

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH**

CWP-19635-2019 (O&M)

Date of Decision: August 26, 2020

D.P. Reddy

....Petitioner

Versus

State, U.T., Chandigarh and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL**

Present: Mr. Sartej Singh Narula, Advocate, and  
Ms. Sumiti Arora, Advocate, for the petitioner.

Mr. Pankaj Jain, Senior Standing Counsel,  
for U.T., Chandigarh for respondent Nos. 1 and 2.

Mr. Suveer Sheokand, Addl. A.G., Punjab.

**HARNARESH SINGH GILL, J.**

Case was taken up for hearing through video conferencing.

While in service, the petitioner was allotted House No. 16, Sector-7, Chandigarh on 25.11.2013. He took premature retirement on 12.10.2018 and on the said very date, he was appointed as Chairman, State Food Commission, Punjab. The petitioner made a representation dated 18.01.2019 (Annexure P.5) to the Advisor, Union Territory, Chandigarh for retention of the aforesaid house, but his request was declined on 11.02.2019. The petitioner again made representations dated 25.03.2019 (Annexure P.7) and 26.04.2019 (Annexure P.8) and also brought to the notice of the authorities that after his

appointment as Chairman, Food Commission, Punjab, he is entitled to higher category (Type-III Old) house, whereas he has been occupying Type-VI Old category house. It was further asserted in the said representations that first vacating the house and then seeking a fresh allotment would result in undue hardships and harassment to the petitioner. The request of the petitioner was declined and the petitioner was asked to apply afresh on the basis of re-employment. On another application dated 07.05.2019 (Annexure P.10) of the petitioner for retaining the said house till upper category house is allotted, as per Rule 11 of Govt. Residences (Chandigarh Administration General Pool) Allotment Rules, 1996 (hereinafter referred as '1996 Rules'), the House Allotment Committee (hereinafter referred as 'the Committee'), informed the petitioner, vide letter dated 18.06.2019 (Annexure P.11) that with the approval of the Advisor to the Administrator, the petitioner was requested to apply afresh as per his entitlement. The petitioner submitted application dated 28.06.2019 (Annexure P.12) to the Committee. The Committee vide letter dated 04.07.2019 (Annexure P.14) served a notice upon the petitioner to hand over the possession of the house in question within a period of one week.

Learned counsel for the petitioner has submitted that while issuing impugned notice dated 4.07.2019, the Committee had not taken into consideration Rule 11 of the 1996 Rules, which deals with the out of turn allotment under exceptional circumstances of hardship or public interest. It is further submitted that the petitioner has been residing in the house in

question since 28.11.2013. It is yet further submitted that the petitioner is also entitled to retain the said house on the ground that the officers, who are already occupying Government accommodations and are re-employed or appointed after retirement, are entitled to retain that residence and this Rule also allows the family of the transferred/retired officer to retain the house in the name of working spouse, subject to the entitlement.

Learned counsel has further submitted that as per the amended Rule 19(3) of Punjab Food Security Rules, 2016, the status and salary of the Chairman, State Food Commission, Punjab, are equivalent to the State Chief Information Commissioner, who is further equivalent to the Chief Secretary to the State Government and, thus, the petitioner is entitled to retain the present house, which is 3 categories lower than his entitlement. As far as notification dated 31.07.2019 is concerned, amended Rule 11 of the 1996 Rules is not applicable, as far as the petitioner is concerned. Statedly, the applications/representations had been pending since 18.01.2019 (Annexure P.5). However, the Committee vide letter dated 18.06.2019 asked the petitioner to apply afresh for allotment of the Government house.

Learned counsel for the petitioner has also raised the issue of pick and choose policy adopted by the respondents in the case of Ex. DGP, who was appointed as the Chief Information Commissioner and after retirement, he has been retaining similar Type-VI accommodation i.e. House No. 25,

Sector-7, Chandigarh despite notification dated 31.07.2019 as above mentioned, Ex. DGP retired on 06.02.2019 and could have retained the house upto 06.06.2019 i.e. four months after retirement, only.

