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IN THE HIGH COURT OF DELHI AT NEW DELHI

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LPA 512/2015

RAVINDER KUMAR WALI

..... Appellant

Through: Mr. Rajinder Wali, Advocate.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Akshay Makhija, CGSC with
Mr. Aditya Goyal and Mr. Seerat
Deep Singh, Advocate for UOI.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE I.S.MEHTA

ORDER

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19.03.2019

Dr. S. Muralidhar, J.:

1. This appeal is directed against an order dated 21st July 2015 passed by the learned Single Judge rejecting the Appellant's W.P. (C) 6875 of 2015.

2. The Appellant pleaded the following facts stated in the writ petition:

(i) He was a permanent resident of the State of Jammu and Kashmir. On 28th September, 1983, he joined the office of the Controller General of Defence Accounts under the Ministry of Defence, and from 1983 to 1985 was posted at District Udhampur in Jammu and Kashmir. Thereafter, between March 1985 to February 1989, he was posted in Leh, also in Jammu and Kashmir.

(ii) Between 1989 and 1992, the Appellant was posted in Srinagar. Owing to the uncontrolled violence in the Kashmir Valley from 1989-1990 onwards

and the mass exodus of Kashmiri Pandits on account of threat to their lives and liberty, he was forced to migrate along with his family leaving behind all belongings and was rendered homeless. He along with other employees of the Department was sent back to Srinagar under security cover where the Appellant continued working till 1992. He has been posted in Delhi since October, 1992.

(iii) Upon his posting in Delhi, the Appellant was allotted Quarter No.C-17, Panchwati, Palam, Delhi Cantonment, which is a residential accommodation forming part of the Defence Accounts Department ('DAD') Pool.

(iv) In 2013, on account of the ill health of his wife, the Appellant submitted a letter dated 8th April, 2013 to the Respondents opting for retirement under the Voluntary Retirement Scheme (VRS). He requested that the same may be accepted after completion of notice period of three months. This was accepted by letter dated 16th July, 2013.

(v) Since the Appellant was forced to leave his hometown on account of militancy, he was registered as a Kashmiri Migrant with the concerned department in Jammu and Kashmir. He was issued a Migration Certificate dated 28th September 2013.

(vi) However, on 16th November 2013, stating that his wife's health had improved and that he had still had 3 years service left, the Appellant sought to withdraw his application for voluntary retirement. A further letter dated

10th November 2014 was also sent by the Appellant, requesting that action may be taken upon his request for reinstatement and regularization which was still pending.

(vii) Even while a decision on the said application was awaited, the Estate Office by order dated 27th October 2014 commenced proceedings against the Appellant under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (hereinafter 'PP Act') and ordered him to vacate the government accommodation within 15 days of the publication of the order.

(viii) By another letter dated 12th February 2015, the Respondents issued a communication calling upon the Appellant to explain why legal action should not be initiated against him for not complying with the order dated 27th October 2014. A further representation dated 20th February 2015 was made by the Appellant reiterating his request for withdrawal of his application for VRS. This was rejected by the Respondents by a letter dated 15th May 2015.

3. W.P.(C) 6875/2015 was filed by the Appellant in the above background seeking orders to restrain the Respondents from evicting him from the Government accommodation, till such time he was able to return to Jammu and Kashmir or to provide any suitable accommodation in the alternative in Delhi.

4. The claim of the Appellant before the learned Single Judge was based on the judgment dated 30th November 2010 of the learned Single Judge of this

Court in a batch of writ petitions of which the lead petition was W.P.(C) 15239/2004 (*P.K. Koul v. Estate Officer*). By that judgment, the learned Single Judge set aside and quashed the orders cancelling the allotment of persons similarly placed as the present Appellant. The consequential eviction orders passed against them under the PP Act were also quashed. A direction was issued to the Respondents to “make all endeavors to adequately, effectively and reasonably rehabilitate and resettle the petitioners, making provisions for appropriate accommodations for them.” It was further directed that till such time the Respondents are able to provide an alternate accommodation to those Petitioners, they would be allowed to retain and occupy the allotted accommodation, subject to payment of normal license fees.

