

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

* * *

CWP-22198-2020

Date of Decision: 22nd December, 2020

Priti Malhotra

...Petitioner

Versus

The Administrator, Union Territory, Chandigarh and others

...Respondents

**CORAM: JUSTICE S. MURALIDHAR
JUSTICE AVNEESH JHINGAN**

Present: Mr. Rajat Malhotra, Advocate for the Petitioner.

Mr. Namit Kumar, Additional Standing Counsel for the Union
of India / Respondent Nos. 1 to 4.

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Avneesh Jhingan, J.

1. This writ petition seeks the quashing of an order dated 9th December, 2020 of the Central Administrative Tribunal, Chandigarh Bench ('Tribunal') dismissing the Petitioner's Original Application ('O.A.') filed against denial to retain the government accommodation. A further prayer is for the quashing of a Notification No. 681, dated 18th/31st July, 2019 amending the Government Residences (Chandigarh Administration General Pool) Allotment Rules, 1996 ('Rules').

2. The Petitioner was appointed as a Member, District Consumer Disputes Redressal Forum-II (now District Consumer Disputes Redressal Commission-II), Union Territory, Chandigarh (hereinafter 'Forum') on whole-time basis for a period of five years. The Petitioner joined on 27th March, 2015. The term of the Petitioner was upto 26th March, 2020. She, at the time of joining, being an 'eligible employee' under the Rules, was allotted government house at Sector 27, Chandigarh vide allotment letter dated 9th September, 2015. By a notification dated 31st December, 2019, she

was re-appointed for another term of five years or up to the age of 65 years, whichever is earlier. The re-appointment was with effect from 27th March, 2020.

3. On 4th May 2020, the Secretary, State Consumer Disputes Redressal Commission, Chandigarh (SCDRC) wrote to the Secretary, House Allotment Committee (HAC), Union Territory (UT), Chandigarh informing him of the Petitioner's re-appointment and requesting that the house allotted earlier may be continued in her name. However, by letter dated 26th May, 2020 the Secretary, HAC rejected the request relying upon the amendment to the Rules, brought about by the impugned Notification No. 681 dated 18th/ 31st July, 2019. The Petitioner was directed to handover the possession of the house on or before 26th July, 2020.

4. Thereafter the Secretary SCDRC made further requests to the Secretary HAC by letters dated 4th and 26th June 2020 that the Petitioner be allowed to retain the government accommodation. The Petitioner too made a further representation to the same effect on 26th June 2020. The Secretary, HAC rejected these representations by a communication dated 4th August, 2020 and asked the Petitioner to hand over possession of the premises immediately failing which she would be liable for penal rent for the period of unauthorised occupation thereof.

5. The Petitioner then approached the Tribunal by filing the aforementioned O.A. Initially the Tribunal granted the Petitioner interim relief by an order dated 21st August, 2020. Ultimately, the Tribunal dismissed the O.A. by the impugned order dated 9th December, 2020. Hence, the present petition.

6. Mr. Rajat Malhotra, learned counsel for the Petitioner argued that the Tribunal erred in relying upon the appointment letter to hold that there was no specific provision regarding allotment of government accommodation. The Petitioner had already been allotted government accommodation on her initial appointment and the request was not for fresh allotment but only for retention of same house. He relies upon Rule 5 of the Chandigarh Consumer Protection Rules, 1987 ('Consumer Rules') that the terms and conditions of

the services of the Petitioner could not have been varied to her disadvantage during the tenure in Office. The submission is that Petitioner by re-appointment had in fact continued as a Member of the Forum. It is submitted that Petitioner remained Member of the Forum and it was not a case under Rule 22 (2) of Rules for vacating the house.

7. Secondly, Mr. Malhotra contends that the Petitioner was discriminated against as another Member of the Forum, Ms. Padma Pandey and Mr. Rajan Dewan, President of the Forum were allowed to retain their respective houses on their re-appointment. Thirdly, Mr. Malhotra assails the amendment to the Rules by the impugned notification on the ground that it is discriminatory and contrary to the directions of the Supreme Court in *Asha Sharma v. Chandigarh Administration (2011) 10 SCC 86*.

8. Mr. Namit Kumar, learned Additional Standing Counsel appearing for the Union Territory, Chandigarh defended the rejection to retain the government accommodation. It is contended that tenure of the Petitioner had expired and thereafter she was re-appointed. At the time of re-appointment, she was not 'eligible employee' as per the amended Rules. Mr. Kumar explained that the Rules were amended as a policy matter, to deal with the shortage of government accommodation. It was uniformly applicable to all appointments of President and Members of the Forum made thereafter and therefore, there was no discrimination made by amended Rules.

