

**(2009) 07 JH CK 0002**  
**In the Jharkhand High Court**

Jagdish Kumar Ojha

APPELLANT

Vs

Heavy Engineering Corporation and Others

RESPONDENT

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**Date of Decision :** 09-07-2009

**Acts Referred:**

**Citation :** (2009) 07 JH CK 0002

**Hon'ble Judges :** Gyan Sudha Mishra, C.J.; Dilip kumar sinha, J

**Bench :** Division Bench

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### Judgement

1. This appeal has been preferred against the judgment and order dated 8.9.2008 passed by the learned Single Judge in W.P (S) No. 3308/2005 whereby the writ petition filed by the petitioner/appellant herein was dismissed, as a result of which the appellant's plea for allotment of a quarter by the Heavy Engineering Corporation (H.E.C for short) was rejected.

2. The petitioner/appellant herein had filed a writ petition before the learned Single Judge for quashing the order dated 7.4.2005, vice Annexure - 13, whereby the respondent no. 5, Senior Superintendent of Post Officer, Ranchi Division, Ranchi, had directed the appellant to vacate the quarters No.B-III-502(T), which was in his possession by virtue of an allotment order in his favour by the Postal Department and the appellant occupied the same on account of being an employee of the Postal Department as he was discharging duties as Postal Assistant.

3. The quarters in question admittedly belong to the H.E.C and the H.E.C had floated a Scheme in the year 2000 which envisaged that the allotment will be made to eligible applicants on a long term basis of the quarters which were owned and possessed by the H.E.C. The Scheme laid down conditions of eligibility which have already been stated in the impugned judgment passed by the learned Single Judge. A perusal of the Scheme indicates that the H.E.C framed rules constituting various categories for the applicants who were entitled to allotment of residential premises/quarters for allotment on a long term basis. The first category includes the serving employees, ex-employees, dependents of

deceased employees and dependents of deceased ex-employees of H.E.C; second category includes serving employees, ex-employees, dependents of deceased employees and dependents of deceased ex-employees of H.E.C. for other notified quarters in order of preference and on seniority basis inter-seniority for ex employees; the third category includes co-operative employees and contract labour engaged by contractors; fourth category includes Central and State Public Sector Undertakings, Registered Philanthropic/Charitable Institutions and the last category includes the individuals having authorized shops/land for shops allotted in H.E.C. township for surplus quarters by process of competitive bidding. The Scheme further laid down that the quarters still remaining surplus, would be allotted to others on the basis of competitive bidding.

4. Admittedly the petitioner/appellant herein did not fall under any of the categories envisaged in the Scheme as he was neither a serving employee, nor an ex-employee, nor a dependent of deceased employee, of H.E.C. He, however, claimed allotment in the category of surplus quarters which could be allotted in the event of its availability on the basis of competitive bidding. In the year 2000, when the Scheme was floated by the H.E.C., there were eight quarters which were available for competitive bidding for allotment on a long term basis, in which any one could participate in the competitive bidding. The petitioner/appellant herein had also applied for allotment under this category, but his name was not recommended by the Postal Department as N.O.C was not issued to him. The appellant at the relevant time was insisting for allotment of the quarters on a long term basis in view of competitive bidding as it was in his occupation, but the Postal Department refused to grant N.O.C in his favour for this quarters (B-III-502(T)) and thereafter the Scheme lapsed and a new Scheme came into effect on 1.11.2002, under which the respondent no. 6, Smt. Ghuna Dev, made an application for allotment of quarters as she was eligible for allotment of a quarter as a dependent of the deceased employee of the H.E.C.

5. The appellant admittedly had not applied under the new Scheme and thereafter the respondent no. 6, under the new Scheme of 2002, was allotted the quarters in question (B-III-502(T)) However, the possession of this quarters (B-III-502(T)) could not be delivered to respondent no. 6, as the same was in occupation of the appellant and the appellant was not prepared to vacate it on the plea that he had applied for allotment of the same under the Scheme of 2000 and his earnest money was lying deposited with the Postal Department.

