
(2011) 04 SHI CK 0137
In the High Court Of Himachal Pradesh
Case No : CWP (T) No. 14352 of 2008

Daya Ram

APPELLANT

Vs

H.P. Milkfed and Another

RESPONDENT

Date of Decision : 19-04-2011

Acts Referred:

Citation : (2011) 04 SHI CK 0137

Hon'ble Judges : Kuldip Singh, J

Bench : Single Bench

Judgement

Kuldip Singh, J.—This petition is directed for quashing, setting aside the order dated 10.2.2006 Annexure P-A with further direction not to recover any amount from the Petitioner on the basis of order dated 10.2.2006 Annexure P-A.

2. The facts, in brief, are that the Petitioner as driver was deployed on the truck of the Respondents for supply of surplus milk to Delhi/Karnal. The duty of the Petitioner was of emergent nature, the Petitioner had no accommodation at Milk Plant, Chakkar Colony, Mandi. It was difficult for the Petitioner to perform his duty in odd hours. The Petitioner was not allotted any accommodation in the residential colony of the Respondents at Chakkar. In these circumstances, the Management allowed the Petitioner to use kitchen room 14 1/2 X 7 feet in the Guest House vide office order dated 7.5.2003 issued by the Manager(Production). The Petitioner used the kitchen room for his stay while at Mandi.

3. On 28/29.11.2005, Respondent No. 2 issued office order calling upon the Petitioner to explain under whose order the Petitioner had occupied one room. The Petitioner submitted the reply dated 30.11.2005. The Respondent No. 1, who had not allotted the kitchen room in the Guest House to the Petitioner, vide office order dated 10.2.2006 ordered the recovery of Rs. 7,538.76 as licence fee plus house rent allowance w.e.f. 7.5.2003 to 28.2.2006. The office order dated 10.2.2006 is wrong, illegal and arbitrary. It has been alleged that no show cause notice was issued to the Petitioner before issuing office order dated 10.2.2006.

The Petitioner has submitted his reply dated 27.2.2006 against office order dated 10.2.2006. The Head Office had passed the salary bill of the Petitioner for the month of February paid in March, 2006 for Rs. 9,803/- but Respondent No. 2 at his own level had adjusted Rs. 500/- from the salary of the Petitioner. The Petitioner has not received his salary for the month of February, 2006 till the filing of the petition. On these grounds the petition was filed.

4. The petition has been contested by the Respondents by filing a reply. It has been denied that the recovery of Rs. 7,538.76 from the Petitioner is illegal. The Petitioner was allotted one room set in the Guest House of Milk Federation at Chakkar on usual rent. The Petitioner occupied one room set in the Guest House till 28.2.2006. It has been denied that the Petitioner was allowed to reside in the kitchen of the Guest House by the Respondents. It has been stated that the Head Office had passed the salary bill of the Petitioner for February 2006 payable in March, 2006 for Rs. 9,803/- in gross and Rs. 7,640/- in net. The recovery was to be made by the Unit Incharge at Chakkar, who is the DDO of the Petitioner and he started the recovery of total amount in instalments of Rs. 500/- per month for which he was having the administrative powers. It has been admitted that the Petitioner had not received the salary for February, 2006.

5. I have heard the learned Counsel for the parties. It is clear from office order dated 7.5.2003 that the Manager(Production) after discussion with the Managing Director had given one room in the Guest House, Chakkar to the Petitioner for stay till such time a quarter is vacated in the colony. The Petitioner was directed to stay in one room of the Guest House till a quarter is vacated. The letter dated 28/29.11.2005 of the Unit Incharge addressed to the Petitioner is to the effect that the Petitioner was not paying any rent and he was drawing the house rent also. He was directed to explain under whose authority he had occupied the room. The Petitioner in response to letter dated 28/29.11.2005 has stated that he was permitted to stay in the kitchen vide office order dated 7.5.2003. He has stated that he had been staying in the kitchen only in emergency.

6. The Respondents have taken a stand in the reply that vide order dated 7.5.2003 one room was allotted to the Petitioner in the Guest House till further arrangements. The office order dated 7.5.2003 is clear to the effect that one room was given to the Petitioner in the Guest House. It is also clear from office order dated 7.5.2003 that the room was given to the Petitioner for his night stay. This indicates that the allotment of room to the Petitioner in the Guest House is not a regular allotment as residence but it was for night stay keeping in view the nature of duty to be performed by the Petitioner as driver. There is nothing in the office order dated 7.5.2003 that in lieu of allotment of one room the Petitioner was required to pay some licence fee or he was not to be paid house rent during the period he would occupy one room.

7. The opening lines of office order dated 10.2.2006 are to the effect that the Petitioner has un-authorizedly occupied one room in the ground floor of the Guest House at Mandi w.e.f. 7.5.2003 onwards. It has also been stated in the

office order that the Petitioner has not paid the licence fee in lieu of occupation in the said room and he is also getting HRA regularly. The foundation of office order dated 10.2.2006 is wrong. The office order dated 7.5.2003 is clear to the effect that the Petitioner was given one room in the Guest House for his night stay. In the office order dated 7.5.2003 no time limit was fixed for occupation of one room by the Petitioner in the Guest House. It is thus, clear that the Petitioner was given one room in the Guest House and, therefore, his occupation of that room cannot be said to be un-authorized.

8. The room in the Guest House was given to the Petitioner for discharging his duty as driver as he was required to operate from Mandi at odd hours. Instead of sitting in the office premises during night to attend his official duty, the Petitioner was required to stay in the room in the Guest House, which cannot be considered as a regular residence of the Petitioner. The position of the Petitioner in the Guest House during night for attending official duty on requirement was like that of an employee working in the office. Therefore, the licence fee cannot be demanded from the Petitioner for using the room in the Guest House for attending the duty. On the same ground it cannot be said that the Petitioner has wrongly drawn HRA.

9. The authorities were alive to the situation. It is not understandable how for about three years no house rent was charged from the Petitioner for occupying one room in the Guest House and why HRA was paid to the Petitioner. The silence on the part of the Respondents gives an indication that even the Respondents were satisfied that the Petitioner was given one room in the Guest House for discharging his duty, he was not given regular residence in the Guest House and that is why no licence fee was fixed when one room was given to the Petitioner nor after the room was given to the Petitioner licence fee was demanded from him and he continued to draw HRA. Later on for reasons best known to the Respondents they gave second thought and started demanding licence fee from the Petitioner and also questioned the withdrawal of HRA by the Petitioner.

10. In view of above, the Petitioner has made out a case for quashing of office order dated 10.2.2006 Annexure P-A. Accordingly, office order dated 10.2.2006 Annexure P-A is quashed, the Respondents are directed not to recover any amount from the Petitioner on the basis of office order dated 10.2.2006 Annexure P-A and to refund the amount to the Petitioner, if any, recovered from the salary of the Petitioner in pursuance to office order dated 10.2.2006 within a period of two months from the date of supply of a copy of the judgment by the Petitioner to the competent authority.