

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.12661 OF 2025

Hemant Laxman Sakpal

.. Petitioner

Versus

Dairy Manager And Ors.

.. Respondent

-
- Mr. Ashwin Vasista i/b Prism Legal for Petitioner
 - Ms. A. A. Nadkarni, AGP for State/Respondent
-

CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 30, 2026

P.C.:

1. Heard Mr. Vasista, learned Advocate for Petitioner and Ms. Nadkarni, learned AGP for Respondent-State.

2. Present Petition is filed challenging the order dated 11.04.2023 passed in Eviction Complaint No.25904 appended below Exhibit-B at page No.19. Petitioner is praying for reduction in the penalty imposed on the market rent levied upon him by the aforesaid impugned order.

3. The brief facts of the matter are as follows:

3.1. Petitioner is a disabled person ie. 100% deaf. Respondent No.1 is the officer appointed as Competent Authority having power to evict unauthorized occupant from Government premises, Respondent No.2 is Court of Deputy Collector and Competent Authority, Brihanmumbai and Respondent No.3 is Government of Maharashtra.

Mother of Petitioner was in employment with Respondent No.2 in Class III Category as "Clerk" in Aarey Dairy at Worli. She was employed on compassionate grounds due to discontinuation of service of her husband ie. Petitioner's father who became medically unfit. She retired on 31.03.2016 and subsequently within 5 months on 27.08.2016 she expired. Petitioner along with his mother was occupying the Government Quarters at the then time.

3.2. After her demise, Petitioner tried to get a job with Respondent No.2 on compassionate ground which request was rejected because his mother had stood retired, hence he was not entitled for the same. Also, Petitioner did not receive any retirement benefits after the demise of his mother, which placed him in a precarious financial condition. As a result, he was unable to vacate the Government accommodation within the stipulated time. Petitioner apprised Respondent No.1 that he did not have any alternate residence. Thereafter, due to unemployment he did various temporary and irregular jobs for his survival.

3.3. On 04.08.2022, Respondent No.2 filed Eviction Complaint No.25904 before Competent Authority against the Petitioner. By order dated 11.04.2023 Competent Authority directed Petitioner to vacate the Government quarter and pay penal rent of Rs.22,25,403/- for unauthorized occupation from 01.04.2016 to 31.03.2023.

3.4. Petitioner preferred Appeal before the learned City Civil Court at Mumbai to set aside the eviction order dated 11.04.2023 along with Application for condonation of delay. Time period mentioned in Petitioner's Application had already expired and City Civil Court did not have jurisdiction to hear the application for condonation of delay. Hence, on 26.07.2024 the Appeal along with Application was rejected by the City Civil Court.

3.5. On 30.05.2024, the Senior Accounts Officer issued order for pension amounting to Rs.8210/- to Petitioner, thereby giving benefit and further making a note that gratuity will not be paid on the basis of this order. Petitioner made numerous requests to Respondent No.2 to process his pension amount and waive off the penalty imposed on the rent payable for the unauthorised occupation and the outstanding arrears of rent not be deducted from the pension amount, however Petitioner received no response thereto.

3.6. The Competent Authority passed order dated 11.04.2023 in Eviction Application No.25904 of 2023 holding that Petitioner (Original Defendant) be evicted from the Government quarter and penal rent amounting to Rs. 22,25,406 be recovered from Petitioner (Original Defendant).

3.7. On 23.08.2024 Petitioner vacated the government quarter and handed over possession of the said premises by way of "Taba

Patra”. In the meanwhile vide order dated 12.09.2022 Respondent No.1 directed Senior Accounts Officer, PR-5 Section, 101, Maharshi Karve Road, Mumbai to issue payment of family pension to Petitioner. However, payment of pension was withheld due to non-payment of penal rent imposed on Petitioner which was to be deducted from the pension amount.

3.8. Hence, being aggrieved by order dated 11.04.2023 passed by Competent Authority, Petitioner filed the present Writ Petition.

4. Mr. Vasista, learned Advocate for Petitioner would submit that Petitioner being a disabled individual is completely dependent on the pension amount. He would submit that father of Petitioner was in employment with Respondent No.2. He would submit that Petitioner’s father suffered severe leg injury while in service which led to discontinuation of his service on medical grounds.

