

(2007) 11 RAJ CK 0053
In the Rajasthan High Court

Hari Om Agarwal

APPELLANT

Vs

Rajasthan Non-Government Educational Institution Tribunal
and Others

RESPONDENT

Date of Decision : 19-11-2007

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 21

Citation : (2007) 11 RAJ CK 0053

Hon'ble Judges : Dinesh Maheshwari, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Dinesh Maheshwari, J.—Having heard learned Counsel for the petitioner and having examined the material. ced on record, this Court is clearly of opinion that this writ petition seeking to challenge the order dated 25.11.2004 (Annex.4) passed by the Rajasthan Non-government Educational Institution Tribunal, Jaipur ("the Tribunal") rejecting the application filed by the petitioner does not merit admission; and rather, the present litigation as taken up by the petitioner cannot be said to be a bona fide one.

2. The petitioner has averred in the writ petition that he filed an application before the Tribunal challenging the ""illegal, arbitrary, and unconstitutional action of the Respondents"" and has produced on record as Annexure-1 a typed copy of the application allegedly made before the Tribunal but without copies of documents annexed thereto. The petitioner has further averred that the respondent filed reply to the application and he filed a rejoinder thereto and has placed on record a copy of the reply as Annexure-2, without the documents annexed thereto and has also placed on record a copy of rejoinder as Annexure-3, again without copies of the documents annexed to the rejoinder. According to the petitioner, the Tribunal has proceeded to dismiss the application filed by him by its impugned judgment/order dated 25.11.2004 (Annex.4) contrary to the provisions of law while ignoring the material available on record.

Certified copy of the order dated 25.11.2004 shows that the petitioner received the same on 01.02.2005. This writ petition has been filed only on 05.07.2006.

3. The dispute relates to penal rent charged by the respondent institution from the petitioner for the period 01.01.1991 to 31.01.1994 towards a residential accommodation occupied by him. The petitioner averred before the Tribunal that he was working on the post of Assistant Teacher (Maths) and was performing the duties to the best of his abilities with the respondent Institution that was receiving grant-in-aid from the State Government; that the Managing Committee of the Institution passed an illegal order of recovering penal rent from him and when he moved a representation to the Chairperson of the Institution, the respondent considered his grievance by regularising the matter and observed that the Society would take decision about penal rent charged from the petitioner. According to the petitioner, he had withdrawn the case filed before the court of law so that the respondent No. 1 may sympathetically consider the matter. The petitioner asserted that penal rent had been charged erroneously because quarter of the Institution was allotted to him by the then Principal in the year 1985; and alleged that he moved a number of representations on 10.01.1995, 15.06.1995, 24.08.1995, 16.01.1996, 06.04.1996, 23.07.1997 and 11.10.1999 making a request to refund the penal rent which had been erroneously recovered from him but no heed was paid by the respondents. The petitioner alleged before the Tribunal that the action of the respondent No. 1 in deducting penal rent was contrary to law, was violative of Articles 14, 16 and 21 of the Constitution of India and was violative of the provisions of the Rajasthan Non-government Educational Institutions Act, 1989 and the Rules framed thereunder. The petitioner prayed for the relief of directions against the respondent No. 1 to refund the penal rent with interest at the rate of 18% per annum.

4. The Managing Committee of the Institution contested the matter and, inter alia, pointed out that the accommodation in question was earmarked for the House Master; that the applicant was assigned the responsibility of Assistant House Master of Arunoday Hostel of the Institution by an order dated 23.08.1984 and accordingly, was he allotted the earmarked rent free accommodation. The answering respondent pointed out that the applicant tendered his resignation from the additional responsibility of Assistant House Master of Arunoday Hostel by an application dated 21.09.1984, the said resignation was accepted by the Management w.e.f. 21.09.1984 by an order dated 17.12.1984; that the applicant was advised to vacate the house by the order dated 01.12.1985; however, because the applicant was again appointed as Assistant House Master of Calcutta Sadan Hostel w.e.f. 01.05.1986 and subsequently assigned the responsibility of House Master of Arunoday Hostel w.e.f. 01.09.1987, he was allowed to retain the house. The respondent alleged that the applicant ceased to be the House Master from 01.07.1989 and the facility of the rent free house was withdrawn and he was asked to vacate the house by 30.09.1989 failing which he would be subjected to penal rent w.e.f. 01.10.1989. The respondent further averred that

