

B.K. Dhingra and ors. Vs. Union of India (Uoi) and ors.

B.K. Dhingra and ors. Vs. Union of India (Uoi) and ors.

SooperKanoon Citation : sooperkanoon.com/628820

Court : Punjab and Haryana

Decided On : Nov-14-2005

Reported in : [2006(109)FLR981]; (2006)142PLR242

Judge : S.S. Nijjar and; Nirmal Yadav, JJ.

Acts : Public Premises (Eviction of Unauthorised Occupants) Act, 1971 - Sections 4, 5, 7, 7(1), 7(2) and 7(3); Pension Act, 1871 - Sections 11; Supplementary Rules, 1922; Government Residence (General Pool in Delhi) Rules, 1963; Residences (General Pool in Chandigarh) Rules, 1969; Chandigarh Civil Services (Pension) Rules - Rules 71, 71(1), 71(2) and 72(1); Pension Rules - Rule 71 and 72; Oil and Natural Gas Commission (Death, Retirement and Terminal Gratuity) Rules - Rule 20; Oil and Natural Gas Commission (Death, Retirement and Terminal Gratuity) Regulations, 1969 - Regulation 5; [Constitution of India](#) - Articles 226, 227, 300A and 366(17)

Appeal No. : Civil Writ Petition Nos. 5604-CAT and 5698-CAT of 2000

Appellant : B.K. Dhingra and ors.

Respondent : Union of India (Uoi) and ors.

Advocate for Def. : D.R. Sharma and; C.M. Sharma, Advs.

Advocate for Pet/Ap. : Gaurav Dhuriwala, Adv.

Disposition : Petition dismissed

Judgement :

S.S. Nijjar, J.

1. This judgment will dispose of C.W.P. Nos. 5604-CAT and 5698-CAT of 2000, as the facts and the points of law involved in both the writ petitions are common.

2. The petitioners in both the writ petitions have retired from Central Government Service between 31.8.1996 and 30.10.1997 from the office of Accountant General (Audit), Punjab and Accountant General (A&E), Punjab and Accountant General (Audit) Haryana. During their service they had been allotted government quarters in Sector 7, Chandigarh. These allotments were made between the years 1975 to 1986 from the General Pool Residential Accommodation (GPRA). In the year 1992, Central Public Works Department constructed a separate colony for the staff of Accountant General Offices in Sector 41, Chandigarh. On the completion of construction, the petitioners were allotted accommodation in the aforesaid colony. The allotments made to the petitioners were subject to the condition contained in Supplementary Rules, 1922. Non-statutory clause SR 317-B-22 was introduced in the supplementary rules which is as under:-

S.R. 317-B-22: Where after an allotment has been cancelled or is deserved to be cancelled under any provision contained in these rules, the residence remains or has remained in occupation of the officer to whom it was allotted or of any person claiming through him, such officers shall be liable to pay damages for use and occupation of the residence, services, furniture and garden charges, as may be determined by Government from time to time.

2. Relying on the aforesaid provision, the allotment made in favour of the petitioners was cancelled by stereo-type orders w.e.f. 16.12.1995. Copy of one such order has been attached with C.W.P. No. 5604 of 2000 as Annexure P-1. The orders of cancellation were issued on the directions of the Directorate of Estates, New Delhi-respondent No. 2. The petitioners were informed that failure to vacate the accommodation by the due date will render them liable to payment of damages at a specified rate per month. The cancellation orders further stated that failure to vacate the accommodation by due date will render the officers liable to

