

THE HON'BLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No.9658 of 2011

Dated:18.07.2017

Between:

Voliuddin, T.No.4999, S/o. Imam Baig, Aged about 58 years, Worker Supervisor (Retd.), HMT Machine Tools Limited, HMT, Balanagar, Narsapur Road, Hyderabad – 500 854.

...Petitioner

AND

M/s. HMT Machine Tools Limited, 59, Bellari Road, Bangalore – 560 032, Karnataka, represented by its Chairman & Managing Director and others.

.. Respondents



The Court made the following:

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

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ORDER:

Petitioner retired from service on attaining the age of superannuation on 30.09.2010 while he was working as Worker Supervisor in the office of Hindustan Machine Tools Limited, Balanagar, Narsapur Road, Hyderabad. Even after retirement, petitioner continued to occupy residential quarter allotted to him while he was in service. This Writ Petition is instituted praying to grant relief to release the gratuity, settlement allowances and challenging the action of respondents in not permitting him to stay in Quarter No.J-08, HMT Town Ship, Balangar, Narsapur Road, Hyderabad, on payment of rent on par with outsiders.

2. The petitioner is continuing in the same quarter by virtue of interim order granted by this Court on 05.03.2012.

3. Heard the learned counsel for the petitioner and the learned counsel appearing for the respondents.

4. Learned counsel for the petitioner submits that there are large number of residential quarters, which are un-occupied and vacant and there is no requirement of the said quarters for the serving employees of the respondent company, therefore, no harm is caused by continuing him, being a retired employee, in the quarter allotted to him. He further submits that several quarters belonging

to the respondent company were allotted to private persons, who are no way concerned with the respondent company and it is also allowing continuation of occupation by the retired employees. In support of the said contention, reliance is placed on a computer statement filed as Annexure P.4 disclosing arrears of rent due from various persons. According to the learned counsel, all these persons are continuing and there is no justification to deny continuation of the petitioner and the same would amount to arbitrary excise of power and is discriminatory. According to the learned counsel, petitioner is willing to pay rent payable by outsiders and when outsiders are allowed to continue in the quarters, no justification to deny continuation to the petitioner.

5. In the reply affidavit, petitioner has asserted that 150 residential quarters are occupied by outsiders on payment of usual rent. He has also referred to some names of retired employees, who are residing in the quarters. It is further averred that employees of APSRTC, State Government employees, employees of National Remote Sensing Centre, employees of CISF and employees of BSNL, in addition to private business people are being continued.

6. In the additional reply affidavit, the petitioner has repeated the same contention and also referred to the names of retired employees.

7. Having regard to this assertion of the petitioner, respondents were directed to file further affidavit explaining the reasons as to

how such of the persons mentioned by the petitioner in his reply affidavit and additional reply affidavit are being continued. Accordingly, respondents filed rejoinder, wherein it is averred that Sri T.Brahma Chary, though retired on 31.07.2013, continued to occupy the premises illegally and unauthorisedly despite being asked to vacate on several occasions. The contention of the petitioner that more than 150 residential quarters are occupied by outsiders is denied. It is further averred that Sri Ch.Anjaneyulu, though retired on 30.06.2012, continued in the said quarter, but vacated on 10.12.2016, after repeated notices. It is averred that the petitioner instigated the retired employees to remain in the quarters because the petitioner is continued in the quarter and others are also resisting for vacation of the quarters. It is further averred in paragraph No.8, by referring to four names of persons that those retired employees were appointed as Consultants, after their retirement, and therefore, they were allowed to retain in the quarters. With reference to continuation of some other employees also, the stand of the respondent company is, in spite of issuing notices, those employees are resisting for vacating the quarters. The assertion of the petitioner that employees of BSNL and private business people are permitted to stay is denied. Employee of BSNL was allotted quarter on the ground that he was providing services to the Company.

8. Learned counsel representing the respondents, on instructions, submits that totally there are 400 quarters, however,

only 282 employees are working in the Company. Many quarters are in dilapidated condition and require renovation, but due to financial constraints, steps are not being taken. Many of the quarters occupied by the working employees of the respondent company requires repairs. Even the quarter occupied by the petitioner requires repairs. He further asserts, on instructions, that except the few persons mentioned in the rejoinder, no other private person is allowed to continue in the quarters of the respondent company. In reply to the specific assertion of the learned counsel for the petitioner that the statement enclosed as Ex.P.4 contains names of shop owners, learned counsel representing the respondent company, on instructions, submits that initially those shop owners were allotted quarters, but they were all evicted subsequently and at present no shop owner occupied the quarter.

