

(2010) 12 P&H CK 0637

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 7367-CAT of 2007

Rakesh Kumari

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 14-12-2010

Acts Referred:

Constitution of India, 1950 — Article 226
Government Residences (Chandigarh Administration General Pool) Allotment Rules,
1996 — Rule 11

Citation : (2011) 162 PLR 63

Hon'ble Judges : Ritu Bahri, J; M.M. Kumar, J

Bench : Division Bench

Final Decision : Allowed

Judgement

M.M. Kumar, J.—This writ petition filed under Article 226 of the Constitution challenges order dated 04.05.2007 passed by the Central Administrative Tribunal, Chandigarh Bench, Chandigarh (for brevity "the Tribunal"), whereby the request of the Petitioner for transfer the allotment of House No. 13/3576, Sector 22-D, Chandigarh in her name was rejected. A further prayer has also been made for declaring as illegal the condition concerning two years in Sub-rule (2) of the Government Residences (Chandigarh Administration General Pool) Allotment (Amendment) Rules, 2004 (for brevity the "2004 Rules"). The Petitioner has also prayed for issuance of writ of mandamus directing Respondent No. 2 to allot the said Government accommodation to the Petitioner in terms of proviso of Sub Rule (a) of Rule 11 - for Out of Turn Allotment S.R. 317-AM-I 1(1) of the Government Residences (Chandigarh Administration General Pool) Allotment Rules, 1996 (for brevity the "1996 Rules").

2. Facts in brief are that the husband of the Petitioner was employed in the office of Director, Health Services, Chandigarh Administration, U.T., Chandigarh and was working as Multi Purpose Health Worker (MPHW), which is Class-III post, when he died on 21.12.2002. The Petitioner-Applicant was appointed as Sanitary

Beldar on compassionate basis in the same department after three years of the death of the deceased Government servant. After joining service on 23.12.2005, she submitted an application for transfer the allotment of the said Government accommodation to her, which was earlier allotted to her late husband but her request was rejected by the Secretary, House Allotment Committee, U.T., Chandigarh-Respondent No. 2. She challenged that order before the Tribunal in O.A. No. 230/CH/2006, which was permitted to be withdrawn on her prayer with the observation that she would approach the Respondent to allot her any Government House on out of turn basis. Thereafter, the Petitioner made representation dated 27.07.2006, which was rejected by the Respondent vide order dated 11.08.2006. The said order of the Respondent was challenged before the Tribunal by filing OA No. 596/CH/2006, wherein the Petitioner Applicant request for quashing order of the Respondent and issuance of a direction to the Respondents to regularise the allotment of the Government quarter No. 13/3576, Sector 22-D, Chandigarh, in her name. The said O.A. was contested by the Respondents before the Tribunal and the Tribunal ultimately vide impugned order dated 04.05.2007 has dismissed the O.A. by observing that the original Applicant has been able to secure the compassionate appointment and remained in the occupation of the said Government accommodation for almost five years after the death of her husband. The Tribunal also did not find merit in the contentions of the Applicant that the condition of prescribing two years" period for allotment of such Government accommodation in the possession of the deceased Government employee is in anyway either arbitrary or perverse. The said order of the Tribunal has been impugned in the instant petition.

3. On 17.05.2007, the motion Bench of this Court while issuing the notice of motion recorded the contention of the learned Counsel for the Petitioner and stayed her dispossession. The Bench also directed the Respondents to charge normal rent from the Petitioner in the meantime. The Respondents-department put in their appearance and contested the claim of the Petitioner by filing written statement challenging her claim by stating that the provisions of out of turn allotment of Government accommodation to the dependent of a deceased Government employee is in the nature of concession, the same has to be construed strictly so that the claims of people waiting in the queue for allotment of Government accommodation are not defeated. It was claimed that the Government employees are merely licensees and did not acquire any indefeasible right to retain Government accommodation and that the cases concerning out of turn allotment of Government accommodation as also the cases of appointment made on compassionate grounds are governed by two different set of Rules/ Policies, which are concessional in nature. Those rules were not inter- dependent on each other. The writ petition was admitted on 04.10.2007 and stay order was allowed to continue. The Tribunal rejected the claim of the Petitioner by observing as under:

...Request of the Applicant has been rejected as per provision of this Rule. The order cannot be said to be in any manner illegal or in violation of any Rules may

have created a right in favour of Applicant.

8. Prayer of the Applicant to declare such amended Rule illegal has also been considered. Her plea that prescribing of two years period for allotment of such accommodation belonging to the deceased employee is arbitrary and contrary to the object sought to be achieved cannot be accepted. Grant of compassionate appointment itself is an exception to the normal rule for recruitment to Govt. jobs. Allotment of residential premises to Govt. employees is another concession which is governed by separate set of rules and both are based on policy decisions of the Govt. Even if a longer period for considering cases of persons for compassionate appointment is decided upon, that does not create a right in a person to claim that even the period for out of turn allotment under a policy decision be extended to the period during which cases for compassionate appointment could be considered. After getting appointment, an appointee normally is placed in the same situation as any other Govt. employees who joins service and is in receipt of pay and allowance of that post. We cannot ignore the fact that there are thousands of similarly placed Govt. employees like the Applicant belonging to a poor strata of society who are waiting for allotment of Govt. houses for years altogether. In Delhi, we can judicial notice from some cases decided, such employees have been waiting for more than two decades for getting some premises allotted. Considering these hard facts, we do not find that the amendment being questioned by the Applicant is in any either arbitrary or perverse. That there was a provision for slightly longer period in 1997 Rules, is not ground to annul the amendment which is based on the ground facts of such employees being available. In any case, Applicant has been able to get compassionate appointment and remained in occupation of the same premises for almost 5 years after death of her husband. Now she can apply for allotment of accommodation as per her turn and priority.

