

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION NO. 1997 OF 2003

Ram Suresh Sharma, S/o Late Jagannath Sharma, aged about 47 years,
Const. No. 414, Police Line, Jagdalpur, R/o Hat Kachora, Halbakote,
Jagdalpur, District Bastar (C.G.)

... Petitioner

Versus

1. State of Chhattisgarh, through the Secretary, Department of Home (Police), Mantralaya, Raipur.
2. The Director General of Police, Police Headquarters, Raipur (C.G.)
3. The Inspector General of Police, Bastar Range, Jagdalpur (C.G.)
4. The Superintendent of Police, Bastar, Jagdalpur (C.G.)

... Respondents

For Petitioner	:	Mr. Akash Pandey, Advocate, under instructions of Mr. Prafull Bharat, Advocate.
For Respondents	:	Mr. D.R. Minj, Dy. Govt. Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

28/08/2017

1. Challenge in the present writ petition is to the orders, dated 5.12.2002 (Annexure P-6), 17.2.2003 (Annexure P-7) and 2.5.2003 (Annexure P-8).
2. At the outset, learned counsel for the petitioner submits that he does not intend to press Annexure P-8, dated 2.5.2003, as the said order is largely in favour of the Petitioner. Thus, the challenge is only restricted to the orders, dated 5.12.2002 and 17.2.2003.
3. Facts in brief relevant for the adjudication of the case are that the petitioner allegedly is said to have taken a house on rent while he was posted at Police Line, Jagdalpur, as Constable No. 414. The landlord of the said disputed house was one Smt. Renu Rai, W/o Jogendra Rai, R/o Hat Kachora, Jagdalpur. She filed a complaint before the Superintendent of Police, Jagdalpur, alleging default on the part of the petitioner in

payment of rent. The Superintendent of Police subsequently issued a charge-sheet to the petitioner alleging misconduct under the service rules to the extent that as there was a default on the part of the petitioner of not paying the monthly rent to the landlord the petitioner has brought disrepute to the image of the police department. Further, the petitioner has also misconducted himself by not accepting the notice issued by the department seeking vacation of the rented premises by the petitioner, which again amounted to indiscipline and misconduct under the service rules and is unbecoming to a government service particularly since the petitioner was working under a disciplined uniformed force.

4. An Inquiry Officer was appointed to conduct a departmental enquiry. The petitioner was found guilty of all the charges levelled against him and vide Annexure P-6, dated 5.12.2002, the disciplinary authority, i.e., the Superintendent of Police, Bastar, District Jagdalpur, has imposed a punishment of stoppage of one increment with cumulative effect and also ordered for payment of arrears of rent of Rs.16,400/- and further directed for payment of future rent as long as the premises is kept in possession with the petitioner.

5. This order dated 5.12.2002 (Annexure P-6) was put to challenge before the Inspector General of Police, Bastar Range, Jagdalpur, who, in turn, vide order dated 17.2.2003 (Annexure P-7), rejected the appeal, affirming the punishment order passed by the Superintendent of Police. Against both the orders (Annexures P-6 and P-7), the petitioner preferred a second appeal before the Director General of Police, Police Headquarters, Raipur, who, vide order dated 2.5.2003 (Annexure P-8) allowed the appeal and quashed the order dated 5.12.2002.

6. The petitioner now has filed the present writ petition assailing the effect of the orders passed by the disciplinary as well as the 1st appellate authority, only to the extent of fastening of liability upon the petitioner to pay arrears of rent of Rs.16,400/- as also the payment of rent for the subsequent period of alleged occupation of the disputed premises by the petitioner.

7. Contention of the learned counsel for the petitioner is that the stand of the petitioner of he not being the tenant of the complainant Smt. Renu Rai is not proved and established in the departmental enquiry by any cogent and substantive piece of evidence, particularly when there was a categorical denial of the petitioner of occupying the said premises. Further contention is that the disciplinary authority and the appellate authority also did not care to look into the aspect of the petitioner being transferred to a different place and the petitioner having joined the transferred place and hence there could not have been an occasion of the petitioner retaining the premises if at all if he was in possession of the same. It is also contended by the counsel for the petitioner that the nature of allegations levelled against the Petitioner is one which ought to have been settled by the complainant Smt. Renu Rai by initiating appropriate civil law remedies available to her, as the alleged act, under no circumstances, would fall within the ambit of misconduct by the petitioner in the course of his employment or while on duty.

