

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION 126 OF 2015

DISTRICT : PUNE

Shri Suresh Prasad Jadhav,)
Occ : Retired, Residing at)
C/o: Shri Dilip Bhandari)
Vijaya Niwas, S.No. 38, Shankarngar,)
Shinde Vasti, Keshav Nagar,)
Manjari Road, Near Shradha Hospital,)
Pune 411 036.)...**Applicant**

Versus

1. The Secretary,)
Printing & Stationery Department,)
Mantralaya, Mumbai 400 032.)
2. The Manager,)
Government Photo Zinco Press,)
G.P.O Road,)
Pune 411 001.)
3. The Executive Engineer,)
PWD Central Bldg, Pune 411 001.)

21

4. The Accountant General (I),)
Maharashtra, 101 M.K Road,)
Mumbai 400 021.)...**Respondents**

Shri V.V Joshi, learned learned advocate for the Applicants.

Smt Kranti S. Gaikwad, learned Presenting Officer for the Respondents.

CORAM : Shri Rajiv Agarwal (Vice-Chairman)

DATE : 14.06.2016

ORDER

1. Heard Shri V.V Joshi, learned advocate for the Applicants and Smt Kranti S. Gaikwad, learned Presenting Officer for the Respondents.

2. This Original Application has been filed by the Applicant challenging the order of recovery of Rs. 4,46,124/- on account of penal rent from his pensionary dues.

3. Learned Counsel for the Applicant argued that the Applicant joined Government service as Watchman on 1.9.1984. He was promoted as Technical Assistant. The Applicant was retired compulsorily from service w.e.f

13.7.2010 by order dated 12.7.2010 issued by the Respondent no. 2. The Applicant was occupying Government Quarters no U-305, Shastri Nagar, Yerwada, Pune during his service. The Applicant was not asked to vacate the Government Quarters and he continued to occupying that quarters. On 10.1.2014, he submitted an application to the Respondent no. 3 that the possession of the Government quarters may be taken by the Respondent no. 3. Finally on 9.5.2014, the Applicant vacated Government quarters. Learned Counsel for the Applicant argued that the Respondent no. 2 in violation of rules, stopped his provisional pension. The delay in taking over possession of Government Quarters was not the fault of the Applicant. The Respondent no. 3, was required to give a notice to the Applicant before charging penal rent. The Applicant has been charged penal rent @ Rs. 50/- per sq. ft as per G.R dated 25.7.2011. This amount even if correctly calculated at Rs. 4,46,124/- cannot be recovered from pensionary due of the Applicant. Learned Counsel for the Applicant argued that Hon'ble Supreme Court has held in the case of **STATE OF JHARKHAND & OTHERS Vs. JITENDRA KUMAR SRIVASTAVA & ANOTHER- AIR 2013 S.C 3383** that pension is property of a retired Government servant and no recovery can be made from it without due process of law. In another case of **GORAKHPUR UNIVERSITY & ORS Vs. DR SHITLA PRASAD NAGENDRA & ORS - AIR 2001 S.C 2433(1)** it has been held that penal rent

cannot be recovered from retiral benefits when employer acquiesced in occupation by accepting normal rent. Learned Counsel for the Applicant also relied on the judgment of this Tribunal dated 24.7.2015 in O.A no 1068 of 2014 regarding excess payment to an employee by mistake.

4. Learned Presenting Officer argued that this case has no application in case of rent to be recovered from a retired Government servant for occupation of Government quarters, during and after his retirement. The Applicant is liable to pay rent and penal rent for unauthorized occupation of Government quarters.

5. The relevant rules under which rent for Government quarters can be recovered from the pensionary dues of a Government servant has been mentioned by the Respondents no 2, viz: Rules 133(4) and 134-A of the Maharashtra Civil Services (Pension) Rules, 1982.

“Rule 134-A (iii) reads:-

If in the case of a Government, who has retired or has been allowed to retire,-

(iii) it is found that the amount of licence fee and any other dues pertaining to Government accommodation is recoverable from him for occupation of the Government accommodation after

the retirement, then the amount so found payable or recoverable shall be recovered from the pension sanctioned to him.”

Plain reading of these rules makes it clear that the Applicant is liable to pay rent/penal rent for occupying Government accommodation after his retirement. The same can be recovered from his pension subject to the proviso of Rule 134-A which read as follows:-

“Provided that, the Government shall give a reasonable opportunity to the pensioner to show cause as to why the amount due should not be recovered from him;

Provided further that the amount found due may be recovered from the pensioner in instalments so that the amount of pension is not reduced below the minimum fixed by Government.”

