

(2009) 02 MP CK 0031
In the Madhya Pradesh High Court

Ravindra Kumar Jain

APPELLANT

Vs

M.P. State Electricity Board and Others

RESPONDENT

Date of Decision : 17-02-2009

Acts Referred:

Citation : (2009) ILR (MP) 36

Hon'ble Judges : Ravi Shankar Jha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

R.S. Jha, J.—The petitioner has filed this petition praying for quashing orders dated 15.12.2001 and 25.1.2002 by which payment of House Rent Allowance to the petitioner has been stopped with effect from December 2001 and for a further direction to the respondents to the effect that the House Rent Allowance be paid to the petitioner with effect from December 2001 alongwith arrears.

2. The brief facts, leading to the filing of the present petition, are that the petitioner is working as an Additional Superintending Engineer in the establishment of the respondents. The petitioner, in accordance with the circulars of the respondents, applied for allotment of an appropriate accommodation to him in January 1997. However, during the pendency of the aforesaid application, as the petitioner purchased and constructed his own house in Plot No. 36, C.O.D Colony, Sanjeevni Nagar, Jabalpur, after due permission of the Board, he filed an application on 19.11.2001 to the effect that his request for allotment of an accommodation be treated as cancelled and withdrawn.

3. It is stated that inspite of the aforesaid withdrawal of his application for allotment of an accommodation, the respondents by order dated 15.12.2001 allotted Quarter No. NBD 15 (GF) to the petitioner in Rampur Colony. It is stated that the petitioner, on receiving the aforesaid order of allotment, immediately filed an application on 26.12.2001 bringing to the notice of the authorities that the petitioner's request for allotment had already been withdrawn by the

application dated 19.11.2001 and, therefore, the allotment made in his name be cancelled. However the respondents, instead of accepting the aforesaid application, rejected the same by order dated

4. It is stated by the learned Counsel for the petitioner that the aforesaid allotment, in favour of the petitioner, was subsequently cancelled by the respondents on 25.1.2002 but House Rent Allowance was not paid to him and, therefore, he moved a representation on 11.3.2002 for grant of House Rent Allowance which was rejected by order dated 26.3.2002 on the ground that he was not entitled to House Rent Allowance as he had refused to occupy the quarter allotted to him. The representations, filed by the petitioner, were also rejected by the respondents by communications dated 20.8.2002 and 31.1.2003. It has also been stated by the learned Counsel for the petitioner that subsequent to cancellation of the allotment in favour of the petitioner, the accommodation in question was allotted to one Shri Vipin Dhagat, System Analyst, by order dated 29.1.2002

5. In the light of the aforesaid, it is stated by the learned Counsel for the petitioner that in accordance with the circular prevalent in the establishment of the respondents, the petitioner, who is in occupation of his own house, is entitled to House Rent Allowance but the respondent Board, on the pretext that he had refused to occupy the accommodation allotted to him, are denying his claim which is contrary to law as well as the circulars of the respondents themselves.

6. The respondents have filed their return and have stated that the petitioner had been allotted a quarter which he refused to occupy and in such circumstances, in view of the circular of the respondents dated 17.1.1990 and 30.12.1999, the petitioner is not entitled to claim any House Rent Allowance. However, the respondents have acknowledged the fact that the petitioner had filed an application on 19.11.2001 stating therein that he was withdrawing his request for allotment of a quarter on account of the fact that he had constructed his own house but have stated that as the said application has not been processed through proper channel and as the authorities had allotted the quarter to him which he refused to occupy, he is not entitled to claim House Rent Allowance.

7. I have heard the learned Counsel for the parties at length. From the facts and documents on record it is apparent that while the petitioner had requested for allotment of a quarter, he withdrew his request on 19.11.2001 prior to allotment of a quarter to him by the respondent Board and that the Board, in ignorance of the aforesaid application for withdrawal, allotted the quarter to him by order dated 15.12.2001 and it is in view of the aforesaid facts that the petitioner, who is already in occupation of his own house, requested the respondents to rectify the mistake by withdrawing the allotment and release House Rent Allowance to him.

8. From a perusal of the circular prevalent in the establishment of the

respondents, complete copy of which have subsequently been filed by the petitioner, it is clear that House Rent Allowance is admissible to an employee of the respondents in cases where he is occupying his own house, subject to the fact that the employee does not refuse the allotment and if he does so, he will cease to be admissible for payment of House Rent Allowance from the date of allotment of the Board accommodation. The aforesaid condition, which is mentioned in para-11 of the circular dated 17.1.1990, further clarifies that if an employee surrenders the accommodation subsequent to allotment, he would be entitled to House Rent Allowance, if otherwise admissible.

9. In the instant case, from the admitted facts as stated above it is clear that the present case is not one where the petitioner has refused to occupy the accommodation allotted to him but is a case where the petitioner had withdrawn his request for allotment of quarter prior to the allotment made to him and in such circumstances the disqualification and conditions which have been mentioned in para-11 of the circular dated 17.1.1990 do not apply to the petitioner's case. As the petitioner, after filing an application for allotment, subsequently constructed his own house with the permission of the respondent Board and thereafter withdrew his request for allotment of a quarter prior to allotment of a quarter to him, he is entitled to claim House Rent Allowance in accordance with the circular dated 17.1.1990. In such circumstances the rejection of the petitioner's request for grant of House Rent Allowance on the ground that he had refused to occupy the house allotted to him *per se* indicates total non-application of mind by the respondents *more so* when the respondents themselves had full knowledge of the fact that the petitioner had withdrawn his request by application dated 19.11.2001, a copy of which has been filed by them as Annexure R-5 but was ignored by them on the pretext that it was not forwarded through the proper channel.

10. In view of the above, I am of the considered opinion that the impugned orders, rejecting the petitioner's request for cancellation of allotment and payment of House Rent Allowance with effect from December 2001, dated 29.1.2002, 26.3.2002, 20.8.2002 and 31.1.2003 deserve to be and are hereby quashed and it is held that the petitioner is entitled to House Rent Allowance *w.e.f.* December 2001.

11. The petition, filed by the petitioner, stands allowed. In the facts and circumstances of the case there shall be no order as to the costs.