

LPA-1520-2015

1

IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

LPA-1520-2015

Date of decision : 28.11.2015

Lt.Col. Tejender Singh Dalal

... Appellant

Versus

Union of India and others

... Respondent

***CORAM: HON'BLE MR. JUSTICE RAJIVE BHALLA
HON'BLE MRS. JUSTICE REKHA MITTAL***

Present: Mr.S.S.Narula, Advocate
for the appellant.

Mr. Chetan Mittal, Senior Advocate
with Mr. Vivek Singla, Advocate
for the caveators-respondents.

REKHA MITTAL, J.

The present appeal lays challenge to judgment dated 01.10.2015 passed by the learned Single Judge, disposing of the petition (CWP No.20891-2015), whereby the appellant was allowed to remain in the premises in question upto 05.11.2015 on payment of rent as per policy / rule in this regard and he was directed to file an undertaking within a week before the Station Commander, Station Headquarter, Chandimandir Cantt. that he would vacate the premises on or before 05.11.2015 failing which the writ petition shall be deemed to be dismissed.

Counsel for the appellant would contend that the appellant submitted an application for study leave that was duly recommended by the

officiating ADG vide letter dated 10.09.2014 Annexure P1(1). The study leave was approved, to be commenced between 1st June to 30th September, 2015 vide letter dated 16.02.2015 Annexure P1(2). During the period of study leave, the appellant was ordered to remain attached to Station Headquarters, Chandimandir with effect from 16.07.2015 vide communication dated 14.07.2015 Annexure P2. As the appellant applied for study leave and recommendation for his study leave was made on 10.09.2014, his claim for retention of officers accommodation is governed by policy decision dated 24.01.2014 (Annexure P3). As per clauses 5 and 7 of the said policy decision, the appellant is entitled to retain accommodation till 31.07.2016 as one of the children of the appellant is admittedly student of Class XII. It is further argued that the policy with regard to study leave dated 30.01.2015 (Annexure P4) cannot be made applicable to the detriment of the appellant by asking him to vacate the accommodation in question at any time prior to 31.07.2016.

Counsel for the respondent, on the contrary, would urge that apart from the fact that the writ petition filed by the appellant was decided on the basis of concession recorded by counsel for the parties and the appellant in pursuance of the order passed by the learned Single Judge has already furnished an undertaking to vacate the accommodation in question on or before 05.11.2015, the appellants' request for study leave was granted subsequent to the policy dated 30.01.2015 having come into force, therefore, claim of the appellant to retain the accommodation in question is misconceived. The appellant is either entitled to alternative accommodation

or house rent in terms of the policy dated 30.01.2015. In case the appellant is permitted to retain the accommodation in question, the respondent would not be in a position to provide regular accommodation to the officer posted on active duty in the station.

We have heard counsel for the parties, perused the records and find no merit in the appeal.

The request of the appellant for grant of study leave was approved after the policy decision dated 30.01.2015 came into force. As per said policy, the appellant is not entitled to the accommodation in question. On the contrary, he is entitled to allotment of alternative accommodation or can avail facility of house rent allowance (HRA). In this view of the matter, we are unable to accept contentions of the appellant that he is not governed by the policy decision dated 30.01.2015 for the purpose of entitlement and grant of accommodation to officers on study leave or he is entitled to retain the accommodation allotted to him before he submitted his application for study leave. This apart, though it is not very clearly mentioned in the order passed by the learned Single Judge that a concessional statement was made by counsel representing the appellant but the fact that the respondent got recorded a statement giving a concession allowing the appellant to retain the accommodation till a particular date coupled with the factum that the appellant has furnished an undertaking before the concerned competent authority in compliance with the directions issued by this Court make us believe that the learned Single Judge disposed of the petition on the basis of statements made by counsel for the parties and certainly not on merits. That

being so, the challenge to the judgment passed by the learned Single Judge is otherwise not competent.

In view of what has been discussed hereinbefore, the appeal is dismissed. No order as to costs.

(RAJIVE BHALLA)
JUDGE

(REKHA MITTAL)
JUDGE

November 28, 2015.

Davinder Kumar