

(103) IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.10933 of 2016

Date of decision:17.08.2019.

Inspector Ajaybir Singh

.... Petitioner

Versus

State of Haryana and others

.... Respondents

Before: Hon'ble Mr. Justice B.S. Walia.

Present: Mr. Amit Kumar Advocate for
Mr. Harkesh Manuja, Advocate for the petitioner.

Mr. Harish Rathee, Sr. DAG, Haryana.

B.S. Walia, J.,

[1] Prayer in the writ petition is for quashing order Annexure P/6 dated 08.04.2016 passed by respondent No.3 directing respondent No.5 to effect recovery of ₹ 2,97,868/- as penal rent @ 300 times the normal rent from the petitioner on account of retaining allotted government accommodation from 20.12.2015 to 31.03.2016 as also for quashing of administrative instructions Annexure P/8 dated 18.06.2012 on grounds of the same being contrary to Rule 5.23 Part I, Vol. I of the Punjab Civil Services Rules (as applicable to the State of Haryana) (hereinafter referred to as 'the Rules').

[2] Brief facts of the case leading to the filing of the writ petition are that while posted in the Haryana Police at Gurgaon, the petitioner vide order Annexure P/1 dated 01.02.2013 was allotted quarter No.602, Tower-K, Police Line, Gurgaon. On promotion as Inspector, vide order Annexure P/2 dated 16.08.2015, the petitioner was transferred to Palwal but on account of the petitioner having two sons studying in Class 6 and Class 8 respectively in Shalom Hills International School, Sushant Lol-I, Gurgaon, it was difficult for the

petitioner to shift his sons school mid-session, therefore, the petitioner submitted representation, Annexure P/4 dated 28.10.2015 to respondent No.3 requesting for permission to retain quarter No.602, Tower-K, Police Line, Gurgaon till the end of the academic session of his children. However, the petitioner did not receive any response to the representation, Annexure P/4 dated 28.10.2015. Subsequently, vide Order Annexure P/5 dated 04.04.2016 passed by respondent No. 2, the petitioner was transferred from Palwal to Gurgaon whereupon the petitioner submitted his joining report at Gurgaon on 18.04.2016.

[3] That in the meantime, respondent No.3 without affording any opportunity of hearing or even issuing show cause notice, passed order, Annexure P/6 dated 08.04.2016 directing respondent No.5 to effect recovery of ₹ 2,97,868/- as penal rent i.e. @ 300 times the normal rent from the petitioner on the basis of administrative instructions Annexure P/8 dated 18.06.2012.

[4] That order Annexure P/6 dated 08.04.2016, was served upon the petitioner on 18.04.2016, where after a sum of ₹ 18,000/- was recovered from his salary vide Annexure P/7 in April, 2016.

[5] Sole argument of learned counsel for the petitioner is that in view of the decision of this Court in **Dilbag Singh vs State of Haryana and others-1994 (3) RSJ 181**, administrative instructions, Annexure P/8 dated 18.06.2012 are contrary to Rule 5.23 Part I, Vol. I of the Punjab Civil Services Rules (as applicable to the State of Haryana) (hereinafter referred to as ‘the Rules’). Learned counsel contended that since administrative instructions, Annexure P/8 dated 18.06.2012 were contrary to the provisions of Rule 5.23 (ibid), the maximum which could have been charged was as per Rule 5.23 (e) Part I Volume I of the Rules. Relevant extract of Rule 5.23 (e) Part I Volume I of the Rules is as under:-

(i)	On retirement	Upto four months at normal rent
(ii)	On transfer	Upto two months in normal circumstances at

		normal rent. Additional two months at normal rent on medical grounds of self or members of family or on ground of education of children of the employees subject to the approval of competent authority.
(iv)	After that till the employee vacates the Govt. accommodation	Fifty times of the normal rent shall be charged from the employees after the prescribed time limit of four months and two months as mentioned in sub-clause (i) and (ii) above. In case Government accommodation is not vacated by the Govt. employee after the transfer from Station 'A' to 'B' the employee shall not be entitled to any house rent allowance at station 'B' where he has been transferred until and unless he vacates the Government accommodation of his previous station 'A'.

