

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

WRIT PETITION NO.1363 OF 2003

Divisional Controller,
Maharashtra State Road Transport
Corporation, Division Dhule,
Dhule.

...PETITIONER

VERSUS

Ramesh Kisan Choudhary,
Age : 49 years, Occupation : Service,
R/o S.T.Qtr. No.2,
Opp-Kalyan Bhavan, Dhule,
Dhule.

...RESPONDENT

...

Shri D.S.Bagul, Advocate for the petitioner.
Shri C.R.Deshpande, Advocate for the respondent.

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 21st June, 2019

Oral Judgment :

1 The petitioner corporation is aggrieved by the judgment of the Industrial Court dated 06.01.2003 by which, the Industrial Court, though agreed in principle that the petitioner had acted in accordance with law, has allowed Complaint (ULP) No.72/2000 filed by the respondent.

2 I have heard the learned advocates for the litigating sides and have gone through the record with their assistance. The respondent, original complainant before the Industrial Court, was appointed as a Security Guard in 1985 and was granted permanency on 27.09.1996. The petitioner corporation allotted a residential quarter to the complainant as per the rules while he was posted at Dhule.

3 The complainant was issued with an order of transfer to Nandurbar and he reported for duties at Nandurbar on 07.11.1998. He did not vacate the quarter allotted to him at Dhule and initially, travelled to and fro from Dhule to Nandurbar on daily basis. On 24.11.1999, he was brought back to Dhule and he reported for duties at Dhule. During this period, he was charged a nominal rent of Rs.11.50 per month at a concessional rate.

4 The petitioner corporation initiated steps to assess as to the commercial rates of rent applicable to such official quarters. A letter was addressed to the Public Works Department to gather information vide communication dated 07.04.2000. The Public Works Department informed the petitioner corporation that the rate of rent at a non concessional rate of rent would be Rs.1954/- per month. Based on such information, the corporation calculated an amount of Rs.18548/- as a recoverable rent on non concessional rate and initiated the recovery. The complainant rushed to the Industrial Court by lodging Complaint (ULP)

No.72/2000. His application for interim relief was rejected by order dated 14.09.2000. By the impugned judgment delivered on 06.01.2003, the Industrial Court set aside the order of the petitioner corporation for recovering the said amount.

5 The Industrial Court has concluded in paragraph 17 that the record clearly reveals that after he was posted at Nandurbar, he has not vacated the quarter at Dhule. It is also recorded that the petitioner corporation had initially recovered an amount of Rs.412/- per month as non concessional rent. The said amount was already recovered for a period of 12 months during which time the complainant was at Nandurbar. As the corporation realized that it has charged at the rate of Rs.412/- by guessing the said amount to be non concessional rent, it approached the Public Works Department. It was after the Public Works Department guided the corporation about the non concessional market rate of rent that the corporation recovered the residual amount of Rs.18548/- from the complainant.

6 In paragraph 18 of the impugned judgment, the Industrial Court agreed that if an employee does not vacate the quarter allotted to him, he cannot claim continuance of his occupancy at the same concessional rates. It is further held that the complainant could not have retained the quarter and should have vacated the same. In not doing so, he was liable to pay the rent at non concessional rates. Yet, for no reasons

assigned in the judgment, the Industrial Court concluded that the amount of Rs.1954/- per month should not have been charged and therefore, could not have been recovered from the complainant.

7 The learned advocate for the complainant submits that he would term his movement from Dhule to Nandurbar as being an assignment on deputation. However, I find from the transfer order dated 07.11.1998 that the posting of the complainant was changed from Dhule to Nandurbar and it is specifically said in the order that he has been appointed (नियुक्ती) at Nandurbar and was relieved on 07.11.1998 forenoon. As such, it cannot be held that the complainant was moved to Nandurbar purely on deputation and therefore, was not required to vacate his quarter.

8 Further communication is pointed out dated 15.02.1999 by which the petitioner has notified that the complainant had not vacated the quarter which was allotted to him and he was specifically reminded that consequent to his transfer to Nandurbar, he cannot retain the said quarter. Despite the same, the complainant has not vacated the quarter.

9 In the matter of *Secretary, ONGC Ltd. and another vs. V.U.Warrier, (2005) 5 SCC 245*, the Honourable Supreme Court has concluded that in the case of an employee who had retired, consequent to his retirement, the official quarter occupied by him will have to be vacated

and in the event, an employee fails to vacate the quarter, he would be liable to pay the penal rent.

10 In yet another case decided by this Court in the matter of *Rohidas Waraji Nisargandh vs. Precision Pattern Works, 2009 III CLR 420*, this Court directed to calculate the rent at non concessional rate and directed the employee to pay the said rent.

11 The complainant has taken shelter of the corporation initially recovering an amount of Rs.412/- per month from him as non concessional rent. He makes a grievance about recovery of the remainder amount of Rs.18548/- on the ground of delay and recovery by retrospective effect.

12 I do not find that the submissions of the learned advocate for the complainant could be acceptable. It is obvious from the record that the corporation charged the complainant at the rate of Rs.412/- per month by superficial assessment. Upon realizing that the non concessional rent has to be assessed by taking assistance of the Public Works Department that the corporation had called for proper assessment from the Public Works Department.

13 Considering the above, I am of the view that once an employee is moved out of a particular posting and is posted at another place thereby, relieving him from the place at which he had been occupying the official accommodation, he is duty bound to vacate such a

quarter and failure to do so, would entitle the employer to charge such employee with the rent at non concessional rates.

14 In the light of the above, this Writ Petition is allowed. The impugned judgment and order dated 06.01.2003 is quashed and set aside. Rule is made absolute accordingly.

15 At this stage, it is stated that the petitioner corporation had deposited the amount of Rs.18,548/- in this Court vide Demand Draft dated 27.01.2005. The complainant moved Civil Application No.5647/2009 seeking leave to withdraw the said amount. By order dated 25.09.2009, which underwent correction by order dated 08.10.2009, the petitioner corporation was directed to release the gratuity amount of the complainant by deducting the amount of Rs.18,548/-. However, the entire gratuity amount of the complainant was released by the petitioner corporation.

16 In view of the above, the respondent shall deposit the amount of Rs.18,548/- with the petitioner corporation at Dhule on or before 31.07.2019, failing which, the said amount shall carry interest at the rate of 3% per annum from the date of the judgment of the Industrial Court.