9. The above submissions have been considered. At this stage, the impugned notification, Rule 22 of the Rules and Rule 5 of the Consumer Rules are reproduced as under:-

Notification:-

“No. 681.- In exercise of the powers conferred by Rule 45 of the Fundamental Rules and all other powers enabling him in this behalf, the Administrator, Union Territory, Chandigarh, hereby makes the following Rules further to amend the “Government Residences (Chandigarh Administration General Pool) Allotment Rules, 1996” namely:-

1. (i) These rules may be called the “Government Residences (Chandigarh Administration General Pool) Allotment (Amendment) Rules, 2019”.

(ii) They shall come into force from the date of their publication in the Chandigarh Administration Gazette.

2. In the “Government Residences (Chandigarh Administration General Pool) Allotment Rules, 1996” hereinafter referred to Rules of 1996, the existing relevant Rules, Rule-SR-317-AM-2 (h), 2(i), 5th proviso of 2 (o), 8 (1), Policy guidelines dated 17th December, 2009 event (d) of Annexure ‘A’ appended with House Allotment Rules, 1996 and Rule 11, the following shall be substituted namely:-

“(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 the 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 house 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.”

Rule 22 of the Rules:-

“22(1) Where a Government employee to whom a house of higher category had been allotted, who is otherwise not entitled for that category shall be liable to pay double times the normal licence fee but shall have the option for out of turn allotment of the entitled category on payment of normal licence fee.

22(2) The house already allotted to the employees of ineligible offices and other such categories shall be got vacated on their transfer out of Chandigarh, resignation, dismissal, retirement or death etc.”

Rule 5 of the Consumer Rules :-

“(5) The terms and conditions of the service of the President and members of the District Forum shall not be varied to their disadvantage during their tenure of Office.”

10. The undisputed facts are that the Petitioner was initially appointed as a Member of the Forum for a period of five years or up to the age of 65 years whichever is earlier. Her term ended on 26th March, 2020. She was given a re-appointment on 31st December, 2019 with effect from 27th March, 2020. The notification is unambiguous that she was re-appointed for another period of five years or up to the age of 65 years, whichever is earlier. IN other words, it was not in ‘continuation’ of her initial appointment.

11. The Petitioner was within the ambit of the definition of ‘eligible employee’ at the time of her initial appointment. The definition of ‘eligible employee’ at that time was as under:

“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 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/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”

12. The Petitioner was allotted government accommodation, being covered under the Rules. She has retained the said accommodation till date. Rules 2 (h), 2 (i), 5th proviso to 2 (o) and 8 (1) were substituted by way of amendment in terms of the impugned notification dated of 18th/31st July, 2019. As per the second part of Rule 2 (i) of the amended Rules, only those authorities mentioned in the first part thereof would be eligible for government accommodation. The Forum was not included therein. The second part of Rule 2 (i) of the amended Rules makes it explicit that none of the other Commissions/Authorities constituted by the State/ Union Territory,

Chandigarh Administration would be considered for government accommodation, irrespective of any provision in their appointment letter. It stated that “They can be provided financial compensation for securing accommodation, by their appointing authority.”

13. On the date of notification of her re-appointment, i.e. 31st December 2019, the Petitioner ceased to be eligible for government accommodation since by then the amendment to the Rules had taken effect. Her re-appointment was with effect from 27th March 2020 on which date again the amended Rule applied. The Tribunal, therefore, rightly concluded that the Petitioner was not entitled to government accommodation as per the terms of her re-appointment.

14. The reliance on Rule 5 of the Consumer Rules renders no help to the case of the Petitioner. There was no variation of the terms and conditions of services of the Petitioner during her tenure in the Office. In spite of the amendment of the Rules in 2019, she was allowed to continue with the government accommodation till the end of her tenure of initial appointment.

15. There is a fallacy in the argument that the Petitioner continued as Member of the Forum from her initial appointment till date. The initial appointment was for a fixed tenure i.e. 5 years or attaining the age of 65 years, whichever was earlier. The said tenure ended on 26th March, 2020. Merely because the re-appointment notification was issued prior to her last day in the Office, will not change the fact that she was given re-appointment with effect from 27th March, 2020. There can be various reasons for issuing an advance notification and one of which is that work of Forum is not stalled as a result of the vacancy occurring.

16. The plea of discrimination vis-a-vis Ms. Padma Pandey, Member and Mr. Rajan Dewan, President of the Forum is noted to be rejected. There is no parity of the Petitioner with the said two cases. It has been rightly held by the Tribunal that their re-appointment was prior to the notification dated 18th/31st July, 2019 by which the Rules stood amended. Hence they were allowed to retain the government accommodation.

