NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition (S) No. 2442 of 2008

1. Smt. Prashunna Bai W/o Girdhari Singh Thakur, aged about 62 years.
2. Kishor Singh Thakur S/o Girdhari Singh Thakur, aged about 42 years
3. Someshwar Singh Thakur S/o Girdhari Singh Thakur, aged about 34 years
   All are legal heirs of ex-employee late Girdhari Singh S/o J. S. Thakur, retd. Vaccinator Municipal Corporation Rajnandgaon (CG)
   Petitioners 1 to 3 all are R/o Jamat Para, Rajnandgaon, District Rajnandgaon (CG)

---- Petitioners

Versus

1. State of Chhattisgarh through the Chief Secretary, Local Self Government (Urban) D.K.S. Bhawan, Mantralaya, Raipur (CG)
2. Commissioner, Municipal Corporation, Rajnandgaon (CG)

---- Respondents

For Petitioners	:	Shri V. K. Sharma, Advocate
For Respondent/State	:	Shri Lav Sharma, Panel Lawyer
For Respondent no.2	:	Shri Sourabh Sharma, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order On Board

13/03/2018

The present writ petition has been filed seeking for the following two reliefs:

i) That, this should be declared by this Hon'ble Court that the respondent no.2 is entitled for the rent @ 38/- per month of the three year/36 months i.e. Rs. 1368/- only.

ii) That, the writ of mandamus be issued against the respondents that the petitioners are entitled for the rest amount Rs.64317-00 only, which has arbitrarily and illegally retain by the respondents.

2. The brief facts relevant for appreciating the issue raised in the present writ petition are that the deceased employee in the instant case i.e. husband and father of the petitioners namely Girdhari Singh Thakur was working with the Municipal Corporation, Rajnandgaon as a vaccinator. He retired from service on 29.02.1996. During his service period, he was allotted a residential quarter of the Municipal Corporation, Rajnandgaon. Subsequent to his retirement, he was supposed to vacate the quarter within permissible period under the Rules. The employee did not do that at the relevant period of time. It appears that for want of furnishing proper NOC, the retiral dues of the employee was not settled.

3. The employee later filed a writ petition which was registered as Writ Petition No. 2101 of 1998 for releasing the pensionary benefits. The said writ petition was disposed of on 24th July, 2006 wherein it was directed to the respondents to consider granting of interest at 12% on GPF amount as granted to other two petitioners namely Prabhakar Bakshi and Balaji Rao. Subsequently, the said amount of GPF was released. However, the impugned order Annexure P-1 dated 04.04.2008 was passed whereby it has been shown that an amount of Rs.65,685/- towards house rent w.e.f. 01.03.1996 to 31.03.2008 was adjusted from the retiral dues payable to the petitioner. Meanwhile, the employee Girdhari Singh Thakur died on 02.12.2006 leading to the filing of the present writ petition.

4. The contention of the counsel for the petitioners is that once the house rent was fixed at Rs.38/-, the respondents could not have calculated the arrears of house rent on an amount more than Rs.38/-. He submits that the the arrears of house rent cannot be recovered from the legal heirs of the deceased employee which is impermissible. He further submits that the arrears of house rent could not have been claimed for a period of more than three years as the respondents would have been hit by the provisions of the

Limitation Act debarring them from charging house rent for a period beyond three years.

5. So far as the facts of the case are concerned, it is undisputed that the employee was working as a vaccinator with the Municipal Corporation, Rajnandgaon. He superannuated from service w.e.f. 29.02.1996 and retained the quarter of the Municipal Corporation beyond the permissible limit and occupied the same unauthorizedly till his death i.e. 02.12.2006. For the period, the employee was an unauthorized occupant, he was liable to pay house rent for the said accommodation at the market rate applicable for the relevant point of time. The respondent Corporation would be at liberty to recover this arrears of house rent from the retiral dues that had accrued in favour of the deceased employee and which was payable to the legal heirs.

6. Under the circumstances, the Municipal Corporation was liable to calculate house rent for the period during which the deceased employee was alive after his retirement i.e. from 01.03.1996 to 02.12.2006 and not beyond that.

7. Beyond the death of the employee to whom the quarter was allotted, any claim which arises cannot be termed to be house rent. That for recovery of any dues in respect of unauthorized accommodation by the legal heirs of the deceased employee would be the other remedies which are available with the respondent Corporation which they had to initiate firstly for recovery of any dues payable and secondly for getting the persons occupying the quarter evicted from the said premises. The recovery of house rent for the period subsequent to the death of the deceased employee as arrears would be impermissible under law. Even the Municipal Corporation Act or the Rules framed thereunder in respect of the same do not empower the Municipal Corporation in this regard.

8. It is ordered accordingly that the respondent Corporation shall recover the arrears of house rent for the period of occupation of the said quarter by the employee from the date of his retirement till the date of his death i.e. from 01.03.1996 to 02.12.2006. The calculation shall be made accordingly and appropriate adjustment in this regard shall be made by the Corporation. The balance amount shall be released to the petitioners from the amount of Rs.65,685/- deducted by the Corporation.

9. So far as the contention of the counsel for the petitioners that the house rent should have been calculated @ 38 per month is concerned, the same is not sustainable for the simple reason that the house rent applicable for an employee would be different than the rate which would be charged beyond the permissible limit of occupying a government accommodation allotted to a person. In the instant case, admittedly, the employee retired on 29.02.1996. He was permissible to retain the quarter for a period of 30 days and not beyond that. He continued to occupy the same for a period of almost 10 years after his retirement which was totally unauthorized . Therefore he would be liable to pay rent at the market rate applicable for the said period and the respondents would also be entitled for recovering the same from the retiral dues which is payable to the legal heirs after death of the employee.

10. So far as the aspect of arrears of rent being barred by limitation and being initiated after three years is concerned, the principles prescribed under the Limitation Act would be applicable only in respect of filing of a civil suit for recovery and the same cannot be brought into force in the Service Jurisprudence denying the right of the employer to recover arrears of rent for the unauthorized occupation of the quarter by a person or an ex-employee. Thus, the said ground also would not be sustainable.

11. So far as the arrears of rent is concerned, in the light of the aforesaid observations made by this court if we refer to Annexure R-2/5 which is a note sheet showing the calculation of arrears of rent would show that the employee was liable to pay rent up till December, 2006 and as per the calculation of the Corporation itself, the rent up till December, 2006 comes to

Rs.53850/-. Thus, it is ordered that the respondents shall be entitled for the arrears of rent to the tune of 53850/- instead of Rs.65685/-. The balance amount of Rs.11,835/- shall have to be refunded by the Corporation forthwith to the petitioners with interest @ 6% per annum. The respondent Corporation at the same time would also have all the right and liberty for initiating appropriate proceeding, if they intend, to get the petitioners evicted from the said premises in accordance with the law.

12. The writ petition thus, stands disposed of .

Sd/-
(**P. Sam Koshy)**
JUDGE

Bhola