4.1. He would submit that due to Petitioner’s father’s early termination due to medical reason the family faced financial hardship, hence Petitioner’s mother requested for appointment on compassionate grounds and considering her request the department of Central Dairy, Aarey employed her as a Clerk. He would submit that Petitioner's mother superannuated on 31.03.2016 and within 5 months of retirement she passed away on 27.10.2016. He would submit that after Petitioner’s mother’s demise Petitioner sought employment on

compassionate grounds however since Petitioner's mother stood retired, as per Government guidelines, his request was rejected. He would submit that Petitioner being handicapped since 2023 suffered a heart attack and has undergone angiography.

4.2. He would submit that on 04.08.2022 Respondent No.2 filed Eviction Complaint No. 25904 against Petitioner for not vacating the Government quarter after retirement of his mother and subsequently issued notice dated 30.08.2022 to be present before the Competent Authority for hearing wherein Petitioner's advocate made submissions that he did not receive the retirement benefits of his late mother which placed him in a precarious financial condition due to which he was unable to vacate the Government quarter as he had no alternate residence.

4.3. He would submit that vide order dated 12.09.2022 Respondent No.2 directed Senior Accounts Officer to issue payment of family pension to Petitioner however same was withheld as penal rent imposed on Petitioner was to be deducted from the pension amount.

4.4. He would submit that Petitioner requested Respondent No.2 to grant reasonable time for vacating the premises and allow him to stay until final decision on his application for appointment on compassionate ground was taken considering delay in disbursal of the retirement benefits and absence of alternate residence. He would

submit that despite Petitioner's request, Competent Authority passed Eviction order dated 11.04.2023 imposing a steep penalty of Rs.22,25,403/- and directed Petitioner to vacate the premises.

4.5. He would submit that vide letter dated 30.05.2024 issued by Grants and Accounts Office it was ordered and directed to pay pension of Rs.8,210/- per month to Petitioner. Further he would submit that under the Pension Payment Order dated 17.09.2024 addressed by the Office of the Assistant Accountant General to the Treasury Officer / PAO Mumbai, payment of family pension is effected and directed to be paid to Petitioner – as the sole surviving son of the deceased on expiration of every month making a note that gratuity will not be paid on the basis of this order.

4.6. He would submit that being aggrieved Petitioner filed Appeal before City Civil Court at Mumbai along with application for condonation of delay. He would submit that learned City Civil Court passed order dated 26.07.2024 rejecting both proceedings. He would submit that on 23.08.2024 Petitioner vacated the premises and handed over possession of the government premises to Respondent No.1 by signing 'Taba Patra'.

4.7. He would submit that Petitioner's mother on her retirement in March 2016, received her retirement retirement benefits which was disbursed to her on 31.03.2016 of Rs.12,28,686/- including gratuity of

Rs.35,000/-, pension of Rs.8,210/- per month from 2016 amounting to Rs.9,58,200/-, Rs.1,10,686/- towards arrears of salary and allowances which was adjusted by Respondent No.2 towards arrears of penal rent.

4.8. He would submit that Petitioner being the only surviving legal heir and son of the deceased is entitled to compassionate pension. He would submit that Petitioner also requested Respondent No.2 to waive off the penalty imposed on him considering his differently abled status and also not to deduct outstanding arrears of rent from the pension amount followed by disbursal of pension which would help him to survive as he was completely dependent on it and had no other source of income.

4.9. He would submit that action on the part of Respondent by imposing penal rent is unjustified, illegal, unreasonable, arbitrary and exorbitant whereas Respondent failed to appreciate the fact that Petitioner is a differently abled and unemployed individual completely dependent on the pension amount. He would submit that Respondent failed to appreciate the fact that Petitioner is not in a position to take care of himself if the pension amount is not released to him. Hence he would persuade the Court to allow the Petition and direct the Respondent to commence paying disability pension to the Petitioner.

