

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.741 OF 2017

DISTRICT : MUMBAI

Shri Vasant K. Jagdhane.)
Age : Adult, Post – Senior Police Inspector)
(Retired), Residing at Flat No.206, B0-1)
Building, 2nd Floor, Anand-Van, Varadha)
Vinayak Lane, Virar (East).)...**Applicant**

Versus

1. The Commissioner of Police,)
Mumbai, Kksha (Class)-8, Building)
Branch, Office of Police)
Commissioner, Mumbai, Crawford)
Market, M. Khana Road, Dhobi)
Talao, Fort, Mumbai – 400 001.)
2. The Additional Commissioner of)
Police, South Region, Mumbai and)
Having Office at South Region)
Office, Nagpada, Mumbai 400 008.)
3. The State of Maharashtra.)
Through Principal Secretary,)
Home Department, Mantralaya,)
Mumbai.)...**Respondents**

Mr. K.R. Jagdale, Advocate for Applicant.

Mrs. K.S. Gaikwad, Presenting Officer for Respondents.

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

DATE : 03.12.2020

JUDGMENT

1. The Applicant has filed the present Original Application for direction to the Respondents to refund sum of Rs.9,50,880/- deducted from his retiral benefits towards penal charges for unauthorized occupation of service quarter retained after retirement and to set aside the order dated 06.08.2018 whereby his request to waive the penal charges stands rejected by the Respondents.

2. Following are undisputed facts to be borne in mind for the decision of O.A.

(i) The Applicant was appointed as Police Sub Inspector (PSI) on the establishment of Respondent No.1 – Commissioner of Police, Mumbai on 14.07.1974.

(ii) In 2004, Crime No.08/2004 was registered against the Applicant by ACB under Section 7, 12, 13(1)(d) read with 13(2) of Prevention of Corruption Act and consequent to it, he was suspended by order dated 13.01.2004. Criminal Case was instituted against the Applicant under the Prevention of Corruption Act and Applicant continued under suspension even till his retirement.

(iii) The Applicant by letter dated 20.12.2007 requested Commissioner of Police, Mumbai to allow him to continue the service quarter on the ground of education of his children (Page No.28 of Paper Book).

(iv) The Applicant stands retired on attaining the age of superannuation on 30.09.2007 but did not vacate the service quarter.

(v) The Applicant was acquitted in Criminal Case by Judgment dated 18.04.2011.

(vi) The Commissioner of Police, Mumbai by letter dated 06.02.2008 asked the Applicant to vacate service quarter failing which he will be liable to pay penal rent at the rate of Rs.10/- per sq.ft. to be charged after the expiration of three months' retention period of service quarter (Page No.30 of P.B.).

(vii) As Applicant failed to vacate the service quarter, the Commissioner of Police by letter dated 08.04.2013 informed the Applicant that he has retained the quarter unauthorizedly for the period of 66 months, and therefore, liable to pay penal charges for unauthorized occupation at the rate of Rs.25/- per sq.ft. in terms of latest G.R. dated 18.11.2005 (Page No.32 of P.B.).

(viii) The Applicant ultimately vacated the service quarter on 01.06.2013.

(ix) The Applicant made representation dated 27.05.2013 to the Respondents requesting to waive the penal charges stating that charging of penal charge at the rate of Rs.25/- per sq.ft. is exorbitant and illegal (Page No.34 of P.B.).

(x) The Applicant again made representation on 27.06.2013 requesting Respondents to charge reasonable penal charges and to release his retiral benefits (Page No.40 of P.B.).

(xi) The Applicant again made representation dated 05.02.2014 to the Government to waive the penal charges and to release the retiral benefits (Page No.44 of P.B.).

(xii) The Government by letter dated 22nd October, 2014 rejected the request of the Applicant to waive the penal charges for unauthorized occupation of service quarter (Page No.47 of P.B.).

(xiii) The Applicant again made representation dated 02.02.2015 addressed to Hon'ble Chief Minister showing his willingness to pay

penal charges at the rate of Rs.10/- per sq.ft. (Rs.6000/- per month) and requested to release remaining retiral benefits after deducting the said amount for unauthorized occupation of the service quarter (Page No.49 of P.B.).

