

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2722 of 2011

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Sita Sharma, wife of Late Arun Kumar Suman, Resident of Mohalla -
Hridyaganj (Simrabagan), Police Station - Katihar , District - Katihar .

... Petitioner

Versus

1. The State of Bihar
2. The Secretary, Department of Building Construction and Housing,
Government of Bihar, Patna.
3. The Chief Engineer, Department of Water Resources, Govt. of Bihar,
Patna.
4. The Superintending Engineer , Nahar Anchal , Purnea
5. The Executive Engineer , Irrigation Devision , Purnea
6. The Executive Engineer , Sone Nahar Pramandal , Ara
7. The Treasury Officer, Katihar.

.... Respondents

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Appearance :

For the Petitioner : Mr. Bindhyachal Singh, Advocate

Ms. Smriti Singh, Advocate

For the Respondents: Mr. Suman Kumar Singh, A.C. to G.A.2

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

Date: 10-01-2018

Heard learned counsel for the petitioner and

learned counsel on behalf the State.

2. Petitioner is aggrieved by letter No. 369

Katihar dated 11.03.2010 issued under the signature of the

Executive Engineer, Irrigation Division, Katihar addressed to

Executive Engineer, Sone Canal Division, Ara, by which he has

requested him to recover a sum of Rs. 6440/- as balance



amount due against the husband of the petitioner who had retired from service on 31.12.2008, but had unauthorizedly and illegally occupied the government quarter with effect from 01.01.2009 for a period of 15 months. The Executive Engineer, Sone Canal Division, Ara was directed to mention the amount of Rs. 6440/- in the no objection certificate to be issued to the Treasury Officer and the Accountant General, Bihar, Patna for the purpose of such recovery, so that the pension of the husband of the petitioner may be released.

3. The petitioner has also prayed for quashing of the letter no. 530 dated 27.04.2010 issued under the signature of Executive Engineer, Irrigation Division, Katihar addressed to the Executive Engineer, Sone Canal Division, Ara by which an additional amount as penal rent for the period from January 2005 to December 2008 has been directed to be recovered from the pension of the petitioner at the rate of Rs. 448/- per month.

4. During pendency of the writ application, the original petitioner died and his wife has been substituted as petitioner in this case.

5. Learned counsel for the petitioner submits



that the impugned orders are wholly illegally, arbitrary and bad in law as also suffer from violation of principles of natural justice, and therefore, are liable to be quashed.

6. It is the case of the petitioner that while serving in the Irrigation Division at Katihar as a Correspondence Clerk he was allotted the government quarter in question at the approved government rate @ Rs. 28/-. He was later transferred to Dehri-On-Sone in the office of the Chief Engineer, Water Resources Department and from there he was transferred to the office of Executive Engineer, Sone Canal Division, Ara vide letter No. 3885 dated 10.07.2003. The petitioner was thereafter not allotted any quarter at his transferred place at Ara nor was given any housing allowance for that period. The petitioner claimed that he could not vacate the quarter at Katihar and the house rent of the period from January 2000 to 31.12.2008 were deducted from the salary of the petitioner at Ara on the basis of last pay certificate issued by the Executive Engineer, Katihar. He retired from service on 31.12.2008. No dues certificate was also issued through letter no. 221 dated 06.03.2009 by Annexure-1 to the writ application.



7. Learned counsel for the petitioner submits that he deposited the rent of Rs. 28/- per month for the period from January 2009 to October 2009 and a copy of the Treasury Challan showing such payment was submitted by him along with his application before the Executive Engineer, Irrigation Division, Katihar with a request to take appropriate steps for the payment of the retiral dues of the petitioner and to send 'No Dues' certificate to the concerned Treasury Officer.

8. It is only thereafter the impugned orders came to be issued. Assailing the impugned orders, Sri Vindhyachal Singh, learned Advocate assisted by Ms. Smriti Singh, learned Advocate submits that the imposition of penal rent for the period January 2005 to December 2008 from the pension of the petitioner @ Rs. 448/- per month would be illegal. He submits that any deduction from the pensionary benefits which are in the nature of the statutory benefit and have been interpreted as a property 'under Article 31-A(1) of the Constitution of India' would be illegal particularly when there is no law permitting such deductions. He has relied upon the judgment of the Hon'ble Supreme Court in the case



of **Union of India and Others Vs. Madan Mohan Prasad** reported in **2002 (4) PLJR (SC) 12** and on the judgment of this Hon'ble Court in the case of **G.M., East Central Railway Hajipur Vs. Central Administrative Tribunal, Patna** reported in **2009 (1) PLJR 543**. Ratio of the judgment cited by learned Advocate is to the effect that in absence of a rule having a force of law, the statutory benefits conferred by way of post retiral dues cannot be allowed to be deducted or reduced by an executive order.

