

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 13.09.2018

Pronounced on: 15.11.2018

+ **W.P.(C) 1696/2010**

KAMLESH SHARMA

.....Petitioner

Through: Sh. M.M. Sharma and Sh. Aditya Vashisth,
Advocates.

Versus

UOI

....Respondent

Through: Sh. Praveen Kumar Jain and Ms. Rashmi
Kumar, Advocates with Mohd. Ayub and Sh. Harvesh
Kumar, Assistant Director.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE A.K. CHAWLA

MR. JUSTICE S. RAVINDRA BHAT

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1. The reliefs claimed in these proceedings by the petitioner, are that a notification issued on 27.12.1991, excluding teachers working in Delhi Administration (hereafter "GNCTD") schools from entitlement to allotment of accommodation in the Central General Pool of residential staff quarters, as discriminatory, and also, a consequential direction that the respondents should permit her to occupy the premises where she resides in (that had been originally allotted to her husband, who sought and was granted voluntary retirement in 2008).

2. The petitioner joined the services of the Central Government in 1983; she was selected as Librarian in the Govt of NCT of Delhi school with effect from 19.11.1986. She was entitled to – and was allotted a Type II

accommodation in Gulabi Bagh. However, on allotment of a higher type accommodation, to her husband, by the Central Government, she gave up and surrendered the Type II quarter allotted to her, in terms of the Allotment of Government Residences (General Pool in Delhi) Rules, 1963 [hereafter “the 1963 Rules”]. It is claimed that the petitioner never claimed or drew House Rent Allowance [hereafter “HRA”] because she always lived in the residence allotted to her husband, in the Central Government accommodation pool. The Petitioner’s husband was an officer in the Indian Navy; she used to live with him. Upon retirement, her husband was permitted to retain the quarter allotted to him, for four months, i.e. from 01.01.2009 to 30.04.2009, on the ground that his son had to appear in the Board examination for the XII standard. This extension was given, in terms of the extant Central Government policies.

3. It is submitted that since the petitioner did not have any other arrangement for residence, she represented to the then Union Urban Development Minister, on 16.04.2009, to regularize the allotment of the quarter under accommodation. It is alleged that based on information made available to the petitioner and her husband, it was quite evident that in the past there were a number of precedents whereby similar occupancy of residential accommodation was regularized, in the names of employees of the Govt. of NCT of Delhi, including teachers. The petitioner has annexed- to the pleadings names of such employees.

4. It is averred that after much correspondence, the petitioner was told- by a letter dated 08.12.2009, written by the Director of Estates, that “*only the officers and staff posted at Headquarter of the Directorate of Education, Government of NCT of Delhi are eligible*”. The petitioner also alludes to her

need for continued medical attention on account of a near fatal accident which she suffered in 2001, which saw her hospitalized for over six months. It is stated that in these circumstances, the respondents should have exercised their discretion and permitted regularization of the residence presently occupied by her, which was originally allotted to her husband, during his public employment.

5. The petitioner impugns the Circular/notification dated 27.12.1991, which disentitles teachers of GNCTD, except those working in Headquarters, from allotment of Central General Pool accommodation, firstly contending that excluding GNCTD teachers, while not excluding employees, *per se* belonging to other departments (of the GNCTD) is discriminatory. It is submitted that as between these two classes of employees and officers, there is no *differentia*; both belong to the same class for the purpose of Central General Pool accommodation. It is secondly urged that the distinction between *teachers in Headquarters and those in schools*, is invidious and not based on any rationale. It is submitted that there is inherent bias and hostile treatment meted out to the teachers of GNCTD schools. If indeed teachers are to be excluded from eligibility to Central Government accommodation, there is no reason to make any distinction between those working in one establishment and another. This so called classification therefore, is *per se* discrimination. It is also submitted on behalf of the petitioner, that classification of those allotted Central General Pool accommodation prior to the impugned notification and those who are not because of the said notification, is irrational. Learned counsel cited *D.S. Nakara v. Union of India* AIR 1983 SC 130.

