

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

Date of decision: 12.05.2017

CWP No.3392 of 2017

Babu Lal ...Petitioner

Vs.

State of Haryana & others ...Respondents

CWP No.3441 of 2017

Parveen Malik ...Petitioner

Vs.

State of Haryana & others ...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Naresh Kumar, Advocate, for
 Mr. Ram Darshan Yadav, Advocate, for the petitioner(s).

Mr. B.R.Mahajan, Advocate General, Haryana with
 Mr. R.T.Redhu, DAG, Haryana.

RAJIV NARAIN RAINA, J. (ORAL)

This order will dispose of the aforementioned two writ petitions i.e. CWP No.3392 of 2017 preferred by Babu Lal and CWP No.3441 of 2017 preferred by Parveen Malik. The cause and the issue involved in both the cases is common and identical and therefore both the petitions can be conveniently decided by a single order, as the question of law and facts are the same.

When these matters came up for hearing on 24.04.2017, I passed the following order:

“W/s has been filed in Court on behalf of the State.

The same is taken on record. Copy supplied.

From the written statement, it is revealed that Haryana Government Finance Department has issued a notification on July 29, 2016 replacing the Punjab Civil Services Rules which have been repealed and action taken as per Rule 47 of Haryana Civil Services (Allowances to Govt. Employees) Rules 2016, (Chapter IV) for recovery of licence fee and Rent of Government Accommodation from the petitioner in the manner prescribed and tabulated in the Rules. These Rules justify levy of 300% penal rent of the normal licence fee for overstay of four months and above if accommodation is not vacated by the allottee.

This morning CWP No. 3441 of 2017 came up for hearing as a fresh matter, in which the same learned counsel relied on an order passed by the coordinate bench in CWP No. 3923 of 2015 titled “Ram Kishan vs. State of Haryana & others” decided on September 16, 2016 to claim that penal rent @ 300 times the normal licence fee was based on instructions and not on statutory rules and, therefore, the Bench took the view that an order February 24, 2015, similar to one passed in this case, deserves to be set aside. That impugned order was set aside and the department directed to pass an order in accordance with Rule 5.23 Part I, Vol. I of the Punjab Civil Service Rules and reduce the penal rent accordingly. The order in CWP No. 3923 of 2015 was passed on September 16, 2016 while the statutory rules were notified earlier, on July 29, 2016 by the State of Haryana which law was unfortunately not brought to the notice of the Court. Apparently, the judgment and order is *per incuriam* and of no moment and not a binding authority.

Notice of motion in CWP No.3441 of 2017.

On the asking of the Court, Mr. Redhu accepts notice on behalf of respondent-State and waives service on them.

Learned counsel for the petitioners to supply two sets of the paper book in the office of Advocate General, Haryana with one extra copy to Mr. Redhu directly. He may file reply before the next date of hearing.

In the meanwhile, learned law officer would confer with the learned Advocate General, Haryana to examine the

resulting inconsistency arising out of two administrative orders, the one passed in implementation of court orders, and the one likely to be passed herein, which may be contradictory to each other. In order to bring uniformity, this Court requests the learned Advocate General, Haryana to address arguments on any date convenient to him, but in the first instance, let the matter come up on 12.05.2017.

A photocopy of this order be placed on the file of the connected matter.

A copy of this order be given to Mr. R.T. Redhu, under the signatures of Bench Secretary.”

Today, learned Advocate General, Haryana, Mr. B.R.Mahajan appears for the State and submits that the decision of the Single Bench in *Ram Kishan's* case (supra) related over-staying allotment of government accommodation during the disputed period prior to the amendment carried out in the Rules by Haryana.

The impugned decisions levying 300% times the normal licence fee for overstaying allotted accommodation were passed when the executive instructions were prevalent prior to the amendment to the rules, which instructions have been faulted and declared *non est* in *Ram Kishan* case holding that instructions cannot override rules. The amendment to the Rules has changed the entire position after their enforcement on July 29, 2016 with the executive instructions abrogated.

The two present cases relate to impugned orders passed pre-amendment and therefore Mr. Mahajan very fairly concedes that the petitions have to be allowed since the amended rule is prospective in operation.

As a result, both the petitions are allowed and the impugned orders dated November 30, 2015 (Annex P-3) and January 15, 2015 (Annex P-

CWP No.3392 of 2017 &
CWP No.3441 of 2017

1) in CWP No.3392 of 2017 and CWP No.3441 of 2017 respectively are set aside. There will be no order as to costs.

12.05.2017
Vimal

[RAJIV NARAIN RAINA]
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>No</i>