9. Learned counsel further submits that in view of the aforesaid judgments of the Hon'ble Apex Court and of this Hon'ble Court, the Direction as contained in Annexure-5 to the writ application, to deduct Rs. 448/- per month from the pension as penalty for the period January 2005 to December 2008 cannot sustain.

10. So far as the direction contained in letter no. 369 dated 11.03.2010 (Annexure-4) is concerned, it talks of the penal rent chargeable to the petitioner for the period he had retained the government quarter unauthorizedly and illegally after his retirement w.e.f. 01.01.2009 to March 2010 (total of 15 months). On perusal of Annexure-4, it would



appear that the mode of determination of rent/penal rent, as it is called after retirement if an employee illegally continues in occupation of the government quarter, has been laid down in the letter bearing No. 3167 dated 08.09.2004 issued by the Chief Engineer, Water Resources Department, Government of Bihar. The guideline provided by the Chief Engineer in his letter No. 486 has been followed in the case of the petitioner in the writ application. Letter no. 3167 dated 08.09.2004 providing guideline to realize the rent/penal rent for the period an employee continues in unauthorized occupation after retirement has not been challenged by the petitioner. Still, learned counsel representing the petitioner submits that even this imposition of rent/penal rent is illegal and needs to be quashed.

11. On the other hand, learned counsel representing the State submits that the husband of the petitioner unauthorizedly continued with the government quarter in violation of the government instructions and after his retirement after he was required to submit a 'no objection certificate'/'no dues certificate' then only after 9 months he deposited the rent @ 28/- per month through a



treasury challan on his own and submitted the same for the purpose of obtaining a no dues certificate which was forwarded to the Executive Engineer, Sone Canal Division, Katihar vide Annexure-2 to the writ application. This being the position, the petitioner cannot be allowed to contend that the department had accepted Rs. 28/- per month as rent even for the period after the retirement of the petitioner's husband. The pleading of the petitioner in the writ application itself makes it very clear that such deposit @ 28/- per month was made only on his own unilateral volition for purpose of getting the 'no dues certificate' but when this fact came to the notice of the competent authority while processing the file for the purpose of granting him 'no dues certificate', the competent authority has come out with Annexure-4 to the writ application in terms of the guidelines provided in the letter no. 3167 dated 08.09.2004.

12. Learned counsel would further submit that it is well settled by several judicial pronouncements that continuation of occupation in government quarter after retirement of a government employee would be illegal and such illegal occupations need to be discouraged. He has



relied upon the judgment dated 09.03.2009 of the Hon'ble Apex Court, in Civil Appeal No. 1599/2005, in the case of **Ram Dayal Rai Vs. Jharkhand State Electricity Board and others**, a copy of which has been annexed as Annexure-C to the counter affidavit filed on behalf of the State respondents.

13. It is submitted that in the said case having considered the entire facts and circumstances the Hon'ble Apex court held that the action of the appellant in continuing with the government quarter was illegal, and in fact when he failed to vacate the quarter after the court's order, it was a case of misconduct. The Hon'ble Apex Court had directed the appellant in the said case to deposit a sum of Rs. 500/- (five hundred) per month as rent/penal rent for the period when he had remained in unauthorized occupation of the government quarter.

14. Learned counsel for the State submits that so far as the recovery of penal rent for the period the petitioner was in service is concerned, the propositions of law as settled by the judicial pronouncements of the Hon'ble Supreme Court would perhaps not support the contention of the petitioner because the petitioner had been continuing in



the premises, even though he was transferred from Katihar and was liable to vacate the premises.

CONSIDERATION

15. I have considered the submissions advanced at the bar and perused the records as also the judgments of the Hon'ble Apex Court and this Hon'ble Court. In this case there are two aspects which require consideration. At the first instance, the petitioner has been held liable to pay the rent/penal rent as per the guidelines existing in the department for the period he remained in unauthorized occupation of the government quarter after his retirement. The proposition of law settled on this issue needs no elaboration at this stage, because time and again it has been held that continued occupation of the government quarter by a retired employee would be illegal.

