

HIGH COURT OF CHHATTISGARH AT BILASPURWPS No. 3026 of 2010

Uma Singh W/o Shri Surendra Kumar Singh, Aged about 62 years, C/o Gopinath Soni, Gandhi Nagar (Rajendra Nagar Colony), Near CSEB Office, Ambikapur, District Surguja (C.G.).

---Petitioner

Versus

1. State of Chhattisgarh, Through Secretary, Department of Tribal Welfare, D.K.S. Bhawan, Raipur (C.G.).
2. The Collector, Surguja, District Surguja (C.G.).
3. Commissioner, Department of Tribal Welfare, Raipur (C.G.).
4. Assistant Commissioner, Department of Tribal Welfare, Ambikapur (C.G.).
5. The Principal, Government Higher Secondary School, Darima, District Surguja (C.G.).

---Respondents

For petitioner	:	Shri Sushobhit Singh, Advocate.
For State	:	Shri Shashank Thakur, Government Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

03/04/2018

1. The challenge in the present Writ Petition is to the Annexures-P/1, P/2 & P/3.
2. Annexure-P/3 is an order passed by the Principle Secretary, Government of Chhattisgarh, Scheduled Caste and Scheduled Tribe Welfare Department on a departmental enquiry held against the petitioner dated 05/11/2008 wherein it was held that the petitioner would be entitled for only subsistence allowance for the period in which petitioner's services was

placed under suspension and treating the said period as the period spent on duty. However, for the unauthorized occupation of the Government accommodation it was ordered that the market rent of the two quarters which were in possession of the petitioner from September-1995 to June-2009 should be recovered from the retiral dues payable to the petitioner.

3. Annexure-P/2 is an order passed by the Collector, District Surguja wherein the Collector has quantified the market rate of the said two quarters which are illegally occupied by the petitioner and quantified it at Rs.4,95,167/- to be recovered from the petitioner.

4. Annexure-P/1 is an order issued by the Assistant Commissioner, Tribal Welfare Department, Ambikapur whereby it has been held that from the total amount of Rs.4,95,167/- to be recovered from the retiral dues payable to the petitioner an amount of Rs.3,32,000/- has been recovered from the gratuity payable to the petitioner and the balance of amount was to be recovered from the amount of money receivable by the petitioner by way of leave encashment.

5. The contention of the counsel for the petitioner is that, the above said three orders (Annexure-P/1, P/2 and P/3) so far as the recovery of market rent is concerned are erroneous and is bad in law. According to the petitioner no amount of money for the illegal retention of the Government accommodation could be recovered from the retiral dues more particularly from the gratuity amount as has been held by the Hon'ble Supreme Court in the case of **Gorakhpur University & Ors. v. Dr. Shitla Prasad Nagendra & Ors.** [2001 6 SCC 591] and also in the light of the

judgment passed by the division Bench of this Court in the case of **Govind Soni v. The General Manager, Bishrampur Area of SECL, District Sarguja & Ors. (Writ Appeal No.61/2017 decided on 17/03/2017)**. He further relies upon the circular of the State Government wherein it has been envisaged that the monthly rent for the Government occupied quarters by the employee has to be deducted promptly from their monthly wages by the department. He further submits that the deduction made by the department is also bad in law for the reason that for a fault committed by him wayback in between 1995 to 2004 cannot be recovered at the time of his retirement. The authority should have promptly recovered the house rent of these quarters from the respective monthly salary.