Learned counsel has relied upon the judgment of Hon'ble Supreme Court of India in 'Civil Appeal No. 7524 of 2011- Mrs. Asha Sharma versus Chandigarh Administration and others', decided on 30.08.2011. The relevant extracts from the said judgment would read as under:-

*“We must not be understood to say that the power of the Legislature to amend rules is restricted by judicial pronouncements, but we want to impress upon the Legislature that the rules of the present kind should not be amended so frequently that no established practice or settled impression may be formed in the minds of the employees. Where the employer has limited resources, there the employee has a legitimate expectation of being dealt with fairly in relation to allotment to such government accommodation. Consequently, reverting to the case of the appellant, she is admittedly occupying an earmarked house. An order of eviction and damages has been passed against her and she has taken recourse to an appropriate remedy or against which she has already taken an appropriate remedy. The matter in that behalf is still pending final hearing before the learned Single Judge. The parties are left to raise all their contentions before the learned Single Judge, who shall decide the matter in accordance with law. However, with regard to the interim order passed by the High Court, we direct the State to allot to her an alternative accommodation under the category which she is entitled to, in pursuance of her appointment as State Information Commissioner, within fifteen days from today and she shall be*

*liable to vacate the accommodation presently in her occupation within two weeks thereafter. We make it clear that in the event the Government is unable to allot her an alternative accommodation of her category for the reason of non-availability of such accommodation, she should be provided with appropriate accommodation, including private accommodation of her status, within the same period.”*

On the other hand, learned counsel for respondent Nos. 1 and 2, has submitted that the house allotted to the petitioner stood cancelled by the Committee w.e.f. 12.02.2019. The said fact was duly communicated to the petitioner and it also finds mention in the letter dated 04.07.2019. It is further submitted that since the petitioner took premature retirement on 12.10.2018, he could only retain the accommodation for four months i.e. upto 11.02.2019 and now the petitioner is in unauthorized possession and even as per the provisions of 1996 Rules, as amended on 16.11.2018, re-allotment can only be considered if the present accommodation is vacated and a fresh application is moved to the Committee. The petitioner submitted an application on 28.06.2019 and as per the seniority list of the applicants, the petitioner is at Sr. No. 87. Learned counsel has relied upon the Provisions of the 1996 Rules which read as under:-

**“Definitions-SR-317-AM 2(h) (as amended on 16.11.2018)**

**“Eligible Employee”** means an employee of the eligible office of the Government of Punjab, Government of Haryana, Chandigarh Administration or of Punjab and Haryana High Court working on regular basis in an eligible office or on foreign service having posting with substantive

*charge at Chandigarh, Panchkula or Mohali except the District Level Offices or those offices which are not State-Level Offices at Panchkula or Mohali, as long as he retains lien on a post in an eligible office, Mayor of the Municipal Corporation as also the employees of the Chandigarh Administration transferred to the Municipal Corporation, Chandigarh, Chairman of State Human Rights Commission, Lokayuktas and the Chief Information Commissioner of Punjab and Haryana, Chairman/President/Member of various Commissions/Boards/Consumer Forums etc. set up by the States of Punjab and Haryana, Chandigarh Administration, who are employed on full time basis and are getting their salary from the Consolidated Fund, and if employed on contractual basis their contractual period is not less than three years:*

*Provided that the Chairman/President/Member of various Commissions/Boards/Consumer Forums etc. set by the State of Punjab, Haryana and Chandigarh Administration and appointed after the retirement etc. and having their own houses in the Urban Estates of Panchkula, Mohali or in the Union Territory, Chandigarh, in their own names or in their spouses or their dependent children, shall not be eligible for allotment of Government Houses of Chandigarh Administration General Pool.*

**SR-317-AM-2(i)**-*“Eligible Office” means an office of the Governments of Punjab, Haryana, Chandigarh Administration and Punjab and Haryana High Court located at Chandigarh, Panchkula or Mohali, except the District Level Offices or those offices which are not State-Level Offices at Panchkula or Mohali, the staff of which has been declared by the Chandigarh Administration to be eligible for accommodation under these rules, Office of the Municipal Corporation, Chandigarh in respect of the employees of the Chandigarh Administration transferred to Municipal Corporation, Chandigarh, Chairman/President/Member of various Commissions/Boards/Consumer Forums etc. set up by the States of Punjab and Haryana, Chandigarh Administration, who are employed on full time*