payment of damages and action will also be taken for vacation of the accommodation under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (hereinafter referred to as 'the Act'). It was further observed that the accounts of the officers may not be settled without obtaining No Demand Certificate from the office of the Assistant Manager-cum-Estate Officer, Directorate of Estates, Chandigarh. Around the same time, the Census Department filed O.A. No. 833-CH-1994 seeking a direction to Assistant Estate Manager, Chandigarh (respondent No. 3) to cancel the allotment of General Pool Residential Accommodation (GPRA) to the staff of the offices in which the petitioners were working. These officers were specifically impleaded as respondents No. 2, 3 and 4 in the aforesaid O.A. It was stated that the Department Pool Accommodation was available for the staff of the Offices of Accountant General. This fact was admitted by the counsel appearing for respondent No. 2 to 4. It was also accepted that Government Residence (General Pool in Delhi) Rules, 1963 had been adopted by U.T. Chandigarh. These rules came into effect on 1.5.1969. Under these Rules, respondents No. 2 to 4 had become ineligible for allotment of residential quarters from G.P.R.A. It was also pleaded that the orders contained in O.M. dated 3.10.1969, which were incorporated in the Residences (General Pool in Chandigarh) Rules, 1969 laid down that those Central Government Offices who have got any separate pool accommodation for their staff are not eligible offices under these rules for the purpose of allotment from GPRA. After considering the submissions made on behalf of the parties, the Tribunal in its order dated 20.7.1995 held that employees of the A.G. Office are not eligible for allotment of residential accommodation out of the General Pool. It was noticed by the Tribunal that separate pool accommodation known as 'Audit Pool Quarters' was complete and an intimation had been sent for handing over the same to the concerned department, on 26.5.1994. Actual possession of 498 residential quarters was handed over being complete in construction. Consequently, the OA was allowed. Respondent No. 5 i.e. Assistant Estate Manager, Estate Cell, Chandigarh was directed to cancel the allotment of staff quarters of Accountant General, Punjab, Accountant General A&E, Haryana and Deputy Accountant General, U.T. Chandigarh from the GPRA. Thus, the accommodation allotted to the petitioners were cancelled w.e.f. 16.12.1995. The petitioner filed O.A. No. 114/CH/1996

challenging the orders of cancellation. By the time, application came up for hearing on 18.9.1997, the petitioners had retired from service. Thereafter, the Tribunal considered the claim of the petitioners that since the petitioners had less than 2 years service prior to retirement at the time when the orders of cancellation were passed, the provisions of SR 317-B-22 ought to be relaxed and penal rent should not be charged from the petitioners. The petitioners pleaded that in case of employees of Government of India Text Book Press, Chandigarh, respondent No. 3. Director of Estate, by his order dated 21.3.1987 has decided that employees who were likely to retire within five years, were allowed to retain the general pool accommodation. This plea of the petitioners was, however, negated on the ground that the facts in the case of employees of Government India Text Book Press, Chandigarh were different from the facts of the case of the petitioners. It was further observed that since the order of cancellation of allotment has already been upheld by an earlier decision of the Tribunal, no relaxation could be granted in the operation of SR 317-R-22. After the decision of the Tribunal, the petitioners again made representations to respondent No. 2 which were rejected. Thereafter, orders (Annexure P-2 to P-6) were issued directing withholding of gratuity of the petitioners. The petitioners challenged the orders of recovery by filing O.A. No. 635-CH/1998, OA No. 1037-PB-1998 which were dismissed on 24.11.1999. The petitioners have challenged the aforesaid two decisions of the Tribunal in the present writ petitions filed under Articles 226/227 of the [Constitution of India](#).

3. The Tribunal notices that the order passed in O.A. 714-CH/1993 where allotments were cancelled in similar circumstances, had been upheld by this Court in C.W.P. No. 3360 of 1994 vide judgment dated 3.5.1995. The Tribunal has held that 'it is not mandatory to issue any show-cause notice for raising bills of damages against unauthorised occupations in the instant case. Recovery of such damages is quite in order from the applicant's dues such as DCRG, as has been done in this case. The provisions of the Act becomes applicable only when recovery of arrears of licence fee is not possible after cancellation of the allotment under the Rules.'

