

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No. 708 of 2017
Date of Decision: 26.4.2017

Surender Malik

... Petitioner

Versus

State of Haryana and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.Shailender Singh Gill, Advocate for the petitioner

Mr.R.T.Redhu, DAG, Haryana

Mr.Shiv Kumar, respondent no.3 in person

RAJIV NARAIN RAINA, J.

1. Affected party, the 3rd respondent has appeared in person. He has filed detailed written statement in Court which is taken on record.

2. The dispute is regarding allotment of house on the ground floor. I passed ex-parte stay order on 18th January, 2017 when the matter came up as a fresh case, directing that in case the petitioner has not physically surrendered the Government quarter, he will not be compelled to and would retain it till further orders. His plea before me was that he is physically handicapped person and will be put to undue hardship if he is not allotted the accommodation on the ground floor besides he has a valid allotment in his favour of the disputed accommodation which has been cancelled by an illegal order passed without hearing.

3. The petitioner had come against the order dated 8th November, 2016 (Annex. P-8) whereby, his allotment has been

cancelled and in his place the accommodation allotted to the 3rd respondent as per station seniority. The petitioner and the third respondent are posted as Teachers in Government Polytechnic, Ambala City. It is not disputed that the third respondent is senior in station seniority than the petitioner. The petitioner has come against the impugned order dated 8th November, 2016 (Annex. P-8) by way of filing this petition on 11th January, 2017. The impugned order has been passed by the House Allotment Committee after re-consideration of the case of the petitioner and the third respondent. House Allotment Committee decided that House No. L-17 Ground Floor, Saraswati Vihar Staff Colony, Govt. Polytechnic, Ambala City deserves to be allotted to the third respondent by cancelling the allotment of the petitioner w.e.f. 11th November, 2016.

4. Earlier, the petitioner was transferred to Sonapat from Ambala, but he prevailed upon the authorities to cancel that transfer and he succeeded in getting his transfer cancelled on 21st November, 2016. On transfer, the government accommodation was allotted to the third respondent. Upon cancellation on 8th November, 2016, the petitioner was asked to vacate the house so that the 3rd respondent could shift in with his family. He made a representation that he may be allowed to retain his accommodation on the ground floor. It is admitted that earlier both the petitioner and the third respondent lived in their respective official accommodation on the first floors.

5. In the written statement filed by the 3rd respondent, it has been elaborately explained how certain elements in the Government Polytechnic had been manipulating files in favour of the petitioner. But better sense prevailed when the matter was re-considered at the

appropriate level and the allotment in favour of the petitioner was cancelled and the 3rd respondent allotted the Government accommodation as per station seniority. It is asserted that allotment of H.No. L-17 was made to the petitioner in an illegal manner in violation of House Allotment Rules of the Technical Education Department, Haryana. The 3rd respondent has disclosed in some detail as to how Smt. Yashodha Rani, Deputy Superintendent, Government Polytechnic, Ambala City put up a misleading note to the House Allotment Committee stating that the 3rd respondent had vacated House No. H.No.L-27 earlier allotted to him whereas the fact is that the house was not in proper condition and he had requested for some time to get the necessary repairs done through PWD (B&R), Ambala, Haryana. However, permission was not granted by the Principal, and therefore, the he was forced to vacate the house vide Memo dated 13th August, 2010 (Annex. R-6). In the same note, it was falsely stated that House No.L-6, Patiala House (Sarswati Vihar), Staff Colony, Government Polytechnic, Ambala City is a ground floor house. In fact, it is a duplex house. A concocted story was made by the lower functionary helping the petitioner out with the Head of Department Electrical Engineering, Government Polytechnic, Ambala City acting against his rights. The House Allotment Committee was misguided in taking a decision in favour of the petitioner which order was re-considered and the allotment rightly restored to the 3rd respondent. The result is that in case the impugned order is found legal and valid and is sustained, the petitioner would have to vacate the ground floor official accommodation.

6. In this background, I asked the learned counsel for the petitioner pointedly that though his client may be a physically handicapped person, but then what is the extent of his motor disability. In the petition, it is stated that he has disability to the extent of 70% due to paralysis of lower limb. I asked him how did he live on the first floor accommodation till he secured a favourable allotment order on the ground floor which has been cancelled. There was no answer. The question really is: can he climb stairs or not? There is no lift in the building.

7. I asked learned counsel to show from the paper-book whether there is any specific rule protecting physically handicapped persons from allotment as per choice; his answer was in the negative. If there are no rules and the petitioner is not disabled to the extent of making it difficult to climb stairs or very tough if not impossible, then the authority would have to go by rule of the station seniority. Admittedly, the 3rd respondent came in service in 2004 as against the petitioner in 2006. The local seniority will prevail in case of house allotment disputes being the principle of least heart burn.

8. I would thus find no illegality in the order of cancellation which only rectifies a mistake committed earlier based on incorrect inputs given to the House Allotment Committee. The power to correct mistake is inherent in executive authority. The petitioner cannot claim allotment of house on ground floor as a matter of right. The fact that he lived on the first floor for long time while the 3rd respondent also lived likewise amply suggests that the petitioner's disability is not inconsistent with the physical ability of climbing stairs and that is enough reason for declining this petition apart from upholding station

seniority. No injustice has been done to the petitioner by the impugned order.

9. In view of the above, I do not find any merit in this petition which is accordingly dismissed. The ad interim stay order stands obviously vacated.

26.4.2017
MFK

(RAJIV NARAIN RAINA)
JUDGE

Whether speaking/reasoned

Yes

Whether Reportable

No