*basis and are getting their salary from the consolidated Fund, and if employed on contractual basis their contractual period is not less than three years and Chief Ministers/Ministers/Deputy Ministers/ Leaders of opposition of Punjab and Haryana Government for houses in the Chief Ministers pool only.*

*Provided that the employees of these departments of Union Territory Administration, who have their own departmental pool, shall not be entitled to allotment of houses from Chandigarh Administration Pool:*

*Provided that the officers/officials holding additional charge of a post at Chandigarh and having substantive charge outside Chandigarh, Mohali or Panchkula will not fall within the expression “eligible office”.*

*Provided that the Chairman/President/Member of various Commissions/Boards/Consumer Forums etc. set up by the State of Punjab, Haryana and Chandigarh Administration and appointed after the retirement etc. and having their own houses in the Urban Estates of Panchkula, Mohali or in Union Territory, Chandigarh in their own names or in their spouse or their dependent children, shall not be eligible for allotment of Government houses of Chandigarh Administration General Pool.*

**Rule SR-317-AM-2(o)**“Priority Date” of an employee in relation to a type of residence to which he is eligible under the provisions of these rules means the date from which he is holding the post under the Chandigarh Administration, High Court of Punjab and Haryana or a State Government or on foreign service except for the period of leave without pay as the case may, in respect of Type 3 (old) to Type 13 (old), Type I (New) to V(New) Duplex Type and Type VI (New) Houses; and earliest date from which he has been continuously drawing emoluments in a post under the Chandigarh Administration or a State Government or on foreign service, except for periods of leave without pay in respect of Type V (New) Flat Type accommodation:

*Provided that inter se seniority of the officers shall be determined of the basis of the date on their becoming eligible for a particular type of house.*

*x x x x x x*

*x x x x x x*

*Provided further that where the priority date in respect of a retired employee shall be reckoned from the date of his/her employment in an eligible office for allotment of government residence as per his/her entitlement/eligibility for the said period, such retired employee has to apply for fresh and also to vacate the house, if any, already under his/her occupation immediately on the expiry of permissible period of retention as provided under Rule SR-317-AM-13.*

*Provided further that the priority date in respect of Chairman of Statutory Commission/Institution viz the Lok Pal, the Human Rights Commission and Chairman and members of other Commissions/Tribunals shall be reckoned from the date of their appointment as such.*

*Provided that the Chairman/President/Member of various Commissions/Boards/Consumer Forums etc. set up by the State of Punjab, Haryana and Chandigarh Administration and appointed after their retirement etc. and having their own houses in the Urban Estates of Panchkula, Mohali or in the Union Territory, Chandigarh in their own names or in their spouse or their dependent children, shall not be eligible for allotment of Government houses of Chandigarh Administration General Pool.”*

Learned counsel for respondent Nos. 1 and 2 has further argued that during the pendency of the present writ petition, the notification dated 16.11.2018 has been amended vide notification dated 18/31.7.2019, which reads as under:-

*“(i) Only Chairpersons of Human Rights Commissions, Lokayuktas, Chief Information Commissioners, State Election Commissioners and Chief Commissioners of Right to Service/Transparency and Accountability Commissions as established by the State Government of Punjab,*

*Haryana and U.T., Chandigarh Administration will be entitled for Government accommodation.*

*The application of any other Commission/Authority constituted by State Government/U.T. Administration will not be considered irrespective of any provision in their appointment letter. They can be provided financial compensation for securing accommodation by their appointing authority.*

*(ii) Out of turn allotment of houses will not be considered for any applicant who is already in occupation of government houses unless the occupant has spent 5 years in existing house except in exceptional/medical grounds*

*This will apply to even such cases where the allottee is staying in government accommodation below his entitled category. He has to follow the queue for allotment in the entitled category.”*

It is further submitted that the petitioner is not entitled to any Government accommodation on account of his appointment as Chairman, Punjab State Food Commission even as per notification dated 19.12.2016 (Annexure P.2) pertaining to Punjab Food Security Rules, 2016, the petitioner is entitled to House Rent Allowance equivalent to 30% of the permissible basic pay. It is further submitted that the petitioner has been in unauthorized occupation of the house which stands further allotted to the eligible applicant.

Moreover, vide letter dated 11.02.2019 (Annexure R.1), the request of the petitioner for retaining the house was declined and the said communication has been concealed and not challenged.