[6] That in the rely, as per Annexure R-1 it has been mentioned that permission was granted to the petitioner for retaining Govt. accommodation uptill 20.12.2015 where after the petitioner was required to vacate the house failing which he was informed that penal rent would be charged w.e.f. 21.12.2015 i.e. after expiry of four months of transfer.

[7] That in paragraph No.11 of the it has been mentioned that penal rent was calculated as per administrative instructions dated 18.06.2012 as applicable at the time of calculations but subsequently, the Haryana Government Finance Department issued notification bearing No.2/2/2016-4FR/22280 dated 29.07.2016 notifying the Haryana Civil Services Rules thereby repealing the Punjab Civil Services Rules. As per Rule 47 of the Haryana Civil Services (Allowances to

government accommodation can be allowed to be retained for 2 months besides for another 2 months inter alia on the ground of education of children of the employee subject to approval of the competent authority whereas as per Rule 48 of the Haryana Civil Services (Allowances to Govt. Employees), Rules 2016 (Chapter IV), in case of overstay beyond the permissible period, penal rent is chargeable over and above the normal rate for upto 1st month of overstay @ 50 times the normal licence fee, in case of overstay above one month and upto 2 months @ 100 times the normal fee, overstay above two months and upto 3 months, @ 200 times the normal licence fee while for overstay for four months and above, @ 300 times the normal licence fee.

[8] Learned counsel also relied upon the decision of a Co-ordinate Bench of this Court in CWP No.3392 of 2017 in case titled as Babul Lal vs State of Haryana and Others as well as CWP No.3441 of 2017 in case titled as Parveen Malik vs State of Haryana and Ors to contend that the impugned levy of 300 times the normal licence fee for retaining the allotted government accommodation beyond the permissible period was imposed on the basis of impugned instructions Annexure P/8 dated 18.06.2012 as were in force prior to the amendment of the Rules and the said instructions having been declared non est in CWP No. 3923 of 2015 in case titled as Ram Kishan vs State of Haryana and others decided on 16.09.2016, the said decision would apply notwithstanding notification dated 29th July, 2016 notifying the Haryana Civil Services (Allowance to Govt. Employees) Rules 2016 which justify levy of 300 times penal rent for overstay of four months and above beyond the permissible period of time as the period for which the penal rent was charged and the order vide which penal rent was imposed was of the period prior to notification dated 29th July, 2016 notifying the Haryana Civil Services (Allowance to Govt. Employees) Rules 2016.

[9] Learned Sr. DAG very fairly concedes that the case is covered by the decision of the Co-ordinate Bench of this Court in CWP No.3392 of 2017 and

penal rent was set aside on account of penalty having been imposed before the amendment of the Rules dated 29.07.2016.

[10] In the instant case also, the impugned order Annexure P/6 dated 08.04.2016 is on the basis of administrative instructions Annexure P/8 dated 18.06.2012. However, at that point of time, Rules 5.23 Part I, Vol. I of the Punjab Civil Services Rules (as applicable to the State of Haryana) which was applicable provided for charging of maximum of 50 times of the normal rent after the expiry of the prescribed time limit for which the allotted Govt. accommodation could be retained by the Govt. employee on his transfer.

[11] In view of the position as noted above, the writ petition is allowed in the same terms as in CWP No.3392 of 2017 titled as Babu Lal vs State of Haryana and Others and CWP No.3441 of 2017 titled as Parveen Malik vs State of Haryana and others. The respondents shall work out the amount chargeable in accordance with Rule 5.23 Part I, Vol. I of the Punjab Civil Services Rules (as applicable to the State of Haryana) and make adjustment of the amount already recovered against the total amount found due and payable by the petitioner.

No order as to costs.

17.08.2019
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(B.S. Walia)
Judge

1. Whether speaking/reasoned

:

Yes/No.
2. Whether reportable

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Yes/No.