

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**CWP No. 3397 of 2017****Date of decision: 28.11.2017**

Inspector Surinder Singh Phogat

....Petitioner(s)

Versus

State of Haryana and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr. R.D. Yadav, Advocate for the petitioner.

Mr. Harish Rathee, Sr. DAG, Haryana.

G.S.SANDHAWALIA, J. (Oral)

Challenge in the present writ petition is to the order dated 15.01.2015 (Annexure P-2) whereby respondent No. 4 has affixed recovery of Rs.7,97,100/- on the petitioner on account of penal rent @ 300 times for over staying in the family quarter. The period of over stay is calculated from 22.04.2014 to 11.01.2015. The penal rent is 300 times of the normal licence fee for overstaying in the allotted accommodation as per Annexure P-9 which is the specific case of the petitioner and is also admitted by the State.

Justification by the State is that thereafter the Rules came into force on 29.07.2016 whereby as per Rule 47 of the Haryana Civil Services (Allowances to Govt. Employees) Rules, 2016 (Chapter IV), penal rent can be levied 300 times. Admittedly, the period of over stay is prior to the enforcement of the Rules and the case of the petitioner is that at that point of time, Rule 5.23 of Civil Services Rules, Volume 1, Part-1, as amended in

2003, was in force.

In similar situation, merely because instructions dated 18.06.2012 (Annexure P-5) had been issued, the amount was calculated @ 300 times, which was quashed in CWP No. 3923 of 2015, Ram Kishan V/s. State of Haryana and others, decided on 16.09.2016 (Annexure P-6). The relevant portion of the order reads as under: -

“The respondents have acted on instructions issued by the Finance Department relating to imposing of penal rent at 300 times in the absence of statutory rules. However, the statutory Rule 5.23 of Punjab Civil Services Rules provides that penal rent can be calculated and imposed at 50 times, therefore, order dated 24.02.2015 (Annexure P-6) asking the petitioner to deposit Rs.5,91,902/- as a penal rent at 300 times for the period from 10.06.2014 to 07.12.2014 would be contrary to cited Rule. Hence, order dated 24.02.2015 (Annexure P-6) is set aside. The respondents are directed to pass orders in accordance with Rule 5.23 of the Punjab Civil Services Rules within a period of two months from today.

Disposed of accordingly.”

Similarly in CWP No. 3392 of 2017, Babu Lal V/s. State of Haryana decided on 12.05.2017 (Annexure P-8), same dispute arose and the relevant portion of the order reads as under.

“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 preamendment 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-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.”

Resultantly, this Court is of the opinion that the matter is covered by the two decisions. Accordingly, petition is allowed and the order dated 15.01.2015 (Annexure P-2) is set aside. Liberty is given to respondent to pass a fresh order by calculating the penal rent @ 50 times for the over stayed period.

(G.S. SANDHAWALIA)
JUDGE

28.11.2017
Divyanshi

Whether reasoned/speaking
Whether reportable

Yes/No
Yes/No