

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Date of Decision: 2nd August, 2011.

+ W.P.(C) 4703/2010

V.K. CHATURVEDI Petitioner

Through: In person.

versus

UNION OF INDIA AND ORS Respondents

Through: Mr.Anshuman Sinha and
Mr.Vijay Pandey, Advocates

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE SUNIL GAUR

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

PRADEEP NANDRAJOG, J.(Oral)

1. Conscious of the fact that exercising jurisdiction under Article 226 of the Constitution of India and having at our back the moto '*Satyamev Jayate*' and that it is only the Supreme Court of India which exercises jurisdiction under Article 142 of the Constitution of India and at the back has the moto '*Yato Dharmastato Jayah*', i.e., we sit under the jurisdiction of upholding the law and the Supreme Court sits under the jurisdiction of doing complete justice, we are passing the present order, which would be a hybrid of upholding the law and at the same time doing justice. The hybrid is necessitated to

bring an end to a litigation between the parties which commenced in the year 1993 i.e. 1 decade and 8 years back.

2. The petitioner was an employee of the Railway Protection Force and rose to the rank of Inspector, till he superannuated in the month of July 2005.

3. When petitioner was posted, with the Railway Protection Force post at Lahori Gate, Delhi, he had been allotted a railway accommodation on the usual terms and conditions, requiring a license fee to be deducted from the monthly salary payable. During the period petitioner remained in occupation of the licensed premises at Delhi, license fee as per Rules was deducted each month.

4. Pursuant to an order dated 11.6.1993, the petitioner was transferred to Ambala Cantonment, which transfer was questioned by the petitioner by and under WP(C) No.2928/1993 filed at the High Court of Judicature for Rajasthan at Jodhpur. The petition came to be dismissed on 1.10.1993 and thus the petitioner, left with no option, joined duties at Ambala Cantonment.

5. Petitioner did not surrender the railway quarter licensed to him at Delhi even after joining duties at Ambala Cantonment, and for which the Commandant of the Unit concerned, directed recovery to be made from the salary of the petitioner in sum of ₹26,510/- for the period 16.6.1993 till 11.01.1994; and needless to state, the recoveries were premised on petitioner's status to be that of an unauthorized occupant and monthly damages being recovered at the penal rates specified.

6. The petitioner marched once again to the High Court of Judicature for Rajasthan at Jodhpur when he filed W.P.(C) NO. 575/1995 in which he prayed that the communication dated 11/24.1.1995 under which demand was raised be quashed.

7. The communication in question was the one addressed by the Commandant to the petitioner, reference whereof we have made herein above in para 5.

8. The writ petition came to be decided on 17.4.2008.

9. Before the writ petition could be decided, petitioner vacated the quarter at Delhi by handing over possession thereof in the month of May 2005. Petitioner superannuated in the month of July 2005.

10. Disposing of W.P.(C) NO. 575/1995 as per order dated 17.4.2008, the learned Single Judge while dismissing the writ petition, held that how-so-ever justified he may have been in the belief that he could retain the quarter at Delhi upon being transferred to Ambala Cantonment, petitioner could not retain the quarter as per law and thus the demand raised for the period in question towards damages was upheld by the learned Single Judge.

11. The petitioner had raised another issue in the writ petition. The issue raised was: that if the department was treating him as an unauthorized occupant of the licensed quarter and was enforcing the demand of damages at penal rates, he would be entitled to house rent allowance.

12. Noting that the relevant Rules, pertaining to entitlement of house rent allowance for such government servants who were in

unauthorized occupation of Government property and from whom penal rent was being recovered as damages, was not pleaded or shown to the Court, the issue was left undecided. It was observed that the petitioner would be free to pursue his remedies, if the petitioner could, by proper pleadings with reference to the legal position and after making out a case for disbursement of house rent allowance.

13. During the pendency of the proceedings before the High Court of Judicature for Rajasthan at Jodhpur, events of relevance took place before the Estate Officer of the Indian Railways.