(xiv) The Applicant has challenged the communication dated 08.04.2013, 18.04.2013 whereby penal charges at the rate of Rs.25/- per sq.ft. were charged by the Respondents by filing O.A.No.995/2015 before this Tribunal.

(xv) The Commissioner of Police, Mumbai issued fresh notice dated 05.01.2017 as contemplated under Section 134-A of Maharashtra Civil Services (Pension) Rules, 1982 (hereinafter referred to as 'Rules of 1982' for brevity) as to why sum of Rs.9,50,880/- should not be recovered/adjusted towards retiral benefits (Page No.55 of P.B.).

(xvi) O.A.No.995/2015 was disposed of by the Tribunal by order dated 24.01.2017 in view of recall of communication dated 06.02.2008 and 08.04.2013 by the Respondents giving liberty to the Respondents to give fresh notice and take necessary appropriate orders in accordance to law (Page No.54 of P.B.).

(xvii) The Commissioner of Police, Mumbai again issued show cause notice dated 13.12.2017 as contemplated under Section 134-A of 'Rules of 1982' to explain why the said amount of Rs.9,50,880/- should not be adjusted from gratuity and the other retiral benefits and he was called upon to submit his explanation within seven days (Page 57 of P.B.).

(xiii) The Applicant submitted his reply on 27.12.2017 stating that charging of penal rate at the rate of Rs.25/- per sq.ft. instead of Rs.10/- per sq.ft. is illegal and requested to release withheld amount of Rs.9,50,880/- (Page No.47-C of P.B.) and to waive the penal charges.

(xix) The Commissioner of Police, Mumbai by communication dated 06.08.2018 informed the Applicant that penal charges at the rate of Rs.25/- per sq.ft. is correct and rejected his representation to waive the penal charges (Page No.57-M of P.B.).

3. It is on the above background, the Applicant has challenged the communication dated 06.08.2018 whereby his request for waiver of penal charges was rejected and sought direction to the Respondents to release sum of Rs.9,50,880/- recovered towards unauthorized occupation of service quarter.

4. Shri K.R. Jagdale, learned Advocate for the Applicant sought to assail the impugned order on following grounds :-

(a) The impugned action of adjusting sum of Rs.9,50,880/- towards unauthorized occupation from gratuity and pension of the Applicant is quite belated, as no action to get the order vacated was taken by the Respondents though the Applicant stands retired on 30.09.2007.

(b) In view of decision of Hon'ble Supreme Court in **(2015) 4 SCC 334 (State of Punjab and others Vs. Rafiq Masih (White Washer))**, the recovery from retired Government servant is not permissible.

(c) The impugned action of recovery of Rs.9,50,880/- from gratuity and pension is totally unsustainable in law since the remedy available to the Respondents was only to avail the provisions of 'Public Premises (Eviction of Unauthorized Occupants) Act, 1971' (hereinafter referred to as 'Act of 1971' for brevity).

(d) The Applicant is subjected to discrimination, as no such action for recovery was taken in respect of Shri Deshbratar, Shri Laxman Pharande, Shri Kiran Shaligram and Shri Sanjay Rangeekar, who were

transferred but retained the quarters and no action for recovery was taken and in the matter of Shri D.R. Shejal, Commandant, SRPF, Home Department waived the amount of Rs.2,99,600/- for overstaying in service quarter.

5. Per contra, Smt. K.S. Gaikwad, learned Presenting Officer submits that the impugned action of recovery is in consonance with law. She has pointed out that the Applicant though retired on 30.09.2007, he vacated the quarter after more than five years on 01.06.2013 and despite the notice dated 06.02.2008, he failed to vacate the quarter. She further submits that after decision of O.A.No.995/2015, fresh notice dated 05.01.2017 was issued to the Applicant as contemplated under Section 134 of 'Rules of 1982'. She, therefore, submits that the occupation of the Applicant over service quarter onward 30.09.2007 was wholly unauthorized, and therefore, he was rightly charged penal rent for unauthorized occupation. She sought to place reliance on the decision of Hon'ble High Court in **Writ Petition No.752/2018 (Original Side) (Prakash L. Damle Vs. Municipal Corporation for Greater Mumbai) decided on 22nd October, 2019** wherein action taken by Municipal Corporation for Greater Mumbai for recovery of penal charges from the retiral benefits was held legal.

