

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO.5952 OF 2019

Suresh Kalingam Degloorkar,
Aged about 57 years,
Occupation Service,
resident of C-2/4, Urja Nagar,
Chandrapur.

..... **PETITIONER**

...V E R S U S...

1. Maharashtra State Power Generation
Company Limited, through its Chairman cum
Managing Director, Prakash Garh, Bandra (East)
Mumbai 400051.
2. The Chief Manager,
Koradi Thermal Power Station,
Tq. Kamptee, District Nagpur.
3. The Chief Engineer,
Khaparkheda Thermal Power Station,
Khaparkheda, Tq. Saoner,
District Nagpur.
4. The Chief Engineer,
Thermal Power Station,
Urja Nagar, Chandrapur.

..... **RESPONDENTS**

Mr. M. M. Sudame, Advocate with Mr. A. M. Sudame,
Advocate for Petitioner.
Mr. A. D. Mohgaonkar, Advocate for Respondents 1 to 4.

CORAM: **ROHIT B. DEO AND MRS. VRUSHALI V. JOSHI, JJ.**
DATE: **21st MARCH, 2023.**

ORAL JUDGMENT: **(PER ROHIT B. DEO, J.)**

Rule. Rule made returnable forthwith. By consent of the parties heard finally.

2. The petitioner was appointed on the establishment of respondent 1 at Parli as Junior Chemist on 01.10.1990 and was transferred to Koradi on 27.07.1996.

3. Post transfer to Koradi, the petitioner was allotted quarter V/13-A and on 05.08.2002 was allotted quarter V/13/4.

4. On 08.12.2010 the petitioner was promoted as Senior Chemist and transferred to Parli. He joined at Parli on 08.12.2010. However, the petitioner was not allotted quarter at Parli and his family continued to reside at Koradi. The petitioner did not claim house rent allowance (HRA) and it is his case that the rent of the Koradi quarter was deducted from his salary which he drew at Parli.

5. It is the specific contention of the petitioner that though he was transferred to Parli, he was not asked to vacate the quarter at Koradi. On 30.06.2012 the petitioner was transferred to Khaparkheda. The petitioner contends that at Khaparkheda

quarter was not available. It was in such situation that the petitioner continued to occupy the Koradi quarter. The petitioner did not claim HRA and rent of the quarter at Koradi was deducted from the salary which the petitioner drew at Khaparkheda. The petitioner contends that even after transfer to Khaparkheda, he was not asked to vacate his quarter at Koradi.

6. In March, 2018 the petitioner secured possession of self-owned residence and on 25.07.2018 vacated the quarter at Koradi. The petitioner was promoted as Executive Chemist on 11.10.2018 and was transferred to Chandrapur where he was allotted quarter and he retired on 30.11.2020.

7. In the interregnum, the Assistant General Manager (HR) served the petitioner communication cum notice dated 11.02.2019 which purports to convey that the said officer has been ordered to recover amount of Rs.12,79,583/- (Rupees Twelve Lakhs Seventy Nine Thousand Five Hundred Eighty Three), in monthly installment of Rs.38,736/- (Rupees Thirty Eight Thousand Seven Hundred Thirty Six) from the petitioner's salary. Having so observed, nay ordered, the said communication proceeds to seek an explanation from the petitioner within seven

days.

8. Irrefutably, the petitioner submitted explanation dated 12.02.2019 broadly emphasizing that he was not asked to vacate the quarter nor was he put on notice that recovery at the market rent shall be ordered.

9. The petitioner and two similarly situated employees also addressed representation dated 06.06.2019 to the Chairman and Managing Director of MAHAGENCO. It appears from communication dated 06.08.2019 (Annexure 12) addressed by the Chief Engineer to the Executive Director (HR) of MAHAGENCO that the Chief Engineer at Chandrapur was conscious of the representation preferred. The Chief Engineer points out in the communication addressed to the Executive Director (HR) that no decision is taken/conveyed as regards the representation preferred by the petitioner to the Chairman and Managing Director.

10. It is not in dispute that after the correspondences referred to *supra*, the petitioner approached this Court and we stayed the effect and operation of the impugned communication dated 06.08.2019.

11. Having heard the learned counsel Mr. Sudame for the petitioner and the learned counsel Mr. Mohgaonkar for the respondents, we are more than satisfied that the petition deserves to be allowed, for reasons more than one.

12. We note that as a fact no final decision was taken by the respondents in the matter. We have referred to the communications *supra* from which what is discernible is that the petitioner was informed of purported directive by a superior officer, that amount of Rs.12,79,583/- shall be recovered. In the same breath, the petitioner was asked to furnish an explanation within seven days. It is not in dispute that the petitioner not only furnished explanation, but further preferred a representation to the Chairman and Managing Director. It is apparent from the communication addressed by the Chief Engineer to the Executive Director (HR) that the officers at Chandrapur were aware of the representation preferred by the petitioner and two similarly situated employees to the Chairman and Managing Director. As a fact, the Chief Engineer does invite the attention of the Executive Director (HR) that the decision, if any, which may have been rendered by the Chairman and Managing Director is not communicated. In this view of the matter, inasmuch as there is no

final decision taken directing recovery at market rent on the premise that the petitioner over stayed at the quarter, we see no impediment in allowing the petition. Needless to observe, while ordinarily, the respondents may have argued that in such situation the authority could be provided with an opportunity to take fresh call to pass a final order, considering that the petitioner has retired in October 2020, we are not inclined to consider such course.

13. The other aspect of the matter is that the petitioner has not been heard. Assuming, *arguendo*, that there was a decision holding the field of recovering huge amount from the petitioner on the premise that the petitioner did not vacate the quarter at Koradi, such a decision entails civil consequences, and could not have been taken without putting the petitioner on notice and needless to observe without hearing the petitioner.

14. In any view of the matter, the petition must succeed.

15. The petition is allowed in terms of prayer clause (b) which reads thus:

(b) Hold and declare that the impugned order,

dated 6.8.2019 from the salary of the petitioner is illegal and bad in law and quash and set aside the impugned order, dated 6.8.2019 (Annexure-12) issued by Chief Engineer (HR) Chandrapur Thermal Power Station, Chandrapur in the interest of justice.

16. No order as to costs.

(MRS. VRUSHALI V. JOSHI, J.)

(ROHIT B. DEO, J.)

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