

(2016) 10 JH CK 0012

In the Jharkhand High Court

Case No : Writ Petition (S) No. 3451 of 2014.

Amrendra Kumar Sinha Son of Late Laxmi Narayan Sinha, resident of Mohalla Tilak Nagar, Station Road, Begusarai, P.S. and P.O. Begusarai, District -Begusarai (Bihar) - Petitioner @HASH State of Jharkhand

Date of Decision : 06-10-2016

Acts Referred:

Citation : (2017) 1 AIRJharR 163 : (2016) 4 JBCJ 558 : (2016) 4 JLJR 650

Hon'ble Judges : Pramath Patnaik, J.

Bench : Single Bench

Advocate : Mr. Sunil Kumar Sinha, Advocate, for the Petitioner; Mr. Pratyush Lala, J.C. to G.P.IV, for the Respondents/State; Mr. Sudarshan Srivastava, Advocate, for the Accountant General

Final Decision : Dismissed

Judgement

Mr. Pramath Patnaik, J. - In the instant writ application, the petitioner has prayed for quashing the office order dated 04.10.2013 passed by the Divisional Forest Officer, Hazaribagh (respondent no. 4) whereby penal rent @ of Rs. 10,260/- per month has been imposed upon the petitioner for alleged occupation of quarter after retirement from the month of March 2012 to September 2013 amounting to Rs. 2,35,980/- directed to be recovered from the pensionary benefit of the petitioner vide letter written to the Accountant General dated 10.02.2014, and the Accountant General vide letter dated 15.03.2014 directed the Treasury Officer, Hazaribagh for recovery of the aforesaid amount from the amount of gratuity of the petitioner, and petitioner has further prayed for issuance of writ of mandamus, commanding upon the respondent no.4 to make payment of arrears of salary for the month of September 2004 to December 2005 and from the month of January 2011 to December 2012 on account of promotion granted to the petitioner under ACP Scheme.

2. The facts, as disclosed in the writ application, in a nutshell are that petitioner was appointed on the post of Forester in Hazaribagh Forest Division on 01.09.1980. The petitioner applied for Government quarter, but the same was

not allotted to him. He was orally permitted to live in a shed by the then D.F.O, Hazaribagh Forest Division in the year 1983. The petitioner continued to live in the said shed even after his retirement i.e. on 31.01.2012 because of the fact that his post retirements dues were not finalized. He also requested the respondent no.4 for payment of arrear of salary and other retirement benefits but instead of making payment he was issued notice dated 15.07.2013 vide Annexure-1 to the writ application for vacation of quarters. In response to the said notice, the petitioner submitted representation dated 25.07.2013 requesting the respondents for payment so that he would vacate quarters but the respondent no.4 declared the petitioner to be an unauthorised occupant and imposed penal rent @ Rs. 10,260/- per month from the month of March 2012 to September 2013 and directed to recover a sum of Rs. 2,35,980/- from the pensionary benefit of the petitioner vide office order dated 04.10.2013, which is impugned in the writ application. On receipt of the impugned order, the petitioner filed application before respondent no.4 on 20.11.2013 requesting him to allow to continue to the said shed till his outstanding dues are cleared as evident from Annexure-4 of the writ petition. Since, no response was forthcoming, the petitioner submitted representation before the Regional Chief Conservator of Forest, Hazaribagh on 06.03.2014 for redressal of his grievance and on receipt of the said representation the respondent no. 3 forwarded the same to respondent no.4 for the needful. Thereafter, the respondent no. 4 wrote the respondent no. 5 for revision of pension, gratuity, leave encashment and at the same time requested respondent no. 5 for recovery of the aforesaid amount from pensionary benefits and accordingly, respondent no. 5 by revising the post retirement benefits directed the Treasury Officer, Hazaribagh to recover the aforesaid amount from the gratuity of the petitioner as evident from Annexure-6 to the writ application. Being aggrieved and dissatisfied with the order passed by the respondents, the petitioner left with no other efficacious and alternative remedy, approached this Court under Article 226 of the Constitution of India, invoking extraordinary jurisdiction of this Court for redressal of his grievances.

