----------

12.0 RETENTION BEYOND PERMISSIBLE PERIOD

12.1 The Head of the Laboratory/Institute may, for reasons to be recorded in writing, allow retention of Council residence for a period not exceeding six months beyond the permissible concessional period under Rule 11.2, if he is satisfied that the retention of the residence is justified for any of the following reasons:

- (a) Education of children of the employee;
- (b) Serious or chronic illness in the family of the employee;
- (c) Any other reason considered to be beyond the control of the employee.

Provided that in the event of retirement or terminal leave the period of retention to be allowed by the Head of the Laboratory/Institute shall be limited to 4 months.

13.0 OVERSTAYAL IN RESIDENCE AFTER CANCELLATION OF ALLOTMENT

13.1 Where, after the allotment has been cancelled or is deemed to have been cancelled under any provisions of these rules, the residence remains or has remained in occupation of the employee to whom it was allotted or of any person claiming through him, the allottee or such other person shall render himself liable to the following: -

- (i) Payment of penal licence fee for use and occupation of the residence and damages equivalent to twice the normal charges for furniture, services, garden etc.;
- (ii) Disciplinary proceedings for violation of CCS (Conduct) Rules, 1964, and/or any other rules in this regard applicable to the Council employees;
- (iii) Any other proceedings that may be taken up at the discretion of the Head of the Laboratory/Institute for getting the residence vacated.

19.0 UNDERTAKING FROM THE LICENCEE

19.1 Each employee shall give an undertaking at the time of allotment or residence that he shall vacate the residence on cancellation or deemed cancellation of allotment failing which he shall be liable to pay penal licence fee and that the Council shall have authority to withhold his gratuity and leave encashment etc.

Provided that gratuity and leave encashment etc. may be released on furnishing of bank guarantee by the employee for an equivalent amount. Bank guarantee shall be discharged after vacant possession of the residence is surrendered to the Council and all the dues relating to the residence have been settled, failing which the bank guarantee shall be invoked.

19.2 All employees who are in occupation of Council residences and have not furnished an undertaking specified under rule 19.1 so far, shall furnish the same forthwith or within such time as may be prescribed by the Head of the Laboratory/Institute.”

9. In terms of the rules it is evident that a person who retires from the services is permitted to retain the residential accommodation for four months whereafter penal license fee has to be charged from him. Thus after 30th May, 2001 i.e. after the 4 months post retiral extension period, the Petitioner in view of the fact that he continued to stay in the premises, was bound to pay penal charges. For vacating the premises the Respondent No. 2 had given him notices vide their letters dated 20th June, 2001, 26th December, 2001 and 15th March, 2002, failing which they filed an application before the Central Administrative Tribunal which was dismissed for want of jurisdiction. The above mentioned provisions (particularly Rule 19) clearly show that the

WP (C) No. 187/2009

Petitioner was not entitled to retain accommodation, was liable to pay the penal charges and for the said charges the gratuity and leave encashment could be withheld.

10. The Petitioner in support of his contention has relied upon the decision in the case of *R. Kapur Vs. Director of Inspection (Printing and Publication) Income Tax and another, reported as 1994 (6) SCC 589, Gorakhpur University and others vs. Dr. Shitla Prasad Nagendra and others, reported as JT 2001 (6) SC 285, and Lt. Col. B.B. Asthana (retd.) Vs. Union of India & others reported as 65 (1997) DLT 86.*

11. In our opinion the decision rendered by the Supreme Court has no application to the fact of the present case, as in the case of *R. Kapur (supra)* the Respondent therein was retired as Director General of Income Tax and was governed by the service rules. In the said case the proceedings under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 were held and an order for damages was passed. The allotment was subsequently regularized. In view of the fact that no final “No Demand Certificate” was issued, the gratuity of the government servant was withheld. It was held that the gratuity could not be withheld and the recovery of damages could be made under Fundamental Rule 48-A (iv) (c) (ii) (8). In the present case, the gratuity

of the Petitioner has not been withheld but has been paid after deducting the penal charges in terms of Rule 19.1 of the CSIR (Residence Allotment) Rules.

12. In the case of *Gorakhpur University & Ors (Supra)* pending settlement the gratuity was withheld and there was delay on account of authorities to settle the claim of the Petitioner. The Supreme Court taking a serious view on account of the delay caused by the Government, specially even one year after the vacating of the quarter held that the claims of university cannot be said to be in respect of an admitted or conceded claim or sum due.

13. In the case of *Lt. Col. B.B. Asthana (Supra)* since he was a Central Government employee in the Ministry of Defence it was held that the impugned demand was liable to be set aside as the Authority seeking damages was not the Authority under the provisions of law.

14. In view of the fact that there is no notification regarding applicability of Public Premises (Eviction of Unauthorized Occupants) Act to CSIR and the Petitioner was bound by the CSIR (Residence Allotment) Rules, we find that there is no merit in the contention that the Petitioner could have been asked to vacate the premises only by following the procedure prescribed under the Public Premises (Eviction of Unauthorized Occupants) Act 1971 or that no penal charges could have been recovered. The above mentioned judgments

have no application to the facts of the present case. The case of the petitioner is covered under Rule 19 of CSIR (Residence Allotment) Rules. The case of the Petitioner is covered by the decision rendered by the Supreme Court in the case of *Secretary, ONGC Ltd. & Anr. vs. V.U. Warriar reported as 2005 (5) SCC 245* (para 17) wherein it was held:

17. 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* 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:-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 for 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 28.2.1990. According to the Commission, he could be allowed four months' time to occupy the quarters 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 quarters, penal rent as per the policy of the Commission would be recovered from him. But the respondent did not vacate the quarters. It was only after eviction proceedings were initiated that he vacated the quarters on 16.5.1991. 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 quarters for the period between 1.7.1990 and 15.5.1991."

15. The Tribunal also noted that apart from anything else, when the Petitioner was due to retire, he was facing a disciplinary enquiry. This fact was concealed by him when he preferred the original application before the Tribunal. The view expressed by the Tribunal was that because of suppression of this material fact, the original application deserved to be dismissed but that apart it was noted that in view of Rule 69 of the Central Civil Services (Pension) Rules, the retiral dues of the Petitioner could be withheld pending conclusion of the disciplinary case. It was, therefore, not correct on the part

of the Petitioner to allege or contend that this retiral dues were withheld only because of the unauthorized retention of the quarter by him.

16. We find no merit in the writ petition.

17. Dismissed.

MUKTA GUPTA, J

MADAN B. LOKUR, J

DECEMBER 21, 2009

vn