

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.119 OF 2017

DISTRICT : PUNE

Shri Purshottam L. Naiknavare.)
Age : 63 Yrs., Occu.: Retired,)
R/at C/o. Priya Shenoy, S.No.87/2,)
Mahamadwadi Road, B-302, Srishti)
Residency, Hadapsar, Pune – 411 028.)...**Applicant**

Versus

1. The Principal Secretary.)
Water Supply & Sanitation Dept.,)
Mantralaya, Mumbai - 400 032.)
2. The Director.)
Ground Water Survey & Developing)
Agency, M.S, Bhujal Bhavan,)
Shivajinagar, Pune 411 005.)
3. The Deputy Director.)
Ground Water Survey & Developing)
Agency, M.S, Bhujal Bhavan,)
Shivajinagar, Pune 411 005.)
4. Senior Geologist.)
Ground Water Survey & Developing)
Agency, Central Building,)
Kasbawada Road, Kolhapur.)
5. The Executive Engineer,)
P.W.D, Pune, Central Building, Pune.)

6. The Accountant General (I))
 Maharashtra, 101, Maharshi Karve)
 Road, Mumbai 400 0021.)
7. The District Treasury Officer.)
 Laxmipuri, Kolhapur – 2.)...**Respondents**

Mr. V.V. Joshi, Counsel for Applicant.

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

PER : SHRI J.D. KULKARNI (VICE-CHAIRMAN)(J)

DATE : 02.02.2018

J U D G M E N T

1. Heard Mr. V.V. Joshi, the learned Counsel for the Applicant and Mrs. A.B. Kololgi, the learned Presenting Officer (P.O) for the Respondents.

2. The Applicant in this case was appointed as a Junior Clerk in the office of Ground Water Survey Developing Agency on 08.11.1973. He was promoted as Senior Clerk in September, 1980. While the Applicant was working at Pune, he was allotted with Government Quarter K-134, Shstri nagar, Yerawada, Pune on 11.03.2005. In the meantime, the Applicant was transferred to Kolhapur on 02.04.2007. He

served at Kolhapur from 26.05.2007 to 31.05.2011 and on 31.05.2011, he got retirement on superannuation.

3. According to the Applicant, he did not get quarters at Kolhapur, nor he was paid House Rent Allowance (H.R.A) since he was occupying quarter at Pune and his family was at Pune. Immediately, after retirement within three months i.e. on 30.07.2011, the Applicant vacated his quarter.

4. The Respondent – Executive Engineer, P.W.D, Pune requested the Senior Geologist, Ground Water Survey and Developing Agency, Kolhapur (Respondent No.4) to deduct an amount of Rs.4,56,065/- from the pensionary benefits of the Applicant towards rent and penal rent, and accordingly, the said amount was recovered from the Applicant. According to the Applicant, the said order of recovery is arbitrary in nature. No show cause notice was issued to the Applicant while making such recovery. The Applicant was not given any opportunity nor he was knowing as to how the penal rent was charged.

5. Being aggrieved by the impugned order of recovery, the Applicant has issued one notice through Advocate to the Respondents and in spite of such notice, the amount is not refunded to the Applicant, and therefore, the Applicant has filed this O.A.

6. The Applicant has prayed for following reliefs.

“10.(a) This Hon’ble Tribunal be pleased to declare that the impugned recovery letter dated 3.2.12 on account of penal rent issued by the Respondent no.5 Executive Engineer, PWD, Pune is illegal and be further pleased to quash and set aside the impugned letter dated 3.02.12 and reply dated 24.10.16 of the Director, Respondent no.2 rejecting the representation/appeal;

(b) This Hon’ble Tribunal further pleased to declare that the impugned recovery effected from pensioner dues was arbitrary and illegal and be further pleased to direct the Respondents to repay to the applicant the amount of Rs.4,56,065/- recovered from the retirement dues with interest @ 12% p.a. within the stipulated period;

(c) Any other order as the Hon’ble Tribunal may deem just and equitable in the facts and circumstances of the case be passed.”

7. Though the amount has been recovered on the basis of impugned letter dated 3.02.2012 from Executive Engineer, Pune, the Executive Engineer did not file any reply in the O.A. The reply affidavit has been filed by the Respondent Nos.1 to 4 and then by Respondent No.7. The sum and substance of the reply filed by the Respondents is that the Applicant knowingly fully well that he was transferred to Kolahpur did not vacate the quarter, and therefore, he was illegally occupying the

quarter and as per the G.R. dated 1st November, 2006, penal rent has been claimed against the Applicant. In short, the Respondents tried to justify the order of recovery.

