

(2010) 11 SHI CK 0229
In the High Court Of Himachal Pradesh
Case No : CWP (T) No. 4336 of 2008

Jagdish Kumar Nadda

APPELLANT

Vs

The State of H.P. and Others

RESPONDENT

Date of Decision : 22-11-2010

Acts Referred:

Himachal Pradesh Allotment of Government Residences (General Pool) Rules, 1994 —
Rule 10, 18

Citation : (2010) 11 SHI CK 0229

Hon'ble Judges : V.K. Sharma, J

Bench : Single Bench

Judgement

V.K. Sharma, J.—The petition has been filed for grant of the following substantive reliefs vide para 7(a) to (c):

7(a) That Annexure A-18 to 20 be quashed and set aside as being illegal, arbitrary in view of the facts submitted above.

(b) That the Respondents be directed to make payment of his retiral benefits i.e. a sum of Rs. 71301/-alongwith the amount withheld by the Respondents.

(c) That Respondent may kindly be directed to pay the applicant interest on a sum of Rs. 71301/-on account of Cash compensation for the un-utilised amount of leave and Rs. 1000/-withheld out of the Retirement Gratuity at the rate of 18% PA w.e.f. 1.7.95 till the payment to the applicant of aforesaid amount.

2. In the reply, filed on behalf of Respondents No. 2 and 4, the following stand has been taken vide paras 3 and 6(iv):

3. That the para is admitted to the extent that the applicant was allotted Set No. C-14/73, Phagli, Shimla and he was transferred from Shimla to Solan on 31.5.93. As such he was entitled to retain the government accommodation for two months i.e upto 31.7.93 under Rule 10 of the H.P. Allotment of Government Residences (General Pool) Rules, 1994. He did not vacate the premises within the stipulated

period of two months. He was further allowed to retain the Government accommodation upto 31.3.94 by the Government at double the normal rent. The applicant overstayed in the accommodation w.e.f. 1.4.94 to 10.11.94 as such he is liable to pay damages @ Rs. 4/- per sq. ft. under Rule 18 of the H.P. Allotment of Government Residences (General Pool) Rules, 1994.

6(iv) That the para is admitted to the extent that the premises in question is a Central Government property and was temporarily placed at the disposal of the State Government till such time the present allottee is either transferred or retires from government service and as such the set of the applicant was duly re-transferred to the Respondent No. 5 after his transfer. Accordingly, the Respondent No. 5 has rightly directed the applicant to handover the vacant possession of the premises but he flouted the rules and thus eviction orders were rightly passed on 7.11.94. Keeping in view his circumstances that he is retiring in June, 1995, the applicant was provided Set No. C-13 M.L.A. as an alternative accommodation so as to enable him to vacate Set No. C-14/73-Phagli for which the Respondent No. 5 had already passed the eviction orders on 7.11.94. the applicant neither vacated the Set No. C-14/73-Phaglinor used Set No. C-13 M.L.A. for his bonafide purpose, though the formal possession of the premise was duly taken over by him on 11.11.94, a copy of which is Annexed as Annexure-R/1. It is crystal clear that Set No.

C-14/73-Phagli was allotted to the applicant on out-of-turn basis when he was working as Accounts Officer, Finance Department, which was duly accepted by him, as such the applicant is estopped by his acts and conducts. The Sub-Rule 3 of Rule 6 provides that when an officer/official becomes eligible for higher type of accommodation of his entitlement he should apply to the Respondent No. 4 on the prescribed performa within 15 days but he did not apply, therefore, he has no case to seek allotment of higher type of accommodation which is not permissible as stipulated above. As such the question of providing below type of accommodation i.e. Set No. C-13 M.L.A. has no relevance. Aggrieved by the order passed by the Respondent No. 5 on 7.11.94, the applicant filed an appeal before the Ld. District & Sessions Judge, Shimla wherein the applicant furnished written undertaking that he will vacate the premises on or before 11.11.95 and thus he vacated the premise on 8.11.95.

3. Replies on behalf of remaining Respondents are also on the same lines.

4. The learned Counsel for the Petitioner submits that the case of the Petitioner is covered under judgment dated 04.05.2010 of this Court in CWP(T) No. 2303 of 2008, titled Subhash Chand v. The State of Himachal Pradesh and Ors. CWP(T) No. 2303 of 2008 Text of the judgment is as follows:

Heard. The petition is disposed of with the following observations/directions:

1. Apparently, the Petitioner, who at the relevant time was working as driver in the Block Development Office, Paonta Sahib, District Sirmaur, was transferred from Paonta Sahib to Nahan, in the month of October, 1992. At Paonta Sahib, he

was allotted Government accommodation, which he did ...4...

not vacate after the permissible period, for which he could have retained the same after transfer and over stayed therein upto June, 1994, when he finally vacated the said accommodation.

On account of the above default, the Petitioner has been Imposed penalty by way of penal rent in the sum of Rs. 25,341/-. He is seeking indulgence of this Court on the strength of instructions circulated vide letter dated 26.7.1993, which provide, inter alia, that instead of penal rent, double the normal rent may be charged from those officers/officials, who had though over stayed in the official accommodation allotted in their favour, yet had vacated the same till date, that is, 26.7.1993. However, the fact remains that the Petitioner had not vacated the accommodation in question by 26.7.1993 and in fact the same came to be vacated by him only in June, 1994.

Against the above backdrop, though this Court is constrained in granting the prayer of the Petitioner in remitting the amount of the aforesaid penal rent, particularly in view of the recital contained in the aforesaid letter dated 26.7.1993, that the decision arrived at there-under will not be considered as a precedent. However, the matter is left to the discretion and wisdom of the Respondents, particularly Respondents No. 1 and 2, to consider the case of the Petitioner in the light of the instructions issued vide the aforesaid letter dated 26.7.1993, for grant of remission of the aforesaid penal rent of Rs. 25,341/-and instead resort to payment of double the normal rent. While doing so, the latest instructions in the matter, if ...5...

any, shall also be kept in view.

The petition is disposed of in the above terms.

Pending CMP, if any, shall also stand disposed of as in fructuous.

5. On the same analogy, as adopted by this Court in the judgment referred to hereinabove, the petition is disposed of in the following terms:

In case, on facts, the Petitioner is also a similarly situate person as the Petitioner Subhash Chand was in the above referred judgment, his (Petitioner's) case shall also be considered and decided by the Respondents/competent authority in the light of the above judgment dated 04.05.2010 in CWP(T) No. 2303 of 2008 after affording an opportunity of being heard to the him, if so desired, within three months from production of copy of this judgment by the Petitioner within one month from today.

6. In view of the above, the petition stands disposed of, so also the pending CMP(s), if any.