3. Learned counsel for the petitioner during course of hearing has strenuously urged that the imposition of penal rent for occupation of quarters in question is not justified, when the said quarter is not a quarter rather a shed and without petitioner being declared as an unauthorised occupant as defined under Sarkari Awas Avantan Kiraya Vasooli Avam Bedakhli Niymavali, 2004, vide Rule 110 of the Jharkhand Service Code. Learned counsel for the petitioner further submits that the impugned order has been passed without following the provision of Jharkhand Government Premises (Allotment, Rent, Recovery and Eviction) Act 2002 and also without following the principles of natural justice, therefore the impugned order is liable to be quashed.

4. Learned counsel for the petitioner in order to fortify his argument has referred to the supplementary affidavit dated 15.03.2016, wherein the Government premises (Allotment, Rent, Recovery and Eviction) Act, 1956 which has been adopted by the State of Jharkhand in the name of Jharkhand Government

Premises (Allotment, Rent, Recovery and Eviction) Act, 2002 has been annexed as Annexure-9 of the writ application. He further submitted that a Rule has been framed under Section 14 of the Jharkhand Government Premises (Allotment, Rent, Recovery and Eviction) Act, 2002 and the said Act is known as Sarkari Awas Avantan Kiraya Vasooli Avam Bedakhli Niymavali, 2004, wherein the provisions have been laid down for allotment, rent, recovery and eviction of the unauthorized occupants of Government Premises. Learned counsel for the petitioner submits that the definition of penal rent has been defined and none of the provisions of the Act 2002 and Rule 2004 have been followed in passing the impugned order. It has been further submitted that as per Rule 2 (Jha) of Rule 2004, the standard of a Government premises either to be fixed as per provisions of Jharkhand Service Code or as per the circular issued by the Government and the Building Construction Department, Government of Jharkhand issued as resolution (Sankalp) vide memo dated 12.06.2004 mention of which finds place in letter dated 27.11.2014 issued by the Divisional Forest Officer (respondent no.4) vide Annexure-8, reply to the counter affidavit filed on behalf of the petitioner. Learned counsel for the petitioner further submits that as per the aforesaid circular, the penal rent of the said premises would come to Rs. 1107/- per month as found by the D.F.O, vide Annexure-8, but the impugned order has been passed in a very arbitrary and illegal manner in gross violation of statutory rules framed thereunder, resulting in pecuniary loss from the pensionary benefits of the petitioner.

5. Learned counsel for the State has reiterated the submissions made in the counter affidavit and supplementary counter affidavit. Learned counsel for the respondents has assiduously submitted that after retirement, the petitioner was directed to vacate the said quarters vide letter dated 11.12.2012 and letter dated 15.07.2013. But the petitioner did not vacate the quarters and continued residing illegally and hence, the penal rent was imposed on the petitioner as per the formula prescribed by the Secretary, House Allotment Committee-cum-Divisional Forest Officer, East Forest Division vide letter dated 27.09.2012, as per Annexure-C to the counter affidavit. It has further been submitted in the counter affidavit that the petitioner was occupying Government accommodation for two years even after retirement and as per the Government residential allotment rules especially Rule II of this rules permit maximum two months retention of the quarters after retirement. Hence, the order of deduction of penal rent is wholly in accordance with provisions of rule. Learned counsel for the State by referring order dated 15.05.2009 in W.P.(S) No. 6664 of 2006 (Sri Balmiki Sharma v. State of Jharkhand and ors., submits that the case of the petitioner is squarely covered by the said order of this Court, wherein the Hon"ble Court was not inclined to exercise extraordinary jurisdiction under Article 226 of the Constitution of India, so far as assessment of rent is concerned. Learned counsel for the State submits that the penal rent has been determined as per the Government accommodation allotment (Patna Central Pool) Rules, 1986 as well as the guideline fixed by the Secretary, House Allotment Committee-cum-Divisional Forest Officer, Hazaribagh

