

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

LPA No.62 of 2016 (O&M)
Decided on : 03.04.2019

Mohinder Singh

..... Appellant

Versus

State of Haryana and ors.

..... Respondents

**CORAM : HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL**

Present : Mr. Neeraj Sharma, Advocate
for the appellant.

Mr. Randhir Singh, Addl. AG, Haryana.

Manjari Nehru Kaul, J.

CM-131-LPA-2016

This is an application under Section 5 of Limitation Act for condoning the delay of 143 days in filing the appeal.

After hearing learned counsel for the parties and perusing the application, which is duly supported by an affidavit of the appellant, delay of 143 days in filing the appeal is condoned.

CM stands disposed of.

Main case

In this intra court appeal filed under Clause X of Letters Patent, the appellant has assailed the orders dated 01.05.2015 and 14.09.2015 vide which learned Single Judge dismissed the writ petition as well as review application filed by the appellant.

2. Brief facts of the case are that the appellant, who is a Medical officer, vide order dated 23.05.2012 (Annexure P-1) was transferred from District Jail, Narnaul to C.H.C.Assandh, Karnal. At that time, the appellant was residing at the government accommodation allotted to him at District Jail, Narnaul. As per the appellant, since he was not being relieved by Superintendent, District Jail, Narnaul, he unilaterally relinquished his charge on 17.07.2012 and joined his new posting at CHC, Karnal on 18.07.2012. While proceeding to his new posting at Assandh, Karnal, he handed over the keys of his official residence at Narnaul to one of his colleagues but the Superintendent, District Jail, Narnaul refused to accept the same due to malafide reasons. Despite best efforts, respondent No.4 did not accept the keys from his colleague and as a result of which, the house was shown to be in the possession of the appellant. Ultimately, the government accommodation at Narnaul was officially got vacated only on 30.07.2013 and the penal rent of ₹ 10,77,020/- was imposed upon the appellant. It was in this background, the appellant approached this Court by way of filing CWP No.11184 of 2014 challenging the order dated 08.01.2014 (Annexure P-20) vide which the penal rent was imposed upon him.

3. Learned Single Judge vide order dated 01.05.2015 dismissed the writ petition with the following observations:

“In my opinion the writ petition must fail. If it was the case of the petitioner that the Superintendent Jail had some animus against him he should have written such letter to the higher authority but no such

letter is on the record. Rather, even after he was informed by his so called colleague that he should personally hand over the keys he still did not do so.

No fault can be found in the action of the respondents.”

4. Learned counsel for the appellant submitted that the learned Single Judge had erred in not appreciating the fact that before imposing penal rent of ₹ 10,77,020/- vide order dated 08.01.2014 the respondent-department had not granted any opportunity of hearing to the appellant. According to the learned counsel, the order of imposition of penal rent was passed in violation of the principles of natural justice as no show cause notice was issued to the appellant in this regard. It was next contended that respondent No.4 misled the higher authorities by withholding the correspondence of the appellant as well as of Dr. Rajesh with him.

5. Learned State counsel, on the other hand, argued that Deputy Commissioner, Narnaul vide order dated 02.08.2013 constituted a Committee consisting of Naib Tehsildar, Deputy Superintendent Jail, Narnaul, Sub Assistant Superintendent, District Jail, Narnaul, Officiating Sub Assistant Superintendent, District Jail, Narnaul and Warder to submit a detailed report qua the controversy pertaining to the official residence of the appellant at Narnaul, which had not been vacated by him. The Committee vide its report dated 02.11.2012 (Annexure R-12) submitted that the main gate of the said residence was locked and on an inquiry, it had been found that the appellant had been allotted another government accommodation at General Hospital, Assandh w.e.f. 26.07.2012. Hence, in this way, the

appellant had retained two government accommodations simultaneously, which was in violation of the Government rules/Instructions for which he was liable to pay penal rent as per the existing rules. He further submitted that repeated requests had been sent to the appellant to vacate the accommodation but in vain.

6. We have heard learned counsel for the parties.

7. The Apex Court in ***Ms. Asha Sharma vs. Chandigarh Administration and ors., 2011(10) SCC 86*** held that it is well within the knowledge of the government servant the period within which he has to vacate the government accommodation allotted to him as a part of his employment and he should surrender the same within the scheduled time. The Apex Court further observed that an officer cannot be allotted two government houses upon his transfer to another place. The relevant observations are reproduced as under:

“29. Now, we will deal with the other two arguments that were raised before us. One argument was in regard to the allotment of two houses to a single officer and/or to his family, one in Chandigarh and one in some other part of the same State; and the second was regarding the period of retention of the allotted house after the employee is retired, promoted, transferred or is sent on deputation etc. These are matters of serious concern. There is no rule that has been brought to our notice or is available on the records providing that an officer who is posted outside Chandigarh/Panchkula/Mohali and whose spouse is not entitled to any Government accommodation of any category can be provided with two houses, one at the District/Division level to which he/she is

transferred and another at Chandigarh and its adjoining areas. In absence of any such specific rule, we consider it appropriate to direct that the State shall not allot two different houses to one government servant. In terms of Rule 11(1)(b) of the Allotment Rules, such allotment can be made in some circumstances but we are constrained to observe that every effort should be made to ensure that such situations arise only in exceptional circumstances. We are informed that even under the rules of transfer of the Government servant, a married couple, both of whom are government servants are normally posted at the same place. Be that as it may, it will be in the interest of all concerned that Rule 11(1)(b) is invoked sparingly and only by the authorities concerned, upon the recommendation of the House Allotment Committee.”

8. As a sequel to the above discussion, we do not find any reason to interfere in the impugned order passed by the learned Single Judge as it could not have been expected from the appellant not to know that in the eventuality of not vacating his official residence within the scheduled time, he would be liable to pay penal rent on the same.

9. Accordingly, the present appeal is dismissed.

(AJAY KUMAR MITTAL)
JUDGE

(MANJARI NEHRU KAUL)
JUDGE

03.04.2019
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Whether speaking/reasoned:
Whether reportable :

Yes/No
Yes/No