4. Mr. Gaurav Dhuriwala submits that no recovery can be made from the death-cum-retirement gratuity of the petitioners in view of Section 11 of the Pension Act

(23 of 1871). Learned counsel further submits that admittedly, no proceedings have been initiated under the Public Premises Act. It was incumbent on the respondents to issue a show-cause notice to the petitioners under Section 4 and 5 of the Act. Only after the petitioners had been declared to be in unauthorised occupation, could the respondents resort to recovery proceedings under Section 7 of the Act. The respondents did not even follow the procedure laid down under Section 7(2) of the Act and the amount of alleged damages was not assessed, on account of any unauthorised occupation by the petitioners. No order can be passed under Sub-sections (1) and (2) of Section 7 without a show-cause notice, being issued to the petitioners. Learned counsel further submits that recovery from the Death-cum-Retirement Gratuity would be violative of Article 300-A of the [Constitution of India](#). According to the learned counsel, the action of the respondents can also not be protected under Rule 71 of the CCS (Pension) Rules. In support of his submissions, learned counsel relies on the judgments of the Supreme Court in the cases of Union of India and Anr. v. Wing Commander, R.R. Hingorani (Retd), : (1987)11LLJ3SC , Shiv Sagar Tiwari v. Union of India and Ors. A.I.R. 1987 S.C. 2725 and R. Kapur v. Director of Inspection (Painting and Publication) Income Tax and Anr. 1994(5) S.L.R. 616.

5. On the other hand, Mr. D.R.Sharma, learned counsel appearing for the respondents submits that the matter is squarely covered against the petitioners by the judgment of the Supreme Court rendered in the case of Wing Commander, R.R. Hingorani (Retd.) (supra). In the aforesaid judgment, the Supreme Court has considered the scope and ambit of SR 317-B-11 and SR 3127-B-22 and held that it is not necessary to take any proceedings under Section 7(3) of the Act. The amount of damages has been calculated by the competent authority under Rule 71 of the Pension Rules. The aforesaid Rules are statutory in nature and therefore, the recovery has been effected in accordance with law. The decision of the Tribunal, therefore, deserves to be upheld. Learned counsel relied on the judgments of the Supreme Court in the cases of Wazir Chand v. Union of India and Ors. : (2001)11LLJ603SC , Union of India v. Sisir Umar Deb 1999 Supreme Court Cases (L&S;) 781, Union of India and Ors. v. Shiv Charan 1992 Supreme Court Cases (L&S;) 140, Amitabh Kumar and Anr. v. Director of Estates and Anr. : [1997]1SCR854 and Secretary, O.N.G.C. Ltd and Anr. v. V.U. Warriar 2005 (3)

R.S.J. 214.

6. We have anxiously considered the submissions made by the learned counsel. In the case of Wing Commander, R.R. Hingorani (Retd.) (supra), the Supreme Court has clearly held as follows:-

7. It is difficult to sustain the judgment of the High Court or the reasons therefore. The construction placed by the High Court on the two provisions contained in SR 317-B-22 and SR 317-B-25 is apparently erroneous. It is plain upon the terms of SR 317-B-22 that the liability to pay damages equal to the market rent beyond the concessional period is an absolute liability and not a contingent one. Both the learned single Judge as well as the Division Bench were clearly in error in subjecting the liability of a Government Officer to pay market rent for the period of unauthorised occupation to the fulfillment of the condition that the Director of Estates should serve him with a notice that in the event of his continuing in unauthorised occupation he would be liable to pay market rent.

7. However, having held as above, the Supreme Court considered the impact of Section 11 of the Pensions Act, 1871. The aforesaid Section reads as follows:

11. Exemption of pension from attachment:-

No pension granted or continued by Government on political considerations, or on account of past services or present infirmities or as a compassionate allowance and no money due or to become due on account of any such pension or allowance, shall be liable to seizure, attachment or sequestration by process of any Court at the instance of a creditor, for, any demand against the pension, or in satisfaction of a decree or order of any such Courts.