5. Against the said judgment in *P.K. Koul* and batch, the Union of India filed appeals, which were disposed of by a Division Bench (DB) of this Court by a judgment dated 1st June 2012 in LPA 332/2011 and connected batch matters (*Union of India v. Vijay Mam*). While declining to interfere with the judgment dated 30th November 2010 passed by the learned Single Judge, the DB issued the following directions:

“31. We also make it clear that the Central Government would be free to frame a rehabilitation scheme specifically for such retired employees like the respondents and in such a scheme, it can specify the terms and conditions on which such persons would be entitled to rehabilitate/alternate residence, which may include the term that these respondents or their family members do not have any residence in any part of the country. It would also be open to the Government to specify the nature of accommodation to which such retired Government servants would be entitled to or the place where they would be rehabilitated which may not

necessarily be in Delhi but can be even in the NCR region. After the scheme is framed, the cases of the respondents can be scrutinized in terms of that scheme and those not found eligible for rehabilitation in terms thereof can be ousted from the present accommodation.”

6. In other words, the DB in *Vijay Mam* made it clear that till such time a rehabilitation scheme for similarly placed persons was framed by the Respondents, and there was no determination as regards the entitlement of individual applicants/retired Government Servants in terms thereof, such persons cannot be ousted from the accommodation occupied by him or her.

7. Before the learned Single Judge in W.P(C) 6875/2015, the above orders of both the learned Single Judge in *P.K. Koul* as well as the DB in *Vijay Mam* were cited. The learned Single Judge distinguished the judgment in *P.K. Koul*, on the ground that the persons in that case had been required to vacate the allotted Government accommodations on reaching the age of superannuation whereas the present Appellant, on his own had sought voluntary retirement. He had applied for reinstatement of service only after receiving notices of cancellation of the residential allotment, which was in 2014 itself. Consequently, it was held that the Appellant had overstayed in the official accommodation for more than two years.

8. No reference however, was made by the learned Single Judge to the decision of the DB in *Vijay Mam* although from para 5 of the impugned order, it is seen that it was placed before the learned Single Judge by counsel for the Appellant, who noted that the SLP filed against the said judgment of the DB was pending consideration before the Supreme Court.

9. In the present appeal, at the very first hearing on 5th August 2015 this Court passed the following order:

“1. Having perused the Division Bench judgment dated June 01, 2012 in LPA No.332/2011 *Union of India & Ors. vs. Viiav Mam* and connected appeals, prima facie the appellant would be entitled to be accorded same benefits as was accorded to the respondent in the various appeals which were disposed of by the Division Bench.

2. Issue Notice.

3. Counsel as above accepts notice for the respondents.

4. Since writ petition has been dismissed in limine without a counter affidavit being filed we permit the respondents to file a reply in the appeal.

5. Re-notify for November 19, 2015.”

10. Again on 12th August 2016, the Court noticed that the claim of the present Appellant was based on the decision of the Division Bench in *Vijay Mam (supra)*. In particular, a reference was made to the directions in para 30 [(i) to (vi)] of the said judgment, which noted the peculiar features of the case before the DB which warranted the directions issued. Two of those features were that the Respondents before the DB were “the employees of the Central Government who were posted in Srinagar, J&K at the relevant time” and the Respondents wanted “to enforce their right to shelter only till such time conditions are conducive for their safe return to their homes or till the time Government provides alternative accommodation.”

11. Counsel for the Respondents then sought time to examine the above aspect. On 7th November 2016, while admitting the appeal, the impugned order was stayed.