subsequently, the Executive Committee of the Society in its meeting dated 23.06.1990 took a decision on the question of penal rent in order to deal with such cases; that the text of the resolution was communicated to the applicant by the letter dated 11.12.1990 and he was required to vacate the house by 01.01.1991 with further caution that upon failing to do so, he would be liable to pay Rs. 1,000/- per month by way of penal rent. The respondent further pointed out that the applicant filed a civil suit before the Munsif, Udaipur on 01.01.1991 and sought determination of provisional rent and also filed a temporary injunction application against vacation of the house; however, the applications for fixation of provisional rent and for temporary injunction were rejected on 09.04.1991 and, according to the respondents, the learned court found that the applicant was simply a licensee and no lease deed had been executed between the parties and also observed that the respondents shall be entitled to have the house vacated as per rules.

5. The respondent yet further averred that the applicant was advised once again by the letter dated 29.04.1991 to vacate the house and was served with reminder on 08.07.1991 but he did not vacate the house and hence, asserted the respondent, the Management was justified in charging penal rent at Rs. 1,000/- per month. The respondent further pointed out that the applicant submitted an application on 20.01.1994 to the President of the Society informing about withdrawal of court case and requested that the house in question may be allotted to him with stoppage of penal rent with a further request for sympathetic consideration of his prayer for refund of difference between penal rent already recovered from him and the rent normally chargeable otherwise. The respondent averred that the Managing Committee considered such prayer sympathetically and the applicant was informed by the office order dated 01.02.1994 that so far the matter of refund of penal rent already charged from him was concerned, the decision was to be taken by the Executive committee only; the applicant was advised not to resort to unnecessary litigation; and in view of unconditional withdrawal of court case, his case was considered sympathetically and the quarter occupied by him was regularised w.e.f. 01.02.1994 and charging of penal rent was stopped after such regularisation. However, according to the respondent, the Executive Committee did not accede to the request of the applicant for refund of the difference of amount between penal rent and the normal rent in its meeting held on 24.07.1994. The respondent reproduced the decision dated 24.07.1994 in its reply that reads as under:

The case of Shri Hari Om Agarwal, Senior Teacher in Vidya Bhawan Senior Secondary School regarding refund of penal rent charged from him for unauthorised possession of a staff quarter was placed before the Committee for consideration. The members of felt that it would not be fair to refund the rent already received for reasons which had been considered valid by the Society authorities at the time. Refund of penal rent would create bad precedents for similar cases in the future. Since on sympathetic considerations Shri Hari Om Agarwal has now been allotted a staff quarter, the request for refund of past rent

deducted and continued even in representations can not be accommodated.

6. The respondent took the stand that the applicant has acquiesced into the terms and conditions stated under the letter dated 01.02.1994; that the case stood finally decided and closed; and that the applicant was estopped from raising the matter before the Tribunal. This apart, the respondent alleged that the matter suffered from inordinate delay and the relief claimed was barred by limitation too; and that the matter in dispute was not within the purview of the term "conditions of service" u/s 21 of the Act of 1989 and, thus, was not of the jurisdiction of the Tribunal.

7. The petitioner submitted a rejoinder and while referring to his previous assignments as Assistant House Master, stated that the dispute remains only regarding penal rent charged for the period 01.01.1991 to 31.1.1994 i.e., for 37 months; though the petitioner specifically admitted that he was residing in the allotted quarter since 15.02.1985. It is borne out from the rejoinder submissions that the petitioner admitted the fact that he remained Assistant House Master until 28.06.1989 while occupying the same quarter and stated that normal rent was deducted upto 31.12.1990. The petitioner suggested in the rejoinder submissions that the quarter in question was not earmarked for Assistant House Master; and in relation to the decision dated 24.07.1994, asserted that the same was not communicated to him and submitted that the said decision as referred to in the reply was only an afterthought and even a copy thereof was not placed on record. The petitioner further refuted the objection that the matter was not of the jurisdiction of the Tribunal and submitted that it were a service dispute. The ground of delay was also denied with the submissions that the order dated 24.07.1994 was never communicated to him.