6. Indisputably, the Applicant stands retired on 30.09.2007 and retention of quarter was permissible only for three months. Admittedly, no permission was granted to the Applicant for retention of quarter after retirement. He vacated the quarter after 69 months on 01.06.2013. True, before retirement, he was suspended in 2004 and Criminal Case i.e. Special Case No.115/2004 was filed against him for offence under Sections 7, 12, 13(1)(d) read with 13(2) of Prevention of Corruption Act. The perusal of record reveals that in Criminal Case, due to absence of Applicant, non-bailable warrant was issued against him. Later, the learned Sessions' Judge by order dated 17.02.2005 released him on bail (Page No.24 of P.B.). While releasing the Applicant on bail, the condition

was imposed that "Accused shall not leave the jurisdiction of this Court without prior permission of the Court". The Criminal Case was continued even after retirement of the Applicant and ultimately, he was acquitted on 18.04.2011. Needless to mention that the pendency of Criminal Case and condition imposed in bail order are absolutely irrelevant and is of no assistance to the Applicant to contend that because of pendency of Criminal Case or bail order, he could not vacate the quarter. Once he stands retired on 30.09.2007, his retention of quarter after three months' permissible period in terms of Government policy is absolutely unauthorize.

7. True, there is unreasonable delay on the part of Respondents to take action for recovery of penal charges and to get the quarter vacated. Indeed, the Respondents ought to have initiated appropriate action to get the quarter vacated and to recover penal charges within reasonable time. The Commissioner of Police for the first time issued notice on 06.02.2008 informing the Applicant that in view of his retirement, he can retain the quarter only for three months, and thereafter, for next three months, the quarter can be retained with prior permission on payment of license fee and after expiry of six months' period from retirement, he will be liable to pay penal rent at the rate of Rs.10/- per sq.ft. By notice dated 06.02.2008, he was further informed that if he failed to vacate the quarter within seven days, the appropriate action for eviction will be initiated under Section 31(2) of Maharashtra Police Act, 1951. Admittedly, this notice was served upon the Applicant. However, regret to note that, thereafter, no further action was taken by the Office of Commissioner of Police and for five years, the matter was kept in cold storage. Thereafter, it is only on 08.04.2013, another notice was issued by Commissioner of Police that he is liable to pay penal charges at the rate of Rs.25/- per sq.ft. totaling to Rs.9,00,970/- and he was directed to vacate the quarter within seven days. The notice was admittedly received by the Applicant on 24.04.2013. Despite this position, he continued to occupy the quarter and vacated the same only on 01.06.2013, and

therefore, recovery of Rs.9,50,880/- for unauthorized occupation was sought. Thus, it appears that the Applicant had managed to retain the quarter for a long period of 69 months and obviously it was in connivance with the concerned official from the Office of Commissioner of Police, Mumbai. The concerned Official who was entrusted to look after the quarter was obliged and duty bound to take action of immediately for vacation of the quarter and for recovery of penal charges but obviously there is either negligence in discharging duties or the concerned Official was in connivance with the Applicant. These are the only inferences and in both situation, the blame definitely lies with the Office of Commissioner of Police for such inordinate delay in taking suitable action. However, this aspect is of hardly any assistance to the Applicant and he cannot be allowed to take the benefit of inaction or delay on the part of Commissioner of Police to take suitable action. Ultimately, it is the Applicant who is beneficiary of this situation as his retention after retirement is absolutely unauthorized, and therefore, he cannot avoid the liability to pay penal charges.