16. A retired employee has no legal right to continue with the government quarter after expiry of the prescribed period in accordance with the government instructions. If he has remained in quarter unauthorizedly and without any sanction he would be liable to pay the rent/penal rent in terms of the guidelines in existence. In



fact, such impositions are not in the nature of a penalty rather the rent fixed by the government for the period when a person remains in unauthorized occupation of the government quarter. It is the actual rent which the government would be realizing from the retired employee who is in such unauthorized occupation. If the government employee continues in unauthorized occupation by violating the government instructions he knows the consequence thereof and then if he is taking a calculated risk, he cannot be allowed to take a plea that the imposition of rent/penal rent for the period he remained in unauthorized occupation would be in violation of the principles of natural justice. The judgment of the Hon'ble Apex Court on which learned counsel for the State relies fully supports the contention of learned counsel that in this case with effect from 01.01.2009, the husband of the petitioner had been occupying the government quarter unauthorizedly, and therefore, if the department has decided to levy the rent at the rate provided in the guidelines by the department in terms of the letter of the Chief Engineer bearing No. 3167 dated 08.09.2004, no illegality has been committed and on this score alone the



petitioner cannot succeed.

17. The contention of learned counsel for the petitioner that the petitioner's husband continued to deposit Rs. 28/- per month even after his retirement seems to be a half hearted statement inasmuch as the pleading would disclose that the petitioner's husband was not depositing any amount and had not sought permission to continue in the premises after his retirement, in fact what he did was an unilateral act in depositing rent @ 28/- per month for a period of 9 months together and at one stroke just in order to get a 'no dues certificate', in absence of which, he was unable to get sanctioned his pensionary benefits.

18. If this is the position, then, the principles of estoppel which has been argued by the learned counsel for the petitioner submitting that the State would not be justified in demanding a rent @ Rs. 448/- per month for the period after the retirement of the petitioner cannot be applied in this case and is rejected accordingly.

19. On this aspect, I am of the considered opinion that the petitioner would be liable to pay a sum of Rs. 6440/- which has been imposed by way of rent/penal



rent vide Annexure-4 to the writ application.

20. The second aspect of the matter is as regards the direction contained in Annexure-10 to the writ application by which the Executive Engineer, Irrigation Division has directed to realize a sum of Rs. 448/- per month from the pensionary benefits of the husband of the petitioner for the period January 2005 to December 2008 @ Rs. 448/- per month by way of a penal rent.

21. So far as this direction is concerned, I would agree with the submission of learned counsel representing the petitioner that such deductions or recoveries cannot be ordered by Executive Engineer, because the pensionary benefits are the statutory benefits conferred upon a government employee and such benefits are property in their hand in terms of Article 31-A(1) of the Constitution of India.

22. It is well settled that the government employee cannot be deprived of such statutory benefits and the property in their hand without following the established procedure of law.

23. The direction of the Executive Engineer,



Irrigation Division, Katihar is in the nature of a direction to recover penal rent for the period January 2005 to December 2008 when the petitioner was in service and a sum of Rs. 28/- per month was being deducted from his salary towards the retained quarter. His statement in the writ application that he was not allotted any other quarter and was not getting any house allowance has not been denied, and, if it is so, then the Executive Engineer, Irrigation Division, Katihar was not justified in awaking from slumber at one fine morning and deciding to impose a penal rent for the said period that too without giving an opportunity to the petitioner's husband. Such imposition would be in violation of the principles of natural justice as also without any sanction of law. I would, therefore, hold and declare that the letter no. 530 dated 27.04.2010 issued under the signature of the Executive Engineer, Irrigation Division, Katihar as contained in Annexure-5 is illegal, arbitrary and bad in law as also it suffers from violation of principles of natural justice, it is liable to be set aside and must be set aside by this court which I do accordingly.

24. The writ application as regards the prayer



made to quash Annexure-5 is allowed. As a result of this, the petitioner would not be liable to pay the penal rent for the period January 2005 to December 2008, and if any amount has been recovered from the pensionary benefits due to the husband of the petitioner, the same would be liable to be refunded within a period of 30 days from the date of receipt of a copy of this order.

25. So far as a sum of Rs. 6440/- pursuant to Annexure-4 is concerned, the petitioner would be liable to deposit the same within the same period as above.

26. The writ application is, therefore, partly allowed and disposed off accordingly.

(Rajeev Ranjan Prasad, J.)

Rajeev/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	11.01.2018
Transmission Date	NA

