

218 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP-15170-2017

Date of Decision:27.03.2023

Subhash Chander Sharma

.....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Mohit Garg, Advocate for the petitioner.

Ms. Akshita Chauhan, DAG, Punjab

JASGURPREET SINGH PURI J.(Oral)

The present writ petition has been filed under Articles 226/227 of the Constitution of India seeking a writ in the nature of *Certiorari* for quashing the order dated 30.05.2017 (Annexure P-14) passed by respondent No.3 wherein the respondent No.3 has ordered to recover Rs.3,67,636/- from the pension of the petitioner without considering that the petitioner is a retired employee and there is no mis-representation or fraud committed by the petitioner in the allotment of house to him.

The brief facts of the present case are that the petitioner was working as Pump Operator with the respondent-department but vide letter dated 01.03.2001 (Annexure P-15), the pay-scale of Pump Operator was enhanced considering pay-scale of Junior Technician in the respondent-department and the petitioner made an application to the office of the Deputy Commissioner, Sangrur on 19.04.2011 (Anenxure P-1) for the purpose of allotment of quarter No.18-A situated at Ranbir Club, Sangrur, which was lying vacant at that point of time. In the application, he had written his designation as Junior Technician (JT) and a

copy of the same has been annexed as Annexure P-1 and Annexure R-1 with the

reply filed by the respondent-State.

The said application was processed by the Office of Deputy Commissioner, Sangrur and verification was got conducted by the Executive Engineer who verified that one Subhash Chander is working as 'Junior Engineer' in the Water Supply and Sanitation Division, Sangrur as per note given on Annexure R-1. Primarily, the dispute has arisen because there were two Subhash Chanders. The name of the petitioner is Subhash Chander who was working as Pump Operator/Junior Technician and there was another Subhash Chander who was working as Junior Engineer. The application which was filed by the petitioner was processed and ultimately the allotment was done by the Deputy Commissioner, Sangrur vide Annexure R-2 on 05.05.2011 wherein it was specifically mentioned that the aforesaid quarter is being allotted to Subhash Chander, Junior Engineer (JE). However, the petitioner took the possession of the aforesaid quarter on the basis of the fact that he had also applied for the aforesaid quarter and he was given possession by the respondent-authorities. However, for the month of May, 2011, the rent was deducted from the salary of Subhash Chander, JE because the allotment was in the name of the aforesaid person and thereafter from the month of June, 2011 till the time he was in possession of the house i.e. 16.08.2012, the rent was deducted from the salary of the petitioner and not from the salary of the aforesaid Subhash Chander, JE. Thereafter, the petitioner retired on 31.10.2012.

Thereafter, one complaint was filed by the brother of the petitioner against the petitioner before the Punjab State Human Rights Commission, Chandigarh, in which directions were issued for getting an inquiry conducted. The office of the Deputy Commissioner, Sangrur wrote a letter to the Executive Engineer, W/S and Sanitation Division, Sangrur on 17.09.2014 (Annexure P-10)

that financial loss of Rs.5 lakh has been caused to the State Government due to

unauthorized possession of the quarter by the petitioner and therefore appropriate action be taken against the employee and as such the petitioner preferred a writ petition No.13362 of 2015 which was disposed of by a Coordinate Bench of this Court on 17.01.2017 vide Annexure P-11 with a direction to pass fresh speaking orders after affording the petitioner an opportunity of hearing and to produce all the documents which are in his possession. Thereafter in compliance with the order passed by this Court in the above stated writ petition, the Executive Engineer, Sangrur, passed the impugned order dated 30.05.2017 (Annexure P-14) in which directions were given that since the petitioner had occupied the house, assessment was made with regard to the rent for the period for which he had occupied the quarter at Rs.19,995/- per month which should be got deposited along with interest and the total amount was calculated as Rs.3,67,000/-. The aforesaid impugned order is under challenge in the present case.

Mr. Mohit Garg, learned counsel appearing on behalf of the petitioner submitted that it is the case where admittedly, the petitioner had filed an application for allotment of quarter which he may not have been entitled for the same but the same was processed by the office of the Deputy Commissioner, Sangrur. He further submitted that so far as the nomenclature of Pump Operator is concerned, the same was also changed to that of Junior Technician vide letter dated 01.03.2001(Annexure P-15) as also I-Card which was issued by the respondent vide Annexure P-16 in which it is specifically mentioned that the petitioner is a Junior Technician. He submitted that in view of Annexure R-2 dated 05.05.2011, office order was issued in the name of another Subhash Chander, who was the Junior Engineer but the same ought to have been issued in the name of the petitioner and the department itself has given the possession of the quarter to the petitioner and even rent was deducted from his salary. He

themselves by which the possession was given to the petitioner and as such no further action could have been taken against the petitioner. He further submitted that even otherwise the petitioner retired on 31.08.2012 and letter dated 17.09.2014 (Annexure P-10) was issued after a period of about two years and now the impugned order dated 30.05.2017 (Annexure P-14) has been passed after a period of more than 04 years of his retirement. He submitted that neither any department proceedings nor any civil or criminal proceedings or any proceedings under Punjab Government Houses (General Pool) Allotment Rules 1983 have been initiated against the petitioner. He further submitted that no proceeding of any kind has been initiated against the petitioner except one notice which was issued to the petitioner on the basis of which the impugned order has been passed. He further submitted that after the retirement of the petitioner no such recovery could have been effected from the petitioner by simply giving show-cause notice and no directions can be issued in this regard and there is no provision under the Punjab Civil Services Rules under which such an action can be taken against the petitioner without adopting the due process of law. He submitted that now no such recovery can be effected from the petitioner in view of the aforesaid facts and circumstances .

