

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No.12274 of 1999

Date of decision: January 11, 2018

Justice A.L. Bahri (Retd.)

.....Petitioner

Versus

State of Punjab

.....Respondent

**CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI
HON'BLE MR. JUSTICE ANIL KSHETARPAL**

Present: Mr. Rajiv Atma Ram, Senior Advocate with
Mr. Ranjit Singh Kalra, Advocate for the petitioner.

Mr. H.S. Sullar, DAG Punjab.

A.B. CHAUDHARI (Oral)

By the present petition, the petitioner has prayed for the following relief:-

“Civil Writ Petition under Article 226 of the Constitution of India seeking the issuance of a writ direction or order in the nature of mandamus directing the respondent State to give the benefits in respect of House Rent Allowance to the petitioner as given to his predecessor and other similarly situated retired Judges and for quashing the order dated 28.04.1999 (Annexure P-18) and Annexures P-11, P-13, P-15 and P-16 and for the grant of other reliefs as prayed for hereunder.”

FACTS

The petitioner is a retired judge of Punjab and Haryana High Court, Chandigarh. He retired on 26.10.1994. Thereafter, he was appointed as President, State Consumer Disputes Redressal Commission, Punjab (for short 'Commission'), on 06.01.1995. The appointment letter (Annexure P-1) indicates that the benefits as admissible to the sitting judges of the Punjab

and Haryana High Court would be extended to him in addition to salary. The petitioner assumed charge as President of the Commission and wrote number of letters for allotment of a vacant house from Punjab quota at Chandigarh and he also stated that he would not mind, if any house of a category below his entitlement is allotted to him. He made repeated correspondence/representations. The predecessor of the petitioner, namely former Justice Mr. S.S. Dewan was in fact, given the enhancement in House Rent Allowance from ₹2,500/- per month to ₹6,000/- per month w.e.f. 26.10.1994 in accordance with the instructions dated 26.10.1994 of the Punjab Government No.17.51.93-5FE-VI/7295. As per those instructions, it was decided by the State Government to pay @ ₹6,000/- per month w.e.f. 26.10.1994. The petitioner, however, received the impugned letters (Annexures P-11, P-13, P-15, P-16 and P-18) from the Government, in which there is denial to grant House Rent Allowance to the petitioner at the rate of ₹6,000/- per month as was done in respect of former Justice Mr. S.S. Dewan. The petitioner felt aggrieved by the said communications and filed the present petition in this Court. This Court had stayed the proposed recovery under the said impugned communications. The petition has now come up for final hearing and accordingly, was taken up.

SUBMISSIONS

Mr. Rajiv Atma Ram, learned Senior Advocate for the petitioner-Justice A.L. Bahri (Retd.) invited our attention to the relevant provisions of Section 22-A (1) & (2) of the High Court Judges (Conditions of Service) Act, 1954 (for short 'Act of 1954').

Placing reliance on the Sub-Section (1) of the Act of 1954, he submitted that Sub-Section (1) mandatorily requires the Government to

provide official residence to Judge of a High Court. Sub-Section (2) thereof provides that if the Judge does not avail himself of the use of an official residence, in that case, he may be paid every month an allowance of ₹2,500/-. Learned Senior Advocate submitted that the petitioner never indicated that he did not want to avail himself of the use of an official residence. On the contrary, he continued to make representations on number of occasions to the Government to provide him the official residence. But his requests for allotment of official residence did not materialize. He, therefore, submitted that in facts of the present case, Sub-Section (2) of Act of 1954 would not at all come into play. He, then submitted that the provision for rent free accommodation in the Act of 1954 is mandatory and therefore, the State could not have violated the said provision. It is in this context, he submitted that as per the instructions of the Government and the decision taken to provide ₹6,000/- per month as per Annexure P-5, the petitioner was entitled to the amount of ₹6,000/- per month as the Government had failed to provide him official residence. The figure of ₹6,000/- per month has not been arrived at from any imagination, but is the conscious decision of the Government of Punjab to pay House Rent Allowance at the rate of ₹6,000/- w.e.f. 26.10.1994 and the said decision held the field atleast during the petitioner's tenure. He, therefore, submitted that the impugned action of attempting to make recovery of difference of amount is wholly arbitrary and the Government went wrong in mistreating a Former Judge of the High Court.

Per contra, learned counsel for the respondent-State opposed the petition and supported the reasons given in the impugned orders and prayed for dismissal of the petition. He has invited our attention to the

written statement/affidavits filed on record. Learned counsel for the respondent-State submitted that the impugned action was taken in the light of the statutory provision and that is the reason why the recovery was ordered.

CONSIDERATION

We have perused the entire record and heard learned counsel for the rival parties. The relevant provision regarding rent free official residence under Section 22-A of the Act of 1954 reads thus:-

“Facility of Rent Free House: (1) Every Judge shall be entitled without payment of rent to the use of an official residence in accordance with such rules as may, from time to time, be made in this behalf.

