

(2011) 04 SHI CK 0099

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition (T) No. 8988 of 2008

Parkash Chand Gautam

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 21-04-2011

Acts Referred:

Citation : (2011) 04 SHI CK 0099

Hon'ble Judges : Kuldeep Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Kuldeep Singh, J.—The Petitioner has prayed for quashing of memo dated 29.8.2002 Annexure A-2 whereby Petitioner has been directed to deposit Rs. 25,757/- on account of penal rent. A prayer has also been made for quashing memo dated 29.11.2002 Annexure A-4 vide which Deputy Commissioner, Solan has directed Tehsildar, Kasauli to recover Rs. 25,757/- from Petitioner from his salary in monthly installments.

2. The further case of the Petitioner is that the Petitioner had been working as Patwari, Patwar Circle, Kasauli from April, 1993. The Patwarkhana was used in an old small dilapidated building. The Petitioner was living in the Patwarkhana with his wife and small school going children. The department had started construction of new Patwarkhana. One room of the Patwarkhana stood constructed in March, 2000 to which the Patwarkhana was shifted in March, 2000 but the Petitioner was continuing to stay in the old building.

3. On 3.4.2000 Kamal Kishore, Patwari, Dharampur was transferred in place of the Petitioner at Kasauli and the Petitioner was transferred to Dharampur. The Petitioner joined as Patwari at Dharampur on 13.4.2000. The children of Kamal Kishore, Patwari were studying at Dharampur and the children of the Petitioner were studying at Kasauli. It was thought not to disturb the families of Petitioner and Kamal Kishore residing in residential portions of respective Patwarkhanas.

The H.P. Allotment of Government Residences (General Pool) Rules, 1994 (for short "Rules") provides retaining of the Government accommodation for two months after transfer.

4. The Petitioner suddenly fell unconscious on 15.6.2000, he got treatment at Government Hospital, Kasauli, District Hospital, Solan and PGI, Chandigarh where he remained admitted till 10.1.2001. The Petitioner reported for duty on 10.1.2001 but his eye-sight diminished for which the Petitioner was still under treatment at PGI, Chandigarh.

5. In view of the condition of the Petitioner, he was again transferred to Kasauli in the office of Respondent No. 3 on the post of Land Reforms Patwari on 12.2.2001. The leave period of the Petitioner has been regularized and the medical reimbursement claim as admissible under the rules had also been paid to the Petitioner. Some medical claim of the Petitioner was rejected on the ground that same was not admissible under the rules. The Petitioner is working in the office of Respondent No. 3 and staying with his family in the old building consisting of two small rooms.

6. The Respondent No. 3 has issued memo dated 29.8.2002 Annexure A-2 in which a demand of Rs. 25,757/- has been raised against the Petitioner on account of penal rent. The Petitioner submitted representation dated 21.9.2002 to Respondents 2, 3 to waive recovery on the ground that the vacation of the government accommodation during the period of his illness was not within his control. It appears the representation of the Petitioner has not been considered. The Respondent No. 2 has issued memo dated 29.11.2002 Annexure A-4 directing the Respondent No. 3 to recover penal rent from the Petitioner. The demand of the Respondents to recover penal rent amounting to Rs. 25,757/- is wrong, arbitrary, unfair and unjust. The Petitioner was neither associated with the measurement of the house nor with the assessment of the penal rent. The Petitioner was condemned unheard.

7. The Respondents have contested the petition by filing reply. It has been denied that the Patwarkhana in which the Petitioner had been residing at Kasauli was in dilapidated building. The new building constructed for Patwarkhana and residence of the Patwari was completed in August, 1999. The Petitioner was required to shift to new building and to vacate the old building but the same was not done by the Petitioner. The Petitioner only shifted his office in March, 2000. He did not handover the possession of the old room in which Patwarkhana/office was housed. He was in unauthorized occupation of old building from 1.3.2000 to 31.1.2001 and the unauthorized occupation of residential accommodation of the old building from 1.2.2000 to 11.2.2001.

8. The residence of the Patwari is a "Rent Free Accommodation", penal rent has rightly been imposed upon the Petitioner under the relevant rules. The Petitioner was required to vacate the accommodation after his joining at Dharampur but he remained in unauthorized occupation of old residential accommodation at Kasauli

as a result of which penal rent was imposed upon him under the rules. The Respondents justified the penal rent. The Petitioner was informed regarding the recovery of penal rent. He submitted representation to waive the recovery of penal rent. The representation of the Petitioner was considered and the same was not found satisfactory. The measurement of the residence accommodation was done by the PWD authorities in presence of the Petitioner. The penal rent was rightly assessed under the rules. The Petitioner was aware of the proceedings, but he made a concocted story. The Respondents have prayed for dismissal of the petition. The Petitioner has filed rejoinder and reiterated his stand.

9. I have heard the learned Counsel for the Petitioner so also the learned Additional Advocate General. On behalf of the Petitioner judgment dated 23.4.2010 in CWP-T No. 6514 of 2008 Dr. Ashu Gupta v. State of H.P. and Ors. has been relied. It has been submitted that the Petitioner was transferred from Kasauli to Dharampur on 3.4.2000 and he joined at Dharampur on 13.4.2000. On 15.6.2000 all of a sudden he fell unconscious and remained under treatment till 10.1.2001 at Kasauli, Solan and PGI, Chandigarh. On account of his medical condition it was not possible for him to vacate the accommodation at Kasauli. The penal rent has been charged from Petitioner from 1.4.2000 to 11.2.2001. No benefit of the rules has been given to the Petitioner for occupying the accommodation after transfer and on account of sanction of leave. The memo dated 29.8.2002 Annexure A-2 is against the principles of natural justice and memo dated 29.11.2002 Annexure A-4 is based upon Annexure A-2, therefore, Annexure A-2 and Annexure A-4 are liable to be quashed. The learned Additional Advocate General has supported Annexures A-2 and A-4.

10. It has been stated in the reply by the Respondents that the measurement of the accommodation was taken by the PWD authorities in presence of the Petitioner and the Petitioner was aware of the proceedings. It has not been stated in the reply that in fact Respondent No. 3 had issued notice to Petitioner or the Petitioner was heard before memo dated 29.8.2002 Annexure A-2 was issued. The memo dated 29.8.2002 Annexure A-2 has civil consequence, therefore, it was incumbent upon Respondent No. 2 to hear the Petitioner before taking any decision. There is no reference of hearing of Petitioner in memo dated 29.8.2002 Annexure A-2. On this point, Dr. Ashu Gupta (supra) is squarely applicable. The memo dated 29.11.2002 Annexure A-4 is based upon Annexure A-2. The Respondent No. 2 has not considered in Annexure A-2 whether in fact Petitioner was entitled to occupy the accommodation under the Rules for some period after transfer or during leave. The Annexure A-2 is against the principles of natural justice and is not sustainable.

11. In view of the above discussion, the petition is allowed, memo dated 29.8.2002 Annexure A-2 and memo dated 29.11.2002 Annexure A-4 are quashed. The liberty is given to the Respondents to proceed in accordance with law.