4. Having heard learned Counsel for the parties and perusing the paper book with their able assistance, we find that the Petitioner is in continuous possession of the Government accommodation since the death of her husband i.e. 21.12.2002 and has been given compassionate appointment since 23.12.2005. For better appreciation of the controversy, it is pertinent to examine provisions of Rule 11 of the 1996 Rules and subsequently substituted 2004 Rules. Rule 11 of the 1996 Rules reads thus:

11. Out of turn Allotment S.R. 317-AM 11-(1). The House Allotment Committee may allot a house on out of turn basis in the following cases:

(a) Allotment of residence to the member of the family of deceased Government employee:

When a Government employee in occupation of a Government residence dies while in service, accommodation may be allotted to his spouse, or a son, or an unmarried daughter who is already in Government service or who joins Government service within one year of the date of death of the Government

employee:

Provided that the condition of joining Government service by the dependent within one year of the date of death of government employee occurring therein shall be condoned only in those cases where there is delay on the part of respective

Governments to offer compassionate appointment to the member of the family of the employee who died in harness.

5. The reafter some amendments were made in the 1996 Rules and the period of condonation to the extent of one year in making compassionate appointment, which was without any limitation was sought to be limited by putting maximum ceiling of two years.

Government Residence (Chandigarh Administration General Pool) Allotment (Amendment) Rules, 2004

No.A5/2004/504. In exercise of the powers conferred by Rule 45 of the Fundamental Rules, the Administrator, Union Territory, Chandigarh, in consultation with the House Allotment Committee (upper) hereby makes the following rules further to amend the Government Residence (Chandigarh Administration General Pool) Allotment Rules, 1996, namely:

(i) These rules may be called the Government Residence (Chandigarh Administration General Pool) Allotment (Amendment) Rules, 2004.

(ii) They shall come into force from the date of their publication in the Official Gazette.

(2) In the Government Residence (Chandigarh Administration General Pool) Allotment Rules, 1996 (hereinafter referred to as the said rules), in Rule SR-317-AM-11, in Sub-rule (1), for Clause (a), the following shall be substituted namely:

When a Government employee in occupation of a Government residence dies while in service, accommodation may be allotted to his spouse, or a son, or an unmarried daughter who is already in Government service or who joins Government service within two years of the date of death of the Government employee subject to fulfillment of other prescribed conditions including that of not owing a house in Union Territory, Chandigarh, Mohali or Panchkula. No relaxation beyond a period of two years shall be permissible in any case:

3. In the said rules, in SR 317-AM-13, in Sub-rule (2), in the table appended thereto, for event 8, the following shall be substituted namely:

8. Death of the allottee - One year (extendable upto two years in the case where the deceased officer/official or his/her dependent does not own a house in Union Territory, Chandigarh, Mohali or Panchkula)

(By order and in the name of the Administrator, Union Territory, Chandigarh).

A bare perusal of the 1996 Rules and 2004 Rules as quoted above would show that the Petitioner was eligible to apply for out of turn allotment of government accommodation. The allotment could be made to the surviving spouse if the government servant was in occupation of a government residence and if he/she dies while in harness. The Rule further stipulates that the spouse should be in government service or he/she must join government service within one year of the death of the spouse. The condition has been relaxed if there is delay in making compassionate appointment to the member of the family of employee who died in harness. The rule has been amended in the year 2004 with a ceiling of maximum two years. Therefore, if the spouse or member is not able to secure job within two year of the death of the bread earner then no further relaxation is to be granted.

6. If we examine the facts in the light of the aforesaid rules then it becomes evident that the husband of the Petitioner expired on 21.12.2002, she could have retained the accommodation for one year as per the 1996 Rules which were applicable at that time. She was not given compassionate appointment for a long period, which eventually happened on 23.12.2005. Firstly, the 1996 Rules, which were applicable to the case of the Petitioner would continue to apply. Secondly the canon of liberal interpretation of such rules is the principle which would apply to the facts of this case which involves rules of social welfare measures. Accordingly, we hold that the Petitioner was entitled to occupy the accommodation under 1996 Rules and delay in seeking appointment should have been condoned by the Respondents. Moreover, we can also not loose sight of the fact that securing appointment on compassionate ground is in the hands of the Respondents-department and delay in granting such appointment cannot weaken the claim of the dependent of a deceased Government employee for out of turn allotment under the above quoted provisions of Rule 11 of the 1996 Rules. Accordingly, we hold that the 1996 Rules are applicable and the delay be condoned by the Respondents in transferring the allotment to the Petitioner.

7. At the hearing, learned Counsel for the Respondent has not been able to point out any other Rules or provisions of law, which made us to take a strict and restricted interpretation of the above quoted Rule especially when delay in securing compassionate appointment is not attributable to the Petitioner.

8. As a sequel to the above discussions, the order dated 04.05.2007 (Annexure P-2) passed by the Tribunal is set aside. The decision of the Respondent dated 10.08.2006 (Annexure P-11) is hereby quashed. The writ petition is allowed with a direction to Respondents to transfer the allotment of the above said Government accommodation to the Petitioner after condoning the delay as per 1996 Rules. The needful be done within two months from the date of receipt of a copy of this order.

9. In view of the peculiar facts and circumstances of the case, we left the parties to bear their own costs.