

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.666 OF 2019

DISTRICT : MUMBAI

Shri Sanjay Pandurang Hadake.)
Age : 59 Yrs., Occu.: Retired Desk Officer,)
R/o. Govt. Colony, B-101/4, Bandra (E),)
Mumbai – 400 051.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through Deputy Secretary,)
Revenue & Forest Department,)
Mantralaya, Mumbai – 400 032.)
2. The Executive Engineer.)
North Mumbai, PWD Department,)
Dadabhai Navroji Marg, Andheri (E),)
Mumbai – 400 058.)
3. The State of Maharashtra.)
Through the Secretary, G.A.D,)
Madam Cama Road, Hutatma)
Rajguru Chowk, Mumbai – 400 032.)...**Respondents**

Mr. R.M. Kolge, Advocate for Applicant.

Mrs. A.B. Kololgi, Presenting Officer for Respondents.

CORAM : SHRI A.P. KURHEKAR, MEMBER-J

DATE : 01.12.2020

JUDGMENT

1. The challenge is to the impugned communication dated 04.05.2018, 08.10.2018 and 29.01.2019 whereby Respondents sought to

recover penal charges amounting to Rs.4,38,125/- for alleged unauthorized occupation of service quarter allotted to the Applicant during the tenure of service.

2. The Applicant was working as Desk Officer in Revenue & Forest Department, Mantralaya, State of Maharashtra, Mumbai and stands retired on 31.07.2016. However, he was re-employed as Coordination Officer, Revenue & Forest Department for one year from 01.10.2016 to 30.09.2017 and the same was extended for another three months from 01.10.2017 to 31.12.2017 by order dated 27th September, 2017. He was again given extension for three months i.e. from 10.01.2018 to 31.03.2018 by order dated 02.02.2018. In view of re-employment, the Applicant continued the possession over service quarter at Bandra which was allotted to him during the tenure of service. Thus, ultimately, his re-employment tenure came to an end on 31.03.2018 and accordingly, he immediately vacated the service quarter on 31.03.2018. After his retirement, the Respondents issued orders dated 04.05.2018, 08.10.2018 and 29.01.2019 informing the Applicant that he is liable to pay penal rent for unauthorized occupation of service quarter quantified at Rs.4,47,500/-. As the Applicant had deposited total license fee of Rs.11,250/-, he was informed to pay the remaining amount of Rs.4,38,125/-. These communications for recovery of Rs.4,38,125/- is challenged by the Applicant in the present O.A.

3. The Respondent No.2 resisted the O.A. by filing Affidavit-in-reply contending that after retirement from regular service, the Applicant was not entitled to continue the service quarter during the period of employment on contractual basis, and therefore, liable to pay penal charges contending that the subsequent occupation of the Applicant was unauthorized.

4. Indisputably, the Applicant retired on 31.05.2016 and he was entitled to retain service quarter for next three months. Admittedly, before he vacates the quarter, he was re-employed in the Department

initially for the period of one year which was extended by another three months' twice. Thus, his total re-employment period was from 01.10.2016 to 31.03.2018.

5. Material to note that while re-appointing and giving extension to the Applicant, by order dated 27th September, 2017, the Government in Para No.5 of the order stated that the Applicant would be liable only to pay license fee only for the quarter during the period of his re-employment in terms of G.R. dated 15.02.1995 and the same should be recovered from him. Para No.5 of appointment order to that effect is material, which is as follows :-

“सामान्य प्रशासन विभागाच्या शासन निर्णय क्र.सीबीई-१८९३/प्र.क्र.३८/९३/तेरा, दि.१५.०२.१९९५ मधील परिच्छेद क्रमांक ७ नुसार शासकीय निवासस्थानाची अनुज्ञप्ती शुल्क भरण्याची जबाबदारी नियुक्त केलेल्या अधिका-याकडून वसूल येते. श्री.हाडके यांच्याबाबत महसूल व वन विभाग, शासन निर्णय क्रमांक :. आव्यप्र २०१६/प्र.क्र.१५३/आव्यप्र-१, दि.०१.१०.२०१६ या शासन निर्णयात शासकीय निवासस्थानाचा उल्लेख नसल्याने सदर शासन निर्णयानुसार त्यांचे अनुज्ञप्ती शुल्क वसूल झालेले नाही. सदर शासन निर्णयातील तरतूदीपैकी क्र.७ येथील तरतूदीनुसार श्री.हाडके यांच्या प्रथम नियुक्तीच्या दिनांकापासून नियमानुसार असलेले अनुज्ञप्ती शुल्क त्यांच्या मासिक पारिश्रमिक (वेतन) मधून वसूल करून संबंधित यंत्रणेकडे जमा कारण्याची कार्यवाही करण्यात यावी.”

