

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9665 of 2017

Shyam Kishore Prasad Sharma Son of Late Anant Prasad Sharma, resident of Village and P.O. Lari, P.S. Kortha, District- Arwal, at present Raj Vila Apartment, Block- D.Q No. 203, P.S. Chandauti, District- Gaya.

... .. Petitioner/s

Versus

1. The State Of Bihar through Principal Secretary, Water Resources Department, Bihar, Patna
2. The Superintendent Engineer, Flood Control Circle, Samastipur.
3. The Executive Engineer, Water Drainage Division, Samastipur.
4. The Assistant Engineer, Water Drainage Division, Samastipur.
5. The Treasury Officer, Gaya.
6. The Accountant General (A & E), Bihar, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Praveen Kumar, Advocate
For the Accountant General Mr. Sudhanshu Shekhar, Advocate

CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date : 19-03-2021

Heard learned counsel for the petitioner as well as learned counsel for the respondents.

2. The following reliefs as formulated by the petitioner have been claimed in the writ petition--

“i For issuance of writ in the nature of mandamus or any other appropriate writ for commanding the respondents to give monthly pension to the petitioner forthwith, as per P.P.O. N0. 2015.11151133 issued on 25.2.15 by respondent no.6.

ii. For issuance of writ in the nature of mandamus or any other appropriate writ for commanding the respondent to issue o dues certificate in favour of the petitioner.

iii. For issuance of writ in the nature of mandamus or any other appropriate writ



commanding the respondent to pay arrears of pension along with penal interest to the petitioner within a reasonable period.

iv. For issuance of writ in the nature of certiorari for quashing the letter dated 25.4.2017 issued by the Executive Engineer, Water Drainage Division, Samastipur by which penal rent in the tune of Rs. 1,53,000/-(Rs. One lac fifty three thousand only) in proposed to be deducted from the pensionary benefit of petitioner.

v. For issuance of writ in the nature of mandamus for directing the respondent to calculate and deduct the rent of 17 month in accordance with law.

vi. For any other appropriate relief for which petitioner is entitled in the eye of law.

vii. For issuance of writ in the nature of certiorari for quashing the office order issued vide Letter No. 997 dated 12.9.2017 by the signature of respondent No.2 and for direction to Respondent No.5 not to deduct the mount from pension and furthermore, pending the writ petition, effect of Letter No. 997 dated 12.9.2017 be stayed.”

3. The short facts of the case, according to the petitioner, are that he superannuated from the post of Head clerk from Flood Control Circle, Samastipur on 31.01.2015, at which time he was residing in a D-type government quarter on payment of rent of Rs. 52/- per month as fixed by the Department. He continued to occupy the quarter and overstayed for 25 months, finally vacating the same on 05.05.2017. In the meantime, by letter dated 15.12.2015 issued by the Executive Engineer, Water



Drainage Division, Samastipur, penal rent of Rs. 6240/- was demanded from the petitioner calculated on the basis of monthly rent of Rs.52/- per month with a multiplier of 15 for 8 months (Annexure-2). Such demand was thereafter followed by another demand by letter dated 25.04.2017 (Annexure-3) in which penal rent was calculated @ Rs.3000/- per month with a multiplier of 3 for 17 months. Soon after, the petitioner vacated the premises on 05.05.2017 as aforesaid. By letter dated 24.07.2017, another demand of Rs. 76,500/- by way of penal rent was raised against the petitioner without any calculation afforded in this regard. This was followed by another letter dated 12.09.2017 in which the penal rent demanded was Rs.1,69,838.50 on the basis of monthly rent of Rs. 450.50 with a multiplier of 15 for 25 months (Annexure-D).

4. Learned counsel for the petitioner submits that such varying demand of penal rent from time to time is completely arbitrary and contrary to rules. The petitioner was admittedly in occupation of D-type government accommodation for which a monthly rent of Rs. 52/- per month had been fixed, which remained applicable at the time of his superannuation and had not been revised till the time he vacated the quarter on 05.05.2017. It is therefore submitted that applying different rates



of monthly rent for calculation of penal rent as stated above, is wholly arbitrary and without jurisdiction.

5. Learned counsel for the respondents appears and has been heard. Reference is invited to a letter dated 31.10.2018 (Annexure-L to the second supplementary counter affidavit) in which the monthly rent of D-type government accommodation was fixed at Rs.370.00 per month calculated at the rate of 0.39 per sq.ft. It is on this basis that the monthly rent was fixed in terms of Letter No.539 dated 16.11.2018 (Annexure-M).

6. Having heard the parties and on a consideration of materials on record, this Court finds force in the submissions of learned counsel for the petitioner. It is not in dispute that the rent for D-type government quarters occupied by the petitioner was fixed at the rate of Rs. 52/- per month and had not been revised till the time the petitioner finally vacated the premises on 05.05.2017. The only basis for applying the penal rent at higher rates and varying demands from time to time as noticed above, is the letter dated 16.11.2018 (Annexure-M) relied on by the respondents. This letter revised the monthly rent on the basis of letter No. 513 dated 31.10.2018 (Annexure-L). However, the respondents have not been able to explain how and why the said letter dated 16.11.2018 which specifically provided that the



revised rent would apply on and from November, 2018, has been applied in the petitioner's case retrospectively as the petitioner had already vacated the premises long before such letter came into force. Besides, the respondents have also not been able to explain the basis of the varying demands towards the penal rent which far exceeds the calculation even on the basis of revised penal rent of Rs. 370/- per month.

7. In the above view of the matter, the impugned letter no. 997 dated 12.09.2017 issued by the Superintending Engineer, Flood Control Circle, Samastipur (respondent no.2) contained in Annexure-10 is hereby quashed. All consequences shall accordingly follow.

8. The writ petition stands disposed of as above.

(Vikash Jain, J)

HR/-

AFR/NAFR	NAFR
CAV DATE	-
Uploading Date	22.03.2021
Transmission Date	-

