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

**CWP No.71 of 2020 (O&M)
Date of Decision: 30.01.2023**

VIKRAM NEHRA

.....Petitioner

Vs

STATE OF HARYANA AND OTHERS

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Raman Chawla, Advocate
for the petitioner.

Mr. Tapan Kumar Yadav, D.A.G., Haryana.

RAJ MOHAN SINGH, J.(Oral)

[1]. The petitioner has preferred this writ petition for the issuance of an appropriate writ, direction or order especially in the nature of certiorari for setting aside the order dated 05.09.2019 passed by the Deputy Commissioner of Police, Headquarters, Gurugram and order dated 18/19.10.2019 passed by the same authority in the context of recovery of penal rent for occupation of House No.701 Tower 'J' Police Line, Gurugram by the petitioner.

[2]. Evidently the petitioner is working as Inspector in the Haryana Police. He was transferred from District Gurugam to

District Narnaul on 07.01.2019 and was ultimately relieved on 21.01.2019. The petitioner then transferred back to Gurugram on 15.02.2019 but on deputation in the office of Irrigation and Power Police Station at Sushant Lok, Gurugram. After his transfer from Gurugram to Narnaul, a period of four months was to be preserved for vacating the house. The said period expired on 21.05.2019 but before that date the petitioner had come back to Gurugram.

[3]. Even during the period of validity/retention of the house upto four months, the respondent No.3 issued a notice on 30.04.2019 to the petitioner to vacate the house in question within five days. Otherwise, penal rent will be charged from the petitioner.

[4]. The petitioner filed reply to the show cause notice before the respondent No.3 on 13.06.2019 and also moved representation of even date to the Director General, Vigilance (H.P.Y.O.), Panchkula in respect of his accommodation, intimating that a notice has been received from the Commissioner of Police/respondent No.3 for vacation of the house and, therefore, indulgence of the Director General, Vigilance was sought for preserving the house in question as the petitioner had already come back to Gurugram.

[5]. The Director General, Vigilance (H.P.Y.O.), Panchkula wrote a letter to the respondent No.3 on 26.06.2019 in the

context of request of the petitioner highlighting that the petitioner is still posted in Gurugram itself and his station has not been changed.

[6]. The respondent No.3 ultimately informed the Director General, Vigilance, (H.P.Y.O.), Panchkula that the petitioner has overstayed in the government accommodation beyond permissible period from 21.05.2019 to 20.08.2019 and penal rent has been calculated to the tune of Rs.1,75,000/- and the said amount has to be deducted from his salary.

[7]. Vide the impugned order dated 19.08.2019, the penal rent has been calculated from 21.05.2019 to 20.08.2019 in a sum of Rs.1,75,000/- and further from 21.08.2019 to 24.09.2019 in a sum of Rs.1,20,000/- thereby totalling the amount to the tune of Rs.2,95,000/- which has to be recovered from the salary of the petitioner.

[8]. In the reply filed by the respondent-Department reference has been made to Rule 48 of the Haryana Civil Services (Allowances to Govt. Employees) Rules 2016 which prescribes that upto the first month of overstay, 50 times penalty of the normal licence fee has to be charged i.e. for the period from 21.05.2019 to 20.06.2019. For overstay of above one month i.e. 21.06.2019 to 20.07.2019, 100 times penalty of the normal licence fee has to be charged and similarly for the 3rd month of overstay, 200 times penalty of the normal licence fee

has to be charged. For overstay of four months and above, 300 times penalty of the normal licence fee has to be charged.

[9]. The petitioner while filing the present writ petition specifically averred in para no.17 that the petitioner had been discriminated against many similarly situated employees, who had been transferred back to the Gurugram and the accommodations had been allowed to be retained in those cases without there being any recovery of penal rent.

[10]. After filing of this petition, the matter came up for hearing on 06.01.2020 and following order was passed:-

“Present petition has been filed by petitioner- Vikram Nehra, presently posted as Inspector, Irrigation and Power Police Station, Gurugram, inter alia, with the prayer to set aside the impugned order dated 05.09.2019 (Annexure P-5) and also order dated 18.10.2019 (Annexure P-7).

Learned counsel for the petitioner submits that inspite the fact that the petitioner was transferred back to Gurugram on 15.02.2019 and also inspite the fact that the accommodation has been vacated by him on 24.09.2019, without any opportunity given to the petitioner, 300 times of the rent has been imposed as a penalty upon him. He further submits that Rs.30,000/- per month is being deducted from his salary and for previous four months Rs.30,000/- has already been deducted.

Notice of motion.

On the asking of the Court, Ms. Sofia Gupta, Assistant Advocate General, Haryana, accepts notice on behalf of respondents-State of Haryana.

Learned counsel for the petitioner further submits that if the department would reduce the penalty to a reasonable amount, he would seek instructions from the petitioner not to pursue the writ petition any further.

In this view of the matter, learned State counsel is directed to take positive instructions from the department so that the Competent Authority may take a decision to reduce the penalty so enforced.

Adjourned to 17.02.2020.

Till the next date of hearing, the amount of further recovery shall remain stayed.

Learned counsel for the petitioner is directed to hand over a copy of the petitioner to learned State counsel during the course of the day.

**(GIRISH AGNIHOTRI)
JUDGE**

06.01.2020

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[11]. It is only after passing of the aforesaid order, short reply has been filed by the respondents thereby highlighting Rules 47 and 48 of the Haryana Civil Services (Allowances to Govt. Employees) Rules 2016. Along with the reply, the respondents have also annexed order dated 17.07.2019 projecting the cancellation of allotment of house of the petitioner. The date of serving the aforesaid order has not been pleaded by the respondents No.1 to 3.

[12]. Learned counsel for the petitioner submits that the said order never came to the knowledge of the petitioner, but the petitioner has not controverted the written statement so far.

[13]. Keeping in view the totality of facts and circumstances

of case, I find that the petitioner remained posted in Narnaul only for 21 days. He was transferred from Gurugram to Narnaul on 07.01.2019 and was relieved on 21.01.2019. The petitioner was allowed to retain the house upto 21.05.2019. The petitioner came back to Gurugram on 05.02.2019 itself, but on deputation in the office of Irrigation and Power Police Station at Sushant Lok, Gurugram.

[14]. The order of cancellation came to be passed on 17.07.2019. During intervening period the representation of the petitioner before the Director General, Vigilance (H.P.Y.O.), Panchkula also remained pending in which favourable recommendation was made by the Director General, Vigilance (H.P.Y.O.), Panchkula, however the recommendations of the aforesaid authority were not accepted by the respondent No.3 and ultimately the order dated 17.07.2019 came to be passed. It is debatable whether the said order has ever been communicated to the petitioner or not.

[15]. In all fairness the petitioner remained under *bona fide* belief that his case has been favourably recommended by the Director General, Vigilance (H.P.Y.O.), Panchkula to the competent authority on 26.06.2019 and the passing of order dated 15.07.2019 is not shown to have been communicated to the petitioner at any point of time. Even in the order dated 06.01.2020 passed by this Court, the petitioner showed his

willingness to pay reduced penalty of reasonable amount.

[16]. After considering the relevant facts on record, it would be appropriate not to force the petitioner to pay penal rent for five months, rather he should be asked to pay penal rent for two months i.e. for the overstay period of month of June (50 times of the normal licence fee) and for the overstay period of month of July (100 times of the normal licences fee) as per Rule 48 of the Haryana Civil Services (Allowances to Govt. Employees) Rule 2016.

[17]. With this modification, this writ petition is disposed of.

January 30, 2023	(RAJ MOHAN SINGH)
Atik	JUDGE
Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No