
(2020) 02 P&H CK 0088
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 8325 Of 2017

Balwan Singh (Deceased) Through Lrs	APPELLANT
Vs	
State Of Haryana And Others	RESPONDENT

Date of Decision : 07-02-2020

Acts Referred:

Citation : (2020) 02 P&H CK 0088

Hon'ble Judges : Nirmaljit Kaur, J

Bench : Single Bench

Advocate : Nitin Rathee, Pankaj Mulwani

Final Decision : Allowed

Judgement

Nirmaljit Kaur, J

Prayer in the present petition is for quashing of the orders dated 1.5.2013 (Annexure P-7), 18.7.2013 (Annexure P-10) and 23.10.2015 (Annexure P-

15), vide which the penal rent was imposed upon the petitioner for overstaying in the Government accommodation with a further prayer to release the

retiral benefits of the petitioner with interest @ 24% from the date of his retirement i.e. 31.10.2015.

Reply has been filed. As per the reply, the petitioner did not vacate the Government house on 12.9.2012, which was the extended time granted for

vacation of the Government house. He vacated the house on 7.8.2014 after 1 year 10 months and 25 days. As per Haryana Government instructions

letter dated 20.1.1995, the petitioner was liable to pay the penal rent. A committee was constituted by the Head Office on 22.1.2015 to calculate the

penal rent to be imposed upon the petitioner. As per the report of the said Committee, penal rent was imposed upon the petitioner as per the

instructions issued by the Finance Department dated 18.6.2012, which was 300 times of the licence fee i.e. 1.5% of the BP+DP+CCA and therefore,

the rent was accordingly calculated. Admittedly, the penal rent to the tune of ` 2,10,600/- was imposed upon the petitioner on the basis of the

instructions dated 18.6.2012.

Learned counsel for the petitioner has relied upon the judgment of this Court rendered in CWP-3392-2017 titled as Babu Lal vs. State of Haryana and

others decided on 12.5.2017 alongwith another writ petition, wherein the statement was made by learned Advocate General, Haryana that the

impugned decision levying 300 times the normal licence fee for overstaying the allotted accommodation were passed, when the executive instructions

were prevalent prior to the amendment of the Rules. The said instructions have been declared non est as they cannot override the Rules.

The operative part of the said order reads as under:-

“Today, learned Advocate General, Haryana, Mr. B.R.Mahajan appears for the State and submits that the decision of the Single Bench in Ram

Kishan’s case (supra) related over-staying allotment of government accommodation during the disputed period prior to the amendment carried out

in the Rules by Haryana.

The impugned decisions levying 300% times the normal licence fee for overstaying allotted accommodation were passed when the executive

instructions were prevalent prior to the amendment to the rules, which instructions have been faulted and declared non est in Ram Kishan case holding

that instructions cannot override rules. The amendment to the Rules has changed the entire position after their enforcement on July 29, 2016 with the

executive instructions abrogated.

The two present cases relate to impugned orders passed pre-amendment and therefore Mr. Mahajan very fairly concedes that the petitions have to be

allowed since the amended rule is prospective in operation.

As a result, both the petitions are allowed and the impugned orders dated November 30, 2015 (Annex P-3) and January 15, 2015 (Annex P-1) in CWP

No.3392 of 2017 and CWP No.3441 of 2017 respectively are set aside. There will be no order as to costs.”

In view of the above, the writ petition is allowed and the impugned orders claiming the penal rent at 300 times as per the instructions dated

18.6.2012, are set aside. However, the respondents will be at liberty to claim the rent as per the existing rules at that point of time and not as per the instructions dated 18.6.2012. The rent shall be calculated as per the rules applicable to the petitioner at that point of time and deducted from the gratuity. Thereafter, the retiral benefits shall be released to the petitioner forthwith alongwith interest @ 6% per annum from the date it was due to the petitioner uptill the payment.

Needful be done within two within a period of two months from the receipt of certified copy of this order. In case the said amount is not paid within two months, the same shall be paid thereafter alongwith 12% interest from the expiry of the period of the said two months.