17. The contention that it was not a case of vacating accommodation as per Rule 22 (2) cannot be accepted. Rule 22 (2) protects the allotment made immediate before the commencement of the Rules by making it a deemed allotment under the Rules. Sub-rule (2) states that house shall be got vacated on transfer out of Chandigarh, resignation, dismissal, retirement or death etc. The word “etc.” gives a wider scope to the Rule. More over in the present case the tenure of the initial appointment of the Petitioner as Member of the Forum ended on 26th March, 2020, the said eventuality is duly covered under Rule 22 (2).

18. The challenge to the impugned notification being discriminatory cannot succeed. The amended Rule applies across the board. All the Commissions and Authorities constituted by the State or Union Territory, Chandigarh Administration, other than those mentioned in the first part of Rule 2 (i) of the amended Rules have been declared disentitled to government accommodation. It is a case of a reasonable classification, as only persons holding the posts mentioned in sub clause (i) of the notification are entitled to government accommodation and none other. It is not a case where amongst the President and Members of the Forum, some have been held entitled and others not. As rightly pointed out by Mr. Namit Kumar that to cover up the gap between the available government accommodation and increasing the number of Tribunals and Commissions, the 2019 amendment was brought in. It would be pertinent to note that terms of initial appointment or of re-appointment nowhere entitle the Petitioner to have the government accommodation. It was privilege given to her by the Rules. She had no vested right in her favour which is taken away by amendment of 2019. She had accepted the re-appointment in spite of the amended Rules.

19. The Division Bench of this Court in *Prem Kumari v. U.T. Administration, Chandigarh, AIR 1994 P&H 188*, reiterated the decision of the Division Bench of this Court in *Chandigarh Administration v. Sham Singh, AIR 1993 P&H 1993* as under:

“....it must be appreciated, as observed in *Sham Singh's* case (supra) “that there is no vested right in a Government servant for allotment of Government residential accommodation, such

allotment not being part of their conditions of service. It is merely a privilege extended to them in terms of the relevant rules or instructions issued in this behalf. This being so, if the Government was competent to grant, it is equally empowered to modify or even cancel such privilege.”

20. The contention that the amendment is in violation of the directions of the Supreme Court in *Asha Rani’s case (supra)* lacks merit. The Supreme Court was considering the following issues:

- “1. The interpretation and enforcement of the Allotment Rules framed by Notification dated 28th June, 1996 and the amendments made to it from time to time;
2. The relevancy of the directions issued by this Court vide its judgment dated 8th December, 1995; and
3. The conflict between the directions of this Court and the Rules framed thereafter and the directions issued by the learned Single Judge of the Punjab and Haryana High Court.”

21. The basic grievance before the Supreme Court was arising from the action of the authorities allotting the two houses of the similar category to same officer, one in Chandigarh and other outside Chandigarh (within Punjab and Haryana) which was not permissible and created hardship and discrimination to other similarly situated employees. The Apex Court dealing with the Rules 7, 8 and 11 vis-a-vis its judgment dated 8th December, 1995 and the directions issued by it in that context, in para 26 of the judgment held:-

- “26. Allotments under different categories and with the restrictions as stated in the Allotment Rules and the guidelines shall continue to be in force and should not be amended or altered except in exceptional circumstances by the appropriate body. This alone can add some certainty to the application of these provisions and to the expectations of the Government employees, who have a legitimate expectation of allotment of Government accommodation as part of their perks.”

22. On the other hand, in the present case the amendment felt necessary to bridge the gap between the demand and availability of government accommodation. The amendment does not suffer from vice of arbitrariness or unbridled discretion.

23. No interference is called for in the impugned order or the notification. The writ petition is accordingly dismissed.

24. At this stage, Mr. Rajat Malhotra requests for reasonable time to vacate the government accommodation occupied by the Petitioner at present and that no penal rent be charged from the Petitioner till then.

25. The request is allowed, and the Petitioner is granted time till 31st January, 2021 to vacate the government accommodation in her possession, subject to her filing an affidavit in this Court by 29th December, 2020 to the effect that she will peacefully handover the possession thereof to the Respondent No.3 i.e. Secretary HAC on 1st February, 2021 by 4 pm.

26. In case she hands over the possession of the house on 1st February, 2021, considering that there was interim order in her favour by the Tribunal, let normal rent be recovered from her for her over stay in the government accommodation.

(AVNEESH JHINGAN)
JUDGE

(S. MURALIDHAR)
JUDGE

22nd December, 2020

pankaj baweja

Whether speaking/reasoned:	Yes
Whether reportable:	Yes