14. The events were that the Estate Officer initiated proceedings under Section 7 of the Public Premises (Eviction of Unauthorized Occupants) Act 1971, by issuing a show cause notice alleging petitioner to be an unauthorized occupant of railway quarter No.98-H, Delhi Sadar Railway Colony and for which damages were proposed to be levied from 12.06.1993 till 19.05.2005. The proceedings came to be terminated when the Estate Officer passed an order dated 8.10.2007 levying damages for various periods at rates varying between ₹2024/- per month to ₹8,804/- per month.

15. In a nutshell, the penal damages were incrementally increased, periodically in view of the policy guidelines which required the damages to be increased as the period of unauthorized occupation increased.

16. The decision dated 8.10.2007 of the Estate Officer was challenged by the petitioner by way of an appeal before the learned District Judge, Delhi, which was registered as Appeal No.1/2008.

17. Vide order dated 25.2.2010, deciding the appeal, the learned District Judge held that the damages were wrongly computed treating the plinth area of the flat occupied by the petitioner as ad-measuring 66.47 mts² whereas the actual area was 47.5 mts². Thus, the direction issued was that the damages be re-worked out on the plinth area of 47.5 mts². The second direction issued was that only such damages could be recovered which preceded the period 3 years prior to the date of show cause notice and thus, it was held that any prior demand would be illegal. Accordingly, it was held that the date with effect wherefrom the penal damages could be recovered was 1.11.2001 till the date, petitioner vacated the quarter.

18. The petitioner has preferred W.P.(C) NO. 5084/2001 before this court against the decision dated 25.2.2010 disposing of, partially allowing appeal No.1/2008 and the writ petition is pending.

19. The department has accepted the verdict of learned District Judge as per order dated 25.2.2010 deciding appeal No.1/2008 inasmuch as no cross writ petition has been filed by the department.

20. Another fact of relevance needs to be noted.

21. Being transferred to Ambala Cantonment from Delhi on 11.6.1993, petitioner joined at Ambala, as noted hereinabove after W.P.(C) NO. 2928/1998 was dismissed on 1.10.1993. He continued to serve in Ambala, till he was re-posted at Delhi on 1.4.1999.

22. Now, as per the service conditions, petitioner would be

entitled either to a Government accommodation for which normal licensee fee would have to be paid by the petitioner, or in the alternative, house rent allowance would have to be paid by the department.

23. It is not in dispute that no house rent allowance was being paid to the petitioner for the reason he was occupying a Government property. Penal rent was sought to be recovered on account of the possession being unauthorized. Since petitioner was transferred to Ambala he was treated as an unauthorized occupant of the Flat at Delhi and when he was re-posted at Delhi, since petitioner did not make any application for the same Flat to be re-allotted to him, he was treated as an unauthorized occupant even post his re-transfer to Delhi.

24. In the instant writ petition, multifarious reliefs have been prayed for and since the petitioner appears in person, we do not propose to be technical and require the petitioner to file separate petitions on various causes which he has raised and restrict the instant writ petition to one cause.

25. The goodwill shown by the Court to the petitioner has been reciprocated by the petitioner who states that he is prepared to give up all claims made by him save and except payment of gratuity, ACP arrears and packaging allowance after he vacated the quarter post retirement, which 3 amounts have admittedly been withheld on account of the claim for damages raised by the respondents; a fact admitted in Court today by learned counsel for the respondents. However, petitioner says that this concession made by him would be contingent upon the condition that the respondents would not enforce, for any period, demand for penal rent against him; he would be liable to

pay only the normal license fee.

26. We note that the petitioner is giving up claim for house rent allowance in approximate sum of ₹6,00,000/- and other claims which he gives up total approximately ₹50,000/-.

27. We note that on the issue of petitioners unauthorized occupation of the flat licensed to him when he was posted at Delhi; unauthorized occupation being for the period after he was transferred to Ambala Cantonment, the period can be divided into two distinct components. The first would be the period post 11.6.1993 when the petitioner was transferred to Ambala Cantonment till 1.4.1999. The second period would be 1.4.1999 till he surrendered possession of the flat in May 2005 i.e. the period the petitioner, on being re-posted at Delhi continued to occupy the flat.