5. Ms. Nadkarni, learned AGP for State - Respondent would submit that order dated 26.07.2024 passed by the City Civil Court,

Mumbai and order dated 11.04.2023 passed by the Competent Authority are correctly passed in law and are binding upon the Petitioner, hence present Petition is devoid of merits and liable to be dismissed.

5.1. She would submit that even after demise of Petitioner's mother he has admittedly illegally occupied and was in possession of the government quarter without paying rent and failed to handover possession to Respondents, hence Petitioner has misused the due process of law and is liable to pay penal rent until handover of possession. She would submit that Petitioner is not the only surviving legal heir of Petitioner's mother and he has one more brother ie. Shri. Ramesh Laxman Sakpal. She would submit that the government premises occupied by Petitioner did not belong to his mother.

5.2. She would submit that Petitioner has falsely raised claim of disability pension since he has submitted Certificate of Disability only after the Eviction order dated 11.04.2023 was passed. She would submit that Petitioner ought to have made application for disability pension during the life time of his mother while she was in service, which admittedly was not done. Hence, she would submit that Petitioner is not entitled either for the balance retirement dues and/or the disability pension.

5.3. She would submit that Petitioner's mother was paid all dues

during her lifetime after retirement except for family pension whereas the difference between salary and the allowances received by her due to a court case being Rs.1,10,686/- was recovered by way of arrears and deposited with Reserve Bank of India.

5.4. She would submit that Petitioner did not make any representation with respect to disability pension neither Petitioner's mother recorded any reference about Petitioner's disability during her service. She would submit that despite this fact Petitioner illegally occupied the government quarter for a long period, hence the orders passed by the Competent Authority and the learned City Civil Court be upheld.

5.5. She would submit that Petitioner is liable to pay arrears of rent of Rs.27,81,260/- which is to be recovered from his disability pension and for the same reason it is withheld with the Treasury Officer/PAO, Mumbai. She would submit that as per rules and regulations, a government employee and his family must vacate the Government quarter after retirement or after his/her death on or before the stipulated period which was willfully not done by Petitioner and he enjoyed the premises for a long period until he vacated on 23.08.2024.

5.6. She would submit that government employees generally misuse Government Circular dated 22.04.2022 which was issued for

entitlement only during Covid-19 period and occupy the Government quarters and then later file Court cases. She would therefore submit that Petitioner has not approached the Court with clean hands and has infact suppressed true, relevant facts and tried to mislead the Court by making false statements.

5.7. She would submit that because of failure of Petitioner to vacate the premises, government was unable to provide alternate accommodation to other needy employees.

5.8. She would submit that present Petition is liable to be dismissed with costs since according to government Rules, Petitioner and / or his mother failed to handover vacant possession of the government quarter within three (3) months after retirement, hence Petitioner is entitled to pay arrears of rent from June 2016 until 23.08.2024 as levied in the impugned order i.e. the date of handover of possession along with penalty and he is not entitled for any deduction of rent from his pension amount as prayed for by him.

6. I have heard Mr. Vasista, learned Advocate for Petitioner and Ms. Nadkarni, learned AGP for Respondent-State and with their able assistance perused the record of the case. Submissions made by both the learned Advocates at the bar have received due consideration of the Court.

7. In the present case, it is seen that Petitioner's mother was the government servant, she retired as Majdoor / Clerk on 31.03.2016. Thereafter within seven months i.e. on 27.10.2016 she expired. Petitioner along with his mother was occupying the government quarters at the then time. According to the Respondents, the Petitioner vacated the government quarter on 23.08.2024 and handed over possession of the same to the Respondents. It is Respondent's case that because the government quarter was occupied by the Petitioner beyond the stipulated period of 3 months unauthorizedly and illegally, Petitioner would be required to pay market rent for occupation of the government quarter as per Government Circular issued from time to time for different periods as stated in the eviction order passed by the Deputy Collector and Competent Authority dated 11.04.2023, copy of which is appended at Exhibit "B" on page No. 19. Perusal of this order shows that for occupying the government quarter, Petitioner is called upon to pay 4 different amounts namely (i)Rs.360/- for the period 01.04.2016 to 30.06.2016 at the rate of Rs. 120/- per month, (ii) Rs.1,07,490/- for the period 01.07.2016 to 30.04.2017 at the rate of Rs.50/- per square foot, (iii) Rs.3,43,968/- for the period 01.05.2017 to 31.08.2018 at the rate of Rs.100/- per square foot and (iv) Rs. 17,73,5858/- for the period of 01.09.2018 to 31.03.2023 at the rate of Rs. 150/- per square foot. The government quarter was admeasuring 214.98 square foot. Thus total recovery amount up to 31.03.2023