9. Fact remains the petitioner retired from service in the year, 2010. Residential quarters of the respondent company can be allotted only to serving employees. On retirement, the employee is granted a period of about 30 days to move out of the quarter. Admittedly, though petitioner retired in September, 2010 for almost 7 years, he continued to occupy the quarter. The only basis for seeking continuation in the quarter is that there are vacant quarters and that there are others, who have also retired like the petitioner and the private persons are occupying the quarters and therefore, he should be continued to occupy the quarter. Thus, the only basis for the petitioner to seek continuation is that other retired

employees and private persons are being continued and alleged ground of discrimination.

10. The fact that the petitioner is not entitled to continue occupation of the residential quarter of the respondent company after retirement is not in dispute. Having regard to the fact that a retired employee is not entitled to occupy the quarter even if he is willing to pay usual rent or higher rent as applicable to private accommodation, no manner of right vests in the petitioner to continue to occupy quarter belonging to the respondents, after his retirement. Thus, continuation of the petitioner in the residential quarter belonging to the respondent company after his retirement is wholly unauthorised. This writ petition is instituted even before steps were taken by the respondent company for evicting the petitioner and by virtue of interim order granted by this Court on 05.03.2012 he continues to occupy the quarter for more than five years.

11. Learned counsel for the respondents, on instructions, further submits that the petitioner is not even paying the rent regularly and huge amount of rent is due from him. Learned counsel for the petitioner sought to deny the said contention and contends that he is not due of arrears of rent payable to the respondents. Leaving open to the respondents to recover the rent due and payable by the petitioner, no direction as sought for by the petitioner for continuation in the quarter can be granted.

12. As no retired employee is entitled to occupy a quarter belonging to the employer merely because some others are continued, he has no right to ask for continuation and he cannot plead the contention of discrimination against him. That apart, stand of the respondents is others are continued because of the provocation of the petitioner and appropriate steps are being taken to evict them also.

13. Merely because some illegalities are committed by the respondents, plea of discrimination cannot be raised. Article 14 of the Constitution of India is not attracted to plea of 'negative equality'. This Court cannot direct to perpetuate such illegality. Learned counsel for the respondents by placing reliance on the decision of the Hon'ble Supreme Court in *Union of India and another v. Arulmozhi Iniarasu and others*¹, contends that Article 14 is not attracted in matters of this nature. In paragraph No.26, the Hon'ble Supreme Court held as under:

“26. Lastly, as regards the submission that the action of the appellants is highly discriminatory inasmuch as some similarly situated persons have been appointed/absorbed as Sepoys, the argument is stated to be rejected. It is well settled that a writ of mandamus can be issued by the High Court only when there exists a legal right in the writ petitioner and corresponding legal obligation on the State. Only because an illegality has been committed, the same cannot be directed to be perpetuated. It is trite law that there cannot be equality in illegality.”

¹ (2011) 7 SCC 397

14. It is not in dispute that the residential quarters are located in industrial and busy commercial area known as Balanagar and the quarter occupied by the petitioner would certainly fetch a higher rental value in the open market. Thus, the petitioner on payment of nominal rent cannot seek to perpetuate his occupation and continue as if he is a owner. It may be true that there are several quarters vacant. However, it is for the owner of the property to utilise those quarters as required in the interest of the organisation. If what is contended by the learned counsel for the respondents is true, it is for the owner whether to repair those quarters or keep them idle. Furthermore, occupation of quarter would require several logistics such as security, provision of water, provision of electricity and maintenance and other aspects and huge money is required to be spent by the company on a person who is no more an employee and serving the company. For all these reasons, relief of continuation in the quarter cannot be granted.

15. Petitioner also sought for payment of gratuity and other benefits. In the rejoinder filed by the respondents, it is explained about settlement of gratuity and other benefits. The same is not controverted. The averments made in the rejoinder would disclose that the petitioner agreed to forego the interest awarded by the authority under the Payment of Gratuity Act, and received an amount of Rs.4,05,273/- as full and final settlement of his gratuity. The averments in the rejoinder also disclose aggrieved by non-settlement of gratuity, petitioner has availed the remedy as available

under the Payment of Gratuity Act. Thus, he cannot simultaneously seek relief similar to the relief already sought, even assuming that the issue was not properly resolved. For these reasons, this prayer is liable to be rejected.

16. Accordingly, the Writ Petition is dismissed. Petitioner shall vacate the Quarter No.J-08, HMT Town Ship, Balangar, Narsapur Road, Hyderabad, within sixty (60) days from today and if the petitioner does not vacate the quarter, it is open to the respondents to take all the steps as required under law. Petitioner shall file an affidavit undertaking within two (02) weeks from today that he would vacate the quarter within a period of sixty (60) days from today.

17. Consequently, Miscellaneous Petitions, if any, pending in this writ petition shall stand closed. There shall be no order as to costs.

JUSTICE P.NAVEEN RAO

Date:18.07.2017

Note: Furnish CC within three (03) days.

(B/O)
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