12. In the present appeal a short affidavit was filed by Respondents on 22nd March 2016, *inter alia* stating that by a letter dated 7th July 2015 the Competent Authority had refused the Appellant's request for reinstatement and for withdrawal of the VRS. It was stated that on 7th July 2015 the Appellant was offered "a final opportunity to vacate the premises failing which the matter shall be referred to the Local Police Station." It was further stated that the Appellant had failed to demonstrate how his case was similar to the case of the migrant Kashmiri Pandits serving in the Defence/Intelligence forces "that faced direct and inherent danger from the prevailing circumstances in Kashmir." A distinction was sought to be drawn between such of those Kashmiri Pandits who are working with "the Armed Forces/Intelligence Agencies" and those like the present Appellant who are "employed under the Central Government". It was stated that "a measure allowing a public servant to retain a quarter post retirement must be taken in a judicious manner and allowed only in places of threat of imminent need of such relief."

13. An additional affidavit was filed by the Respondents in the present appeal on 13th August 2018 in response to a query from the Court whether any alternate accommodation could be offered to the present Appellant. The query was answered in the negative in the said additional affidavit for the reason "there is zero availability and a long waiting list". It is also stated that

there is no provision in the allotment of Government Residences (DAD Pool) Rules 1986 as amended to regularize quarters to retired DAD employees or Kashmiri migrants after the stipulated period of eight months of retirement.

14. This Court has heard the submissions of learned counsel for the parties.

15. The Court's attention was drawn to a decision of the Supreme Court in *J.L. Koul v. State of Jammu & Kashmir (2010) 1 SCC 371* where again the issue was the allotment of accommodation to Kashmiri Pandits who were in the employment of the State Government. A learned Single Judge of the Jammu & Kashmir High Court had by an order dated 24th January 1997 issued a series of directions to cater to the accommodation needs of such of those who had been forcibly evicted on account of the situation in the Kashmir valley. The appeal against the said judgment of the learned Single Judge was dismissed by the DB of the Jammu & Kashmir High Court on 14th March 1997 following which a further appeal was filed in the Supreme Court.

16. The Supreme Court by an order dated 11th April 1997 directed the Respondents to maintain status quo as regards possession of the property. The Court noted that during the pendency of the appeal, directions had been issued to the State to frame a scheme for the rehabilitation of the Appellants therein and "particularly for providing them accommodation." By an affidavit dated 6th October 2009 filed before the Supreme Court, the Chief Secretary of the State of J&K informed the Court that of the 54 Appellants

before the Supreme Court, 23 had already handed over their Government accommodations to the State department and the same had been allotted to Government employees, and only 31 migrants/retirees were presently in the occupation of Government accommodation.

17. In para 5 of the affidavit, the details of the policy framed by the Government of Jammu & Kashmir on the basis of re-commendations of a working group constituted by the Government of India were set out. It was also stated that State Government had also constituted an Apex Advisory Committee to oversee the implementation of return and rehabilitation package for Kashmiri migrants in the month of September 2009, and various suggestions were put forth in a meeting of the Committee held on 23rd September 2009. It was stated that the State Cabinet had by a decision dated 1st October 2009 approved the package for return of the Kashmiri migrants in Kashmir Valley.

18. With regard to implementation of the employment scheme, the Committee had been ordered to submit a report looking at the legal aspects and other implications for making recruitments of migrant youth against various posts before the said scheme was formally notified, for which two weeks time was granted. It was further stated that the State Government “is keen to rehabilitate the Kashmiri migrants in the Kashmir Valley and shall provide every type of assistance for the return of rehabilitation. The process for the rehabilitation in the Valley has been initiated in June 2008 after the Government of India announced the package for their return.”

19. The Supreme Court then observed as under:

“The aforesaid affidavit makes it clear that the State authorities have framed the rehabilitation scheme and for implementation of the same, it has got the resources also. In such a fact situation no further action/direction is required.”

20. Learned counsel for the Appellant informed this Court that no such rehabilitation scheme has been implemented till date. The Court enquired from counsel for the Union of India whether in terms of the decision dated 1st June 2012 in **Vijay Mam** (*supra*), any scheme for rehabilitation had been framed by the Central Government. He answered in the negative.

