

(2021) 12 SHI CK 0075

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition (Original Application) No. 4599 Of 2019

Harbans Lal

APPELLANT

Vs

State Of Himachal Pradesh And Others

RESPONDENT

Date of Decision : 22-12-2021

Acts Referred:

Himachal Pradesh Allotment Of Government Residences (General Pool) Rules, 1994 — Rules 8, 8(2)

Citation : (2021) 12 SHI CK 0075

Hon'ble Judges : Vivek Singh Thakur, J

Bench : Single Bench

Advocate : Sunita Sharma, Ranveer Singh, Dinesh Thakur

Final Decision : Allowed

Judgement

Vivek Singh Thakur, J

1. The petitioner has approached this Court, being aggrieved by communication dated 30.8.2014 (Annexure P- 6) conveying rejection of his request for transfer of allotment of Government accommodation in favour of his wife, serving as Class-III employee in IPH Department, which was allotted to him being Class-IV employee in HPPWD Department.

2 Petitioner, while in service, was allotted Government accommodation, i.e. House No.6, Winter Field, HPPWD, as per his entitlement being a Class IV employee.

3. Petitioner retired on 31.10.2014. Before his retirement, petitioner, vide application dated 11.3.2014, (Annexure P-1), had requested the Superintending Engineer, respondent No.2, to transfer the allotment of Government accommodation occupied by him in the name of his wife Asha Devi serving as Clerk in IPH Department by giving reference of precedents of such allotments in cases of Rajender Kumar Junior Assistant and Harish Guleria driver serving in IPH Department in whose cases their family members occupying allotted

Government accommodation had retired from HPPWD Department, but, aforesaid employees Rajender Kumar and Harish Guleria serving in IPH Department, were allotted the same Government accommodation on their request.

4 Petitioner had also approached the office of Hon'ble the Chief Minister for transfer of allotment of Government accommodation in the name of his wife Asha Devi. The Special Secretary to Hon'ble the Chief Minister had forwarded the request of petitioner to the Secretary (GAD) to the Government of Himachal Pradesh vide communication dated 21st August, 2014. However, the Secretary (GAD) had forwarded the matter to respondent No.2 Superintending Engineer for necessary action by saying that requested accommodation pertains to the Department Pool of HPPWD.

5 Request of petitioner was rejected by respondent No.2 on the ground that PWD Pool Accommodation cannot be allotted to employee of other Department and as such, inability was expressed to allot the accommodation to the wife of petitioner. Rejection by respondent No.2 Superintending Engineer was communicated to the Secretary (GAD) to the Government of HP vide communication dated 10.9.2014, copy whereof was also endorsed to the petitioner.

6 Petitioner has contended that he has been discriminated by the respondents by rejecting his application for transfer of allotment of Government accommodation in the name of his wife. Petitioner has also placed on record the relevant extract of Himachal Pradesh Allotment of Government Residences (General Pool) Rules, 1994, notified vide notification dated 1.6.1994, especially of Rules 8, with submissions that there are no other Rules dealing with allotment of Government Residences in the State of Himachal Pradesh. Rules 8 deals with adhoc allotment on out of turn basis. Extract of Sub-rule 2 thereof, relevant for the purpose of adjudication of present petition, reads as under:-

"(8) 1.....

2. In the event of death or retirement of a Government servant, to the wife/husband, provided that the retired or the deceased Government servant was in occupation of Government accommodation at the time of retirement or death, as the case may be. Such allotment shall not be made in a category higher than a category to which the spouse of the deceased or retired Government servant is entitled:

Provided that such wife/husband was serving the Himachal Pradesh Government at the time of the retirement or death of the Govt. servant and residing with him/her and was not claiming HRA for the last 3 years or since the date of appointment/transfer in the station whichever is relevant."