under the said order passed by the Competent Authority is Rs. 22,25,403/- in the above terms for the period 01.04.2016 to 31.03.2023. Admittedly the employee i.e. mother of Petitioner expired on 31.10.2016, the record placed before me *prima facie* shows that the mother of Petitioner was paid her retirement benefits to the tune of Rs.9,58,585/- pursuant to her retirement on 31.03.2016 out of this amount, mother of Petitioner who before retirement group insurance scheme of Rs.17,096/- and commutation of sold pension amount of Rs.2,00,393/- before her retirement whereas she was paid leave encashment amount of Rs.80,164/- on 08.06.2016, general provident fund amount of Rs.3,79,140/- on 20.04.2016 and gratuity amount of Rs.63,747/- on 22.07.2016. From the above it is seen that the government employee was paid substantial retirement benefits after her retirement in April 2016, June 2016 and July 2016. Thus, if this be the case then it cannot lie with the authority of the Respondents to seek set off of the disability pension given to the Petitioner – Son of the employee on the premise that the arrears of the outstanding penal rent is required to be adjusted against the said disability pension which is the retirement benefit. It was well within the rights of Respondents to withhold the retirement benefits which were duly given to the employee i.e. mother of Petitioner after her retirement despite the fact that she was occupying the government quarter beyond the stipulated period of three months unauthorizedly. The Respondent did not take

any steps whatsoever to withhold the retirement benefits of the government employee when she was very much alive and on the contrary released the same to her in the months of April, June and July 2016. In the above context, the attachment of disability pension receivable by the Petitioner is in my opinion against the arrears of penal rent is extremely arbitrary and highhanded rather illegal act on the part of the Respondents. This is because Respondents have claimed that the disability pension is retiral benefit and therefore it is family pension from which the penal rent for occupation of the government quarter should be recovered. This contention of Respondents in my opinion on the face of record is incorrect. Petitioner is the son of the government employee, admittedly he is 100% disabled, he has obtained disability certificate from the JJ Group of Hospitals and Grant Medical College dated 06.01.2018 and applied to the Competent Authority under Government Notification dated 08.10.2018 and the Respondent No.2 namely employer of his mother has recommended his name and case for being declared as the legal heir of the employee to be entitled for family pension nomenclatured as disability pension. The recommendation letter to this effect dated 12.09.2022 issued by Defendant No.2 is appended at Exhibit "E" on page No. 28. The pension payment order from the office of the Accountant General for payment of family pension to the Petitioner on expiration of every month has been issued on 17.09.2024 under the 2071 Pension and

Other Retirement Benefits which is at Exhibit “G” on page No. 30. By virtue of this order, the family pension amount payable is approximately Rs.5,095/- per moth from 28.10.2016 to 07.03.2021 and Rs. 3,057/- from 08.03.2021 till the date of Petitioner’s remarriage or death whichever is earlier. It is seen that this family pension along with certain amount of gratuity is withheld for non vacating of the government quarters rather it is seen that the entire gratuity amount is not paid because of this reason. However, in so far as the family pension / arrears is concerned the same is determined only on 17.09.2024. *Prima facie* the record shows that out of the retirement benefit payable to the government employee i.e. mother of Petitioner, Respondent No.2 has already recovered the differential amount of Rs. 1,10,686/- and deposited the same with Reserve Bank of India on 13.01.2023 against the outstanding arrears for non vacating of the government quarter.

8. It was well within the right of Respondent No.2 to withhold the retirement benefit amount due and payable to the government employee which the Respondent No.2 did not withhold. It is seen that despite the government employee not vacating the government quarter and overstaying in the quarter beyond the stipulated period, except her gratuity amount all other retirement benefit amounts were in fact paid to her. In normal parlance whenever a government employee does not vacate the government quarters and occupies it illegally and

unauthorizedly, his retirement benefit amounts are always withheld and released only on vacating the Government accommodation. However, such is not the case here.

