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

**109** **CM-6886-CWP-2025 in/&**
**CWP-13286-2021**
**Date of Decision :13.05.2025**

**Kamaljit Singh** **...Petitioner**

**Versus**

**Secretary House Allotment Committee, Chandigarh & others** **...Respondents**

**CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI**

Present: Mr. Arshdeep Bhullar, Advocate for the petitioner.

Ms. Aakanksha Sawhney, Addl. Standing counsel for U.T. Chandigarh.

* * *

***<u>Harsimran Singh Sethi, J. (Oral)</u>***

1. In the present petition, the challenge is to the order dated 22.01.2021 (Annexure P/1) passed by respondent No.2 by which, the petitioner, who retired from service in the year 2007 has been directed to deposit the penal rent as well as interest on the penal rent from the date the petitioner had surrendered the Government house in question back i.e. 16.05.2005 till 31.01.2021 @ 12% per annum. In total at the relevant time, the petitioner was asked to deposit a sum of Rs.5,22,010/- with the respondents.

2. As per the petitioner, the petitioner was allotted a government accommodation being H.No.2269/A, Sector 20, Chandigarh while the

petitioner was posted in the Transport Department, Haryana at Chandigarh Thereafter, the petitioner was asked to perform the duties at Sirsa for certain period i.e. form the December, 1999 to April, 2002 but there was no Government accommodation allotted to the petitioner in Sirsa and the petitioner continued occupying the premises in question and he continued to pay the licence fee he was liable to pay.

3. After joining back duties at Chandigarh, the petitioner continued to reside in the said Government accommodation and ultimately surrendered the said Government accommodation on 16.05.2005.

4. After the petitioner surrendered the accommodation, all the dues admissible were paid by him. Before the retirement, the petitioner was served with letter wherein it was stated that while occupying the accommodation in question, the petitioner was transferred out of Chandigarh in the year 1999 and hence, he should have surrendered the said Government accommodation immediately but as he had not surrendered the said Government accommodation, the said allotment should be deemed to be cancelled as per the rules governing the House Allotment in Chandigarh i.e. The Government Residence (Chandigarh Administration) General Pool Allotment Rules, 1996 and therefore, the petitioner is liable to pay double the licence fee along with 12% interest on the amount of the licence fee up to the date of deposit of the amount in question.

5. Despite a letter in the year 2006, no action was taken and the petitioner ultimately retired from service in the year 2007

6. After 14 years of retirement, the impugned order dated

22.01.2021 (Annexure P/1) has been passed by the respondents fastening the liability of a sum of Rs.5,22,010/-, which includes penal rent @ 51 times of the normal licence fee w.e.f. 01.06.2000 till the house in question was surrendered by the petitioner on 16.05.2005 and also the interest @ 12% from 16.05.2005 till 31.01.2021, which order is under challenge in the present petition.

7. Learned counsel for the petitioner argues that the said order dated 22.01.2021 is arbitrary and illegal as no order fastening the liability upon the petitioner can be passed and that too after 14 years of the retirement or after 16 years of the surrendering of the house in question. Learned counsel for the petitioner further argues that once, the master and servant relationship between the petitioner and respondents has already come to an end, no action of fastening the liability upon the petitioner can be taken so as to recover the amount and therefore, the liability so fastened upon the petitioner may kindly be set aside.

8. Upon notice of motion, the respondents has filed reply wherein, it has been submitted that the Chandigarh Administration was never informed about the posting of petitioner in Sirsa in the year 1999 and his joining back Chandigarh in May 2002. Learned counsel for the respondent-U.T. submits that all these facts only came to the knowledge of the department after the house was surrendered back by the petitioner in the year 2005 and a notice was issued to the petitioner in the year 2006 to explain the issue. Though, the said issue should have been decided within a time bound manner prior to the retirement of the petitioner but

unfortunately, the same could only be finalized on 22.01.2021 while passing order dated 22.01.2021 (Annexure P/1) but once, the liability of the petitioner was established under the rules governing the allotment of the Government houses, the said liability was asked to be discharged by the petitioner, which is perfectly within the jurisdiction of the respondent-U.T. keeping in view the rules governing the said aspect as, after the transfer of the petitioner outside Chandigarh in the year 1999, the house in question should have been surrendered back by the petitioner on his own.

9. I have heard learned counsel for the parties and have gone through the record with their able assistance.

10. The first question which needs to be decided is, whether any financial liability can be fastened upon an employee after 14 years of his retirement or not. Even if, it is assumed for the sake of argument that the petitioner after his transfer out of Chandigarh in the year 1999 was required to surrender back the house in question, can liability be fastened upon him after 14 years of his retirement or not.