8. The learned Counsel for the Applicant submits that the Applicant was never given any show cause notice to vacate the quarter nor he was asked to explain as to why the penal interest shall be charged. The learned Counsel further submits that, in the impugned order of recovery, it has been stated that the recovery was being made as per G.R. dated 29.07.2011. The copy of the said G.R. is placed on record at Annexure 'L', Pages 21 to 23 (both inclusive). The learned Counsel for the Applicant submits that the Applicant has got retired on superannuation on 31.05.2011 whereas the impugned G.R. vide which the recovery is being made is dated 29th July, 2011, and therefore, in any case, the G.R. dated 29th July, 2011 cannot be held applicable to the case of the Applicant.

9. In the impugned letter of recovery dated 3.02.2012, it is stated that the amount of Rs.4,56,065/- towards rent was being recovered as per the G.R. dated 29th July, 2011. The impugned order of recovery is at paper book No.20.

10. I have perused the G.R. dated 29th July, 2011 (Annexure 'L'). Vide this G.R, the Government has taken following decision:-

“शासन निर्णय:-

३(अ) सेवानिवृत्त झालेल्या, सेवेतून कोणत्याही कारणास्तव कमी करण्यात आलेल्या तसेच मुंबईबाहेर बदली झालेल्या अथवा शासकीय अधिका-यांचा / कर्मचा-यांचा सेवेत असताना मृत्यू झालेल्या, यथास्थिती शासकीय अधिकारी / कर्मचा-यांनी / त्यांच्या कुटुंबियांनी सेवानिवृत्तिच्या / बदलीच्या / मृत्यूच्या दिनाकापासून ३ महिन्यांच्या आत शासकीय निवासस्थान रिक्त केले पाहिजे. अशा अधिकारी / कर्मचा-यांच्या बाबतीत तीन महिन्यांपर्यंत नियमित दराने अनुज्ञप्ती आकारणी केली जाईल. तीन माहिन्यांनंतर पुढे निवास्थांनाचा ताबा विहित पद्धतीने परत घेईपर्यंतच्या कालावधीकरिता उपरोक्त सर्व प्रकरणी दरमहा प्रती चौरस फूटास रु.५०/- या दंडनीय निवासस्थानाच्या एकूण चटई क्षेत्रासाठी अनुज्ञप्ती शुल्क आकारले जाईल.

३ (ब) सेवानिवृत्त झाल्याच्या, सेवेतून कोणत्याही कारणास्तव कमी करण्यास आल्याच्या तसेच मुंबईबाहेर बदली झाल्याच्या / कर्मचा-यांचा सेवेत असताना मृत्यू झाल्याच्या दिनाकापासून ६ शासकीय निवासस्थान कोणत्याही परिस्थितीत ताब्यात ठेवता येणार नाही. सदर ६ महिन्यांचा कालावधी संपुष्टात येताय शासकीय निवासस्थात त्वरित रिक्त घेण्यासाठी संबंधित कार्यकारी अभियंता, विभाग यांच्याकडून विहित कार्यपद्धतीनुसार संबंधित अधिकारी/कर्मचारी यांना सूचना घेण्यात येतील व त्यानंतर निष्कासनाची पुढील कार्यवाही करण्यासाठी संबंधित प्रकरण सक्षम

प्राधिकारी, बूहन्मुंबई यांच्याकडे --- करण्याची कार्यवाही विनाविलंब केली जाईल.

३(क) उपरोक्त शासन निर्णय, सामान्य प्रशासन विभाग दि. १०.९.१९९६ व दि. १.११.२००६ अन्वये घेण्यात आलेल्या अन्य निर्णयाच्या बाबतीत सदर निर्णयांमध्ये जेथे रु.१०/- प्रती चौरस फूट दरमहा अथवा रु.२५/- प्रती चौरस फूट दरमहा असा उल्लेख असेल त्यामध्ये सुधारणा करण्यास येत असून सदर दर रु.५०/- प्रती चौरस फूट दरमहा असा आकारण्यात येत आहे. त्याचप्रमाणे वरील शासन निर्णयात जेथे ९ महिन्यांचा अनुज्ञेय कालावधी नमूद करण्यात आलेला आहे, त्यामध्ये सुधारणा करण्यात येत असून सदर कालावधी ६ महिने इतका विहित करण्यात येत आहे.

४. हे आदेश दि. १ ऑगस्ट, २०११ पासून अंमलात येतील.”

11. The plain reading of the aforesaid decision taken by the Government shows that it was made incumbent upon the Government servant to vacate the quarter within three months from the date of retirement or on transfer or in case of their death by their LRs and in case, it is not vacated as such within three months, the rent will be at Rs.50/- per square feet/per annum. The said rent enhances further, if the quarter is not vacated within stipulated period. It was made incumbent that, in case of death of the employee outside Mumbai, the period of vacation shall not exceed in any case for more than six months.