(2) where a Judge does not avail himself of the use of an official residence, he may be paid every month an allowance of two thousand five hundred rupees.”

It is clear that Sub-Section (1) of Section 22-A of the Act of 1954 mandatorily provides for entitlement of a Judge of a High Court without payment of rent to the use of an official residence. In the appointment letter dated 06.01.1995 issued to the petitioner, the Government of Punjab itself had incorporated term (iii) as under:-

“iii) He will be entitled to the salary of the judgment of Punjab and Haryana High Court or would be given emoluments equal to the last pay drawn minus pension per mensem. In addition he will be entitled to the benefits admissible to a sitting Judge of Punjab and Haryana High Court as per Annexure attached.”

However, in the Annexure of the said order, House Rent Allowance at the rate of ₹2,500/- per month in lieu of rent free accommodation admissible to him as sitting Judge of Punjab and Haryana

High Court was mentioned. That could apply only if the Judge himself does not avail of the use of an official residence. The amount was in terms of the amendment to the Act of 1954 before Amendment Act, 1998. Perusal of the written statement filed by the respondent-State of Punjab along with documents from time to time with subsequent affidavits shows the stand taken by the respondent-State. The same can be culled out in brief as under:-

- (i) Annexure to the Appointment order (Annexure P-1) of the petitioner and in particular clause-2 thereof itself shows mention of House Rent Allowance at the rate of ₹2,500/- per mensem in lieu of rent free accommodation and therefore, the petitioner having accepted the term would not be entitled to claim allowance at the rate of ₹6,000/- per month;
- (ii) It is true that the petitioner had made representations from time to time for allotment of rent free accommodation in terms of Section 22-A (1) of the Act of 1954 but the same could not be provided (as there was interim order made by the High Court and the matter was pending before the Full Bench);
- (iii) It is also true that the petitioner had having realised the pendency of the issue before the Full Bench of this High Court sought any other house even lower than the category permissible to the judge of the High Court and in particular had requested by his letter for allotment of a vacant House No.4, Sector 7, Chandigarh under Punjab quota.
- (iv) The decision of the Government of Punjab, Department of Finance, dated 29.03.1996 cannot be compared with the case of the petitioner as Mr. Justice S.S. Dewan was getting house rent as he was residing in his own house which is different from House Rent Allowance payable in terms of Sub-Section 2 of Section 22-A of the Act of 1954;
- (v) After vacating his house in Sector-4, Chandigarh that was allotted to him as a Judge of the High Court, after his retirement, he was not entitled to any excess amount at the rate

of ₹6,000/- per month as there was allotment of a house to his daughter Ritu Bahri who was employed as Assistant Advocate General, Haryana, where the petitioner resided;

- (vi) The petitioner having resided in the Government accommodation allotted to his daughter Ritu Bahri was in fact prohibited from receiving any allowance much less ₹2,500/- per month as stated in Punjab Government letter No.956-FCW-65/1548 dated 20.02.1965 with the further clarification issued vide letter No.3023-FICW(5)-71/14416 dated 20.07.1971, in terms of clause 11.11 of the decision, as indicated in the letter dated 21.07.2003 attached with the additional affidavit to the petition filed along with affidavit dated 01.07.2003 of the petitioner, on record.

The respondent-State has nowhere averred that the petitioner himself declined availing of use of official residence nor there is any evidence on record. On the contrary, the respondent has admitted that the petitioner had asked for a house of lower category, i.e. House No.4, Sector-7, Chandigarh, in case vacant house of a higher category could not be granted for any reason. No reasons are forthcoming why the said vacant House No.4, Sector-7, Chandigarh was not allotted to him. No reason has been given as to why even the said house was not allotted to him. In addition, he had also requested for allotment of house in Sector 39, Chandigarh and I quote the following portion from his letter dated 04.04.1995 (Annexure P-4):-

“It is, therefore, requested that steps may kindly be taken to allot me any reasonable house constructed by the Punjab State in Sector 39, Chandigarh immediately so that I may shift there in order to save harassment and to avoid unnecessary confrontation with the High Court.”

Therefore, clause-2 of Annexure to the Appointment order

(Annexure P-1) of the petitioner or the defence that the respondent-State was justified in working out the allowance at the rate of ₹2,500/- per month is fully misconceived, misplaced and without any application of mind to sub-section (2) of Section 22-A of the Act of 1954 by the mandarins of power in the Government. The relevant portion from Para 4 of the written statement about the vacant house No.4, Sector-7, Chandigarh reads thus:-

“Para No.4.....As regards the rest of the part of this para it is admitted that a letter was received requesting for the allotment of a vacant House No.4, Sector-7, Chandigarh of Punjab Quota....”