8. The learned Tribunal after taking into comprehension the subject matter found nothing illegal in charging of penal rent with the following observations and findings:

12- tgkWa rd izkFkhZ dk lEcU/k gS] izkFkhZ dh fu;qfDr vizkFkhZ laLFkk es v/;kid f}rh; Js.kh ds in ij gqbZ Fkh rFkk tc izkFkhZ bl in ij dk;Zjr Fkk rks mls lgk;d v/;kid ds in ij dk;Z Hkh djok;k x;k A lgk;d v/;kid ds in ij dk;Z djrs gq, mls gk?l ekLVj ?okM+Zu? ds in dk vfrfjDr Hkkj Hkh fn;k x;k A bl vfrfjDr inHkkj ds lkFk izkFkhZ dks vkoklh; fpafrg edku dh lqfo/kk nh x;k h Fkh rFkk ;g lqfo/kk fcuk fdjk;s ds Fkh A tc izkFkhZ dks vfrfjDr dk;ZHkkj bl in dk lqiqnZ fd;k x;k rc ;g Li"V vknsf"kr dj fn;k x;k Fkk fd fpfUgr edku dh lqfo/kk ek= bl in ij jgrs gq, gh mik;ksx dh tk ldrh gS vkSj tSls gh bl in ls izkFkhZ gVsxx rks mls fpafrg edku [kkyh djuk gksxx A bl in ij jgrs gq;s mls ,d ckj mlds Loa; ds }kjk R;kxi= nsus ij gVk;k x;k rFkk dqN le; ckn mls iqu% bl in ij fu;qDr fd;k x;k ysfdu mlds ckn fQj mls bl in ls gVk fn;k x;k vkSj izkFkhZ dks dgk x;k fd vkoklh; lqfo/kk tks mls in ds lkFk nh x;k h Fkh mls [kkyh dj ns ysfdu izkFkhZ us vkoklh; lqfo/kk dks [kkyh ugh fd;k A izkFkhZ dks vkokl [kkyh djus ds fy, dbZ ckj ekSf[kd :i ls o fyf[kr es Hkh dgk x;k ysfdu izkFkhZ }kjk bl vkoklh; lqfo/kk dks [kkyh dj laLFkk dks lqiqnZ ugh fd;k cfYd bl vkoklh; lqfo/kk dks ysdj eqaflQ ,oa U;kf;d eftLV?sV] mn;iqj ds ;gkWa

fdjk;k dkuwu dh /kkjk&7 ds rgr okn izLrqr fd;k tks dkykUrj es [kkfjt gqvk vkSj mlds lkFk izLrqr fd;k x;k vLFkk;h fu"ks/kkkKk dk izkFkZuk i= Hkh [kkfjt gqvk A izkFkhZ ds }kjk bl izdkj vfrfjDr in ij dk;Z uk djrs gq, Hkh bl fpafr edku dh lqfo/kk dks ckotwn laLFkk ds }kjk fyf[kr es o ekSf[kd es [kkyh djus dk dgus ij Hkh bl edku dks [kkyh ugh fd;k A laLFkk us Li"V :i ls izkFkhZ dks uksfVI ns fn;k Fkk fd bl vkoklh; lqfo/kk dks ;fn [kkyh dj izkFkhZ ugh nsrk gS rks mls izfrekg 1]000@& :i;s ?v{kjs ,d gtkj :Ik;s? isuy jsUV pqdkuk gksxk Aysfdu izkFkhZ us bl uksfVI dh ijokg fd;s cxsSj yEcs le; rd edku [kkyh ugh fd;k] vr% laLFkk us izkFkhZ ls fn0 01-01-91 ls 31-01-94 rd dh vof/k dk isuy jsaV olwy fd;k A izkFkhZ dk ;g dFku fd ,slk djus ls iwoZ mls lquok;h dk ekSdk ugh fn;k x;k] ;g dFku ljdkj xyr gS A izkFkhZ dks vfrfjDr inHkkj ls gVus ds ckn laLFkk }kjk lq>k;h x;h vof/k es bl vkoklh; lqfo/kk dks [kkyh dj laLFkk dks lqiqnZ dj nsuk Fkk ysfdu izkFkhZ ds }kjk ,slk ugh fd;k x;k A izkFkhZ dks fyf[kr es o ekSf[kd :i ls ,slk dgk x;k ;gkWa rd fd isuy jsUV olwy fd;s tkus dk Hkh dgk x;k vkSj mls fyf[kr esa bl ckcr lwfpr Hkh fd;k x;k ysfdu izkFkhZ us fpfUgr edku [kkyh ugh fd;k] vr% mlls isuy jsUV olwy fd;k x;k gSA isuy jsUV olwyh ds bl vkns"k dks uSIfxZd U;k; ds fl)kUrks ds foijhr bu ifjLFkfr;ksa es gskuk ugh dgk tk ldrk A

