



2025:DHC:9566-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 30.10.2025

+ W.P.(C) 5306/2023
ANIL KUMAR JAIN

.....Petitioner

Through: Mr.Rajshekhar Rao, Sr. Adv.
with Ms.Aditi Gupta,
Mr.Rajarshi Roy and
Ms.Lavanya Bhardwaj, Advs.

versus

NATIONAL COUNCIL OF EDUCATION RESEARCH AND
TRAINING AND ANR.

.....Respondents

Through: Mr.Abhishek Saket, SPC with
Mr.Manish Madhukar,
Mr.Abhigyan and Ms.Reya
Paul, Advs. for UOI

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MS. JUSTICE MADHU JAIN

NAVIN CHAWLA, J. (ORAL)

1. This petition has been filed, challenging the Order dated 07.09.2022 passed by the learned Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as the, 'Tribunal'), in O.A. No. 1156/2019, titled *Shri Anil Kumar Jain v. National Council of Education Research and Training Through its Secretary & Anr.*, whereby the said O.A. filed by the petitioner herein was dismissed.

2. The petitioner had filed the above O.A. challenging the Orders dated 22.06.2015 and 28.02.2017 passed by the respondent no. 1- National Council of Educational Research and Training (in short,



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‘NCERT’), withholding an amount of Rs.6,53,607/- from the gratuity amount payable to him on account of him retaining the residential quarter beyond the permissible time limit.

3. The petitioner had retired as an Assistant with the respondent no. 1 on 31.05.2011, upon attaining the age of superannuation. While in service, he was allotted Quarter No. Type III/73 in NIE Campus by NCERT with effect from 04.03.2005.

4. Although he superannuated and was liable to vacate the allotted quarter in terms of the applicable rules, he did not do so and sought further extension of time to retain the quarter owing to the medical condition of himself, his wife and his brother.

5. On the other hand, the respondents continued to issue eviction notices, also warning the petitioner that he would be liable to pay penalty charges for the unauthorised occupation of the government quarter. The petitioner was also warned that action under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (hereinafter referred to as, ‘PP Act’) would be taken against him.

6. The petitioner eventually vacated the residential accommodation only on 07.05.2015. In the meantime, the respondents had released only around Rs. 4 lacs to the petitioner, out of the total claim amount of Rs.12 lacs towards retiral dues.

7. Subsequent to vacation of the government accommodation, it was only on 27.03.2017, that a further sum of Rs.1,17,953/- was released to the petitioner by the respondents, after adjusting the sum of Rs.6,53,607/- as damages for the unauthorised occupation of the



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accommodation.

8. Aggrieved thereby, the petitioner had filed the above O.A. before the learned Tribunal.

9. As noted hereinabove, the learned Tribunal dismissed the O.A., observing as under:

“7. The applicant had joined at NCERT as LDC in the year 1975. He was also allotted quarter No. Type-III/73 in NIE Campus by the respondents w.e.f. 04.03.2005 and he continued to stay in the same quarter. He superannuated on 31.05.2011. However, as stated by him, on account of medical requirements, he continued to occupy the said quarter even after retirement. The respondents issued successive notices to him for vacating the said quarter and also indicating that failing which action shall be initiated against him under Public Premises (Eviction of Unauthorised Occupants) Act, 1971. Some of these notices are also placed on record including dated 03.05.2013, 06.01.2014, 28.05.2014 and the final notice dated 28.11.2014. All these notices clearly indicate that the said quarter No. Type-III/73 in NIE Campus, NCERT has not been vacated by the applicant. The applicant is in unauthorized occupation of the said accommodation, and that the Council has already cancelled the allotment of the quarter w.e.f. 01.10.2011. It is also clearly indicated in the notices that in case he fails to vacate the said quarter, further action will be taken to get the house vacated as per the provisions of Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and the Council will also charge the damage charges from 01.10.2011 till its vacation.