28. We make it clear that the petitioner's claim for gratuity in sum of ₹2,80,758/-, arrears under ACP in the sum of ₹22,927/- and packaging allowance after vacation of quarter in sum of ₹14,100/- have not been waived.

29. It not being disputed that the 3 amounts have been withheld by the department on account of the claim of the department for penal rent, we proceed to decide the issue: Whether the petitioner would be entitled to the said 3 amounts, which admittedly are payable to him, but are being adjusted by way of a set off claimed by the department.

30. Respondents concede that as per service conditions, petitioner would be entitled to a Government accommodation for which a license fee has to be paid by the petitioner and if the

accommodation is not made available, the department has to pay to the petitioner house rent allowance.

31. Admittedly, for the entire period in dispute the petitioner has not been paid any house rent allowance. It is true that on being transferred to Ambala Cantonment the petitioner could not retain the quarter allotted to him at Delhi without a proper sanction from the competent authority, which sanction admittedly was never given. It is also a fact that at Ambala Cantonment, no official accommodation was given to the petitioner. That apart, as per the order dated 25.2.2010 in Appeal No.1/2008, the learned District Judge Delhi has prohibited the respondents to recover any damages prior to 1.11.2001. It assumes importance that the petitioner was re-posted to Delhi on 1.4.1999. Being re-posted at Delhi, the petitioner would have been entitled to a Government accommodation at Delhi, not necessarily the one which was earlier allotted to him, but another one. It means that upon his being re-posted at Delhi, the department ought to have considered whether the same flat which petitioner was occupying could be re-allotted to him. The department did not do so.

32. Thus, with effect from 1.4.1999, it could be said that petitioner's occupation of the flat in question was technically incorrect, but in equity the possession could be protected by directing the department to regularize the same in view of the fact that the petitioner was entitled to a government accommodation at Delhi.

33. Thus, we direct the respondents to regularized petitioner's possession of the flat in question post 1.4.1999 till he vacated

the same for the reason during this period the petitioner was admittedly in service and working at Delhi.

34. For this period i.e. 1.4.1999 till May 2005, when petitioner vacated the accommodation, for certain periods license fee was deducted from the salary of the petitioner, which respondents claim was a mistake, but notwithstanding the mistake being detected the amount was not repaid to the petitioner.

35. Thus, since petitioner has consented to pay the normal license fee for the period in question i.e. 1.4.1999 till May 2005, we dispose of the writ petition declaring/directing as under:-

- (i) Claim in the writ petition save and except for gratuity, ACP arrears and packaging allowance are dismissed, being given up by the petitioner.
- (ii) Respondents would not enforce any demand for penal rent by way of damages or otherwise for the entire period 1.4.1993 till the petitioner vacated the licensed premises.
- (iii) Petitioner would be liable to pay normal license fee pertaining to quarter No.98-H, Delhi Sadar Railway Colony post 1.4.1993 till he vacated the same on 19.5.2005.
- (iv) License fee already recovered during the period aforesaid would be given credit of to the petitioner and the remainder would be computed with reference to the salary register and after adjusting the license fee payable, amount due to the petitioner towards gratuity, ACP arrears and packaging

allowance would be paid to the petitioner within 8 weeks from today and simultaneously a statement showing license fee payable and license fee paid, with balance due would be sent to the petitioner and if, with reference to his salary slips, petitioner can show that license fee recovered from him is more than what has been reflected in the statement of account sent by the respondents to the petitioner, within 4 weeks thereof the respondents would re-check their record and do the needful.

- (v) Since the directions issued take care of the dispute in W.P.(C) No.5084/2010, we direct the petitioner to withdraw the said writ petition.

36. The instant order has been passed in the peculiar facts noted hereinabove and since no legal point has been adjudicated upon, it is apparent that the present order has no value as a precedent.

37. No costs.

38. Dasti.

PRADEEP NANDRAJOG, J.

SUNIL GAUR, J.

AUGUST 02, 2011
pkb/mm