6. Since the appellant was in an unauthorized occupation of the aforesaid quarters (B-III-502(T)), a letter was issued by the respondent no. 5, Senior Superintendent of Post Officer, Ranchi Division, Ranchi, on 7.4.2005, by which the petitioner/appellant herein was directed to vacate the quarters as the same was not allotted to him. This gave a cause of action for the appellant to file a writ petition before the learned Single Judge. But the learned Single Judge, after hearing the counsel for the parties, was pleased to reject the writ petition by order dated 8.9.2008, as already indicated hereinbefore, against which this

appeal has been preferred.

7. The learned Single Judge has assigned cogent reasons in the impugned judgment for rejecting the writ petition and in substance, it has been stated that the petitioner did not fall under any of the categories holding him eligible for allotment. The last category under the Scheme, which could offer a plank for the appellant to seek his claim for allotment, also could not offer any relief to him as the Postal Department had not recommended his case for allotment, since on the one hand, he had failed in the competitive bidding and on the other, he was not also prepared to opt for any other quarter than the one which was in his occupation, although the appellant had failed to qualify himself for allotment even in the last category. The learned Single Judge, therefore, was pleased to dismiss the writ petition.

8. Learned Counsel for the appellant had contended and tried to impress upon this Court regarding eligibility of the appellant to seek the allotment, but even after arguing the matter at length on several dates, he could not succeed in establishing the case of the appellant that he had a rightful claim to retain the quarters (B-III-502(T)), which was in his occupation, as he did not fulfill the conditions laid down under the Scheme and did not fall under any of the categories. Besides this, the Postal Department itself had refused to issue N.O.C in favour of the appellant. At this stage, it may be relevant to highlight that the appellant is neither an employee of the H.E.C., nor he had filed any application as a member of the general public, but he had filed application for allotment as an employee of the Postal Department and it was the Postal Department which could have recommended his case for allotment of quarters by the H.E.C. Since the recommendation was not made and N.O.C was not issued in his favour by the Postal Department for the reasons already stated hereinbefore, the appellant could not be allotted the quarters in question.

9. Thus, we find no substance in the plea of the counsel for the appellant that the appellant had a rightful claim to the quarters in question (B-III-502(T)), as this quarters had, in fact, already been allotted to the respondent no. 6 by virtue of the Scheme of 2002 and in spite of the allotment of the said quarters to the respondent no. 6, the possession of the same could not be delivered to her as the appellant had failed to vacate it. The H.E.C at some stage had also offered alternative allotment to the appellant to occupy any other quarter but the counsel for the appellant, on instruction, had informed this Court that the appellant is not prepared to take any other quarters. Finally, after several dates, wisdom seems to have prevailed on him and he came out with the proposal that any other quarters would be acceptable to him in lieu of the quarters in question (B-III-502(T)), which was allotted to the respondent no. 6

10. Counsel for the H.E.C. stated that the H.E.C. is prepared to allot one quarter to the appellant but the same cannot be done on a long term basis and the allotment can be made in favour of the appellant to occupy the same only for the time till he is in the service of the Postal Department. This could not be denied by

the appellant. Therefore, he obviously is compelled to accept this offer.

11. We, therefore, deem it appropriate to leave the liberty to the appellant to accept the allotment of any other suitable accommodation/quarters offered by the H.E.C. in lieu of the quarters no. B-III-502(T) and when the allotment is made in favour of the appellant, he shall vacate the quarters no. B-III-502(T) after which the possession of the quarters no. B-III-502(T) shall be delivered to the respondent no. 6 forthwith. However, we also cannot leave the respondent no. 6 in lurch and as such, we direct the H.E.C to make allotment in favour of the appellant within a period of two weeks, as suggested by the counsel for H.E.C allotting a quarter in his favour as per his eligibility as an employee of the Postal Department, as it is informed that the appellant's father is 82 years old and is ailing. The H.E.C is expected to take this humanitarian aspect into consideration and allot a ground-floor quarter to the appellant. It is made clear that this allotment shall be in favour of the appellant only till the time he remains an employee of the Postal Department and shall not be treated as an absolute allotment on a long term basis, which is of 30 years. Since the plea of the appellant to get an allotment on long term basis for 30 years had already been rejected by the learned Single Judge with which we do not deem it appropriate to interfere, for the reasons indicated hereinbefore.

The appeal, in view of the aforesaid directions, be treated as disposed of.