7 It is an undisputed fact that wife of petitioner is not claiming HRA since 30.12.2006 till date. It is also submitted on behalf of petitioner that wife of petitioner is going to retire on 30.6.2023 and present petition was filed by petitioner in the year 2014 and the Division Bench of this Court was pleased to

direct the parties to maintain status quo as existing on 1st December, 2014 and thereafter, petitioner along with his family, including his wife, is staying in the Government accommodation in reference. It has further been submitted that in the year 2015, the petition was transferred to the Erstwhile H.P. State Administrative Tribunal on its constitution and was re-numbered as TA No. 5895 of 2015. However, on abolition of the Erstwhile H.P. State Administrative Tribunal, it has again been transferred to this Court and has been re-numbered as CWPOA No. 4599 of 2019 and has been listed for hearing on application filed by petitioner for early hearing. It has been further submitted that since wife of petitioner is going to retire on 30.6.2023, therefore, at this stage, ousting the petitioner and his family members from accommodation, which is in their occupation, would cause grave hardship to the family of petitioner particularly when similarly situated persons have been allowed to retain the same accommodation in the similar circumstances.

8 In reply to petition, the stand of respondents is that request of petitioner was considered and it was found that case of petitioner is not covered under Rules particularly under Rule 8(2) of Himachal Pradesh Allotment of Government Residences (General Pool) Rules, 1994 as accommodation belongs to PWD Pool, whereas, wife of petitioner is working in IPH Department and since the accommodation pertains to PWD, therefore, it has been contended that no action is warranted at the level of GAD under the Allotment Rules.

9 Petitioner has placed on record the order dated 9.1.1997 passed by Joint Secretary (GAD) to the Government of HP, whereby representation of above referred Rajender Kumar was considered and decided in favour of Rajender Kumar in pursuant to order dated 19.9.1996 passed in OA No. 1310 of 1996 by the Erstwhile H.P. State Administrative Tribunal and in that case, request of Rajender Kumar was accepted and it was decided and ordered to allot Quarter No. 10, Balquali Building Outhouse, Shimla-4 to Rajender Kumar, Clerk serving in IPH Department occupied by his father Sohan Lal, retired from PWD Department. Undisputedly H.P. Allotment of Government Residences (General Pool), Rules, 1994 have been adopted by PWD and IPH Departments and in the said order dated 9.1.1997, it was stated that since PWD was owner of said Set, therefore, in lieu of that, PWD may take some Set from IPH Department or petitioner (Rajender Kumar) may be allowed to continue in the Set of his father till such time the IPH Department provides him the accommodation in lieu of that Set.

10 Petitioner has also given example of another employee Harish Guleria in whose case also, the Government accommodation, allotted to PWD employee i.e. family member of Harish Guleria, was transferred/allotted to family members serving in different i.e. IPH Department. The said contention has not been controverted by respondents.

11 Office order dated 27.3.1997, issued by HPPWD Department, has also been placed on record as Annexure P-3, whereby formal order of allotment of accommodation, earlier allotted to Sohan Lal Ex-driver, father of Rajender Kumar,

in PWD, was allotted in favour of Rajender Kumar Clerk, serving in IPH Department. The aforesaid office orders dated 9.1.1997 and 27.3.1997 the example of Rajender Kumar and Harish Guleria, are establishing that stand taken by respondents in their reply is factually incorrect.

12 Petitioner being a similarly situated person to Rajender Kumar and Harish Guleria is to be considered in like manner. Respondents are completely silent in their reply about the cases of Rajender Kumar and Harish Guleria. It is not the case of respondents that petitioner is not similarly situated to those employees. Therefore, rejection of request of petitioner by respondent No.2 and also stand of Secretary (GAD) that Secretary (GAD) has nothing to do with present case is arbitrary and is not tenable as it is evident from Rajender Singh's case that allotment in his case was transferred on the basis of orders passed by the Joint Secretary (GAD).

13 In view of aforesaid facts and circumstances, rejection of request of petitioner communicated to him vide communication dated 10.9.2014, Annexure P-6, is quashed with direction to respondents to transfer the allotment of accommodation, occupied by petitioner, in the name of his wife Asha Devi from the date of retirement of her husband (petitioner) i.e. 31.10.2014 and to settle the arrears of rent of said accommodation on the basis of rent applicable in case of regular allotment from the said date till her retirement or a period thereafter as permissible under Rules. The needful be done on or before 31st January, 2022 by the respondents.

Petition stands allowed and disposed of accordingly including all pending miscellaneous application(s), if any.