8. Interpreting the aforesaid Section, the Supreme Court has held as under:-

12... It bears out the construction that the words money due or to become due on account of pension' occurring in Section 11 of the Pensions Act, 1871 include the commuted portion of the pension payable to an employee after his retirement. It must accordingly be held that the government had no authority or power to unilaterally deduct the amount of Rs.20,482.78p. from the commuted pension

payable to the respondent, contrary to Section 11 of the Pensions Act, 1871.

Mr. Gaurav Dhuriwala has submitted that the aforesaid observations would also be applicable with regard to the deduction made from DCRG. He had relied on the definition of the expression 'pension' as given in Article 366(17) of the [Constitution of India](#). The aforesaid Clause defines pension as under:-

366. Definitions-

(17) 'Pension' means a pension, whether contributory or not, of any kind whatsoever payable to or in respect of any person and includes retired pay so payable, a gratuity so payable and any sum or sums so payable by way of the return with or without interest thereon or any other addition thereto, of subscription to a provident fund;

9. A bare perusal of the aforesaid clause would show that the gratuity is included in the definition of 'pension'. Therefore, it would be subject to protection under Section 11 of the Pensions Act. Learned counsel for the respondents, however, has relied on Rule 71 and Rule 72 of the Pension Rules. We may notice that the aforesaid provisions of Rules 71 and 72 were not brought to the notice of the Supreme Court in Wing Commander, R.R. Hingorani (Retd.) (supra). But a similar Rule was considered by the Supreme Court in the case of V. U. Warriar (supra). In the aforesaid case, the Supreme Court considered Rule 20 of the Oil and Natural Gas Commission (Death, Retirement and Terminal Gratuity) Regulation 1969. The aforesaid Regulation was as under:-

20. Regulation 5 deals with recovery of dues of the Commission and reads thus:
'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.

10. The Supreme Court interpreted the aforesaid regulations as follows:

21. 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 unauthorised occupation of the quarter for the period between July 1, 1990 and May 15, 1991.

11. In the present case, the respondents have taken action under Rules 71 and 72 of the CCS (Pension) Rules. Under these Rules, the expression 'government dues' includes dues pertaining to government accommodation, including arrears of licence fee. Rule 71(1) further provides that it shall be the duty of the Head of Office to ascertain and assess government dues payable by a Government servant due for retirement. Rule 71(2) is as under:-

71. Recovery and adjustment of Government dues

(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.

12. The aforesaid Rule specifically provides that the amount which is due and payable shall be adjusted against the amount of retirement gratuity under Rule 72(1). Directorate of Estates has to scrutinize the record and inform the Head of Office 8 months before the date of retirement of the allottee, if any, licence fee was

recoverable from him in respect of the period prior to 8 months of his retirement. On the intimation given by the Directorate of Estates, the Head of Office is duty bound to ensure that outstanding licence fee is recovered in installments from the pay and allowances of the allottee. In case the entire amount is not recovered from the pay and allowances, the balance shall be recovered out of the gratuity before its payment is authorised. The aforesaid Rules make it abundantly clear that on the basis of the ratio of law laid down by the Supreme Court in *v.U. Varrier* (supra), recovery cannot be said to be arbitrary, unlawful or unreasonable. It also cannot be said that the respondents had no right to withhold the gratuity by deducting the amount which is found due and payable by the petitioners towards penal charges for unauthorised occupation of the quarters for the relevant period. The Supreme Court in laying down the law in the case of *Wazir Chand* (supra) has taken into consideration all the earlier judgments. In the aforesaid judgment, the Supreme Court held as under:

The appellant having unauthorisedly occupied the government quarters 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 stands dismissed.

13. In view of the aforesaid enunciation of law by the Supreme Court, we are of the considered opinion that the respondents have correctly recovered the amount due from the Death-cum-Retirement Gratuity of the petitioners. We find no merit in both the writ petitioners and the same are hereby dismissed. No costs.