
(1970) 07 P&H CK 0014
In the Punjab And Haryana At Chandigarh
Case No : C.W. No. 2426 of 1969

Amrit Lal Kathuria

APPELLANT

Vs

The Union Territory Chandigarh and others

RESPONDENT

Date of Decision : 16-07-1970

Acts Referred:

Punjab Civil Services Rules — Rule 5.29

Citation : (1970) 07 P&H CK 0014

Hon'ble Judges : H.R. Sodhi, J

Bench : Single Bench

Advocate : S.K. Pipat, for the Appellant; Charanjit Singh Bindra, and Mr. C.D. Dewan, A.A.G. Haryana, for the Respondent

Final Decision : Allowed

Judgement

H.R. Sodhi, J.—This writ petition challenges the validity (sic) of an order passed by the Union Territory Administration Chandigarh (hereinafter called the Administration) whereby allotment of the Petitioner in respect of his residential accommodation was cancelled on 16th April, 1969 and he was directed to pay market rent retrospectively with effect from 21st March, 1966 (sic) actually vacated the house and handed over its physical possession to the authorities concerned. A copy of his order has been filed as Annexure "B" with the writ petition.

2. The Petitioner was working as an Assistant in the office of Director of Industries in the (sic) State of Punjab and on reorganisation of the State under the Punjab Reorganisation Act, 1966 he was allocated to the State of Haryana. He was a permanent employee of the Government and had been allotted house II-F/3361 in Sector 22-D, Chandigarh, in July, 1966 at a monthly rent of 10 per cent of his salary though earlier he had been allotted different accommodation on 21st April 1959. It appears that the Haryana Government instituted an inquiry against the Petitioner for his alleged (sic) absence from duty, refusal to comply with orders and engaging himself in private business directly or indirectly without

prior sanction. We are not concerned in this case with the charges levelled against the Petitioner and as to whether they were substantiated Suffice for the purpose of writ petition to mention that the Director of Industries Haryana, terminated the services of the Petitioner by an order passed on 16th October, 1969, with a direction that the latter be removed from Government service forthwith. It was further ordered by him that the Petitioner was not entitled to his salary for the period of unauthorised absence, that is, with effect from 22nd March, 1966, up to the date of passing of the order. A copy of this order has been filed as Annexure "A" by the Adiministration with its return. Some correspondence seems to have passed between the Admnistration and the Director of Industries, Haryana with regared to the Petitioner and an information was communicated to the Administration by letter dated 2nd September 1969 (Annexure "A"), that the Petitioner continued to be in Government service but a tentative decision to remove him from there had been taken The Petitioner was stated to have been absence without leave since 22nd March, 1966, and it was further mentioned that he was not likely to be paid any salary beyond that date. In the returns of the Administration and the Director, the circumstances under which this letter was issued are not clarified but what gleans is that probably some correspondence about the residential house of the Petitioner must have been going on. Be that as it may, what ultimatly happened was that the allotment was cancelled as stated above, on 16th April, 1969 and his services terminated on 16th October, 1969.

3. The leaned counsel for the Petitioner has invited my attention to rules 5.29 and 5.51 (a) of the Punjab Civil Services Rules, Volume I, Part I. Rule 5. 51 (a) runs as under:-

5 51. A competent authority may permit Government servant during temporary absence from his station to store his furniture and other property at his own risk free of rent in the residence occupied by him prior to his absence when both the conditions specified below are fulfilled:-

(a) If the house is allotted to another Government servant under Rule 5.48 (i) (a), subject to the condition that the latter does not require the residence and is exempted under Rule 5.34 from responsibility for the rent.

(b) * * *

The contention raised by Mr. Pipat that the power to cancel an allotment can be exercised only when the Government servant is dismissed and that in the instant case the Petitioner having been dismissed only on 16th October, 1969, there was no power with the authorities to order that the cancellation would take effect restrospectively making the Government employee liable to pay enhanced market rent from the back date, is not without substance.

4. The learned Counsel for the Administration relies on rules 5.47 and 5.48 (b) of the said Rules. Rule 5.47 provides only this much that a Government servant is not to be considered to be in occupation of a residence when he proceeds on

leave unless the competent authority directs otherwise. In the case before us, no question of the Petitioner proceeding on leave which disentitled him to continue in occupation of the house. The charge against the Petitioner before the departmental authorities was that he was absent from duty for which he has been punished in as much as his services have been terminated. This rule cannot, therefore, in terms apply to the instant case. Rule 5.48 (b) has equally no bearing on the facts of the present case. This rule prescribed the normal period of allotment It is to be 12 months at a time though the same stands terminated on the transfer of a Government servant from the place where he is stationed. If the Petitioner was absent from duty, it could not be said that he had been transferred from his place of posting. Again the Administration has not pleaded that the period of allotment was only 12 months and that having expired, the Petitioner ceased to be entitled to continue in occupation of the house. The period of allotment impliedly continued to be extended from time to time, when we find that no action was ever taken against the Petitioner on the ground that the requisite period had expired and that he could not, therefore, continue in occupation any longer. Beyond these two rules reference to no other rule giving any such power enabling the allotting authorities to cancel an allotment retrospectively making a Government servant liable to enhanced rent has been pointed out, nor is any such power conceivable. There is no warrant for assuming such a power and the impugned order which is not founded on any provision of law, is to say the least most arbitrary, uncalled for and shocking to one's conscience. What seems to have happened is that the services of the Petitioner having been terminated on 16th October, 1969, declaring him not entitled to any salary with effect from 22nd March, 1966, the Administration thought that they could also cancel his allotment and charge market rent with effect from the said date. As a matter of fact, the Administration seems to have been under the impression, as it appears from its return, that the services of the Petitioner stood terminated with effect from 22nd March, 1936 which is wholly incorrect. His services were actually terminated as per order . Annexure "A" only on 16th October, 1969, though in the matter of salary he was declared not entitled to the same for the period of alleged unauthorised absence from duty with effect from 22nd March, 1966.

5. For the foregoing reasons, I allow the writ petition, quash the impugned order and direct that the Administration is entitled to charge only the normal rent at the rate of 10 percent of the salary of the Petitioner till the date of termination of his services. The conduct of the authorities in passing the said order which is wholly illegal and not supported by any rule of Law being indefensible, it is a fit case where the Administration should pay the costs of the Petitioner which I assess at Rs. 200/-(sic). The Director of Industries is just a proforma party and no costs are, therefore to be borne by this Respondent.