8. Shri K.R. Jagdale, learned Advocate for the Applicant sought to place reliance on the decision rendered by this Tribunal in **O.A.No.695/2012 (Dadasaheb B. Ghumare Vs. The State of Maharashtra) decided on 15.01.2013** and **O.A.No.739/2017 (Shivaji N. Pophale Vs. Commissioner of Police & 3 Ors.) decided on 04.06.2019**. In these decisions, the order of recovery of penal rent from retiral benefits were quashed giving liberty to recover it by adopting due process of law. In O.A.No.695/2012, the recovery of Rs.3,37,550/- was sought for not vacating the quarter despite transfer from Pune to Raigad. Whereas, in O.A.No.739/2017, the recovery of Rs.10,11,959/- was sought for not vacating the quarter allotted to the Applicant in Mumbai though he was transferred to some other place. The perusal of Judgment in these O.As. reveals that the Tribunal allowed the O.As. mainly relying on the decision of Hon'ble Bombay High Court in **2004(3) BOM CR 24 (N.C. Sharma Vs. Union of India & Ors.)** and the decision of Hon'ble

Supreme Court in **AIR 2001 SC 2433 (Gorakhpur University Vs. Dr. Shitla Prasad Nagendra)** and **1994 II CLR 885 (R. Kapur Vs. Director of Inspection)**. In **N.C. Sharma's** case, the recovery of penal charges was sought from Railway employee on account of retention of quarter despite transferred to other place. It is in that context, the Hon'ble Bombay High Court while deciding **N.C. Sharma's** case referred the decision **2003 (3) Mh.L.J. (V.U. Warriar Vs. Secretary, Oil and Natural Gas Commission & Anr.)** and held that the Respondents therein ought to have taken recourse of the provisions of Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and further held that it is not permissible for the authorities to fall back on the Pension Rules pertaining to grant of terminal benefits and to effect recovery therefrom. As such, the Tribunal rendered the decisions in **O.A.No.695/2012** and **O.A.No.739/2017** relying on the decision in N.C. Sharma's case which was based upon the decision in **V.U. Warriar's** case. However, subsequent to it, there is change in legal situation, as the decision in **V.U. Warriar's** case was challenged before the Hon'ble Supreme Court and the decision of Hon'ble Bombay High Court was set aside in **(2005) 5 SCC 245 (Secretary, ONGC Limited and Anr. Vs. V.U. Warriar)**. Therefore, it would be useful to refer this subsequent decision which hold the field and clinch the issue.

9. It would be apposite to refer the decision of Hon'ble Supreme Court in **Secretary, ONGC Ltd. & Anr. Vs. B.U. Warriar**. It was a case pertaining to retention of quarter by the employee of ONGC Ltd, even after retirement. Earlier, the Hon'ble Bombay High Court delivered the Judgment in favour of the Applicant (reported in 203 (3) Mh.L.J., Page 168) wherein it was held that to recover damages from retired employees for unauthorized occupation, the employer has to pursue appropriate remedy in law, but the said amount cannot be set off against pension and gratuity amount payable to retired employee. Being aggrieved by the decision, the ONGC carried the matter before the Hon'ble Supreme Court and while setting aside the decision of Hon'ble Bombay High Court, the

Hon'ble Supreme Court upheld the action of ONGC to deduct the amount of penal charges for unauthorized occupation from the gratuity and turned down the contention raised by the employee that it cannot be deducted from retiral benefits. In this behalf, Para No.17 of decision is material, which is as follows :-

“17. Having heard the learned counsel for the parties, in our opinion, the appeals deserve to be allowed. It is no doubt true that pensionary benefits, such as gratuity, cannot be said to be 'bounty'. Ordinarily, therefore, payment of benefit of gratuity cannot be withheld by an employer. In the instant case, however, it is the specific case of the Commission that the Commission is having a statutory status. In exercise of statutory powers under Section 32(1) of the Act, regulations known as the Oil and Natural Gas Commission (Death, Retirement and Terminal Gratuity) Regulations, 1969 have been framed by the Commission. In Sukhdev Singh v. Bhagatram Sardar Singh Raghuvanshi and Anr., [1975] 1 SCC 421 the Constitution Bench of this Court held that regulations framed by the Commission under Section 32 of the Oil and Natural Gas Commission Act 1959 are statutory in nature and they are enforceable in a court of law. They provide for eligibility of grant of gratuity, extent of gratuity, etc. Regulation 5 deals with recovery of dues of the Commission and reads thus :

“5. Recovery of Dues.- The appointing authority, or any other authority empowered by the Commission in this behalf shall have the right to make recovery of Commission's dues before the payment of the death-cum retirement gratuity due in respect of an officer even without obtaining his consent or without obtaining the consent of the members of his family in the case of the deceased officer, as the case may be.”

