

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.11133 of 2001 (O&M)

Date of Decision: 06.04.2016

Prem Singh

... Petitioner

Versus

The Chandigarh Administration
and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Sarwan Singh, Sr. Advocate,
with Mr. N.S. Rapri, Advocate,
for the petitioner.

Mr. Vishal Sodhi, Advocate,
for the respondent-UT Administration.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.

1. The short question which arises for consideration in this case is whether the petitioner is liable to pay arrears of house rent in a sum of Rs.1,31,769/- for retaining a Government quarter for five years after he was repatriated to his parent State i.e. the State of Punjab after serving on deputation in the Chandigarh Police. While he was serving on deputation in Chandigarh Police, the petitioner was allotted a Government quarter out of Police Pool on April 04, 1985. He was paying licence fee of Rs.48 per month. He was repatriated in January 1996. The Inspector General of Police, UT, Chandigarh cancelled the allotment on January 24, 2001 w.e.f. March 18, 1996. The petitioner complains that this order was passed

without hearing him or issuing him a notice to quit and following the due process of the law.

2. After the passing of the order, proceedings were taken under section 4 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 after notice issued by the 4th respondent-Estate Officer, Chandigarh Administration. The order of cancellation of allotment is challenged on the ground that till the cancellation of allotment is not made by order in writing retention of Government accommodation cannot be said to be illegal and, therefore, penal rent is not leviable. For this proposition, Mr. Sarwan Singh, learned Senior counsel cites the decision of the Division Bench of this Court in B.K. Dhingra and others v. Union of India and others, 2006 (1) RSJ 671 that notice was essential to declare the occupation unauthorized with concomitant liability to pay market/penal rent. The Division Bench rendered its opinion in a case of Central Government service where the petitioners were allotted Government quarters in Chandigarh from the General Pool Residential Accommodation which allotment was governed by Supplementary Rules, 1922 wherein a non-statutory clause SR 317-B-22 was introduced in the supplementary rules which read:-

“S.R. 317-B 22. Where after an allotment has been cancelled or is deserved to be cancelled under any provision contained in these rules, the residence remains or has remained in occupation of the officer to whom it was allotted or of any person claiming through him, such officer shall be liable to pay damages for use and occupation of the residence, services, furniture and garden charges, as may be determined by Govt. from time to time.”

3. In support of the case before the Division Bench the petitioners

therein relied on the decisions of the Supreme Court in Union of India and another v. Wing Commander, R.R. Hingorani (Retd), AIR 1987 S.C. 808, Shiv Sagar Tiwari v. Union of India and Ors., A.I.R. 1987 S.C. 2725 and R. Kapur v. Director of Inspection (Painting and Publication) Income Tax and another, 1994(5) S.L.R. 616.

4. On the other hand, the respondents relied on the following decisions:- (i) Wazir Chand v. Union of India and others, 2001 (6) SCC 596; (ii) Union of India v. Sisir Umar Deb, 1999 Supreme Court Cases (L&S) 781; (iii) Union of India and others v. Shiv Charan, 1992 Supreme Court Cases (L&S) 140; (iv) Amitabh Kumar and another v. Director of Estates and another, AIR 1997 Supreme Court 1308; (v) Secretary, O.N.G.C. Ltd. and another v. V.U. Warriar, 2005(3) RSJ 214.

5. There were cases of recovery of dues towards market rent from pension and gratuity which the statutory rules authorize for recovery and adjustment of Government dues under Rule 71 (2) as in *V.U. Warriar* case (Supra). The petition was dismissed by the Division Bench relying on *U.V. Warriar* and *Wazir Chand* cases. In *Wazir Chand* the Supreme Court passed the following order:-

“These appeals are directed against the orders of the Central Administrative Tribunal rejecting the claim of the appellant, who happens to be a retired Railway servant. Admittedly, the appellant even after superannuation, continued to occupy the Government quarter, though being placed under hard circumstances. For such continuance, the Government, in accordance with Rules, has charged penal rent from the retired Government servant, and after adjusting the dues of the Government, the balance amount of the gratuity, which was payable, has been offered to be paid, as noted in the impugned order of the Tribunal. The

appellants' main contention is that in view of the Full Bench decision of the Tribunal against which the Union of India had approached this Court and the Special Leave Application was dismissed as withdrawn, it was bounden duty of the Union of India not to withhold any gratuity amount, and therefore, the appellant would be entitled to the said gratuity amount on the date of retirement, and that not having been paid, he is also entitled to interest thereon. We are unable to accept this prayer of the appellant in the facts and circumstances of the present case. The appellant having unauthorisedly occupied the Government quarter, was liable to pay the penal rent in accordance with Rules, and therefore, there is no illegality in those dues being adjusted against the death-cum-retirement dues of the appellant. We, therefore, see no illegality in the impugned order which requires our interference. The appeals stand dismissed."

6. There is a relevant fact which may be noticed. Earlier to the filing of this petition, the petitioner had approached this Court in CWP No.3615 of 1996 in case Prem Singh v. Chandigarh Administration challenging his repatriation order from Chandigarh Police to his Parent Department i.e. PAP Jalandhar Cantt. The repatriation orders were passed on January 18, 1996. The writ petition came up for final disposal with this case and it was dismissed on the statement of the counsel for the parties who were *ad idem* that the petition had been rendered infructuous. It was thus dismissed as such on April 06, 2016 on the date when the present petition was dismissed with reasons to follow. This order contains the reasons which have weighed in mind to decide the case.