On the other hand, Ms. Akshita Chauhan, DAG, Punjab submitted that it is a case where the petitioner was never entitled for any quarter as he was only a Pump Operator and even believing the arguments made on behalf of learned counsel for the petitioner that he was treated as a Junior Technician even then again the petitioner was not entitled for the quarter in question. She further submitted that a bare perusal of letter dated 05.05.2011 (Annexure R-2) would show that the Deputy Commissioner, Sangrur has approved the quarter in the name of Subhash Chander, Junior Engineer and not in the name of the petitioner

and thereby petitioner had kept possession of the quarter in an unauthorized

manner and thereafter the recovery from the petitioner was justified. She further submitted while referring to the reply submitted by the Executive Engineer, Sangrur, on behalf of respondents No.1 to 3 that the petitioner had taken the possession of the house by way of wrongful method and even earlier in the month of May, 2011, the rent was deducted from the salary of Subhash Chander, J.E. and thereafter, the rent was deducted from the salary of the petitioner for the subsequent months and therefore the petitioner was in an unauthorized possession of the aforesaid premises from May, 2011 till August, 2012 and for which the rent has been assessed by way of impugned order dated 30.05.2017 (Annexure P-14) and the petitioner was directed to deposit the aforesaid amount of Rs.3,67,000/- along with interest but concededly submitted that as per the reply that has been filed by the respondent-State that there is neither disciplinary proceeding nor any criminal proceeding pending against the petitioner. However, an enquiry was conducted by the Vigilance Bureau against one Lakhwinder Kaur, Sr. Assistant in the office of the Executive Engineer, Sangrur, whereas the allegations against the other officers namely, Parampal Singh, Executive Engineer, J.S. Mittal, the then SDE and Rahul Gupta (Kumar Rahul), the then Deputy Commissioner were found to be not proved but the abovesaid enquiry is still in progress against the abovesaid one official. She further submitted that the impugned order dated 30.05.2017 (Annexure P-14) has been passed under the provisions of Punjab Government Houses (General Pool) Allotment Rules 1983 and as of now there is no specific mention of the aforesaid Rules in the order.

I have heard learned counsel for the parties.

The facts of the present case with regard to the dates are not in dispute.

The petitioner Subhash Chander had moved an application dated 19.04.2011 (Annexure P-1) for allotment of quarter which was processed by the concerned

Department but there was another Subhash Chander who was working as Junior Engineer and vide Annexure R-2, the Deputy Commissioner made an allotment to the aforesaid Junior Engineer namely Subhash Chander and not to the petitioner. However, it was because of either inadvertent mistake or because of any other reason, the department gave the possession of the quarter to the petitioner who was working as Pump Operator/JT with the respondent-authorities. For the first month i.e. for May 2011, the rent was deducted from the salary of the aforesaid Subhash Chander, JE and thereafter for the remaining months till August, 2012, the rent was deducted from the salary of the petitioner. The petitioner vacated the house/quarter in the month of August, 2012 and he retired in the month of October, 2012. During the said period of his service and his occupation, no enquiry or action was taken against the petitioner. Thereafter on the complaint of brother of the petitioner, one enquiry was conducted and matter was sent to the Deputy Superintendent of Police, Vigilance Bureau, Unit Sangrur vide Annexure R-4 recommending that the action be taken against one Mrs. Lakhwinder Kaur, Senior Assistant, office of the XEN, Sangrur and so far as the other persons are concerned, allegations were found to be not proved and thereafter departmental proceedings were initiated against the aforesaid official only. So far as the present petitioner is concerned, neither any departmental proceeding nor any criminal action nor any action under the provisions of Punjab Government Houses (General Pool) Allotment Rules, 1983 has been initiated against the petitioner. It was only when the Deputy Commissioner, Sangrur wrote a letter dated 17.09.2014 (Annexure P-10) to the Executive Engineer, W/S and Sanitation Division, Sangrur for taking appropriate action for loss of Rs.5 lakhs for unauthorized possession of the quarter in question that the process was started but in the meantime, the petitioner approached this Court by filing a writ

compliance with the order passed in the aforesaid writ petition, impugned order dated 30.05.2017 (Annexure P-14) has been passed. A perusal of the aforesaid impugned order (Annexure P-14) would show that the provisions of the Punjab Government Houses (General Pool) Allotment Rules, 1983 are not mentioned in the aforesaid order and therefore it cannot be said that the action was taken under the aforesaid rules.

Apart from the above, once the petitioner has already retired in the year 2012 and then after a period of more than 4 ½ years no action could have been taken against the petitioner in the absence of adopting a due process of law. Admittedly, there were no disciplinary proceedings against the petitioner nor any other kind of proceedings whatsoever have been taken against the petitioner and as such this Court is of the view that the recovery which is sought to be made from the petitioner is without the authority of law. It is made clear that this Court is not making any observation that there was no power with the respondent-authority to have adopted lawful measures in accordance with law but it is the case where no procedure has been adopted of any kind except for issuance of a show -cause notice on the basis of which impugned order dated 30.05.2017 (Annexure P-14) has been passed. After the retirement of the petitioner, no such order could have been passed and therefore the action of the respondent is without jurisdiction and without authority of law.

In view of the aforesaid position, the present petition is allowed. The impugned order dated 30.05.2017 (Annexure P-14) is hereby set aside.

(JASGURPREET SINGH PURI)
JUDGE

27.03.2023

shweta

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