8. Lastly, it is contended by the learned counsel that the disciplinary as well as the appellate authority have failed to take note of the report submitted by the Town Inspector, dated 15.10.2001, wherein there was a categorical finding by the Town Inspector that the said premises was in fact not in occupation by the petitioner but it was the brother-in-law of the petitioner, namely, Mithilesh Sharma, who was the actual tenant of the said

disputed premises. Thus prayed that the respondent authorities may be directed to refund the amount of recovery made from the petitioner's salary by virtue of orders, Annexure P-6 and P-7.

9. Learned counsel for the State, however, opposing the petition submits that it is a case where the petitioner in spite of the fact of being a member of a disciplined uniformed force ought to have been conducted himself in a fair and reasonable manner even when he was out of his duty hours. According to the State Counsel, the petitioner being the member of the police department ought not to have behaved in a manner where the image of the police department is put at stake and disrepute inasmuch as the petitioner having been given the house on rent by the complainant Smt. Renu Rai should have conducted himself in a manner where he would have promptly and regularly paid the monthly rent without any default nor should he have tried to put pressure or coercion of being a police personnel upon the landlord from seeking the unpaid rent if any. Further contention of the State Counsel is that the petitioner also has misconducted to the extent of refusing to accept the notice which was issued by the department asking him to vacate the disputed premises which also calls for a disciplinary action and therefore the impugned orders do not require any interference. Moreover, the punishment of stoppage of increment has in any case been set aside/quashed by the department, the only course left to the petitioner now would be in turn filing of suit for recovery against the landlord who must have got the money recovered from the department towards the payment of rent. Thus prayed for the rejection of the petition.

10. Having considered the contentions put forth on either side and on perusal of the records, undisputedly there was an order of punishment issued on 5.12.2002 which was affirmed by the appellate authority vide

order dated 17.2.2003. However, if we look into the order passed on 2.5.2003 by the Director General of Police, operative part of which reads as under, it would clearly reflect that the order passed on 5.12.2002 has been quashed:

“अतः याचिका पर सहानुभूतिपूर्वक विचारण में लेते हुये पु0अ0-बस्तर-जगदलपुर द्वारा पारित अंतिम आदेश “वेतनमान में से एक वेतनवृद्धि संचयी प्रभाव से अवनति का दण्डादेश क्रमांक/पु0अ0/बस्तर/स्टेनो/निजि/43-ई/01-02, दिनांक 05-12-02 तत्काल प्रभाव से “याचिका” स्वीकार करते हुये “निरस्त” किया जाता है।”

The order of the second appellate authority does not reflect of the order dated 5.12.2002 being quashed only to the extent of imposing of punishment of stoppage of increment. It only reflects of the entire order dated 5.12.2002 be quashed. The effect of quashment of order dated 5.12.2002 as a whole would mean that the order dated 5.12.2002 not being in existence and as such even if there is an order of recovery or any recovery made pursuant to the order dated 5.12.2002 the said has to be refunded to the petitioner as there is no affirmation of the order of recovery by the second appellate authority in his order dated 2.5.2003.

11. Thus, this Court is of the opinion that in view of the aforesaid facts the petition deserves to be and is accordingly allowed. The Petitioner is held to be entitled for any recovery which has been made from his salary pursuant to the order dated 5.12.2002.

12. It is further submitted that in the opinion of this Court even otherwise the impugned orders would had been bad in law for the reason that the alleged act of default on the part of the petitioner in non-payment of any rent to a private accommodation taken from a private individual, namely, Smt. Renu Rai, is purely a private dispute and is also disputed factual aspect and could not have been an act which could be said to have been done in the course of discharge of his duty. The complainant Smt. Renu

Rai had civil remedies available to her for getting the petitioner vacated and also for seeking recovery of the unpaid amount of rent from the petitioner, the rent defaulter. For this reason also this Court is of the opinion that the petition deserves to be allowed and it is ordered accordingly. As a consequence of the allowing of the petition, the petitioner shall be entitled for refund of any recovery which has been made pursuant to the order dated 5.12.2002.

13. The writ petition is allowed and disposed of accordingly.

Sd/-
(P. Sam Koshy)
Judge

/sharad/