9. The Tribunal has also observed that the matter stood concluded between the parties because the applicant had prayed for allotting him the house on normal rent and the Institution had accepted such of his prayer. The Tribunal has observed that raising of dispute by the petitioner cannot be said to be proper and rather the petitioner was estopped from raising the same; and that the application filed as late as on 16.12.2000 does not merit acceptance. The Tribunal has also made an observation that the dispute relating to penal rent cannot be said to be a dispute pertaining to the conditions of service.

10. Seeking to assail the order aforesaid, learned Counsel for the petitioner has put forward the submissions for consideration before this Court that the Tribunal has erred in observing that the present one was not a dispute with respect to the conditions of service; that the so-called decision dated 24.07.1994 was never communicated to the petitioner and it was merely reproduced in the reply filed by the respondents before the Tribunal and the matter cannot be said to be delayed; and that the respondent-Institution has acted illegally in seeking to recover penal rent from the petitioner. The submissions remain bereft of substance. The contention against the observations as made by the Tribunal that the dispute in question does not pertain to conditions of service has only a technical value in the present case and has no bearing on the substance of the matter. It is apparent from the findings and observations of the learned Tribunal as reproduced hereinabove that the Tribunal has, in the first place, dealt with the matter directly on merits, and has approved the action of the respondent Institution of recovering penal rent. The Tribunal has of course dealt with other contention of the respondent regarding competence of the application in relation to the dispute of penal rent and has of course held the same to be not a dispute concerning the conditions of service; and the said proposition as stated by the Tribunal seems to be questionable because the matter concerns pay and

allowances of the employee and per explanation to Rule 34 of the Rules of 1995 framed under the Act of 1989, a house rent allowance is included while defining ""allowances"". However, this part of the matter needs no further dilatation in this case for the simple reason that the Tribunal even while making such observation has not refused to deal with the matter on merits; and findings of the Tribunal on merits of the case appear to be valid and justified; and this Court does not find any reason to consider any interference at the instance of the petitioner. On the other hand, there are more than one reason wherefor this petition deserves rejection.

11. In the first place, it is required to be pointed out that this writ petition itself suffers from gross and inordinate delay without any explanation therefor. The impugned order was passed by the Tribunal on 25.11.2004 and certified copy thereof was received by the petitioner on 01.02.2005. This writ petition has been filed only on 05.07.2006 and there is not even a whisper on the cause of such delay in filing the petition nearly seventeen months even after receiving a copy of the order impugned. Then, the petitioner has chosen to file this writ petition while withholding the documents placed before the Tribunal. The documents said to be marked Annexure-1 to Annexure-18 with the application made to the Tribunal (Annex.1 herein) have not been produced on record with this writ petition. Similarly, the documents marked as annexures in the reply (Annex.2 herein) have not been produced on record; and further, the documents marked as Annexure-19 to Annexure- 34 said to have filed with the rejoinder have also not been produced on record. The omission to produce the documents is not without significance and has its relevance. It is borne out from the averments taken by the parties that the petitioner chose to litigate against the Institution while seeking to retain the accommodation in dispute and his applications seeking fixation of provisional rent and for grant of temporary injunction were rejected by the civil court on 09.04.1991 (as stated by the respondent in its reply); and according to the respondent, the trial court observed that the Institution would be entitled to have the house vacated as per rules. The petitioner had admittedly withdrawn such litigation as stated in paragraph-6 of his application before the Tribunal and made a request to the Institution to regularise the matter. The respondent has pointed out that the applicant made an application to the President of the Society on 20.01.1994 and stated that he had withdrawn the court case on 20.01.1994 and made a request for allotment of the house in question and stopping of penal rent and for sympathetic consideration of his request for refund of the difference between penal rent already recovered and the normal rent chargeable. The petitioner has admitted the fact that upon his representation, an order was passed on 01.02.1994, as stated in paragraph-6 of the application. The respondent has stated that the allotment of the quarter occupied by the petitioner was regularised w.e.f. 01.02.1994 and charging of penal rent after regularisation was stopped and the remaining part of the matter, regarding refund of the penal rent already recovered was left for the decision of the Executive Committee. The decision of