9. What is seen is that the arrears of outstanding penal rent is attempted to be recovered from his family pension receivable by the Petitioner who is suffering from 100% disability which has been determined in the year 2024 on the recommendation of Respondent No. 2 employer and most importantly Petitioner is not the Government employee. In this background the short question for my consideration in this petition is whether on account of failure to vacate government quarter by the government employee and pursuant to the demise of the said employee is it a valid justification for withholding the payment of family pension / disability pension to the Petitioner (disabled son of the Government employee).

10. In this regard, attention is drawn to the decision of the Supreme Court in the case of *Panchayat and Rural Development Department and Ors. Vs. Santosh Kumar Shrivastava*¹, in somewhat identical facts where official residence was not vacated for a period of more than 2 years and amount of family pension and gratuity was withheld, the learned Single Judge of the Madhya Pradesh High Court allowed the Writ Petition observing that the entire amount of pension and gratuity could not have been withheld on account of there being

¹ 2025 SCC Online SC 2042

order for recovery. On appeal, the Division Bench of the same High Court upheld the order passed by the learned Single Judge. In the Special Leave Petition filed before the Supreme Court, the Supreme Court upheld and confirmed the order passed by the learned Single Judge in the aforesaid case and held that the payment of retirement dues / gratuity / pension is not a matter of bounty but in fact a matter of right of every employee. In the present case, long after the demise of the Government employee the Competent Authority of the employer has determined payment of family pension to the 100% disabled son of the employee. Once such an order is made, and payment of family pension is made payable the same cannot be recovered against penal rent for non vacating of the government quarter by the Government employee. It is seen that this family pension has been adjudicated and finalized only in the year 2024 and therefore there is no justification whatsoever for the Respondent No. 2 employer to set off the same against penal rent.

11. It is seen that this is a fit case for grant of relief against recovery in view of the aforementioned facts to relieve the Petitioner from the hardship that will be caused if such recovery is permitted. The entire exercise conducted by Respondent No.2 and the concerned Competent Authority between 2022 and 2024 as seen from Exhibit 'E' to Exhibit 'G' of the Petition will be rendered completely futile if such a course of action is permitted for recovery. In the first instance

Respondent No.2 did not withhold the retirement benefits when the government employee was alive and occupying the government quarter. In my opinion there is no nexus between adjudication of payment of family pension to the disabled son of the government employee and recovery of the penal rent as contemplated by the order dated 11.04.2023. In the case of *Panchayat and Rural Development Department and Ors. (supra)* the employer had blamed the government employee for the delay in him receiving benefits rightly owed to him. This stand of the employer was not accepted by the Supreme Court holding that pension and other retiral dues are benefits that have been earned by an employee due to the service rendered to the institution paying the pension / other retirement benefits whereas the grant of the residence corresponds to the position held at the then time by such employee and the width of these two aspects are separate and distinct. The Supreme Court held that the pension and retirement benefits accrue from a much wider base as the culmination of all efforts across employment whereas the grant of residence is only for a limited time till such a person is holding that position. Thus in view of the aforesaid observations and findings the petition deserves to be allowed. The petition is allowed in the following terms:-

- (i) Order dated 11.04.2023 seeking recovery of Rs.22,25,403/- from the petitioner and setting off the same against family pension / disability pension

receivables by him is quashed and set aside;

(ii) Petitioner shall be liable to pay rent at the rate of Rs.120/- per month which shall be recovered by the Respondents after making appropriate adjustment from the retirement benefit already recovered for the entire period from 01.04.2016 to 31.03.2023;

(iii) Petitioner shall be entitled to family pension and all arrears thereof if not paid for the period as determined in the order dated 17.09.2024 appended at Exhibit 'G' page Nos.30 and 31 of the Petition and in future in accordance with law.

12. Writ Petition is allowed and disposed in the aforementioned terms.

H. H. SAWANT

[MILIND N. JADHAV, J.]

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