
(2024) 10 SHI CK 0038
High Court Of Himachal Pradesh
Case No: CWP No. 11367 Of 2024

Bhupender Singh

APPELLANT

Vs

State Of H.P. And Others

RESPONDENT

Date of Decision: Oct. 14, 2024

Acts Referred:

- Himachal Pradesh Allotment of Government Residences (General Pool) Rules, 1994 - Rule 10(2), 16

Hon'ble Judges: Ajay Mohan Goel, J

Bench: Single Bench

Advocate: B.N. Mehta, Pushpender Jaswal

Final Decision: Dismissed

Judgement

Ajay Mohan Goel, J

1. By way of this writ petition, the petitioner has primarily prayed for the following reliefs:-

â€œ(1). That the petitioners in the facts and circumstances prays that the Civil Writ Petition may very kindly be allowed and this Hon'ble Court may very kindly be pleased to grant the following relief (s) in favor of the petitioner.

(a). That the writ in the nature of mandamus may kindly be issued, and Annexure P-9 and P-10 dated 02.07.2024 and 16.09.2024 may kindly be set-aside and

quashed and further the respondents may be directed to charge Four times license fee and excess amount may be ordered to be refunded to the petitioner. And

further may also be directed the accommodation in question so allotted may not be disturbed till the period of 06.01.2025 as the family of the petitioner is

residing there with lawful entitlement.â€

2. Brief facts necessary for the adjudication of this writ petition are that the petitioner, who happens to be an employee of Public Works Department of the Government of Himachal Pradesh, is presently serving the National Highways & Infrastructure Development Corporation Ltd. on deputation in terms of Annexure P-1. The petitioner was allotted Government Accommodation in his capacity as an employee of the Public Works Department of the respondent-Department. After being sent on deputation, he was called upon to vacate the said accommodation but when he did not vacate the premises, proceedings were initiated against him under the provisions of the Himachal Pradesh Public Premises and Land (Eviction and Rent Recovery) Act, 1971. In terms of order dated 02.07.2024 (Annexure P-9), the Collector-cum-Director of Estates, Himachal Pradesh, Shimla, ordered the eviction of the petitioner from the premises in issue, i.e., Set No. 2, Type IV, Barnes Court, Shimla-02, by holding that the record clearly demonstrated and proved beyond any doubt that the petitioner was in unauthorized occupation of the public premises w.e.f. 06.03.2024 and he had no right to retain the Government accommodation. The appeal filed by the petitioner against this order also met the same fate. The appeal was dismissed by the Appellate Authority vide order dated 16.09.2024 (Annexure P-11), hence, this petition.

3. Learned Counsel for the petitioner has argued that the orders passed by the Collector as well as Appellate Authority are not sustainable in the eyes of law as both the authorities erred in not appreciating that in terms of the notification dated 01.01.2021 (Annexure P-8), the petitioner was entitled to retain the accommodation for a period of one year after he was sent on deputation and otherwise also, the petitioner is entitled to retain the accommodation for the reason that he is transferred to a non-family station. It is on these two grounds that learned Counsel has submitted that the orders passed by the Collector as well as Appellate Authority are not sustainable in law. No other point was urged.

4. I have heard learned Counsel for the petitioner as well as learned Additional Advocate General and also carefully gone through the pleadings as well as documents appended therewith as also the orders passed by the authorities.

5. It is not in dispute that the petitioner presently is serving on deputation with the National Highways and Infrastructure Development Corporation

Ltd. The deputation per se is not a transfer but a person is deputed to another department with his consent. The petitioner in fact is presently on

“foreign service within India”. The petitioner was sent on deputation vide Annexure P-1, dated 20.02.2024. The Court has been informed that the

term of deputation is one year. In terms of notification dated 01.01.2021, the amendment that has been incorporated in Sub Rule 2 of Rule 10 of the

Himachal Pradesh Allotment of Government Residences (General Pool) Rules, 1994, provides that an employee who proceeds on Foreign Service in

India is entitled to retain the government accommodation for a period of two months. An employee is entitled to retain the government

accommodation, if sent on deputation, for a maximum period of one year but provided this deputation is outside India. Here, the petitioner has not been

sent on deputation outside India but has gone on deputation to another employer within India. He presently is serving with his current employer, i.e.

National Highways and Infrastructure Development Corporation Ltd. in the border areas of Jammu and Kashmir.

6. Reliance placed on the amended Rule 16 of the 1994 Rules (supra) is also completely misplaced.

7. Rule 16 as it stands amended reads as under:-

“16. Transfer of non-family station”

If an officer/official is transferred to any Scheduled Area of Himachal Pradesh or Dodra Kwar of District Shimla and the residence allotted to him under these

rules is required by the family for bonafide use, he may be allowed on merit of each case to retain the residence on payment of normal license fee.”

8. In terms of this Rule, an officer/official transferred to any Scheduled Area of Himachal Pradesh or Dodra Kwar of District Shimla, can be

allowed to retain the residence allotted to him if required by the family for bonafide use on merit of each case on payment of normal license fee. A

plain reading of this Rule demonstrates that for the purpose of applicability of this Rule, it is an employee of the Government of Himachal Pradesh

who ought to be transferred to any Scheduled Area of Himachal Pradesh or Dodra Kwar of District Shimla and said transfer but natural has to be by

the parent department of the Government of Himachal Pradesh. Herein, the petitioner has not been transferred to any Scheduled area of the Himachal Pradesh or Dodra Kwar of District Shimla but he is serving on deputation with National Highways and Infrastructure Development Corporation Ltd. Simply because the petitioner is serving in the border areas of the Union Territory of Jammu and Kashmir, Rule 16 of the Policy referred to above is not attracted.

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9. In a case of transfer, unless the transfer is on the request of the employee, the same is effectuated by the employer per se. However, in the case of deputation, an employee goes on deputation voluntarily and as the petitioner with open eyes has gone on deputation to a foreign employer within India and by virtue of this, he happens to be serving in border areas of Jammu and Kashmir, he is not entitled for protection of the 2004 Rules, as is being claimed by the petitioner, save and except for a period of two months.

10. In this backdrop, when one peruses the order passed by the Collector and the Appellate Authority, one does not find any infirmity therein. A perusal of the same demonstrates that after the petitioner went on deputation, numerous opportunities were granted to him to vacate the premises once his possession thereof became unauthorized but he failed to do so and this necessitated initiation of proceedings against him under the provisions of the Himachal Pradesh Public Premises and Land (Eviction and Rent Recovery) Act, 1971. As the petitioner has not been able to demonstrate that his possession of the Public Premises is not unauthorised, that is to say that as he is legally entitled to retain the premises, the order of eviction passed by the Collector as affirmed by the Appellate Authority calls for no interference.

Accordingly, in view of above observations, as this Court does not find any merit in the present petition, the same is dismissed. Pending miscellaneous application(s), if any also stand disposed of accordingly.