(1988) 01 P&H CK 0109

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 1624 of 1987

Harbans Lal and Others — APPELLANT

Vs

The State of Punjab and Others — RESPONDENT

Date of Decision : 13-01-1988

Acts Referred:

Citation : (1988) 01 P&H CK 0109

Hon'ble Judges : D.V. Sehgal, J

Bench : Single Bench

Advocate : A.K. Chopra, for the Appellant; Harinder Lal, Mr. R.S. Mongia, for the Respondent

Final Decision : Allowed

Judgement

D.V. Sehgal, J.—The Petitioners are Government servants serving under the State of Punjab, Respondent No. 1. Petitioner No. 1 is working as an Assistant, Petitioner No. 2 is Superintendent Grade III and Petitioner No. 3 is working as a Stenographer. All of them are working in the office of Labour Commissioner, Punjab, Chandigarh Each one of them was allotted a dwelling unit in Sector 41-A, 41-C and 40-D respectively by the Chandigarh Housing Board, Respondent No. 2 for a consideration of Rs. 89,600/-, 80,800/- and 83,100/- respectively. The Punjab Financial Rules Vol. I and particularly rules 10.16 and 10.17, to which extensive reference has been made in the petition, provide for grant of advance to Government employees, who desire to build houses for occupation by themselves in or outside Punjab, or who want to purchase built up houses. It is not in dispute that the Petitioners, according to these Rules, would have ordinarily been entitled to grant of such an advance. They have, however, not been allowed advance for purchase of the dwelling units allotted to them in view of the instructions issued by Respondent No. 1 vide letter dated 13.9.1982 Annexure P.2 by which it has been decided not to allow advance for purchase of houses built by the State Agencies, viz. Housing Board etc. where payment towards the cost of house is allowed to be made in monthly instalments The contention of the Petitioners is that the aforesaid instructions Annexure P 2 are discriminatory and are violative of rule of equality and the action of the Respondents not to allow them the advance to purchase the dwelling units allotted to them respectively by Respondent No. 2 is bad in law. They seek the relief of quashing the instructions Annexure P.2 and a direction to Respondents Nos. 1 to 3 to grant them the advance for the purchase of the dwelling units allotted to them.

2. The petition has been opposed by Respondent No. 1. Written statement has been filed on its behalf by the Joint Secretary to Government, Punjab, Finance (M) Department, Chandigarh. A preliminary objection has been raised that grant of loan is not a right of a Government servant. It is a mere facility given to the employees in exceptional circumstances. Therefore, the Petitioners cannot enforce the same through the present writ petition As such they have no cause of action. Instructions Annexure P.2 issued by Respondent No. 1 have been defended. It is maintained that the Government is within its rights to allow or disallow advances for purchase of built up houses. The Housing Boards allot houses under the subsidised schemes floated by the Government and the payment towards the price of these houses is recoverable by these Boards in easy instalments. As such, grant of loan from the Government funds for making payment to the Housing Boards in lumpsum is not justified keeping in view the limited budgetary allocations. It is contended that there is no justification in allowing advances in lumpsum and thereafter to recover the same from the employees in monthly instalments when the facility of making payment towards the cost of these houses in instalments already exists. It is thus submitted that the impugned instructions are not. violative of Rule 10.17 ibid or of the rule of equality.

3. I have heard the learned Counsel for the parties. I am of the view that this petition must succeed. The preliminary objection raised by the learned Counsel for Respondents Nos. 1 and 3 that grant of advance for purchase of built up houses by the Government employees is not a right, but a matter, in the discretion of the Government and as such the writ petition is not maintainable does not hold water in view of the authoritative pronouncement of the Supreme Court in Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, . It has been, inter-alia held therein that today the Government in a welfare State is the regulator and dispenser of special services and provider of a large number of benefits. The Government pours forth wealth, money, benefits, services contracts quotas and licences All these mean growth in the Government largess and with the increasing magnitude and range of Governmental functions as we move closer to a welfare State more and more of our wealth consists of these new forms Some of these forms of wealth may be in the nature of legal rights but the majority of them are in the nature of privileges The law has not been slow to recognise the importance of this new kind of wealth and the need to protect individual interests in it and with that end in view it has developed new forms of protection. The Government is still the Government when it acts in the

matter of granting largess and it cannot act arbitrarily it does not stand in the same position as a private individual. It is, thus, clear that even in the matter of granting largess like giving advance for purchase or construction of residential houses to the Government employees, it cannot discriminate one Government servant from the other.

4. However, it requires to be seen in the present case whether the impugned order Annexure P.2 is discriminatory and violative of the rule of equality, before law. It may be noted here that in spite of the fact that the Housing Board Respondent No. 2 has allotted dwelling units to the Petitioners on payment by instalments, it is the case of the Petitioners that Respondent No. 2 accepts the price in lumpsum also if it is so paid by, an allottee. When this petition was pending motion hearing counsel for the, Housing Board Respondent No. 2 made a statement before the Division Bench on 15.9.1987, that the Board is prepared to receive full price of the dwelling units, which would include interest, penalty or any other sum due and execute, the conveyance deed in favour of the Petitioner allottees on certain-given conditions. The learned Counsel for the Petitioners has pointed out that in case they make the payment of the consideration to the Housing Board Respondent No. 2 by instalments they have to pay the same along with 13.75% compound interest. For example, in the ease of Petitioner No. 2, he is required to pay the consideration of Rs. 73500/- only if the amount is paid by him in lumpsum, but if he makes the payment by instalments he has to pay a sum of Rs. 1,23,396/-. He is entitled to an advance for the purchase of a house to the tune of Rs. 60,000/- under the aforesaid rules. The moment this amount is paid by Respondent No. 1 to the Housing Board Respondent No. 2, the Petitioner shall pay the balance amount of Rs. 13500/- from his own pocket, and he shall be left without any liability. He further submits that as against the interest payable by the Petitioner to Respondent No. 2 at the compound rate of 13.75% in case they are allowed advance by Respondent No. 1 they have to pay 9% simple interest on the same. Thus, the Petitioners, who are Class III Government employees, suffer a huge monetary loss on denial of advance for house-purchase by them. The advance is being denied to them simply for the reason that the dwelling units allotted to them have been built by a Government owned agency, i. e. the Chandigarh Housing Board. This is not at all a valid ground for denial of house advance to them.