8. It is thus evident that the allotment of the said quarter in favour of the applicant had already been cancelled w.e.f. 01.10.2011 after



his superannuation and he was, time and again, advised through these notices to vacate the same, failing which punitive action was to be taken against him under Public Premises (Eviction of Unauthorised Occupants) Act, 1971. It was also intimated that he will be charged the damage charges w.e.f. 01.10.2011 till its vacation. The applicant vacated the said quarter on 07.05.2015. The respondents vide impugned order dated 22.06.2015 issued the office order indicating the dues payable by the applicant with complete details of charging of normal licence fee, double licence fee, damage charges at varying rates, water charges and concluded that a total of Rs.6,53,607/- is due for recovery from the applicant. This was also brought to the notice of the applicant. Further vide order dated 28.02.2017, it was mentioned that except outstanding recovery of Rs.6,53,607/- towards licence fee, damage charges and water charges, nothing is due against the applicant. The applicant submitted various representations and also gave a legal notice through his counsel dated 06.07.2018 to the respondents. In response to the legal notice, the respondents vide their letter dated 24.12.2018 had clearly indicated that the deductions have been made as per the House Allotment Rules for the overstayed period and unauthorised occupancy with the approval of the Competent Authority.

9. *It is thus evident that the applicant has indeed continued to retain the official accommodation allotted to him much after his superannuation on 31.05.2011. In terms of the Rules, he was allowed to retain the quarter on normal licence fee for specified period and as he did not vacate the same, finally this allotment was cancelled w.e.f. 01.10.2011 by the Competent Authority. After this, an Eviction Notice was issued to him on 16.02.2012, clearly indicating that permissible period of 4 months for retention of quarter after retirement has already expired on*



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30.09.2011 and that the allotment has been cancelled w.e.f. 01.10.2011 and he is liable to pay damage charges. It was also directed that he should vacate the quarter immediately, failing which suitable action will be taken to get the quarter vacated and the recovery of damage charges etc. will be made from the payment of DCRG/gratuity etc. The applicant was obviously well aware of the fact that he is under unauthorised occupation of the said quarter. Although he continued to make representations on medical grounds, he was not permitted to retain the said accommodation. Despite sufficient notices issued to him, he failed to vacate the same and continued to unauthorisedly occupy the same till 07.05.2015, i.e. for four years after his retirement. The respondents, accordingly, in terms of their policy worked out the damage charges and advised that a total amount of Rs.6,53,607/- is due to be recovered and also recovered the same from his gratuity.”

10. The learned Tribunal further placed reliance on Rule 72(3), (4) and (5) of the Central Civil Services (Pension) Amendment Rules, 2010 (hereinafter referred to as, ‘CCS Rules’), to observe that the gratuity amount can be withheld by the respondents for recovery of the license fee.

11. The learned senior counsel for the petitioner submits that, in terms of Rule 73(9) of the CCS Rules, only 10% of the gratuity due to a government servant can be withheld by the Department, on ground of unauthorised occupation of government accommodation. He places reliance on the Judgment of the Supreme Court in ***R. Kapur v. Director of Inspection (Painting and Publication) Income Tax & Anr.***, (1994) 6 SCC 589, wherein directions were given for release of



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withheld pension amount along with interest at the rate of 18% per annum. He also places reliance on the Judgment of this Court in *Dhanwant Rai & Ors. v. Delhi Transport Corporation*, 2004 SCC OnLine Del 758, wherein it was held that non-vacation of a government allotted accommodation would not provide a tenable ground to withhold payment of gratuity.

12. On the other hand, the learned counsel for the respondents places reliance on Rule 16(d) of the 'Rules for Allotment of Residences to Council's Employees at Delhi' (hereinafter referred to as, 'Earlier Allotment Rules'), to submit that the said Rule expressly authorised withholding of the No Dues Certificate to an employee upon his retirement, in case he is unauthorisedly retaining a government accommodation.

13. He further places reliance on Rule 18 of the NCERT's 'Rules for Allotment of Residences to Council's Employees at Delhi, 2012' (hereinafter referred to as the, '2012 Allotment Rules'), promulgated by Notification No. F.10-10/2012/C&W dated 31.12.2012, to submit that the said Rules also authorised the respondents to withhold the grant of No Dues Certificate or the release of the retiral benefits to the employee who is found retaining the accommodation beyond permissible time on his retirement.

14. He further places reliance on the Circular dated 15.10.1999, which cautioned all the establishments, sections and accounts branches of the respondents to not issue a No Dues Certificate where the employee is unauthorisedly retaining the government



accommodation.

15. Placing reliance on the Judgments of the Supreme Court in *Wazir Chand v. Union of India & Ors.*, (2001) 6 SCC 596, and in *Secretary, O.N.G.C. Ltd. & Anr. v. V. U. Warriar*, (2005) 5 SCC 245, he submits that, in similar circumstances, the Supreme Court upheld the retention of retiral dues by the employer until the employee vacates the government quarters unauthorisedly occupied by him/her beyond his/her retirement and entitlement.