7. In the present case, the petitioner is, in the considered opinion of the Court, trying to take undue advantage of the cancellation order passed on January 24, 2001 with retrospective effect from March 18, 1996

following his repatriation order by allowing 15 days of retention free of rent. The Administration has charged penal rent @ 50 times of the normal licence fee i.e. Rs.2250+3/- per month as per rules totalling an amount as stated in the first paragraph and as a result the intervening period, it is argued, cannot be said to be unauthorized occupation since there was no order cancelling the allotment prior to January 24, 2001. Financial liability cannot be created retroactively. I am not impressed with the argument as it is an extremely technical one. The petitioner was on deputation to Chandigarh and was repatriated to Punjab in 1996. If he continued to occupy Government accommodation thereafter he did so to his own peril. He owed a duty to the Chandigarh Administration to have vacated the premises on his own without awaiting orders of cancellation from the same authority that had repatriated him to his Parent Department in Punjab. Could the result have been achieved without issuing him notice of vacation and if this would amount to breach of principles of natural justice to such an extent as to cover the period to 1996 to 2001 and make it lawful occupation, is the question.

8. I do not think that principles of natural justice should be stretched so far to make occupation lawful till the elastic reaches breaking point. When there is a duty and an obligation on Government servant to vacate Government accommodation on repatriation then it cannot be held as an absolute rule that market rent or penal rent should not follow except upon a notice duly served which penal rent is statutorily provided for, for not relinquishing the allotment made from the general pool or for that matter from any government accommodation. There were other Government

servants in the queue to be allotted Government accommodation in a war of attrition on public property meant for housing employees of Government.

9. The petitioner effectively withheld the accommodation from further allotment without using it for five years by the very nature of the repatriation order would spell which order had to be obeyed an obviously caused relocation to the State of Punjab. His case for absorption in Chandigarh Police set up in CWP No.3615 of 1996 has been rendered infructuous today by separate orders. His repatriation order is thus legal and valid. The niceties of law on notice, hearing and proceedings under the Public Premises Act notwithstanding should not blur vision or come in the way of equity in the discretionary and extraordinary jurisdiction provided by Article 226 of the Constitution of India. It is well settled that an order need not be passed only because it is lawful to do so. The equities are not in favour of the petitioner to take advantage of his own wrongs. Therefore, on first principles I refrain from granting any relief to the petitioner and would dismiss the petition.

10. While doing so I would, however, make it clear that the claim of the UT Administration will be limited to Rs.1,31,769/- up to January 31, 2001 but no interest would be chargeable on that amount for the reason that this petition was entertained in 2001 on an undertaking given by the petitioner present in Court on July 31, 2001 that he would vacate the house in question and deliver vacant possession thereof to the Chandigarh Administration within one month from the date of the order. It was on these premises that notice of motion was issued in the case to examine the effect of the cancellation order passed after five years from the date when the

petitioner was repatriated and had orders been passed earlier, the petitioner may not have been burdened with the arrears.

11. The UT Administration has filed a written statement contesting the case stating that the petitioner was no longer an employee of the Chandigarh Police after January 18, 1996. He was allowed to retain Government quarter in his possession for two months i.e. upto March 18, 1996 as per the provisions and instructions applicable to rent free accommodation by instructions of the Government of India in the Ministry of Works & Housing dated March 30, 1965 (Annex R-1).

12. The stand of the Chandigarh Administration is not incorrect when they state that the petitioner has misused Government property by retaining the quarter in his unauthorized possession. In view of the terms and conditions of the allotment letter, no notice was required to be issued or serve because its terms were known to the petitioner with eyes wide open. The petitioner never approached the department in this connection rather he remained at large since he stood repatriated from Chandigarh Police to his parent State. As a matter of fact, the office memorandum dated March 30, 1965 (supra) deals with cases of transfer from one station to another, then officer may be allowed to retain the residence, free of rent for the period of first 15 days and thereafter on payment of rent under F.R. 45-A but not exceeding two months from the date of handing over the charge. The other events are death and resignation from service, dismissal, removal or retirement where incumbent can retain residence for a period of one month, free of rent. Even this is hedged in for bona fide use of the officer or his family as the case may be and the residence can be conveniently spared by

the competent authority. The OM does not deal with cases of repatriation which is albeit the weakest of the situations obtaining with hardly any foothold left in the allotted quarter. Delay in taking action by the Estate Officer is not to be read in favour of the petitioner. The petitioner even filed a Civil Miscellaneous Application No.23974 of 2001 praying for extension of time for vacating Government accommodation praying for extension up to March 31, 2002 which was rendered infructuous on the undertaking given at the motion hearing to vacate the house within one month. The application was rendered infructuous. The question which survived was about his liability to pay the arrears which liability is held against the petitioner in the above terms as reasoned in this order.

13. I find no ground to interfere in this matter and would dismiss the petition.

(RAJIV NARAIN RAINA)
JUDGE

06.04.2016
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