I have heard the learned counsel for the parties and with their able assistance, have gone through the documents/Rules on record of the file.

The petitioner has been residing in House No. 16, Sector-7, Chandigarh i.e. Type-III (Old) category since 28.11.2013 i.e. the date on which the house was occupied and after premature retirement, he had been appointed as Chairman, State Food Commission, Punjab vide order dated 12.10.2018 which is equivalent to the State Chief Information Commissioner and to the Chief Secretary of the State Govt., entitling him to allotment of Government accommodation of Type-VI (Old).

I do not find on the record of the file that House No. 16, Sector-7, Chandigarh is an earmarked house. The petitioner made a request for retaining the said accommodation vide letter dated 18.01.2019 (Annexure P.5) which was declined on 11.02.2019 (Annexure R.1). Even thereafter, the representations were made by the petitioner and were considered by the Committee and the petitioner was asked to apply afresh. Thereafter, the Committee vide letter dated 18.06.2019 (Annexure P.11), after taking approval from the Advisor to the Administrator, for retention of the house in question, requested the petitioner to send fresh application online on the official website and after receiving the same, the impugned cancellation notice dated 04.07.2019 (Annexure P.14) was issued cancelling the allotment and to hand over the possession within a week.

It may be noticed that vide order dated 22.07.2019 passed by this Court, directions as regards the maintaining of the status-quo, as it existed on that day, were issued.

Rule 11 of Rules 1996 provides for out of turn allotment in case of exceptional circumstances of hardships or in the public interest. This Rule also stipulates regarding retaining the residence on the ground of the officer being re-employed/appointed as Chairman/ Member of the Commission/ Tribunal/ Consumer Forum etc.

Taking into consideration the said Rule and after taking approval from the Advisor to the Administrator, vide letter dated 18.06.2019, a fresh application was asked for from the petitioner. It is not disputed that as per new appointment, the petitioner is entitled for category Type-VI house, but he is currently occupying Category Type-III house.

As far as the notification dated 31.07.2019, amending of Rule 11 of Rules 1996 is concerned, the same cannot be applied in the present case retrospectively. As already discussed above, a fresh application was called for by the Committee, vide letter dated 18.06.2019 after approval from the Advisor to the Administrator.

Moreover, in Asha Sharma's case (supra), the Apex Court has drawn the conclusion pertaining to Rules 1996 that the Rules of the present kind should not be amended so frequently that no established practice or settled impression may be formed in the minds of the employees. Where the employee has limited resources, there he has a legitimate expectation of being dealt with fairly in relation to allotment of such government accommodation.

This Court is conscious of the fact regarding the scope of the judicial review of such actions, which is usually quite limited and depends upon the facts and circumstances of the given case to issue appropriate direction in exercise of the jurisdiction under Article 226 of the Constitution. The Hon'ble Supreme Court in the case of Reliance Airport Developers (P) Ltd. Vs. Airport Authority of India and others, (2006)10 SCC page 1, while considering the scope for judicial interference in the matters of administrative decisions, held that it is trite law that exercise of power, whether legislative or administrative, will be set aside if there is manifest error in the exercise of such power or the exercise of the power is manifestly arbitrary.

It is not disputed by respondent Nos. 1 and 2 that on the similar footings an Ex. DGP has been accommodated on his appointment as the Chief State Information Commissioner on his superannuation dated 06.02.2019 being covered by the notification dated 31.07.2019.

It be noted that fairness in the State actions is the essence of proper governance. Where the authorities exercise their power under the Rules, they are expected to exercise the discretion vested in them fairly and with the intention to attain a balance between exercise of discretionary power and the larger public interest sought to be achieved by such discretion.

Keeping in view the above facts and circumstance, the impugned order dated 04.07.2019 is quashed. The Secretary of the Committee is directed to place the matter before the House Allotment Committee within 15 days from the receipt of

certified copy of this order and to consider and decide the representation(s) of the petitioner regarding retaining of the house or for fresh allotment of Government accommodation, as per his entitlement. Upon this needful having been done, the Committee is directed to decide the representation within a further period of one month and till such time, the status quo, as it exists as on today, shall be maintained.

No order as to costs.

August 26, 2020

Gurpreet/ds

**(HARNARESH SINGH GILL)**  
**JUDGE**

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