6. The Central Government and other respondents resist the petition and urge that GNCTD employees cannot claim entitlement to allotment of the Central General Pool accommodation.

7. It is submitted that for any department to be considered an eligible unit for purposes of allotment under the 1963 rules, it should not have its own pool of residential accommodation. The respondents refer to a meeting dated 21.09.1955 in the Union Ministry of Home Affairs, where it was decided that the Delhi Administration (now GNCTD) would have its own pool of separate residential accommodation. It was also decided that GNCTD employees were to be permitted allotment for some time; in 1975 and again in 1985 were permitted to continue in occupation of Central General Pool residential quarters.

8. It is argued, on behalf of the respondents, that the GNCTD has a separate pool of accommodation which its employees are entitled to. Learned counsel also contended that teachers were never held entitled to Central General Pool accommodation. Even those GNCTD employees who were entitled in the past to allotment (of Central General Pool accommodation) were entitled only upon fulfilment of a condition that the concerned employee had to produce a certificate to the effect that no person junior to him was allotted accommodation in the GNCTD's pool of residential quarters. The complaint of arbitrariness and discrimination is refuted by the respondents, who urge that permitting those allotted in the past, to continue occupation was to obviate hardship, which was in the circumstances, avoidable.

9. The respondents also argue that some part of the GNCTD offices and departments were consciously made eligible for Central General Pool

accommodation, by virtue of their job, which required them to perform ministerial tasks. Furthermore, it is pointed out that teachers in the GNCTD schools were never included in the list of whose employees who were eligible for Central General Pool accommodation. The respondents also defend the classification between the employees of GNCTD and the Central Government, stating that the two are different, in regard to their employers; they have different sets of accommodation or pools of residential quarters, which they would be entitled to; consequently for one to say that she has a right to allotment in the other government's pool is incorrect.

10. The impugned circular, dated 27.12.1991, states as follows:

“Subject: Regarding allotment of General Pool Accomodation to teachers/other staff working in the schools of Delhi Administration

The undersigned is directed to say that in accordance with the Allotment of Government Residences (General Pool in Delhi) Rules, 1963, allotment of accommodation from General Pool is made to the staff of offices declared specially eligible by the Central Govt. The teachers of schools of Delhi Administration were never declared eligible as such. However, since the Directorate of Education, Delhi Administraton is an eligible office, certain allotments have been made in the past to the teachers and other staff working in schools as their applications were forwarded by the Directorate of Education (Delhi Administration). Some allotments have also been made on the basis of certificates issued by Delhi Administration or the Principals of Schools that the staff concerned were working in an eligible office located in eligible zone.

2. The teachers and other staff working in the Govt. schools in Delhi Administration have been representing for declaring them eligible and for allotting them a suitable eligibility code. The matter has been considered keeping view the fact that the

Delhi Administration has its own pool of accommodation which also caters to the teachers and other staff of the schools in the Delhi Administration. The factual position that certain allotments have already been erroneously in the past to the teachers and a number of such allottees are already registered for in turn change etc, has also been noted. After careful consideration, it has now been decided that the teachers and other staff of schools of Delhi Administration will not be eligible for initial allotment (in turn as well as ad hoc) from general pool in Delhi. However, the allotments already made to them by the Directorate of Estates will not be disturbed and will continue to be treated as lawful allotments.

3. It has also been decided that change allotment in the same type will also be admissible to teachers and other staff of schools of Delhi Administration who are already allottees of general pool accommodation. Those who are already registered for in turn change will be allowed their due seniority for such change of accommodation in the same type. ...”