the Executive Committee was taken on 24.07.1994 as reproduced above.

12. In the backdrop of the facts noticed hereinabove, the contents of the order passed by the court in the litigation taken up by the petitioner, the prayer as made by him for regularization of his possession, and the order passed thereupon by the Institution are material and relevant in the present case having a direct bearing on the questions involved. However, the petitioner has chosen to withhold such and all other documents; and in the totality of the circumstances, the inference is directly available that such documents go against the petitioner on the merits of this case. As an obvious consequence of such adverse inference and for withholding of material documents, the contentions sought to be urged by the petitioner deserve to be rejected. It is an admitted position that the dispute remains only relating to the penal rent charged from 01.01.1991 to 31.01.1994. The Managing Committee has acted rather fair on the representation of the petitioner and stopped charging penal rent after 31.01.1994 while permitting his retention of the quarter in question and left the question of refund of the amount already charged towards penal rent for the decision of the Executive Committee. Noteworthy it is that but for such decision of the Managing Committee on regularisation, the petitioner had no right or authority to remain in possession of the quarter at normal rent. The petitioner having taken advantage of the sympathetic attitude of the Institution in regularising his possession and charging normal rent after 31.01.1994 cannot be said to be justified in seeking to question the other part of the very same decision of the Managing Committee where the question regarding refund of the penal rent already charged was left for the decision of the Executive Committee; nor the petitioner could legitimately put any question over the decision of the Executive Committee by filing an application before the Tribunal six years later. If he was aggrieved of such decision of the Managing Committee, of regularising his possession from 01.02.1994 and leaving the question of penal rent from 01.01.1991 to 31.01.1994 for the decision of the Executive Committee, the petitioner in the very first place ought to have vacated the house. Having taken advantage of the favourable part of the decision of Managing Committee, the petitioner does not appear bona fide in questioning the other part of the said decision; nor could be acceded any right to question the decision consequently taken by the Executive Committee. Having examined the facts in their totality this Court is satisfied that having taken advantage of the sympathetic attitude of the respondent Institution, the petitioner seems to have taken up this one only as a chance litigation. The Tribunal has been perfectly justified in observing that the dispute was already over and the petitioner was not justified in seeking to re-agitate the same.

13. Whether the decision of the Executive Committee was communicated to the petitioner or not is hardly of any relevance. The penal rent had already been charged and the litigation taken up by the petitioner had already terminated long back as prayer for interim relief was refused by the court and the suit was withdrawn by him. Mere decision of the Executive Committee not to refund the

penal rent already charged does not by itself furnish a fresh cause of action to the petitioner.

14. In any case, the decision of the Executive Committee in the present case, as reproduced above, remains unexceptionable as it would be creating a bad precedent if penal rent would be refunded to the petitioner particularly having regard to the fact situation of the present case. In the overall circumstances of the case, this Court is constrained to observe that even the earlier sympathy shown by the Institution to the petitioner was entirely unwarranted, and the petitioner has effectively demonstrated that he did not deserve the same.

15. In an overall comprehension of the matter, this Court is satisfied that this litigation, not having a semblance of bona fide on the part of petitioner, does not call for any further consideration; and this petition does not merit admission.

16. The petition stands rejected.