

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

% Judgment delivered on: 13.11.2009

+ W.P.(C) 337/2009

MAHAVIR PRASAD

..... Petitioner

-versus-

GOVT. OF N.C.T. OF DELHI & ORS.

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr R.K. Saini, Advocate
For the Respondent : Ms Aruna Tiku, Additional Standing Counsel with
Ms Purbali Bora, Advocate for respondent nos.1 to
2.
Mr Chetan Lokur for Mr Viraj R. Datar, Advocate
for respondent no. 3

CORAM:-

HON'BLE MR. JUSTICE BADAR DURREZ AHMED

HON'BLE MS. JUSTICE VEENA BIRBAL

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

BADAR DURREZ AHMED, J (ORAL)

1. This writ petition is directed against the letters dated 09.06.2008 (Annexure P-6), 05.08.2008 (Annexure P-9) and 07.11.2008 (Annexure P-12) which have been issued by the respondents, demanding payment of market rent of Rs. 7,697/- per month w.e.f. 01.01.2006, i.e., four months from the date of retirement of the petitioner, which was 31.08.2005, till the date of vacation of

Flat No. 93, Nimri Colony, Delhi, which was allotted to the petitioner when he was functioning as a Senior Public Prosecutor with the Government of NCT of Delhi. The amount claimed to be outstanding as per the impugned letter dated 09.06.2008 was Rs 2,17,615/- up to 31.05.2008.

2. The petitioner, as aforesaid, was a Senior Public Prosecutor with the Government of NCT of Delhi. On account thereof, he was allotted Government accommodation being the said Flat No. 93, Nimri Colony, Delhi. The petitioner retired on 31.08.2005. On 26.05.2006, the petitioner was offered employment as a Special Metropolitan Magistrate by the Delhi High Court and he joined work on 29.05.2006. By a letter dated 17.07.2006, the petitioner made a representation for retaining the Government accommodation. Since no decision was taken on the said representation and no reply was received by the petitioner, another representation dated 18.02.2008 on similar lines was made for retaining the Government accommodation. No reply was received by the petitioner even to this representation. On 06.05.2008, the petitioner sent a letter to the Drawing and Disbursing Officer, Prosecution Branch, Directorate of Prosecution, Delhi, Tis Hazari Court Complex, Delhi, indicating that he had not received any reply to his representations nor was any notice of cancellation of the flat sent to him. The petitioner presumed that the flat had not been cancelled and, therefore, he wanted to surrender his

occupation of the said flat w.e.f. 31.05.2008 and also wanted to deposit the licence fee of the said flat along with water charges @ Rs 232/- per month.

3. The learned counsel for the petitioner has also drawn our attention to a copy of the receipt dated 07.05.2008 issued by the Drawing and Disbursing Officer, Directorate of Prosecution, Government of NCT of Delhi, Delhi for a sum of Rs 7,656/-, purportedly received from the petitioner on account of licence fee/water charges from 01.09.2005 to 31.05.2008 @ Rs 232/- per month against the said Government accommodation. We may point out, at the outset itself, that the learned counsel for the respondents submitted that this receipt was issued by the department from which the petitioner had retired and not by the appropriate authority being the Rent Recovery Cell, PWD/Government of NCT of Delhi, Delhi. The learned counsel for the petitioner also did not claim any estoppel on the basis of the said receipt dated 07.05.2008.

4. Thereafter, the petitioner received the first impugned letter dated 09.06.2008, whereby the petitioner was informed that his request for retaining the Government accommodation was considered but could not be acceded to because there was no such provision in the rules. He was also informed that he would be liable to pay market rent in respect of the said premises @ Rs 7,697/- per month w.e.f. 01.01.2006 till the date of vacation and that till the time the said dues

are cleared, the 'No Dues Certificate' could not be issued to him. On 08.07.2008, the petitioner sent a letter to the Principal Secretary, PWD and Housing Department, Government of NCT of Delhi, Delhi indicating that he cannot be forced to keep possession of the said flat and, therefore, he was sending the key of the said premises to the Executive Engineer, PWD, Nimri Colony, New Delhi by courier. He requested that directions be issued to the Executive Engineer, PWD, Nimri Colony, Delhi for taking possession of the flat and also to stay the charging of market rent inasmuch as the matter with regard to the Officers under the Central Government raising similar issues was pending before the Delhi High Court.

5. The respondents sent letters dated 05.08.2008 and 07.11.2008 similar to the impugned letter dated 09.06.2008, wherein they reiterated their contention that the petitioner was liable to pay market rent w.e.f. 01.01.2006 and that he should vacate the flat after clearing the dues. The learned counsel for the petitioner submits that in the matter concerning the Central Government employees, the writ petition which was pending before this court was entitled **P.K. Sharma and Ors v Union of India and Ors [W.P.(C) No.672/2006]** (and other connected matters) and was decided by a Division Bench of this court on 20.08.2008. In that decision, the court had observed that although the petitioners therein had no right to retain the accommodation, the petitioners had reasonable belief that they were

allowed to stay in the premises in question on normal licence fee and that asking them to pay the rent at market rate from a back date, after they had vacated the premises, would be unjust to them. The petitioner seeks a similar relief in the present petition also. The learned counsel states that the case of the present petitioner would be covered by the said decision in the case of ***P.K. Sharma and Ors v Union of India and Ors*** (*supra*).

6. The learned counsel appearing on behalf of respondents 1 and 2 drew our attention to the Delhi Administration Allotment of Government Residences (General Pool) Rules, 1977 (hereinafter referred to as the said Rules). Rule 11(1)(a) prescribes that allotment is to be effected from the date on which it is accepted by the officer and shall continue in force until the expiry of the concessional period permissible under sub-rule (2), after the officer ceases to be on duty in an eligible office. Sub-rule (2) of Rule 11 of the said Rules stipulates that a residence allotted to an officer under sub-rule (3) can be retained on the happening of any of the events specified in sub-rule 2, provided that the residence is required for the use of the officer or members of his family. In respect of the event of retirement, the permissible period of retention of the residence has been prescribed as under:-

“2 months on normal licence fee.