6. Admittedly, the Applicant had deposited license fee of Rs.9,375/- on 05.10.2017 and again deposited Rs.1,875/- on 15.03.2018, total Rs.11,250/- with the Department. However, the Respondents by impugned communication sought to contend that the possession of the Applicant over service quarter was unauthorized, and therefore, he was liable to pay penal charges quantified Rs.4,38,125/- was sought.

7. In view of above, the question posed for consideration whether the Applicant's occupation over service quarter during the period of his re-employment can be termed unauthorized occupation rendering him liable to pay penal charges and in my considered opinion, the answer is in negative.

8. When a person in Government service is re-appointed, his terms and conditions about his pay and other benefits are required to be

specified by the employer, so that the person re-employed is put to notice about his obligation, liability, etc. In the present matter, we are concerned with the liability of the Applicant to pay penal charges for continuing service quarter. This being the position, it was incumbent on the part of Respondents to clarify about the vacation of quarter or liability to pay penal rent, if any, while re-appointing the Applicant. However, admittedly, no such document stipulating such condition that the Applicant will have to vacate service quarter and would be liable for penal charges is forthcoming. On the contrary, in re-employment order dated 27th September, 2017, the Government had stated that the Applicant will be liable to pay license fee only for the occupation of service quarter, as stated above. Suffice to say, the re-employment order dated 27th September, 2017 is totally silent about the liability of the Applicant to vacate service and failing which will be liable to pay penal interest. This being the position, now the Government cannot be allowed to change their stand to the detriment of the Applicant. Otherwise, it would amount to alteration of material, terms and conditions of the appointment order.

9. In so far as G.R. dated 15.02.1995 as referred in re-employment order dated 27th September, 2017 which speaks about the liability to pay license fee only is concerned, the Applicant had obtained information from the Government under R.T.I. Act about the efficacy and validity of G.R. dated 15.02.1995. The Public Information Officer by his letter dated 05.06.2018 informed the Applicant that the G.R. dated 15.02.1995 is not superseded fully. He was further informed that at present the terms and conditions of persons re-appointed are governed by G.R. dated 17.12.2016.

10. At this juncture, it would be apposite to refer G.R. dated 15.02.1995 which *inter-alia* provides for liability of a person re-employed to pay only service charges for continuation of service quarter. Para No.7 of G.R. dated 15.02.1005 is material, which is as follows :-

“७. शासकीय निवासस्थानात रहाणा-या व्यक्तीची करार पध्दतीने नेमणूक केल्यास व करार कालावधीत तो अधिकारी शासकीय निवासस्थानात रहात असल्यास त्याच्याकडून नियमानुसार अनुशक्ती शुल्क वसूल करण्यात येईल.”

11. Nothing is produced by the Respondents to show that the G.R. dated 15.02.1995 has lost its efficacy and revoked by the Government. Thus, in view of specific stipulation in Para No.5 of re-employment order dated 27th September, 2017 coupled with Clause 7 of G.R. dated 15.02.1995, the Respondents cannot be allowed to deviate from the terms and conditions mentioned in re-employment order dated 27th September, 2017 and to claim penal charges.

12. Futile attempt was made by the learned P.O. that in terms of G.R. dated 17.12.2016 which governs the terms and conditions of re-employment, the remuneration paid to the Applicant was inclusive of H.R.A, and therefore, the Applicant is liable to pay penal rent. In the first place, there is no whisper or stipulation in G.R. dated 17.12.2016 that in case re-employed person continued the possession of service quarter, he would be liable to pay penal charges. The perusal of G.R. dated 17.12.2016 reveals that the remuneration paid to the re-appointed employee was to be determined considering his pension, etc. Clause No.2 of G.R. relied by the learned P.O. is as follows :-

“भत्ते - उक्त तरतुदीनुसार निश्चित होणा-या मासिक पारिश्रमिकाच्या “जास्तीत जास्त २५% इतक्या मर्यादेपर्यंत एकमुस्त रक्कम “निवास भत्ता, प्रवास भत्ता आणि दूरध्वनी भत्ता” या सर्व भत्त्यांपोटी प्रतिमाह अनुज्ञेय असेल. सदर रक्कम नियुक्त करावयाच्या अधिकारी/कर्मचारी यांची कार्यक्षमता, कार्यकुशलता, त्यांना पुरविण्यात आलेल्या सोयीसुविधा इ.बाबी विचारात घेऊन निश्चित करण्यात यावी.”