From Para 3(क) as above, it seems that, earlier the rate per square feet was Rs.10/- per square feet per month which was subsequently enhanced to Rs.25/- and lastly to Rs.50/- per square feet per month. The most important Clause in the said G.R. is Clause No.4, which states that the G.R. will be made applicable with effect from 1st August, 2011. Thus, in any case, this G.R. cannot be used against the Applicant for the simple reason that the Applicant has got retired on superannuation on 31.05.2011 and has handed over the possession of quarter to the competent authority on 30.07.2011 i.e. prior to coming into force of this G.R.

12. It is an admitted fact that, no show cause notice was issued to the Applicant prior to recovery of the amount from his pensionary benefits and straightaway, the amount has been recovered in spite of objection from Accountant General. Such an action on the part of the Respondents is not legal. No opportunity of hearing was given to the Applicant nor any show cause notice was issued to him to explain the circumstances as to why it was necessary to recover the penal interest.

13. The learned Counsel for the Applicant invited my attention to the fact that the Applicant has not claimed H.R.A. while he was serving at Kolhapur. He was not occupying any Government quarter at Kolhapur and he has paid all the rent for his occupation of quarter at Pune, and therefore, his possession cannot be said to be illegal. The learned Counsel

further submits that the Respondent authorities have never issued any show cause notice to the Applicant asking him to vacate quarter either on account of his transfer at Kolhapur or on other count. The Respondents never informed the Applicant that his occupation of Government quarter at Pune was in any manner illegal or unauthorized. On the contrary, immediately after retirement, the Applicant himself vacated the quarter on 30.07.2011. There seems to be no dispute of the fact that, after retirement from Kolhapur on 31.05.2011, the Applicant himself approached the Respondent authorities and vacated the quarter on 30.07.2011. The application in this regard is at paper book Page No.28. Along with this application, the Applicant has also filed the Schedule showing the recovery of rent from his salary. This statement of recovery is at paper book Page Nos.30 & 31. The documents at Page Nos.28 to 31 (both inclusive) thus makes it clear that the Applicant has deposited all the rent for the quarter at Pune from 25.05.2007 to 31.05.2011 and has also requested the authority to allow him to vacate the quarters. A 'No Dues Certificate' was also issued by the competent authority for releasing his pension.

14. The learned Presenting Officer (P.O) has invited my attention to the order of allotment of quarter to the Applicant. The said order is placed on record at paper book Page Nos.25, 25-A and 25-B. The learned P.O. specifically pointed out Condition Nos.6, 8 and 13 of the said allotment order, which read as under.

“६. आपली बदली पुण्याबाहेर झाल्यास बदलीचे गावी रुजू होण्यासाठी कार्य मुक्त झाल्याचा दिनांकापासून फक्त एकच महिना निवासस्थान ताब्यात ठेवता येईल. तदनंतर निवासस्थान ताब्यात राहू द्यायचे किंवा नाही हा प्रश्न गृहवाटप समितीच्या अधिकारातील आहे. तशी संमती न घेतल्यास निवासस्थान रिक्त करवून घेण्याबाबत प्रचलित नियमानुसार कार्यवाही केली जाईल, याची नोंद घ्यावी.

८. प्रतिनियुक्तीवरील आपली बदली जर कोणत्याही निम-सरकारी संस्थेत अगर कार्यालयात झाली व तशी प्रतिनियुक्ती जरी पुण्यात असली तरी प्रतिनियुक्तीवर गेलेल्या दिनांकापासून निवासस्थानकाचा ताबा ठेवता येणार नाही तसेच निवासस्थान त्वरित रिक्त न केल्यास बाजार भावाप्रमाणे भाडे आकरण्यात येईल.

१३. मंजूर करणेत आलेले निवासस्थान पुण्याच्या बाहेरगावी बदली झालेनंतर मुदतीत रिक्त करून दिले नाही, तसेच मंजूर आदेशामध्ये नमूद केलेल्या शर्त ६ अथवा ७ चा भंग होऊन मुंबई शासकीय निवासस्थान (घालवणे) कायदा- १९५५ प्रमाणे कार्यवाही करावी लागेल. तर महाराष्ट्र नागरी सेवा (शिस्त व अपील) नियम १९७९ नियम - ५ (३) अन्वये शिस्तभंगाची कार्यवाही सुरू केली जाईल.”

15. According to the learned P.O, the Applicant was knowing fully well that he was to vacate quarters on his transfer from Pune, even if he was transferred on deputation at Pune itself and that in case, he does not vacate the quarter, he

will have to pay rent as per market value and further that departmental action can be taken for misconduct against him for not vacating the quarter. Even from the arguments sake, it is accepted that such was the condition for allotment for quarter, it was incumbent upon the Respondent authorities i.e. Executive Engineer, P.W.D. or the Quarter Allotment Committee, Pune to at least issue a show cause notice to the Applicant to state as to why penal rent shall not be recovered from the Applicant. In fact, the Respondent – Executive Engineer / Quarter Allotment Committee ought to have given clear understanding to the Applicant to vacate the quarter or else to pay penal rent at particular rate. However, no such opportunity was given to the Applicant.

