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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **LPA 177/2014**

RADHEY LAL ..... Appellant
Through: Mr. P. S. Sharda, Advocate.
versus
STATE OF HARYANA & ORS ..... Respondents
Through: Mr. Arun Bhardwaj, AAG for State of Haryana.

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE TALWANT SINGH

O R D E R

% **29.01.2020**

1. The present appeal is directed against the order dated 11th April, 2013 passed by the learned Single Judge dismissing the W.P.(C)7054/2003 filed by the present Appellant, wherein he had prayed for the release of his retiral benefits withheld on account of the penal rent payable by the Appellant for the quarter/premises of the Respondents in which he had allegedly overstayed.

2. The challenge in the writ petition was to the order dated 30th January, 2003 of the Director, Hospitality Organisation, Haryana, Chandigarh, in which it was stated that the total outstanding amount of penal rent from 3rd October, 1991 to 17th June, 1996 was Rs.2,83,067/-, the penal rent from May, 2000 to June, 2000 was Rs.20,500/- and the pending water charges were Rs.15,284/-. The order stated that a sum of Rs.22,052/- had already been recovered from the Petitioner and that, accordingly, the balance sum of Rs.2,86,799/- was to be paid. The order then listed out the retiral benefits that were being withheld, as under:

1. DCRG	Rs.1,27,818/-
2. G.I.S.	Rs. 7,070/-
3. Leave encashment	Rs. 46,466/-
Total	Rs.1,83,354/-

3. While releasing the G.I.S. amount of Rs.7,070/-, the amount withheld, according to the order, was Rs.1,76,284/-. This entire amount was sought to be adjusted against the recoverable amount of Rs.2,86,799/-, leaving a balance of Rs.1,10,515/- to be recovered from the Appellant's pension.

4. The learned Single Judge declined to examine the plea of the Appellant that without explaining the basis for calculating the above amounts, the Respondents could not have proceeded to recover the entire alleged dues from the retiral benefits of the Appellant. Even as regards the water charges, the learned Single Judge's approach was that if the Government of Haryana on affidavit stated such figure, it could not be questioned.

5. While dismissing the writ petition by the impugned order, the learned Single Judge, nevertheless, required the State of Haryana to send to the Appellant within a period of six weeks from the date of the impugned order "the details/calculation showing what were the amounts which the petitioner became entitled to under different heads as retiring benefits and what were the amounts which the respondent No. 1 had adjusted towards its claim." The learned Single Judge further gave the Appellant liberty to file "independent proceedings as available in law with respect to any balance amount which according to the petitioner still is payable but is not paid". At the same time, liberty was further granted to Respondent No.1, if it found

that "as per its calculations for different amounts payable under different heads to the petitioner as retirement benefits, if amounts after adjustments are due to the petitioner then such amounts would be paid to the petitioner along with interest @ 9% per annum for the period of the pendency of this petition and till the dues (if any) are paid to the petitioner".

6. During the pendency of the present appeal, orders have been passed requiring the Respondents to place before the Court the full calculations. On 4th August, 2016, the following order was passed:

> "The respondents have computed and quantified damages for overstay between the period 3rd October, 1991 till 16th June, 1996 as Rs.2,60,417/-. The appellant has been held liable to pay another amount of Rs.10,500/- for the period 1st May, 2000 till 30th June, 2000. After adjusting payment of Rs.21,883/-, the total amount due and payable by the appellant as per the respondents is Rs.2,49,034/-. This amount has been partially adjusted and set-off from the retirement dues and gratuity.
>
> The basic pay of the appellant was Rs.1700/- per month till January, 1996. The market rent charged from the appellant for the period January, 1992 till 16th June, 1996 is Rs.4,836/- per month and Rs.10500/- for the period between 1st May, 2000 till 30th June, 2000.
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> Learned counsel for the respondent states that the market rent was calculated on the basis of the revised instructions dated 30th May, 1997, a copy of which has been filed today in the Court. As per the revised instructions, an employee was liable to pay market rent as assessed by the PWD (B&R) Branch keeping in view the prevailing market rates in that area or 6% of the cost of site and 9% of the cost of construction including 2% for annual maintenance at current rates.
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> The respondents will produce before us a copy of the computation made in terms of the aforesaid revised instructions.

The said details will be filed along with an affidavit within three weeks from today. Learned counsel for the respondent will also obtain instructions whether the appellant can be granted a personal hearing before the authorities concerned on the question of quantum of damages/charges payable for the period during which he was in occupation of the quarter in the Nabha House and thereafter a speaking order can be passed, without reference to the earlier computation.