21. It requires to be noticed here that the basic contention of Respondents in trying to make a distinction between those Kashmiri Pandits working with the Armed Forces/Intelligence Agencies and those working for the Central Government, does not flow from either of the judgment of the learned Single Judge in **P.K. Koul** (*supra*) or the judgment by the Division Bench in **Vijay Mam** (*supra*). On the other hand, both judgments speak of Kashmiri Pandits working for the State and Central Governments in the State of Jammu & Kashmir, who were forced to migrate as a result of the violence that they were subjected to in the said State. A reference is also made by the Division Bench in **Vijay Mam** to the decision in the **P.K. Handoo v. Estate Officer & Anr. 132 (2006) DLT 672** which also related to the issue of providing accommodation to Kashmiri Pandits who had been displaced due to violence in the Valley.

22. What is also significant from the above judgments is that no distinction

is made between the serving and retired employees of the Central Government who were posted in Srinagar and Jammu & Kashmir during the relevant years. Para 30 of the judgment in *Vijay Mam (supra)* notices certain peculiar features, which equally apply to the case in hand. The said para reads as under:

“30. Going by all these considerations, we do not find any fault with the directions given by the learned Single Judge in the impugned judgment. However, we make it clear that these direction are given keeping in view the salient and peculiar facts of these cases and, therefore, cannot be treated as general directions in all types of cases pertaining to right to shelter. Directions are circumscribed by the following peculiar features of the instant case:

- (i) All these respondents were the employees of Central Government who were posted in Srinagar, J&K at the relevant time.
- (ii) Because of the turbulent conditions and turmoil in the valley coupled with the fact that lives of these respondents and their family members were in gross danger, the Government itself took the decision to transfer them from Srinagar to Delhi. While in Delhi, they were allotted the Government accommodation.
- (iii) These respondents have their houses in Kashmir which have been destroyed by the extremists and they have not been able to reconstruct/restore them.
- (iv) These respondents or their families have no other residence in any part of the country.
- (v) Though they have retired, they are not in a position to go back to their native place because conditions are still not favourable for their safe return back to the valley.
- (vi) Respondents want to enforce their right to shelter only till such time conditions are conducive for their safe return to their homes or till the time Government provides alternate accommodation.”

23. The Court therefore, rejects the stand of the Respondents seeking to make a distinction between such of those Kashmiri Pandits who are employed by the Armed Forces and Intelligence Agencies on the one hand and those working for the Central Government in other Departments/Agencies on the other. There also appears to be no justification for drawing a distinction between serving employees and retired employees, in the matter of entitlement to alternative accommodation. It is not the case of the Respondents that the situation in Jammu & Kashmir today is such that there is no need to have a rehabilitation scheme as was directed not only in *J.L. Kaul v. State of Jammu & Kashmir (Supra)* but also by the Division Bench of this Court in *Union of India v. Vijay Mam (supra)*.

24. It is unfortunate that despite the Supreme Court being informed nearly a decade ago in *J.L. Kaul (Supra)* that the State authorities were going to frame a rehabilitation scheme and proceed with its implementation, till date that promise has remained only on paper as far as the Kashmiri Pandits are concerned. The decision dated 1st June 2012 of the DB in *Vijay Mam* also expected the Central Government to come forth with such a rehabilitation scheme. For nearly seven years now there has been no such rehabilitation scheme.

25. Kashmiri Pandits who were forcibly displaced from their homes during the turbulent years, have been unable to return to Jammu & Kashmir in the absence of any rehabilitation scheme either issued by the State Government or the Central Government. Consequently, the occasion for evicting the

retired Government servants who are Kashmiri Pandits and are in occupation of Government accommodation does not arise till such time, as mandated by the DB of this Court, a rehabilitation scheme is not framed and the entitlement of the individuals including the present Appellant to alternative accommodation in terms thereof is not determined. Till such time, as ordered by the Division Bench in *Vijay Mam*, persons like the Appellant will not be disturbed from their accommodation which is now under their occupation.

26. For the aforementioned reasons, the impugned judgment passed by the learned Single Judge is hereby set aside. The appeal is allowed with the above terms.

S. MURALIDHAR, J.

I.S. MEHTA, J.

MARCH 19, 2019

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