

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

204 WRIT PETITION NO. 523 OF 2008

Rameshwar S/o. Namdeo Dahate,
Age : 64 Years, Occu. Retired,
Resident of Survey No.139/4,
Shirsoli, Pra-Bornar, Pachora Road,
Taluka & District Jalgaon. ..PETITIONER

VERSUS

1. The State of Maharashtra
Though Secretary
Home Department,
Mantralaya, Mumbai;
2. Director General of Police,
State Police Head Quarters,
Shahid Bhagatsingh Road,
Mumbai-400039;
3. Special Inspector General of Police,
State Reserve Police Force, State
Police Head Quarters,
Shahid Bhagatsingh Road,
Mumbai-400039;
4. Divisional Commissioner,
Nagpur Division, Nagpur;
5. Executive Engineer, Public Works
Department, Division No.1,
Civil Lines, Nagpur. ..RESPONDENTS

...

Mr. K. C. Sant, Advocate for the Petitioner.
Mr. V. S. Badakh, AGP for Respondent-State.

...

**CORAM : S. V. GANGAPURWALA &
S. M. GAVHANE, JJ.**

DATED : 29th AUGUST, 2018.

ORAL JUDGMENT (Per S. V. Gangapurwala, J.):-

1. Mr. Sant, learned counsel for the petitioner submits that the only dispute between the parties is with regard to the claim of respondents for an amount of Rs.29,767/- recovered by the respondents from the petitioner on the ground of house rent allowance.

2. Mr. Sant, learned counsel further submits that the petitioner was working as a Deputy Commissioner of Police, Nagpur City from 18.02.1998 and he was allotted the P.W.D. quarter bearing no.54/4 situated in Civil Lines Area, Nagpur. Thereafter on 09.10.2001 he was given posting as a Commandant in the State Reserve Police Force, Maharashtra State, Nagpur and was allowed to retain the same quarter and thereafter he retired on 30.04.2004. The learned counsel submits that as per Clause 259 of Bombay Police Manual, 1959, the Commandant of the State Reserve Police Force is entitled for rent free accommodation. In fact, if the respondents claimed that the petitioner was not allotted quarter, then petitioner is entitled for house rent allowance from the respondents for the period 09.10.2001 to 30.04.2004. The same is not paid to the petitioner. On the contrary the recovery is claimed from the petitioner for the said period the petitioner was occupying the said quarter, the same is erroneous. It is deducted from the retiral benefits of the petitioner.

3. Mr. Badakh, learned A.G.P. submits that the petitioner never made a claim for allotment of quarter. He was residing in the P.W.D. quarter and not the quarter of the respondents. The petitioner as such was liable to pay the license fee / rent for occupying the said P.W.D. quarter. The Government dues can be recovered from the retiral benefits as per Rules 132 and 133 of the Maharashtra Civil Services (Pension) Rules 1982. The petitioner at no material point of time had made the claim for house rent allowance. Clause 259 of the Bombay Police Manual is in the nature of executive instruction and not a Rule. The Tribunal has rightly considered the aspects and rejected the claim of the petitioner.

4. We have considered the submissions canvassed by the learned counsel for the respective parties.

5. Clause 259 of the Bombay Police Manual reads thus:

"Normal Housing Arrangements — (1) The Commissioner of Police, Bombay, Deputy Commissioners of Police, Greater Bombay, Deputy Inspector General of Police, C.I.D., Superintendent of Police, S.B., C.I.D., Bombay, Deputy Superintendents of Police, C.I.D., Bombay, Principals, Police Training Schools, Nasik and Junagadh, Principal, Regional Training School, Baroda; Superintendent, Constables Training School,

Nagpur; the two Deputy Superintendents of Police on the instructional staff of the Police Training School, Nasik; the probationary Assistant Superintendents of Police and Deputy Superintendents of Police under training, the Commandants, Assistant Commandants and Adjutants of the State Reserve Police Force Groups and the Superintendents of Police in Greater Bombay are entitled to rent-free accommodation."

6. Reading the said Clause, it is manifest that the petitioner being a Commandant of the State Reserve Police Force is entitled to rent free accommodation. At the time when the petitioner was working as Deputy Commissioner of Police of Nagpur City, he was occupying the quarter bearing no.54/4 at Civil Lines Area, Nagpur. On 09.10.2001 he was given posting as a Commandant in the State Reserve Police Force, Maharashtra State, Nagpur and was allowed to retain the same quarter till he retired on 30.04.2004.

7. The Tribunal has gone on the premise that Clause 259 of the Bombay Police Manual is merely an executive instruction and not the Rule.

8. Even, if we assume that Clause 259 of Bombay Police Manual is in nature of executive instruction, still no Rule is pointed out to suggest that the petitioner is not entitled for rent free accommodation nor it is pointed out that the said executive instruction is contrary to any Rule, Regulation or statute. In absence thereof,

the executive instruction would be binding upon the parties. The executive instruction was issued so as to evolve uniform instruction.

9. No contrary Rules are pointed out. In absence thereof, the executive instruction would be guiding factor. The compilation of the order and the Rules contained in the Bombay Police Manual are unless otherwise specifically stated under any rules framed or orders issued by the Government applicable to all areas. In view of that the same would be binding.

10. As observed supra the petitioner is entitled for rent free accommodation and he was allotted the quarter bearing no.54/4. In view of that, the respondents would not be entitled to recover the rent from the petitioner for the period 09.10.2001 to 30.04.2004.

11. It appears that, the petitioner had retained the quarter for a period of two months after his retirement. It has been observed by the Tribunal that Government Servant is entitled to retain the quarter for a period of one month after his retirement. As the petitioner had retained the quarter for the period of two months, the petitioner will be liable to pay rent for the period of one month.

12. In light of the above, the impugned order passed by the Tribunal is quashed and set aside. The respondents shall refund the amount of Rs.29,767/- recovered from the petitioner for his occupation for the period 09.10.2001 to 30.04.2004 after deducting the amount towards house rent allowance for one month which the petitioner had retained even after one month of his retirement.

13. In view of the above, Rule is accordingly made absolute in above terms. No costs.

(S. M. GAVHANE)
JUDGE

(S. V. GANGAPURWALA)
JUDGE

Devendra/August-18

Devendra
Nandkumar
Kale

Digitally signed
by Devendra
Nandkumar Kale
Date: 2018.09.03
13:22:18 +0530