6. The facts of the case in brief is that the petitioner was in occupation of two quarters i.e. G-1 and E-1 type at the Girls Hostel, Ambikapur. The allegation against the petitioner is that though the petitioner was not posted at the Girls Hostel, Ambikapur and was posted at the Higher Secondary School, Mendrakala, she continued occupation of these two quarters and had not paid the monthly rent. Likewise, it is also the allegation that while she was posted at Mendrakala, she had also received H.R.A. for residing at Mendrakala though she was occupying the Government accommodation at Ambikapur. Further it is also reflected that while she was posted at Mendrakala, she has also drawn traveling allowance for traveling between Mendrakala to Ambikapur and back. Likewise it is also reflected that in between, the petitioner was further transferred to a different place. Even then she continued to retain the two quarters at Ambikapur i.e. G-1 and E-1 type

and did not pay any license fee for the said occupation of the these quarters. In spite of repeated notice being given to the petitioner for vacating the premises since she has been transferred out of the said school, the petitioner continued in unauthorized occupation of the said quarters. A chargsheet was issued and the petitioner's services was placed under suspension and a departmental enquiry was also conducted. In the departmental enquiry, the charges levelled against the petitioner stood proved and market rent of the quarter has been ordered to be recovered from the petitioner. It is this order – Annexure-P/3 which is under challenge in the present Writ Petition and the subsequent orders passed by the Collector, District Surguja - Annexure-P/2 dated 02/07/2009 quantifying the market rate and the order of recovery – Annexure-P/1 dated 11/03/2010.

7. Perusal of record would reveal that though the petitioner was not eligible to occupy G-1 type of quarter, yet the petitioner has unauthorizedly occupied the said premises for a considerable long period of time. Further from July-2005 to June-2009 the petitioner appears to have not been posted at Ambikapur but was posted elsewhere and E-1 type of quarter which was otherwise to be provided to the Principle of Girls School at Ambikapur was not vacated by the petitioner and she continued to retain that quarter till June-2009.

8. So far as the rule position is concerned, undoubtedly, in case if a Government employee is in occupation of a Government quarter officially allotted to him, he is entitled to retain the same as long as he is posted at a particular place where the quarter has been allotted to him. The moment the

employee stands transferred to a different place he is duty bound to vacate the quarter.

9. In the instant case it appears that though the petitioner has been transferred out of Ambikapur but she continued to occupy not one but two quarters at Ambikapur unauthorizedly. The petitioner had not paid any rent whatsoever against the two quarters. On the contrary, there is an evidence available in Annexure-P/3 wherein she admits that she had received H.R.A. for her stay at Mendrakala and has also received traveling allowance for traveling from Mendrakala to Ambikapur and back.

10. This admission of facts by the petitioner itself clearly reflect that the petitioner was unauthorizedly occupying the two quarters i.e. G-1 and E-1 at Girls Hostel, Ambikapur. For the said unauthorized occupation in the Government accommodation, the petitioner was duty bound to pay rent at the market rate.

11. Thus, the finding of an enquiry officer does not seem to be in any manner either perverse or contrary to the evidence available on record.

12. So far as the judgment of the Supreme Court in the case of Gorakhpur University (Supra) so also the judgment of the division Bench of this Court in the case of Govind Soni (Supra) is concerned, these two judgments are quite distinguishable on facts itself in as much as these two judgments are in respect of those cases where the employee was officially occupying the Government quarter while in service and post retirement he has not vacated the allotted quarter, whereas in the instant case while in service itself, the

petitioner had illegally and unauthorizedly retaining the Government accommodation.

13. In the given facts and circumstances of the case this Court does not find that the recovery made by the respondents for the Government accommodation illegally and unauthorizedly occupied by the petitioner from the retiral dues in any manner bad in law.

14. Moreover what also cannot be lost sight of is the fact that before issuance of the order of recovery, the petitioner has been given an opportunity of hearing in as much as the order for recovery of rent at market rate was passed after a duly conducted departmental enquiry.

15. Given the aforesaid facts and circumstances of the case this Court does not find any strong case made out by the counsel for the petitioner calling for an interference.

16. The order of this Court also stands fortified by the decisions of Supreme Court in the case of **Secretary, O.N.G.C.Ltd. & Anr. v. V.U.Warrier** [2005 5 SCC 245] so also in the case of **U.P.State Sugar Corporation Ltd. & Ors. v. Kamal Swaroop Tondon** [2008 2 SCC 41].

17. The Writ Petition accordingly stands dismissed.

Sd/-

(P. Sam Koshy)
JUDGE