The above regulation leaves no room of doubt that the Commission has right to effect recovery of its dues from any officer without his consent from gratuity. In the present case admittedly the respondent retired after office hours of February 28, 1990. According to the Commission, he could be allowed four months' time to occupy the quarter which was granted to him. His prayer for extension was considered and rejected stating that it would not be possible for the Commission to accept the prayer in view of several officers waiting for quarters. He was also informed that if he would not vacate the quarter, penal rent as per the policy of the Commission would be recovered from him. But the respondent did not vacate the quarter. It was only after eviction proceedings were initiated that he vacated the quarter on May 16, 1991. In the circumstances, in our opinion, it cannot be said that the action of the Commission was arbitrary, unlawful or unreasonable. It also cannot be said that the Commission had no right to withhold gratuity by deducting the amount which is found “due” to Commission and payable by the respondent towards penal charges for unauthorized occupation of the quarter for the period between 1-7-1990 and 15-5-1991.”

10. Material to note that while deciding the matter, the Hon'ble Supreme Court also referred the decisions in **R. Kapur's** case, **Gorakhpur University's** case which were referred in the decision of Hon'ble Bombay High Court in **N.C. Sharma's** case and finally held that the action of ONGC deducting penal charges from the retiral benefits is legal in view of Rules and Regulations framed by the ONGC in this behalf. Regulation 5 deals with the recovery of dues of the Commission which *inter-alia* empowers the Commission to effect recovery of Commission's due from retiral benefits even without obtaining his consent.

11. Now turning to the facts of the present case, the Respondents have invoked Rule 134 of 'Rules of 1982' for effecting recovery of Government dues (amount towards unauthorized occupation of quarter) from retiral benefits. In this behalf, Rule 132 and Rule 134-A of 'Rules of 1982' are material, which are as follows :-

"132. Recovery and adjustment of Government dues.

- (1) It shall be the duty of the Head of Office to ascertain and assess Government dues, payable by a Government servant due for retirement.
- (2) The Government dues as ascertained and assessed by the Head of office which remain outstanding till the date of retirement of the Government servant, shall be adjusted against the amount of the (retirement gratuity) becoming payable.
- (3) The expression 'Government dues' includes-
 - (a) dues pertaining to Government accommodation including arrears of license fee, if any;
 - (b) dues other than those pertaining to Government accommodation, namely balance of house building or conveyance or any other advance, overpayment of pay and allowances or leave salary and arrears of income-tax deduction at source under the Income Tax Act, 1961 (43 of 1961).

134A. Recovery and adjustment of excess amount paid.

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

(i) it is found that due to any reason whatsoever an excess amount has been paid to him during the period of his service including service rendered upon re-employment after retirement, or

(ii) any amount is found to be payable by the pensioner during such period and which has not been paid by or recovered from him, or

(iii) it is found that the amount of licence fee and any other dues pertaining to Government accommodation is recoverable from him for the occupation of the Government accommodation after the retirement, then the excess amount so paid, the amount so found payable or recoverable shall be recovered from the amount of pension sanctioned to him):

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 installments so that the amount of pension is not reduced below the minimum fixed by Government.)”

12. As such, it is crystal clear that under Rule 132 of ‘Rules of 1982’, the Government dues which include dues pertaining to Government accommodation can be adjusted from the retirement gratuity of the Government servant. Whereas, where dues pertaining to Government accommodation is sought to be recovered from pension, then in that event, Rule 134A would attract which *inter-alia* contemplates issuance of notice to the pensioner to show cause as to why the amount due should not be recovered from his pension.

