IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 2145 of 2018
Date of Decision: 09.09.2019

Adarsh Kumar Sharma

...Petitioner

Vs.

U.T., Chandigarh and others

...Respondents

CORAM:- HON'BLE MR.JUSTICE RAJIV NARAIN RAINA

Present: Mr. Prateek Gupta, Advocate
for the petitioner.

Mr. Jagdish Rai, Advocate,
Mr. Suman Jain, Advocate and
Ms. Bhupinder Kaur, Advocate
for respondent No.3.

RAJIV NARAIN RAINA, J. *(Oral)*

1. The petitioner retired from service on 31.03.2012 as a Special Secretary on the Establishment of this Court. He was granted special extension in service by the Chief Justice for 03 periods starting from 03.04.2012 and ending on 06.08.2015. During the period of extensions, the petitioner handed over the possession of the government accommodation allotted to him in Sector 23, Chandigarh to the House Allotment Committee on 02.01.2013.

2. The U.T. Administration called upon him to pay a penalty of Rs. 77,715/- with 12% interest for the period of use and occupation of Government accommodation. On calculation, it is revealed that the period of the penalty is more that what it should be since the conceded position in the Rules is that a superannuating Government servant can retain government

house for 04 months after retirement. Accordingly, the petitioner could have retained government accommodation upto 31.07.2012, with 4 months added, on usual terms. The effective period which falls in the penalty zone is between 01.08.2012 to 02.01.2013, which accounts for 05 months and 02 days, whereas the penal rent in the impugned demand demand letter issued vide Memo dated 09.02.2016 addressed to the Registrar (General), Punjab and Haryana High Court with a copy to the petitioner, has been ordered erroneously for a much larger period which was impermissible in law and fact. The rate of interest on the amount of Rs. 77,715/- calculated in the impugned order has been ordered to carry 12% interest per annum.

3. In view of the apparent discrepancy in the calculation of the period for which penal rent can be demanded is fallacious reason, the impugned order deserves to be set aside with liberty to the answering respondents to pass a fresh order in accordance with law demanding penal rent for the determined period mentioned above. In case 12% interest per annum demanded by the U.T. Chandigarh is not backed by statutory authority, then it is deemed to be excessive and deserves to be reduced to 6% interest per annum as per the provision of the Code of the Civil Procedure or at best, the interest fixed by Nationalized Banks on FDRs. If interest at the rate of 12% is chargeable, the statutory basis of the interest must be communicated to the petitioner in writing with the relevant rule in support thereof.

4. Mr. Prateek Gupta draws the attention of the Court to Sub-rule 2 of Rule 13 of the Government Residences (Chandigarh Administration General Pool) Allotment Rules, 1996 which prescribes that residences

allotted to government employee may subject to sub-Rule (3), be retained on the happening of any of the events specified in Column I, of the Table below for the period specified in the corresponding entry in Column 2. In the event of retirement, terminal leave, resignation, dismissal or removal from service, termination of services or unauthorized absence without permission, the permissible period for retention is 04 months. In Sub-rule 4 of Rule 13, it is prescribed that a government employee who has retained the residence by virtue of the concession under event (1) of the Table in Sub-rule (2) shall on reinstatement in an eligible office within the period specified in the said table, be entitled to retain that residence and shall also be eligible for any further allotment of residence under these rules. This amendment has been carried out vide notification No.2978 dated 17.12.2009 issued by the UT Administration, Chandigarh and, therefore, Mr. Jagdish Rai appearing for the administration submits that the case of Prem Singh relied upon is distinguishable as it was decided pre-amendment. The effect of the amendment is that proviso to this sub-rule stood deleted by notification No. 2978 of 17.12.2009. Event in sub-rule 4 of Rule 13 pre-condition laid down is “reinstatement in an eligible office”. This means that upon reinstatement, irrespective of time, employee cannot be disadvantaged by the limits prescribed in the Table. Needless to say, the case of the petitioner is not one of reinstatement, but, is either of re-employment or fresh appointment as per the orders of Hon'ble the Chief Justice exercising his powers under the Constitution of India. I would, therefore, not accept the argument of Mr. Gupta of waiver of rent, as the petitioner has exposed himself to levy of penal rent beyond the period of 4 months permissible for retention of residence.

5. Accordingly, on instructions received by Mr. Gupta during the course of hearing, the petitioner undertakes to furnish a bank guarantee in a sum of Rs.1,00,000/- to the House Allotment Committee, U.T. Chandigarh with interest calculated @6% per annum subject to final clearances and discharge. Upon deposit, the surety bond signed by the petitioner's sister in favour of her husband i.e. Mrs. Anita Sharma, also an employee retired from the Establishment of this Court, with reference to Annex. P-10, will stand discharged and she will be released her pending dues, pension and other retiral benefits. The bank guarantee will be furnished by the petitioner within 10 days of receipt of this order and will be accepted, upon which deposit, the outstanding dues to Mrs Anita Sharma shall be released forthwith by the branch concerned. Her, surety bonds will stand discharged.

6. The petition is accepted to the extent afore stated.

(RAJIV NARAIN RAINA)
JUDGE

09.09.2019
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Whether speaking/reasoned : Yes
Whether reportable : Yes/No