The petitioner has in Para-6 of his additional affidavit dated 01.07.2003 stated thus:-

“6. At the time of appointment as President of the State Commission, the deponent was residing in Judges House No.29, Sector 4, Chandigarh, and was constrained to vacate the same. He, therefore, shifted to House No.620, Sector 11-B, the house allotted to his daughter Ms. Ritu Bahri, then Assistant Advocate General, Haryana.”

This averment has not been denied. Thus, it is clear that after he was asked to vacate House No.29 in Sector-4, Chandigarh meant for the sitting judge of the High Court, he had no other alternative, but to find out a place for his residence and therefore, out of compulsion, he had to reside with his daughter Ritu Bahri who was allotted house by the Haryana Government, being Assistant Advocate General, Haryana.

Now the stand taken by the Government is that the petitioner was in fact, not entitled to any House Rent Allowance much less ₹2,500/- per month because his daughter was allotted a house from the Government quota and he was residing in that house, vide letter dated 21.07.2003 by the

Director, Food, Civil Supplies and Consumer Affairs & Ex-Officio Special Secretary to Government of Punjab in which clause 11.11 of the Finance Department's decision has been relied upon. This Court is aghast as the manner in which officers of the respondent-State have mistreated a Former Judge of the High Court. The compulsion of the petitioner to reside with his daughter having vacated the House No.29, Sector-4, Chandigarh due to his retirement as a judge of the High Court has been sadly commended upon rather than being apologetic for not providing official residence; vide Annexure P-16 dated 11.12.1998, that a favour was being done to the petitioner. It is a matter of serious concern that even the IAS officers of the Government do not understand the difference between a Government servant and sitting Judge or a Former Judge of the High Court as the reliance has been placed on clause 11.11 applicable to Government employees. This is simply bizarre and must be deprecated.

The next question that comes for consideration is at what rate, the petitioner should have been paid when the respondent admittedly did not provide official accommodation in violation of Sub-Section (1) of Section 22-A of the Act of 1954. The issue need not dilate us any further because quantification of the allowance at the rate of ₹6,000/- per month was consciously made by the Government of Punjab itself looking to the prevalent situation then in respect of Mr. Justice S.S. Dewan. There is no reason why any other amount lesser than ₹6,000/- per month could be thought of. We quote the following portion from Annexure P-5 as under:-

*“GOVERNMENT OF PUNJAB
DEPARTMENT OF FINANCE
(FINANCE EXPENDITURE-V BRANCH)*

*The Department of Finance observes that the standard
terms and conditions for the appointment of Chairpersons of*

various Commissions have been issued with the approval of the Hon'ble Chief Minister vide this Department's Endst. No.17/51/93-5FE-VI/7295 dated 26.10.1994 (copy enclosed for ready reference) to all the Financial Commissioners and Administrative Secretaries. Accordingly, in case of retired Judge of the High Court is appointed full time Chairperson of the Commission he would draw salary and perks as were being provided to a sitting Judge.

2. In view of the above, the Department of Finance agrees to the proposal of the Administrative Department for the enhancement of House Rent Allowance to Mr. Justice S.S. Dewan (Retd.) President State Consumer Disputes Redressal Commission to Rs.6000/- p.m. (Rs. Six Thousand only) instead of Rs.2500/- p.m. w.e.f. 26.10.1994, the date of issue of instructions No.17/51/93-5FE-VI/7295 dated 26.10.94.”

We find that the petitioner did no wrong in relying on the said decision for claiming allowance at the rate of ₹6,000/- per month in the light of the factual scenario discussed above.

Learned Senior Advocate for the petitioner has pointed out to us the manner in which the correspondence was made with the petitioner in ignorance of the post held by him. We have seen the said correspondence and we find that the same is not happily worded and cannot be appreciated, but then without making any further comment, we wish to add that the Judges or the judicial function cannot be permitted to be stonewalled by browbeating or bullying methodology.

Be that as it may. The upshot of the above discussion is that the present petition must succeed. In the result, we make the following order:-

ORDER

- (i) CWP No.12274 of 1999 is allowed;

- (ii) Rule is made absolute in terms of the following prayer clauses;
- “(ii) *directing the respondent State to grant House Rent Allowance to the petitioner with effect from the date when he assumed charge of office @ Rs.6000/- per month plus as revised later on;*
- (iii) *directing the respondent State in not making deduction from the monthly salary of the petitioner as stated in its letter dated 28.4.1999 (Annexure P-4);*
- (iv) *quashing the letter dated 28.4.1999 Annexure P-18 (Annexures P-11, P-13, P-15 and P-16) in as much as they deny the lawful claim of the petitioner of getting House Rent Allowance @ Rs.6000/- per month earlier to its revision to revision Rs.10,000/-.”*
- (iii) Costs made easy.

(A.B. CHAUDHARI)
JUDGE

(ANIL KSHETARPAL)
JUDGE

January 11, 2018

mahavir

Whether speaking/ reasoned: **Yes**

Whether Reportable: **Yes**