6. The Applicant has cited the judgment of Hon'ble Supreme Court in **JITENDRA KUMAR SRIVASTAV's** case (supra), which reads as below:-

“Having due regard to the above decisions, we are of the opinion that the right of the petitioner to receive pension is property under Article 31(1) and by a mere executive order the State had no power to withhold the same. Similarly, the said claim is also

SLH

property under Article 191(1)(f) and it is not saved by sub article (5) of Article 19”.

Hon'ble Supreme Court observed that under Article 300-A, no person can be deprived of his property save by authority of law. It is observed that:-

“As we noticed above, so far as statutory rules are concerned, there is no provision for withholding pension or gratuity in the given situation. Had there been any such provision in these rules, the position would have been different.”(emphasis supplied).

In the present case, Rule 134-A of the Maharashtra Civil Services (Pension) Rules, 1982, which are framed under proviso to Article 309 of the Constitution and are thus statutory in nature, provides for recovery of rent for Government accommodation for occupation after retirement. Ratio in this case cited above is not applicable in the present case.

7. The Applicant has relied on **GORAKHPUR UNIVERSITY's** case (supra), in which Hon'ble Supreme Court has held recovery of rent for occupying accommodation after retirement cannot be recovered from pension. Hon'ble Supreme Court has noted that:-

RLH

“As noticed earlier, the case of the contesting respondent in this case is that the University authorities regularly accepted the rent at normal rates every month from the petitioner till the quarters was vacated and that inspite of request made for the allotment of the said quarters, in favour of the son of the respondent, who is in the service of the University, no decision seems to have been taken and communicated though it is now claimed in the Court proceedings that he is not entitled to this type of accommodation. Further, the facts disclosed such as the resolutions of the University resolving to waive penal rent from all Teachers as well as that the Executive Council dated 18.7.1994 and the actual such waiver made in the case of several others cannot be easily ignored.”

It seems that the attitude of the University authorities was found to be vindictive and discriminatory. All these factors are totally absent in the present case. The Applicant did not pay a farthing for unauthorized occupation of Government quarters to the authorities for nearly four years. There is no evidence of any vindictiveness or discriminatory attitude. This case is clearly distinguishable.

14

8. The Applicant has also cited judgment of this Tribunal dated 24.7.2015 in O.A no 1068/2014. That judgment has quoted from the judgment of Hon'ble Supreme Court in the case of **STATE OF PUNJAB & ORS Vs. RAFIQ MASIH (White Washer) etc in Civil Appeal no 11527/2014**. It was held that no recovery of excess payment during service can be recovered, inter alia, from retired employees unless there was misrepresentation or fraud on their part for getting wrong payment. That case does not cover the rent for Government accommodation.

9. The Respondents are claiming that the rent/penal rent has been calculated as per G.R dated 29.7.2011 and that the Applicant ought to have handed over possession of Government quarters after his retirement, or three months after it. He was therefore charged penal rent as per G.R dated 29.7.2011.

It is seen that the Respondents no 2 or 3 did not give any show cause notice to the Applicant before passing orders to recover rent/penal rent from his pension, which has been sanctioned during the pendency of this Original Application. Under Proviso to Rule 134-A, the Government is required to give a Show Cause Notice before rent for Government accommodation after retirement can be ordered to be recovered. The action of the Respondent no. 2 in ordering recovery of the amount of rent/penal rent without giving notice, cannot be

upheld. Also, the G.R dated 29.7.2011 has to be applied prospectively. Before that date, the G.R in field should be applied. Considering all these facts, the Applicant may be granted provisional pension, and if the Respondents no 2 and 3 so desire, a show cause notice may be issued to the Applicant mentioning the amount which is due from him for occupying Government accommodation after retirement, quoting the provisions of relevant G.Rs. The Applicant may be given reasonable opportunity of being heard. After considering the reply of the Applicant, the Respondents no 2 and 3 may pass appropriate order. The process should be completed within 3 months from the date of receipt of this order. Till then the Applicant may be paid provisional pension, if he is already getting regular pension, no deduction be made till this issue is decided.

9. Original Application is disposed of accordingly with no order as to costs.

Sd/-

(Rajiv Agarwal)
Vice-Chairman

Place : Mumbai

Date : 14.06.2016

Dictation taken by : A.K. Nair.