13. Indisputably, the Applicant retired on 30.09.2007 and vacated the quarter only on 01.06.2013. Firstly, notice was issued on 06.02.2008 informing the Applicant to vacate the quarter within seven days and failing which he will be liable to pay penal charges at the rate of Rs.10/- per sq.ft. which was not complied with. True, thereafter for more than five years, no action was taken by the Respondents due to sheer laxity and negligence in discharging duties on the part of concerned authority

who was entrusted with the said assignment. Thereafter, again notice was issued on 08.04.2013 and recovery at the rate of Rs.25/- per sq.ft. was sought in terms of G.R. dated 05.03.2008. The Applicant made representations on 27.05.2013, 27.06.2013, 13.09.2013 and 05.02.2014. By representation dated 05.02.2014, he requested to waive the penal charges. Thereafter, he had filed O.A.No.995/2015 which was disposed of by order dated 24.01.2015 giving liberty to Respondents to take appropriate steps in accordance to law. It is on this background, the Respondents again issued fresh notice on 13.12.2017 invoking Rule 134A of 'Rules of 1982'. As such, there is compliance of provisions of Rule 134A of 'Rules of 1982', which *inter-alia* empowers the Government to adjust the Government dues from the retiral benefits. The request made by the Government to waive the penal charges is rejected by order dated 06.08.2018 which is again challenged by the Applicant in the present O.A.

14. As such, in view of decision of Hon'ble Supreme Court in **V.U. Warriar's** case, it is no more *res-integra* that the Government dues including penal charges for unauthorize occupation of service quarter can be recovered from the gratuity and other retiral benefits. This being the latest position of law, the decisions relied by the Applicant is of no assistance to him. While deciding **O.A.No.695/2012** and **O.A.No.739/2017**, the decision of Hon'ble Supreme Court in **V.U. Warriar's** case was not brought to the notice. Be that as it may, now in view of decision of Hon'ble Supreme Court in **U.V. Warriar's** case, the contention raised by the Applicant that recovery of penal charges from retiral benefits is not permissible will have to be rejected.

15. Suffice to say, the submission advanced by the learned Advocate for the Applicant that Respondents are required to invoke the remedy under 'Public Premises Act' and the dues towards penal charges cannot be set off or recovered from gratuity or other retiral benefits it totally erroneous and unsustainable in law.

16. The reliance placed by the learned Advocate for the Applicant on **Rafiq Masih's** case is totally misplaced. The decision of Hon'ble Supreme Court in **Rafiq Masih's** case pertains to excess payment made to the Government employee due to mistake in pay fixation. The Hon'ble Supreme Court in Para No.12 of the Judgment held that such recovery is not permissible in following situations :-

“12. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarize the following few situations, wherein recoveries by the employers, would be impermissible in law.

- (i) Recovery from employees belong to Class-III and Class-IV services (or Group 'C' and Group 'D' services).*
- (ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.*
- (iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.*
- (iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.*
- (v) In any other case, where the court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.”*

17. Whereas, in the present case, the recovery pertained to unauthorized occupation of service quarter after retirement. This is not a case of payment of excess money due to *bonafide* mistake of the Department. This is a case where despite notice to vacate the quarter, the Applicant retained the quarter for more than five years. He was specifically made aware that notices dated 06.12.2008, 08.04.2013, etc. that he will be liable to pay penal rent. Despite the knowledge, the Applicant detained the quarter with impunity and vacated the same only

on 01.06.2013. After retirement, he had absolutely no right to retain the quarter except to retain the same for next three months in terms of Government policy. The quarter was at Borivali, Mumbai where large employees are in queue for quarter and they are deprived of getting the quarter due to such unauthorized retention which needs to be dealt with firmly in accordance to Rules.

18. As stated above, Rule 132 and 134A of 'Rules of 1982' specifically empowers the Government to recover the Government dues and the arrears on account of unauthorized occupation of quarter comes within the term 'Government Dues'. The 'Rules of 1982' are framed under Article 309 of Constitution of India which have statutory force alike ONGC Commission Rules, and therefore, the action of recovery of penal charges from gratuity and other retiral benefits cannot be termed illegal by any stretch of imagination. Indeed, it is in consonance with service rules.

19. In similar situation, the Hon'ble Bombay High Court in **Prakash L. Damle's** case (Writ Petition No.752/2018) decided on 22nd October, 2019 upheld the legality of action taken by Municipal Corporation of Greater Mumbai to recover the penal charges from the retiral benefits of the employee taking note of the decision of Hon'ble Supreme Court in **U.V. Warriar's** case.