5. The position as regards the increase in the financial liability of the Petitioner and the higher rate of inetrest payable by them in case they are denied advance under the aforesaid rules by Respondent No. 1 has not been disputed by its learned Counsel.

6. Another submission made by the learned Counsel for the Petitioners is that Respondent No. 1 vide Memo, dated 12.12.1979 has issued a policy decision of the Government which is also contained in para 36 of the Standing Guide of Punjab Government on Concessions to Families of Government Employees who die while in service to the effect that where the Government employee dies while

in service and without repaying the loan-advance obtained by him, or any part Of it, for construction/purchase/repair of house and/or interest accrued thereon, such loan or part thereof together with interest which remains unpaid is to be written off. A specific averment in this regard has been made in para 17 of the petition which has been categorically admitted by Respondent No. 1 in its written statement. The learned Counsel for the Petitioners, therefore, submits that the Petitioners have been denied this material benefit which is available to them and their families. On the other hand, in the case of death of any one of them the liability for payment of the balance amount of consideration to Respondent No. 2 shall stand and devolve on the shoulders of the families of the Petitioners. Thus, denial of advance for purchase of a house in their case by virtue of the instructions Annexure P.2 is discriminatory The learned Counsel has further made a pointed reference to the averment contained in para 12 of the writ petition wherein some instances have been quoted of the loans having been paid to Government servants who purchased built up houses from the Housing Board Respondent No 2. He, therefore, contends that the Petitioners have been discriminated against. The learned Counsel for the Respondents has, however, submitted that these instances relate to the period prior to 13.9.1982 when instructions Annexure P.2 were brought into force. No advance for purchase of a built up house has been given to any Government employee after the coming into force of these instructions.

7. I have considered the above submissions In my view the instructions Annexure P.2 are not based on a reasonable classification and there is no rationale behind them. The Government agency which builds houses and allots them to different persons has a different field of activity in a welfare State It is to provide shelter for residence to the houseless. Provision for payment of the amount of consideration for such houses made by the Government agency by easy instalments is with a view not to pass the entire burden all at once on the purchaser/ allottee of a house The Government agency receives the amount by instalments by charging interest. In the present case 13.75% compound interest is payable by the Petitioners as allottees of the houses in case they choose to make the payment by instalments But to deny payment of advance to Government servants who are allotted houses by a Government House building agency is not based on any sound principles A Government servant has certain rights and privileges. One privilege is provided by the aforesaid rules. As a Government servant can be allowed payment of advance for purchase or construction of a house and the amount of such advance is repayable by monthly instalments with simple interest at the rate of 9% per annum, this is decidedly a beneficial provision far more favourable comparable to the one made by the Housing Board for payment of consideration by easy instalments,

8. As has already been noticed, in case a Government servant dies while in service and has not repaid either in full or any part of the amount of advance taken for the purchase or construction of a house his dependants and family shall not be liable to pay such unpaid amount along with interest and it is to be

written off. To deny this privilege to the Government servants who happen to purchase houses from a Housing Board or from another Government agency is again irrational.

9. I am, therefore, of the considered view that the instructions Annexure P.2 by which the Government servants who purchase houses built by Government agencies have been denied the privilege of granting advance for purchase of such houses by making lumpsum payment merely because such Government agencies allow payment of the purchase price by easy instalments at a particular rate of interest which is decidedly far more than the simple interest of 9% payable by the employees, in case advance is not granted to them, are discriminatory. There can be no reasonable classification between the employees who purchase houses from Government agencies which do not allow payment of the purchase price by easy instalments and the Government agencies which allow payment of price by easy instalments. The privilege of grant of loan under rules 10.16 and 10.17 ibid has distinct advantages attached to it like writing off of the advance or a part thereof and the interest due thereon in case of death of a Government servant. I, therefore, hold that the instructions Annexure P 2 are discriminatory, violative of Articles 14 and 16 of the Constitution and are, therefore, liable to be quashed.

10. Consequently, 1 allow this writ petition, quash the instructions Annexure P.2 being discriminatory and direct Respondents No. 1 and 3 to pay directly to Respondent No. 2 the amount of advance for purchase of the dwelling units allotted to the Petitioners which is admissible to them under the rules and for which the Petitioners have applied for within two months from today. On making payment by Respondents Nos. 1 and 3 to Respondent No. 2, the Petitioners shall soon thereafter pay the balance amount of the purchase price to Respondent No. 2 from their own pockets so that the houses purchased by them are without any encumberance and the necessary instrument executed by them for securing advance from the Government are valid and proper. The Petitioners shall also be entitled to the costs of this writ petition which are assessed at Rs. 300/-.

