

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

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Date of decision: 16th October, 2012

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LPA No.692/2012

SMT. SUNITA

..... Appellant

Through: Mr. M.K. Bhardwaj & Ms. Minal
Sehgal, Advs.

Versus

ASSISTANT CHIEF OF AIR

STAFF (WORKS) & ANR.

..... Respondents

Through: Mr. Jatan Singh, Adv. for UOI.

CORAM :-

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J

1. This appeal impugns the order dated 02.05.2012 of the learned Single Judge of dismissal of W.P.(C) No.9484/2007 preferred by the appellant. The said writ petition was preferred impugning the order dated 11.09.2007 of the Additional District Judge exercising powers of an Appellate Authority under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, partly allowing the appeal preferred by the appellant against the order dated 29.08.2006 of the Estate Officer. The Estate Officer, vide the said order had held the appellant liable to pay a sum of ₹7,944/- per month with effect from 21.07.2006 for unauthorized use and occupation of the official accommodation.

2. The Additional District Judge, on appeal aforesaid by the appellant, held the appellant liable to pay the said sum of ₹7,944/- with effect from 11.01.2007 instead of from 21.07.2006.

3. The impugned order of the learned Single Judge records that though the appellant had in the writ petition made several submissions but did not press the same and confined the challenge to the order of the Additional District Judge on the ground that the appellant had been discriminated vis-à-vis Smt. Annamma Yotannan. Though the counsel for the appellant has again sought to make other submissions before us but we are of the view that the appellant having given up the same before the learned Single Judge is not entitled to re-agitate the same in this appeal.

4. As far as the case of discrimination set up by the appellant is concerned, the learned Single Judge has held the said Smt. Annamma Yotannan to be not placed similarly as the appellant, for it to be said that the appellant had been discriminated against.

5. The appellant, while posted as Stenographer with Air Force Central Medical Establishment (AFCME) was in or about the year 2001 allotted Quarter No.K-67, Civil Zone, Camero Complex, Subroto Park, Delhi Cantt., New Delhi. She was vide order dated 10.05.2006 promoted to the post of Private Secretary and posted from AFCME to Headquarter, Western Air Command (Hqwac). It is not in dispute that upon such promotion, she was required to vacate the said quarter. She however wanted to retain the same till she was allotted another quarter at her next Unit i.e. Hqwac. Though she was granted extension for retaining the

quarter for ten days, but her request was declined. The appellant however continued in occupation and we are today informed that she finally vacated, recently on 10.10.2012 when she was allotted residential accommodation pertaining to her present post at HQWAC.

6. The Estate Officer in the meanwhile passed the order dated 20.08.2006 holding the appellant to be in unauthorized occupation with effect from 21.07.2006 i.e. after two months of the date when she was required to vacate the quarter.

7. The learned Additional District Judge on appeal, finding that the Rules entitle the appellant to retain the quarter up to six months beyond the permissible period of two months or till the end of School / College / Academic year of the children, held the appellant to be in unauthorized occupation only with effect from 11.01.2007 and thus liable for charges for unauthorized use and occupation at the rate of ₹7,944/- per month with effect from the said date only.

8. The learned Single Judge in the impugned judgment on the only plea of discrimination urged before him, has found that Smt. Annamma Yotannan was allowed to retain the official accommodation since no built up accommodation was available in the Unit to which she had been transferred while accommodation was available in HQWAC to which the appellant had been transferred though the appellant was on the wait-list. It was thus held that the appellant could not claim parity.

9. The counsel for the appellant has argued that it is immaterial as to whether the Unit to which an employee is transferred does not have any accommodation or that accommodation though available is not

immediately available. Attention in this regard is invited to the Circular titled ‘Retention of accommodation in Big Cities by and recovery of rent from Civilians paid from Defence Services Estimates who are posted to nearby stations and vice-versa’ providing for the employees transferred to nearby stations being permitted to continue in occupation of their quarters on payment of normal rent provided no accommodation is available for them in their new duty stations. It is argued that Smt. Annamma Yotannan was allowed to so retain the accommodation under the said Circular.

10. The said Circular does not create any right in favour of the employees to continue in occupation of their quarters and vests discretion in the Authorities to allow them to so continue, on case to case basis.

11. Learned counsel for the respondent, appearing on advance notice, has on the contrary invited our attention to the Statutory Rules in this regard and relying whereupon, the Additional District Judge also has held the entitlement of the appellant to continue in occupation for a maximum period of eight months only.

12. We, in exercise of powers under Article 226 of the Constitution of India, do not deem it appropriate to interfere with the decisions of the Authorities, of while allowing one employee to continue in occupation of quarter, not granting such permission to the appellant. We are not exercising powers of appeal over such orders of the Authorities of the respondents. No case of any bias or perversity in refusing permission to the appellant is made out. If it were to be held that owing to the Circular aforesaid every employee transferred to nearby station has a right to

continue in occupation of the accommodation allotted to him / her, it will make the Statutory Rules infructuous and may lead to a situation where all accommodation will be occupied by transferred employees leaving no accommodation for the employees being transferred to the big cities. These are purely administrative matters in which the Courts generally refrain from interfering. We therefore do not find any merit in this appeal and dismiss the same.

13. At this stage, learned counsel for the appellant has stated that the appellant is the sole earning member of her family and her husband is ailing and the appellant will be in dire straits if made to pay the charges for unauthorized use and occupation at ₹7944/- per month from 11.01.2007 till 10.10.2012. On the said plea, notwithstanding the dismissal of this appeal, we observe that it will be open to the appellant to make a representation to the Authorities concerned on compassionate grounds and we are confident, if the Authorities concerned are satisfied as to the genuineness of the said plea of the appellant, shall consider the representation of the appellant sympathetically.

No costs.

RAJIV SAHAI ENDLAW, J

CHIEF JUSTICE

OCTOBER 16, 2012

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