16. From perusal of the record, it seems that the Respondent authorities never directed Applicant to vacate quarter nor issued any show cause notice to pay penal rent. Nor it has initiated any proceedings against the Applicant for getting the quarter vacated. The fact, therefore, remains that the Applicant was occupying the quarter legally and though he was expected to vacate it after transfer from Pune to Kolhapur, that itself does not mean that he was occupying the quarter unauthorizedly or illegally.

17. The learned Counsel for the Applicant has placed reliance on Rule 119 of the Maharashtra Civil Services (Pension) Rules, 1982. As per this Rule, the head of the office

has to write to the Executive Engineer concerned at least two years before the anticipated date of retirement of the Government servant who is in occupation of Government accommodation for issue of a 'No Dues Certificate' in respect of the period preceding 8 months of the retirement of the Government servant. In this particular case, No Dues Certificate has already been issued by the competent authority.

18. The learned Counsel for the Applicant then placed reliance on Rule 134 of the M.C.S.(Pension) Rules. This Rule states about the adjustment and recovery and dues other than the dues pertaining to Government accommodation, which states that the Head Office take steps to assess the dues two years before the date on which the Government servant is due to retire on superannuation or on the date on which the process of leave repertory to retire whichever is earlier. Sub-clause (2) of Rule 123 states that the assessment of Government dues shall be completed by the Head Office 8 months prior to the date of retirement of the Government servant and Sub-clause (3) of the said Rule states that the dues as assessed under Sub-rule 2 including these dues, which come to the notice subsequently and which remained outstanding till the date of retirement of the Government servant shall be adjusted against the amount of (retirement gratuity) becoming payable to the Government servant on his retirement. The learned Counsel for the Applicant submits that the Respondent authorities have not followed Rule 134

and all of a sudden, recovered the amount from the pensionary benefits of the Applicant.

19. From the discussion in foregoing Paras, it will be clear that without giving any show cause notice to the Applicant, the Respondents have recovered the amount of so called penal rent from the Applicant. The amount is recovered as per the G.R. dated 29.07.2011 which was not at all applicable in case of the Applicant. The said G.R. is applicable from 1.08.2011 whereas the Applicant has already retired on superannuation on 31.05.2011, and therefore, the order of recovery is absolutely illegal and arbitrary.

20. The learned P.O. submits that the Applicant was knowing the fact that the quarter was to be vacated within three months. The Applicant himself was dealing with the subject and he himself has issued such notice of recovery, and therefore, the Applicant cannot take defense ignorance. There is no doubt that, in the allotment order, it has been specifically stated that the Applicant will have to vacate the Government quarter on his transfer and in case, he does not vacate it on transfer, penal rent will be charged as per market rate. It was also given an understanding that, in case, he does not vacate the quarter on transfer within one month, he will be liable for departmental action as well as penal interest. In Clause No.6 of the allotment letter (paper book Page 25-A), it is clearly mentioned that the Applicant will have to vacate the quarter

within one month on transfer. Though it can be presumed that the Applicant was knowing cause and consequences of not vacating the Government quarter after his transfer, it is also a fact that the Respondent authorities have not taken any action for getting the quarter vacated. Considering these facts, at the most, it can be said that the Applicant may not be entitled to claim interest on the amount recovered from him, but that will not justify the recovery.

21. In view of the discussion in foregoing Paras, I, therefore, pass the following order.

ORDER

It is hereby declared that the impugned recovery letter dated 3.02.2012 on account of penal rent issued by Respondent No.5 – The Executive Engineer, Pune is illegal and hence, the same stands quashed and set aside.

It is also hereby declared that the recovery of Rs.4,56,065/- from the Applicant towards recovery of rent is arbitrary and illegal. The Respondents are directed to refund the amount of Rs.4,56,065/- to the Applicant within two months from the date of this order.

The Applicant will be at liberty to claim interest on the amount of recovery of Rs.4,56,065/- as per the provisions of M.C.S. (Pension) Rules, 1982 in case the said amount is not refunded within two months from the date of this order. In that case, the Applicant will be at liberty to claim interest from the date of recovery of the amount till the date of actual payment of amount of Rs.4,56,065/- to the Applicant.

No order as to costs.

Sd/-

(J.D. Kulkarni)
Vice-Chairman
02.02.2018

Mumbai

Date : 02.02.2018

Dictation taken by :

S.K. Wamanse.

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