13. True, as per Clause 2 of G.R. dated 17.12.2016, the remuneration paid to the Applicant was inclusive of H.R.A, T.A, Telephone Allowance, etc. and it was the appointment on purely contract basis and the remuneration was inclusive of all perks. However, this Clause 2 cannot be construed to hold that the Applicant was liable to pay penal charges, particularly in the light of Government’s own stand in re-employment order dated 27th September, 2017 that the Applicant would be entitled to pay license fee only and not more than it.

14. Needless to mention that the penal charges has to be levied where a Government servant continued the possession over staff quarter unauthorizedly. The Applicant stands retired on 31.07.2016 and within three months, he was re-employed in the same Department on contractual basis. While appointing him on contractual basis, it was made clear in the re-employment order itself that he would be liable to pay license fee only. It is on the basis of this re-employment order dated 27th September, 2017, the Applicant continued the possession over the service quarter and paid license fee. It is after the completion of re-employment tenure only, the Respondents raised the issue of liability of the Applicant to pay the penal charges. During the period of re-employment, not a single notice or letter was given to the Applicant informing him that the condition stipulated in re-employment order dated 27th September, 2017 that he will be liable to pay license fee only is incorrect.

15. Suffice to say, once the Government made it clear that the Applicant will be liable to pay license fee only in terms of G.R. dated 15.02.1995 subject to which the Applicant accepted the re-employment, subsequently the Government cannot be allowed to retract from the terms and conditions mentioned in the re-employment order and to deviate from it to the detriment of the Applicant. In other words, the Government is estopped from raising any such issue and principle of promissory estoppel embodied in Section 115 of 'Evidence Act' would apply with full force and vigor.

16. Suffice to say, once the Government itself made it clear and admit that the liability of the Applicant would be restricted to pay license fee only, the occupation of the Applicant over service quarter by no stretch of imagination can be termed unauthorized occupation much less inviting liability to pay penal charges. Needless to mention, penal charges can be levied only in case of unauthorized occupation of service quarter and in the present situation, the occupation of the Applicant over service

quarter cannot be termed unauthorize inviting liability to pay penal charges.

17. Furthermore, as rightly pointed out by the learned Advocate for the Applicant that the Applicant is subject to discrimination, which is violative of Article 14 of the Constitution of India. The Government by order dated 17.12.2017 had given re-employment to one Shri Nandlal Kalke, who as working in Law & Judiciary Department and for the period of one year, he was allowed to continue service quarter on the payment of license fee only. Another instance is also seen from the Government order dated 17.12.2018 which is tendered by the learned Advocate for the Applicant and taken on record during the course of hearing and marked by letter 'X'. It shows that the Government had re-employed one Shri Kiran Kurandkar on re-employment and allowed him to continue service quarter on payment of license fee only. Whereas, in the matter of Applicant, the Respondents adopted discriminatory treatment which indeed totally unsustainable in view of specific stipulation in re-employment order restricting the liability of the Applicant to pay license fee only.

18. The totality of aforesaid discussion leads me to conclude that the impugned communication charging penal interest is totally arbitrary, harsh, iniquitous, illegal and deserves to be quashed. The Applicant is unnecessarily dragged to the litigation by the Respondents in which he succeeds, and therefore, the O.A. deserves to be allowed with costs, as the Applicant is required to be compensated by imposing costs on the Respondents. Hence, I proceed to pass the following order.

ORDER

- (A) The Original Application is allowed.
- (B) The impugned orders dated 04.05.2018, 08.10.2018 and 29.01.2019 are hereby quashed and set aside.

(C) The Respondents do pay cost of Rs.20,000/- to the Applicant.

Sd/-

(A.P. KURHEKAR)
Member-J

Mumbai

Date : 01.12.2020

Dictation taken by :

S.K. Wamanse.

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