20. There is one more decision of Hon'ble Supreme Court **(2001) 6 SCC 596 (Vazir Chand Vs. Union of India & Ors.)** wherein in similar situation, the Hon'ble Supreme Court upheld the action of Government to recover penal charges for retention of quarter after retirement. The Hon'ble Supreme Court held that the employee is liable to pay penal rent in accordance to Rules and it was rightly adjusted against the death cum retirement dues. The Hon'ble Supreme Court held as follows :-

“These appeals are directed against the orders of the Central Administrative Tribunal rejecting the claim of the appellant, who happens to be a retired Railway servant. Admittedly, the appellant even after superannuation, continued to occupy the Government quarter, though being placed under hard circumstances. For such continuance, the Government, in accordance with Rules, has charged penal rent from the retired Government servant, and after adjusting the dues of the Government, the balance amount of the gratuity, which was payable, has been offered to be paid, as noted in the impugned order of the Tribunal. The appellants' main contention is that in view of the Full Bench decision of the Tribunal against which the Union of India had approached this Court and the Special Leave Application was dismissed as withdrawn, it was bounden duty of the Union of India not to withhold any gratuity amount, and therefore, the appellant would be entitled to the said gratuity amount on the date of retirement, and that not having been paid, he is also entitled to interest thereon. We are unable to accept this prayer of the appellant in the facts and circumstances of the present case. The appellant having unauthorisedly occupied the Government quarter, was liable to pay the penal rent in accordance with Rules, and therefore, there is no illegality in those dues being adjusted against the death-cum-retirement dues of the appellant. We, therefore, see no illegality in the impugned order which requires our interference. The appeals stand dismissed.”

21. At this juncture, it would not be out of place to refer the admission of the Applicant accepting his liability to pay penal charges at the rate of Rs.10/- per sq.ft. instead of at the rate of Rs.25/- per sq.ft. In this behalf, it would be worthwhile to refer representation dated 02.02.2015 (Page Nos.49 & 50 of P.B.) wherein the Applicant states as follows :-

“म्हणून मला कळविल्याप्रमाणे मी दरमहा रुपये ६,०००/- प्रमाणे घरभाडे भरण्यास तयार आहे व ते मला मिळणा-या थकीत रकमेतून टप्प्याटप्प्याने वळते करावे व उर्वरित वाढीव भाडे ज्या अधिका-याने मला कळविले नाही त्यांच्याकडून वसूल करावे व माझे शिल्लक राहिलेले पैसे मला ताबडतोब देण्यात यावे, ही नम्र विनंती. केलेली कार्यवाही मना पत्राने कळवावी ही विनंती.
”

Apart from the admission of the Applicant in law he cannot escape from the liability to pay penal charges from the retiral benefits as discussed above.

22. Shri K.R. Jagdale, learned Advocate for the Applicant tried to make much clamour that the Applicant is subjected to discrimination. He sought to contend that in the matter of other Police employees viz. Shri Deshbratar, Shri Laxman Pharande, Shri Kiran Shaligram and Shri Sanja Rangeekar, who were transferred out of Mumbai were not subjected

to penal rent. He has also submitted that in the matter of Shri D.R. Shejal, Commandant, SRPF, Home Department waived penal charges of Rs.2,99,600/- for over-staying in service quarter. These are the instances not disputed by the Respondents which appears arising from the charging of penal charges in view of transfer of Police Official. Whereas, in the present case, we are dealing with the issue of retention of quarter after retirement. It is not clear as to why non action was taken against those Police Officials for recovery of penal charges though transferred outside Mumbai. In my considered view, inaction on the part of Respondents in that matter will be of no assistance to the Applicant as per the principle of negative discrimination is unknown to law. Otherwise, it would amount to perpetuate the illegality which Court of law should not countenance in any manner, so as to discourage such tendency of the Government servant to retain quarter with impunity and then to take plea of discrimination. Inaction or wrong on the part of Respondents in those matters is hardly of any assistance to the Applicant to exonerate from the liability to pay penal charges.