Relist on 4th October, 2016."

7. Thereafter on 4th October, 2016 referring to the compliance affidavit, the following order was passed:

"CM 37154/2016 (for condonation of delay in filing the affidavit)

This is an application for condonation of delay in filing the compliance affidavit in terms of our order dated 04.08.2016. In view of the averments made in the application, we condone the delay in filing the affidavit.

The application is disposed of.

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The respondents have filed compliance affidavit in terms of our order dated 04.08.2016. A perusal of the said affidavit would show that the respondents have relied upon the revised instructions dated 30.05.1997. The said revised instructions quantify the damages or market rent, ft, however, do not disclose the basis on which the said computation of market rent/ damages is made. The letter dated 31.07.2002 does not specify the basis.

The respondents will file an affidavit meeting the said contention and state the basis for computing and fixing the market rent / damages at Rs.4836 and Rs.4848 per month. In case, the respondents are not able to justify and explain the amount so fixed, we would have no option but to allow the present appeal.

The said affidavit will be filed as a last opportunity within 4 weeks from today."

8. The Respondents/State of Haryana thereafter kept seeking adjournments to comply with the above order. When an affidavit was filed finally pursuant to the order dated 4th October, 2016, it was not in compliance with the said order. This is reflected in the order dated 30th November, 2017 passed by the Court, which reads as under:

> "1. Mr. Sharda, learned counsel for the appellant states that though the respondents have filed an affidavit pursuant to the order dated 04.10.2016, it is not in compliance of the said order as they have failed to set out the basis for fixing the market rent/damages assessed at Rs.4836/- and Rs.4848/- per month.
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> 2. On a perusal of the second affidavit dated 09.03.2017 filed by the respondents, the submission made by the counsel for the petitioner is borne out. We do not find any details regarding the basis of computing and fixing the market rent/damages, which the respondents were required to state by filing the second affidavit.
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> 3. Last opportunity of six weeks is granted to the respondents to make compliances strictly in terms of the order dated 04.10.2016, with a copy to the counsel for the appellant.
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> 4. If the relevant details are not furnished, then an officer competent to assist us from the Department shall remain present with the relevant records.
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> 5. List on 17.07.2018."

9. After many adjournments, on 15th May 2019, the following order was passed:

Even though after orders were passed on October, 2018 and

> costs were imposed on the respondents, affidavit has not been filed by the respondents. Learned counsel for the respondents submits that now he has received the documents and other materials and wants to file the affidavit. He is granted two weeks' further time to do so. Let the affidavit be filed along with explanation for delay in filing the affidavit. That apart, the question of imposition of further costs will be decided after consideration of the explanation furnished by the respondents with regard to filing the affidavit.
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> The costs imposed vide order dated 1st October, 2018 be paid by the respondents and a receipt be filed.
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> List on 1st August, 2019."

10. Today, nearly six years after the appeal was first heard by this Court, the position that emerges is that the Respondents are still unable to trace the records and unable to comply with the directions of this Court to file an affidavit giving the proper calculations.

11. It will be recalled that the basis for the recovery was amounts purportedly due from the Appellant, which even before the learned Single Judge could not be justified by the Respondents. It is for this reason that learned Single Judge in the impugned order gave liberty to the Appellant to question the recoveries once the calculations as directed by the learned Single Judge was furnished to him. With that direction of the learned Single Judge not having been complied with in letter and spirit till date, and the absence of any justification for the figures mentioned in the original order dated 30th January, 2003 of Respondent No.1, the Court finds the entire basis for making recoveries to be non-existent.

12. Accordingly, the Court now directs, while setting aside the order dated 30th January 2003, that the Respondent No.1 will pay to the Appellant the entire withheld amount of Rs.1,76,284/- together with simple interest at 6% per annum, from the date it was withheld till the date it is paid, which will not be later than twelve weeks from today. If the aforementioned amount together with interest is not paid within the time stipulated hereinabove, the Respondents will pay simple interest at 9% per annum on the sum payable (i.e. Rs.1,76,284/- plus 6% simple interest) for the period of delay.

13. For any other amount which the Appellant claims is due to him, it will be open to him to make a representation to the Respondents, not later than four weeks from today and such representation will be decided by the Respondent within a further period of eight weeks thereafter. The said decision will be communicated to the Appellant within two weeks it is taken. If the Appellant is aggrieved by the said decision, it will be open to him to seek appropriate remedies in accordance with law.

14. The appeal is disposed of in the above terms.

S. MURALIDHAR, J.

TALWANT SINGH, J.

JANUARY 29, 2020
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