East Division letter no. 2158 dated 27.09.2012. As per Finance Department Circular no.660 dated 28.02.2009, the fixation of pay in the revised sixth pay scale, the Foresters are being paid 10% of the basic pay as House Rent allowance. Keeping this fact in view, the penal rent was decided as per the Rule 3(Gha) and Rule 3(Ta) of Annexure-1 of the Government Quarter Allotment, Patna Central Pool Rule, 1986. As per Rule 3 (Gha) of the above said Act, 10% of the last basic pay i.e. Rs. 20,520/- amounting to Rs.2052/- was fixed as standard rent and 5 times the standard rent (Rs.2052 x 5 = Rs.10,260/-) was fixed as penal rent per months as per Rule 3 (Ta). Thus total penal rent for 23 month (Rs. 10,260/- x 23) was calculated as Rs. 2,35,980/-. Subsequently, the Accountant General, Jharkhand, Ranchi was requested to recover the said amount and the Accountant General, Jharkhand, Ranchi vide order dated 15.03.2014 directed the Treasury Officer, Hazaribagh to recover Rs. 2,35,980/- from the gratuity of the petitioner. Photo copy of Rule 3 (Gha) and Rule (Ta), Annexure-2 of Government Quarter Allotment, Patna Central Pool Rule 1986 has been annexed as Annexure-2 to the counter affidavit.

6. Learned counsel for the State during course of argument has referred to the supplementary counter affidavit filed on behalf of respondent no.3 dated 12.05.2016, wherein it has been submitted that the Act, 2002 is not applicable in the petitioner's case. Since, the petitioner was illegally occupying Government building, which is not a Sarkari Awas then the petitioner's rent which was calculated/fixed by the Secretary, House Allotment Committee-cum-Divisional Forest Officer, Hazaribag East Forest Division has been approved by the Chairman-cum-Conservator of Forest, Hazaribagh Circle vide letter dated 18.09.2006, annexed as Annexure-A to the supplementary counter affidavit. Therefore, on the basis of the said guidelines, respondent no. 4- the Divisional Forest Officer, Hazaribagh West Division vide office order no. 219 dated 04.10.2013 calculated the penal rent of the said accommodation, which was illegally occupied by the petitioner and respondent no. 3 has validly approved the penal rent fixed by the Member Secretary of the said Committee.

7. Learned counsel for the Accountant General, respondent no.5 during course of hearing has vehemently submitted that the Annexure-1 dated 15.07.2013 to the writ application was a notice issued to the petitioner. The petitioner pursuant to the said notice submitted his reply vide Annexure-3 to the writ application. Vide order dated 15.03.2014, the office of the respondent intimated the Treasury Officer for recovery of Rs. 2,35,980/- which cannot be construed to be an illegal act rather the same has been done as per the relevant circular and rules.

8. After hearing learned counsel for the respective parties and on perusal of the documents on record, I find no reason to entertain the instant writ petition, due to the following facts and reasons:

(I) Indisputably, even after superannuation on 31.01.2012 the petitioner occupied the Government quarters i.e. from March 2012 to September 2013. Since, the petitioner continued the occupation of Government accommodation for

a period of 23 months even after his retirement, the penal rent has been imposed as per the guidelines of the Government accommodation (Patna Central Pool) Rules, 1986 or guidelines fixed by the Secretary, Divisional Forest Officer, East Forest Division vide letter dated 27.09.2012. As per Rule 3 (Gha) of the above said Rule, 10% of the last basic pay i.e. Rs. 20,520/- amounting to Rs.2052/- was fixed as standard rent and 5 times the standard rent (Rs. 2052 x 5 = Rs. 10,260/-) was fixed as penal rent per months as per Rule 3 (Ta). Thus total penal rent for 23 month (Rs. 10,260/- x 23) was calculated as Rs. 2,35,980/-. Subsequently, the Accountant General, Jharkhand, Ranchi has been requested to recover the said amount and the Accountant General, Jharkhand, Ranchi vide order dated 15.03.2014 directed the Treasure Officer, Hazaribagh to recover Rs. 2,35,980/- from the gratuity of the petitioner.

(II) The impugned order dated 04.10.2013 and 15.03.2014 passed by the respondent nos. 4 and 5 is in consonance with the aforesaid rules. Therefore, the contention of the petitioner is not accepted by this Court merely for the reason that the late payment of retirement benefit is not a valid reason and subsequent demand of payment with interest by the petitioner, when he retained the quarters beyond permissible period after retirement, the assessment made by the respondent no.4 dated 04.10.2013 vide Annexure-3 to the writ application, is absolutely in consonance with the aforesaid rules.

9. As a cumulative effect of the facts and reasons, the impugned order dated 04.10.2013 and 15.03.2014 passed by the respondent nos. 4 and 5 vide Annexures- 3 and 6 to the writ application, are absolutely legal and justified and I find no justifiable reason to entertain this writ petition.

10. Hence, the writ application sans merit, is dismissed.