23. Similarly, the reliance placed by the learned Advocate for the Applicant on the decision rendered by this Tribunal in **O.A.41/2016 (Sampat B. Sawant Vs. State of Maharashtra) decided on 10.08.2018** is also misplaced in the facts and circumstances of the present case. In that case, the action of the Department for charging penal rent after transfer of employee of Police Department was under challenge. The Applicant took plea that Shri Ashok Deshbratar, Shri Laxman Pharande, Shri Kiran Shaligram and Shri Sanjay Rangeekar were allowed to retain quarter after transfer, but no penal action was taken against them, and therefore, prayed to quash the recovery order dated 04.09.2015. The Tribunal disposed of the O.A. by making following observation in Para Nos.12, 13 and 14.

“12. It is clear and evident that deficiency of distinct treatment is given to subordinate police staff while a favoured treatment is given to the Higher Officers.

13. In the result without any adjudication on other points Original Application partly succeeds on the point of discrimination and unequal treatment in the matter of condonation of payment/ recovery of penal rent. No recovery shall be done against the Applicant unless the recovery of pending penal rent is done from other officers named in O.A. and other names which applicant may furnish.

14. In the event turn of applicant for recovery arises, applicant shall be free to agitate grounds of challenge as available in law.”

24. As such, all that, the Tribunal held that the recovery shall not be done against the Applicant unless the recovery of pending penal rent is done from other Officers named in O.A. Suffice to say, there is no such finding on merit about the legality of order of recovery. Therefore, in my considered opinion, this Judgment is hardly of any assistance to the Applicant.

25. Initially, though the Applicant sought to challenge the charging of penal interest at the rate of Rs.25/- per sq.ft. instead of 10/- per sq.ft., he deleted the said ground pleaded in Para No.XII of O.A. It seems that he has deleted the said ground under the belief that raising of such contention would amount to admission to pay penal charges at the rate of Rs.10/- per sq.ft. Though he has deleted the said ground, material to note that, initially, the penal charges were at the rate of Rs.10/- per sq.ft. in terms of G.R. dated 18.11.2005 which was enhanced to at the rate of Rs.25/- per sq.ft. of G.R. dated 05.03.2008. Here, material to note that the Applicant retired on 30.09.2007 and penal charges were levied by giving the benefit of retention for six months w.e.f.01.04.2008. Thus, the penal charges were levied w.e.f.01.04.2008 whereas, the G.R. was issued on 05.03.2008 whereby rate was enhanced to Rs.25/- per sq.ft. The

period for which penal charges were levied is subsequent to G.R. dated 05.03.2008. Therefore, the contention that G.R. dated 05.03.2008 was applied with retrospective effect is misconceived and fallacious.

26. The totality of aforesaid discussion leads me to conclude that the challenge to the impugned action of recovery of Rs.9.50,880/- from the retiral benefits of the Applicant is totally devoid of merit and O.A. deserves to be dismissed.

27. Before concluding, it is necessary to point out that though the Applicant retired in 2007 and first notice was issued on 06.02.2008, no further action was taken within reasonable time either to vacate the quarter or to recover the penal charges. There is total negligence and laxity on the part of concerned Official. It seems that the Applicant managed to retain quarter in connivance with the concerned Official who was entrusted with the work of quarter allotment. The Tribunal has come across such inaction and negligence in several matters which needs to be taken note of. This aspect requires to be looked into to take the matter to logical conclusion and to avoid such instances in future. The Respondent No.1 – Commissioner of Police, Mumbai is, therefore, directed to look into the matter and to fix the responsibility of the concerned Official responsible for such negligence and shall take suitable departmental action against him. The Commissioner of Police, Mumbai shall submit compliance report within a month from today. Hence, I proceed to pass the following order.

ORDER

- (A) The Original Application stands dismissed.
- (B) The Respondent No.1 – Commissioner of Police, Mumbai is directed to submit compliance report on or before 05.01.2021 without fail, as stated in Para No.27 of the Judgment.

- (C) The matter be placed before the Tribunal on 05.01.2021 for further order, if any.
- (D) No order as to costs.
- (E) Registrar is directed to forward the copy of Judgment to Commissioner of Police, Mumbai for compliance.

Sd/-

(A.P. KURHEKAR)
Member-J

Mumbai

Date : 03.12.2020

Dictation taken by :

S.K. Wamanse.

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