2 months on double licence fee.

On request

2 months on 4 times licence fee.

2 months on 6 times licence fee.”

7. Rule 11(3) of the said Rules reads as under:-

“Where a residence is retained under sub-rule (2) the allotment shall be deemed to be cancelled on expiry of the admissible concessional period(s) unless immediately on the expiry thereof the officer resumes duty in an eligible office in the Administration.”

8. The learned counsel for the respondents 1 and 2 submitted that the said Rules were clear and unambiguous. The petitioner retired on 31.08.2005 and, therefore, on retirement the petitioner could have retained the premises under normal circumstances for a period of 4 months which ended on 31.12.2005. On request, the petitioner could have retained the accommodation for a further period of 4 months on the licence fee as indicated above but not beyond that period. It was also pointed out that rule 11(3) made it absolutely clear that where a residence is retained under sub-rule (2) of rule 11, the allotment shall be deemed to be cancelled on the expiry of the admissible concessional period unless immediately on the expiry thereof the officer resumes duty in an eligible office in the Administration. She submitted that the 8 months period which could be regarded as the maximum concessional period ended on 30.04.2006 and by that date,

admittedly, the petitioner had not been offered any employment with the Government of NCT of Delhi. The petitioner was offered the appointment of as a Special Metropolitan Magistrate only on 26.05.2006 and joined as such on 29.05.2006, which was beyond the said concessional period. Therefore, according to the learned counsel for the respondent nos. 1 and 2, the allotment of the petitioner could be deemed to have been cancelled on 31.12.2005 and, in the maximum, on 30.04.2006.

9. The learned counsel for the respondent nos. 1 and 2 also submitted that the case of ***P.K. Sharma and Ors v Union of India and Ors (supra)*** was clearly distinguishable and was not applicable to the facts and circumstances of the present case.

10. We have examined the material on record and have heard the counsel for the parties and are of the view that the petition is liable to be dismissed. The first reason for coming to this conclusion is that the Rules and, in particular, Rule 11 is explicit and clear. Upon the expiry of the concessional period, as permissible under Rule 11(2), the allotment is deemed to be cancelled. This means that the respondents do not have to issue any formal cancellation letter. The allotment would be deemed to be cancelled automatically upon the expiry of the permissible concessional period, unless immediately on the expiry thereof, the officer resumes duty in an eligible office in the Administration. The fact that the petitioner sent representations which

were not heeded to by the respondents were of no consequence.

11. The second reason as to why we feel that the writ petition ought to be dismissed is that the decision in *P.K. Sharma and Ors v Union of India and Ors (supra)* is distinguishable and would not be applicable to the facts of the present case. This is clear from the fact that the decision in *P.K. Sharma and Ors v Union of India and Ors (supra)* involved a different fact scenario.

12. Thirdly, the petitioners in that case had been appointed as Special Metropolitan Magistrates before the respective concessional periods had expired in respect of the allotments of Government accommodation. In the present case, the appointment of the petitioner as a Special Metropolitan Magistrate took place after the concessional period had expired.

13. The relevant provision which was applicable in *P.K. Sharma (supra)* was S.R. 317-B-11. The same, to the extent relevant, reads as under:-

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

(3) xxxxx

(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 the 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.”

The Division Bench understood the said provision to mean as under:-

“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 sub-rule (2).

10. The petitioners fulfil 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.””

14. From the above extract, it is apparent that in the case before the Division Bench in *P.K. Sharma (supra)*, the third contention was fulfilled. There was a question-mark with regard to the first two conditions and that is why the Division Bench embarked upon an examination of the question as to whether the appointment as a Special MM would amount to ‘re-employment’ and whether the ‘office’ of a Special MM was an ‘eligible office’. They answered these questions as follows:-

“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.”

15. As regards the rate of licence fee payable by the petitioners therein, the Court felt that as there was confusion as to whether S.R. 317-B-11 was applicable or not, the petitioners therein should be made to pay only normal licence fee. The Division Bench observed:-

“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 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.”

16. But, the position in the present case is entirely different. As we have mentioned above, the third condition was not satisfied in the case at hand. This is so because the petitioner herein was appointed as a Special MM much after the concessional periods during which he could retain the flat were over. The consideration of the satisfaction of the first two conditions therefore became irrelevant. There could not have been, and there wasn't, any confusion with regard to Rule 11(3) of the said Rules. Therefore, the petitioner's case is entirely different from that of the petitioner's in *P.K. Sharma (supra)*. No parallel can be drawn from that case insofar as the relief granted therein is concerned. Consequently, the petitioner cannot be granted the benefit of being charged only a 'normal' licence fee and not the market rate charges for the period he occupied the flat beyond the prescribed concessional period.

17. In these circumstances, we feel that the only relief that the petitioner would be entitled to would be to grant him the extra four months concessional period beginning on 01.01.2006 and ending on 30.04.2006; the first two months @ four times the licence fee and the next two months @ six times the licence fee. We also feel that since the petitioner had sent the keys of the flat by courier in August, 2008, the petitioner be deemed to have vacated the premises on 31.07.2008. The dues claimed from the petitioner be re-calculated accordingly and thereafter a separate demand notice be sent to the petitioner indicating clearly the amount payable by him.

18. The writ petition stands disposed of.

BADAR DURREZ AHMED, J

VEENA BIRBAL, J

NOVEMBER 13, 2009
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