11. As per the settled principle of law once, a master and servant relationship between petitioner and respondent came to an end, the jurisdiction of the department diminish not only qua fixation of the liability upon the petitioner but is also limited qua the recovery of any financial liability upon the employee.

12. As per the settled principle of law settled by the Hon'ble Supreme Court of India in ***State of Punjab and others Vs. Rafiq Masih (White Washer) etc., 2015(1) S.C.T., 195,*** even if, an employee has been

paid an amount beyond his/her entitlement, the same cannot be recovered after his/her retirement or even when, one year is left to his/her retirement. The said judgment has been passed for fulfilment of the purpose that no harassment especially financial harassment can be caused to a retired employee. Relevant paragraph of the judgment is as under:-

> "12. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:
>
> (i) Recovery from employees belonging to Class-III and Class- IV service (or Group 'C' and Group 'D' service).
>
> (ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.
>
> (iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.
>
> (iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.
>
> (v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right recover".

13. Keeping in view the said settled principle of law, the issue needs to be decided keeping in view the fact that whether after 14 years of retirement, any financial liability can be fastened upon the petitioner to be

recovered from a retired employee.

14. Once, the conceded liability/excess amount paid cannot be recovered after the retirement of an employee, on the same ratio, no financial liability can be fastened upon the petitioner after his retirement from service can be recovered so as to cause financial hardship to a retired employee until the rule permits the same but no such rule which gives the jurisdiction to the respondents to pass an order against the retired employee after a period of 14 years fixing his/her pliability has been brought to the notice of this Court hence, the impugned order dated 22.01.2021 (Annexure P/1) which has been passed by the respondent No.2 after 14 years of retirement of the petitioner fixing the financial liability upon him and asking him to discharge the same, which includes 51 times of the normal licence fee which is being termed as a penal rent to be deposited with 12% interest upon the said penal rent, even though the rules permit the imposition of the said penalty, whether the imposition of said penalty after 14 years of retirement, will be valid or not, is to be seen.

15. Keeping in view the facts and circumstances of the present case, coupled with the settled principle of law settled hereinbefore, even if, the penalty is being imposed under the rules governing the service but after 14 years of retirement the same can not be given effect to especially when no recovery can be done from a retired employee as per ***Rafiq Masih (supra).***

16. Further, the respondents are on record to say that the house in question was surrendered in May, 2005 by the petitioner but no question

was asked from the petitioner at the relevant time. In May, 2007, the petitioner retired from service even at the that time, despite notice by the Chandigarh Administration in the year 2006, no objection was raised and the petitioner retired from service. In case the respondents knew about the non-payment of the rent or the liability of the petitioner was being assessed prior to his retirement nothing stopped the respondents to take the said fixation of liability to the logical end prior to the retirement of the petitioner. Once, the respondents waited 14 years after the retirement to fix liability of the petitioner, the same cannot be appreciated/accepted so as to give the jurisdiction to the respondents to recover the amount after 14 years of the retirement especially keeping in view the settled principle of law where concededly, excess payment made to an employee cannot be recovered from a retired employee.

17. Further, it is not the case that the petitioner was availing the Government accommodation at his transfer place. Even the transfer order is not on record to show whether the posting of the petitioner outside the Chandigarh was on permanent basis or on temporary basis. In the absence of such transfer order on record, even the fixing of the liability upon the petitioner cannot be treated to be done as per the rules.

18. The petitioner has never availed any accommodation in Sirsa. Further, the petitioner joined back his duty in Chandigarh in 2002 and surrendered the house in 2005 to be finally retired from service in May 2007.

19. Keeping in view the totality of the facts and circumstances of

the present case that the petitioner is a senior citizen and is of 75 years of age at the time when the notices were issued asking him to deposit 51 times of the normal rent as a penal rent along with 12% interest, which is more than even the penal interest, is going to cause financial hardship, from which not only a senior citizen but a retired senior citizen should be saved as per the settled principle of law settled in ***Rafiq Masih (supra).*** Hence the impugned order dated 22.01.2021 (Annexure P/1) passed by respondent No.2 is set aside. Any recovery done in pursuance to the impugned order dated 22.01.2021 (Annexure P/1) from the petitioner be refunded back within a period of 08 weeks from the date of receipt of copy of this order. Any retiral benefit withheld be also released within the said period.

20. Present petition is allowed in above terms.

**May 13, 2025** **(HARSIMRAN SINGH SETHI)**
*aarti* **JUDGE**

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