11. According to the pleadings on the record, an office memorandum issued by the Central Government, on 26.10.1993 specified – through Annexure B - various offices and departments of the Delhi Administration (now GNCTD) whose employees and officers were eligible for allotment to Central General Pool accommodation. The Central Government explains that for any department to be declared as eligible, it has to fulfil three criteria, i.e. firstly, it should be an attached or subordinate office of the Central Ministry/department; secondly, its staff is paid from the Consolidated Fund of India and thirdly, it should not have a departmental pool of accommodation. It is submitted that offices of the GNCTD do not fulfil these conditions and that allotment of residential accommodation from the General Pool to employees of Delhi Administration are made as an exception.

12. It is a matter of record that the petitioner first joined public employment in 1983; she thereafter joined GNCTD in 1986. Initially, she was allotted Type II accommodation by the GNCTD. However, she chose to give it up because her spouse, then an Indian Navy officer, had a better official accommodation. This continued right till 2008, when he sought and was allowed to retire voluntarily. However, after the expiry of the period of extension (sought on the ground that her son was at a crucial academic stage, i.e. he was to appear in the 10+2 examination), the permission to occupy ended, so to say on 30.04.2009. What the petitioner has achieved, as a result of this proceeding, is a prolonged residence in an official accommodation that she is clearly not entitled to. Given that the 27.12.1991 office memorandum clarified that only employees in specified departments could be allotted Central General Pool residences, - a condition which was in force when the petitioner's husband was apparently in service and was allotted his official quarter, which she currently occupies (and also keeping in mind the fact that this condition applied *per se* to her, as an employee of the GNCTD), there was no manner of doubt that she was not entitled to seek "regularization" in terms of the office memorandum.

13. As far as challenge to the office memorandum goes, the petitioner had urged that the expression "Government" included GNCTD and therefore, the employees of the latter were *entitled* to allotment of Central General Pool residences. This court is of opinion that the matter is not as simplistic; officers and employees of the GNCTD and those of the Union have different employers – i.e. appointing authorities. Employment of public servants – of the GNCTD is usually through and in the name of the Lt. Governor and in accordance with rules approved or promulgated by him; that of Central

Government is through and in the name of the President of India. There are a large number of other differences too. Most importantly, both the governments have separate general pool of accommodation available for allotment to their employees. That the Central Government – on the basis of an understanding with the GNCTD, for convenience of both the authorities, permits employees or officers of GNCTD to occupy some of its Central General Pool accommodation does not amount to an enforceable right. These differences, in the opinion of the court, are sufficient to dispel the charge of unequal treatment of equals. As regards the allegation that teachers of GNCTD have been hostilely discriminated, or are victims of arbitrariness – given that the employees of the Directorate of Education are permitted to occupy the Central General Pool accommodation - goes, the court is of opinion that this complaint too is unmerited. As observed earlier, the list annexed to the 1993 memorandum merely limited the departments or offices whose employees *could be given* Central General Pool residences. Firstly, it is not that all such employees have a right to such allotment. Secondly, this arrangement was perhaps conceived more as a resource management measure, to limit the request by GNCTD employees of all departments and also to prioritize certain offices whose employees had to be housed in public accommodation. As such there is no merit in the charge of discrimination.

14. Like all public resources, no one can claim an entitlement to allotment of a particular official accommodation. In this case, Central General Pool accommodation was never available for allotment to the petitioner. She had the good fortune of residing in one such, beyond her entitlement; at the time of her initial occupation, undoubtedly her husband was entitled to allotment. However, after he superannuated- and after the humanitarian extension

granted to her (for four months) she lost the right to occupy the residence. She managed to overstay all these 9 years, thanks to the interim orders of this court.

15. For the above reasons, it is held that the petition is unmerited. The interim orders of the court are hereby vacated. In case the petitioner does not vacate and hand over possession of the residential accommodation in her possession by 31.12.2018, the respondents shall have the right to evict her. The writ petition is dismissed but without order on costs.

S. RAVINDRA BHAT
(JUDGE)

A.K. CHAWLA
(JUDGE)

NOVEMBER 15, 2018



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