16. We have considered the submissions made by the learned counsels for the parties.

17. The petitioner retired on 31.05.2011. It is admitted by him that, as Rule 16 (d) read with Rule 8 of the Earlier Allotment Rules, the maximum retention period allowed to an employee was 4+4 months, and in case an employee continues to occupy the residential accommodation beyond the said period, the respondents were authorised to retain his retiral dues and deny issuance of a No Dues Certificate. The relevant rules are reproduced as under:

**“Rule -8: PERIOD FOR WHICH
ALLOTMENT WILL BE VALID”**

(1) An allotment shall be effective from the date on which it is accepted by the employee and shall continue in force until :

(a) the expiry of the concessional period under sub-clause (2) after the employee ceases to be on duty in an eligible office in Delhi.

(b) It is cancelled by the Council or is deemed to have been cancelled under any provision in those rules.

(c) It is surrendered by the employee or

(d) The employee ceases to occupy the



residence.

(2) A residence allotted to an employee may subject to this sub-rule be allowed to be retained on the happening of any of the events specified in column 1 of the table below for the period specified in the corresponding entry in column 2 thereof provided the residence is required for the bonafide use of the employee or members of his family.

Events	Permissible period for retention of the residence
xxx	
(ii) Retirement or terminal leave	4 (2+2) + 4 (medical/ Education ground)

xxx

**Rule – 16 OVESTAYAL IN RESIDENCE
AFTER CANCELLATION OF
ALLOTMENT**

xxx

(d) Provided further that in case of employees who are in occupation of Council's accommodation on leaving service on retirement/ or otherwise, the quarters allotted to them may be cancelled or deemed cancelled after expiry of the stipulated period. A no-due certificate will be issued only after they vacate the Council accommodation. Till that time their full amount of gratuity and sum due to encashment of leave will be withheld by the Council till they vacate the quarters."

18. The Circular dated 15.10.1999, relied upon by the learned counsel for the respondents, reads as under:

"The council has issued instructions to all the Establishment Section and Accounts Branch vide Notification No. F.4-2/81-C&W dated 20.10.1986 (copy enclosed for ready reference) that A No. Dues Certificate to employees leaving NCERT's services on retirement/resignation or otherwise shall be



issued only after they vacate the Council's accommodation. Till that time full amount of gratuity and sum due to leave encashment of leave will be withheld by the Council till they vacate the Council's accommodation.

But it has come to the notice of this office that in a few cases the employees who have left service on account of retirement or otherwise, have been released the amount due to encashment of leave contrary to the explicit instructions and orders as aforesaid even without issue of a No Dues Certificate by this office. This matter has been viewed seriously and any lapse of this kind needs to be avoided in future.

All the Establishment Sections and Accounts Branches are once again requested to follow the above noted instructions in letter and spirit in all cases. In case any error is detected it would be the sole responsibility of the concerned employee.

This issues with the approval of the Competent Authority."

19. A combined reading of the above would show that the respondents were fully justified in retaining the retiral dues and refusing to issue a No Dues Certificate to the petitioner, as the petitioner was admittedly retaining the residential accommodation beyond the permissible period.

20. It is also not denied by the petitioner that the respondents had repeatedly issued eviction notices, calling upon him to vacate the residential accommodation, which he failed to do. The petitioner, if he was aggrieved of non-extension of the period of retention of the residential accommodation by the respondents, should have initiated an appropriate legal action at that stage. Instead, he remained silent and continued to retain the residential accommodation unauthorisedly.



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21. The submission of the learned senior counsel for the petitioner that the respondents should have initiated action against the petitioner under the PP Act, cannot be accepted. It was one of the course of action available to the respondents, however, as they were already retaining the retiral dues of the petitioner, they were fully secured, and it may have been for this reason that they did not initiate action for seeking vacation of the premises from the petitioner. However, merely on the ground that they failed to initiate appropriate proceedings for vacation of the residential accommodation at appropriate time, there is no bar on the respondents from recovering their legitimate dues for the unauthorised occupation of the premises by the petitioner.

22. In **V. U. Warriar** (supra), the Supreme Court, in similar circumstances, while distinguishing the Judgment of **R. Kapur** (supra) and placing reliance on the Judgment in **Wazir Chand** (supra), has observed as under:

“22. The ratio in R. Kapur [(1994) 6 SCC 589; 1995 SCC (L&S) 13; (1994) 28 ATC 516], in our opinion, does not help the respondent as in that case, the claim for damages for unauthorised occupation against the appellant retired employee was “pending” and the proceedings were not finally disposed of. In the present case, the facts clearly reveal that the last day of lawful occupation of quarters by the respondent was 30-6-1990 and before that date, the appellant Commission had informed the respondent that his prayer for extension or retention of quarters had not been accepted and he should vacate by 30-6-1990. If he would not vacate the quarters, penal rent would be recovered from him. He did not challenge the action of not extending the period nor the recovery of penal rent. He,



therefore, cannot make grievance against the action of the Commission.

24. In Wazir Chand v. Union of India [(2001) 6 SCC 596 : 2001 SCC (L&S) 1038] , a retired employee continuously kept the quarters occupied unauthorisedly. He was charged penal rent in accordance with rules and after adjustment of dues, balance amount of gratuity was paid to him. He contended that it was the bounden duty of the Government not to withhold the gratuity amount. The Court, however, dismissed the appeal observing that it was “unable to accept” the prayer of the appellant. The Court observed that the appellant having unauthorisedly kept the government quarters was liable to pay penal rent in accordance with rules and there was no illegality in adjusting those dues against death-cum-retirement benefits.

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26. The matter can be considered from another angle also. It is well settled that the jurisdiction of the High Court under Article 226 of the Constitution is equitable and discretionary. The power under that article can be exercised by the High Court “to reach injustice wherever it is found”. More than fifty years before, in Veerappa Pillai v. Raman & Raman Ltd. [(1952) 1 SCC 334 : 1952 SCR 583 : AIR 1952 SC 192] , the Constitution Bench of this Court speaking through Chandrasekhara Aiyar, J., observed (at SCR p. 594) that the writs referred to in Article 226 of the Constitution are obviously intended to enable the High Court to issue them “in grave cases where the subordinate tribunals or bodies or officers act wholly without jurisdiction, or in excess of it, or in violation of the principles of natural justice, or refuse to exercise a jurisdiction vested in them, or there is an error apparent on the face of the record, and such act, omission, error, or excess has resulted in manifest injustice”.

(emphasis supplied)



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28. As already adverted to by us hereinabove, the facts of the present case did not deserve interference by the High Court in exercise of equitable jurisdiction under Article 226 of the Constitution. The respondent-petitioner before the High Court was a responsible officer holding the post of Additional Director (Finance and Accounts). He was, thus, "gold collar" employee of the Commission. In the capacity of employee of the Commission, he was allotted residential quarters. He reached the age of superannuation and retired after office hours of 28-2-1990. He was, therefore, required to vacate the quarters allotted to him by the Commission. The Commission, as per its policy, granted four months' time to vacate. He, however, failed to do so. His prayer for continuing to occupy the quarters was duly considered and rejected on relevant and germane grounds. The residential accommodation constructed by him by taking loan at the concessional rate from the Commission was leased to the Commission, but the possession of that quarters was restored to him taking into account the fact that he had retired and now he will have to vacate the quarters allotted to him by the Commission. In spite of that, he continued to occupy the quarters ignoring the warning by the Commission that if he would not vacate latest by 30-6-1990, penal rent would be charged from him. In our judgment, considering all these facts, the High Court was wholly unjustified in exercising extraordinary and equitable jurisdiction in favour of the petitioner — respondent herein — and on that ground also, the order passed by the High Court deserves to be set aside."

23. In view of the above, we find no merit in the contention of the learned senior counsel for the petitioner that the respondents were not



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authorised to retain his retiral dues on the ground of unauthorised occupation of the accommodation.

24. Following the case of *V. U. Warriar* (supra), we refuse to exercise our jurisdiction under Article 226 of the Constitution of India, given the peculiar facts of the present case.

25. However, it is admitted that the petitioner vacated the residential accommodation on 07.05.2015. Even as per the respondents, an amount of Rs.1,17,953/- was due to the petitioner after adjusting the damages for the unauthorised occupation. The said amount should have been released to the petitioner within a reasonable period, however, was released only on 27.03.2017, that is, with a delay of almost two years. The No Dues Certificate itself was issued to the petitioner only on 28.02.2017. We find no explanation for this delay on part on the respondents.

26. We, therefore, direct the respondents to pay interest at the rate of 12% per annum for this delay in payment from 07.05.2015 till the date of actual payment, to the petitioner. Such payment shall be released to the petitioner within a period of eight weeks from today.

27. The petition is disposed of in the above terms.

NAVIN CHAWLA, J

MADHU JAIN, J

OCTOBER 30, 2025/sg/Yg