



**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

OA No. 060/433/2018
MAAs No. 060/1365/2018, 060/1372/2018 &
060/1108/2018

Pronounced on : 20.02.2020
Reserved on : 04.02.2020

HON'BLE MR.SANJEEV KAUSHIK, MEMBER (J)

1. P.G.I. Employees Union, Group B, C and D Employees (Regd. & Recognized), through its President, Ashwani Kumar Munjal, Post Graduate Institute of Medical Education & Research, Sector 12, Chandigarh.
2. P.G.I. Medical Technologists Association (Regd. & Recognized) through its General Secretary, Ashwani Kumar Munjal, Post Graduate Institute of Medical Education & Research, Sector 12, Chandigarh.
3. Sh.Ravinder Kumar Saini, Clerk, Department of Hospital Engineering and Planning, Post Graduate Institute of Medical Education & Research, Sector 12, Chandigarh R/o House No. 3288 A, Type XI, Sector 24-D, Chandigarh.

.....Applicants

BY ADVOCATE: **Sh. Ashwani Kumar Munjal, applicant
in person**

VERSUS

1. Post Graduate Institute of Medical Education & Research, Sector 12, Chandigarh through its Director.
2. The Governing Body of Post Graduate Institute of Medical Education & Research, Sector 12, Chandigarh through its Chairman.
3. The Comptroller Auditor General of India through Principal Auditor General (Punjab), Sector 17, Chandigarh.



4. Union of India through Secretary, Ministry of Health and Family Welfare, Nirman Bhawan, New Delhi.

.....Respondents

BY ADVOCATE: **Sh. Arvind Moudgil for respdts. No. 1, 2 & 4**
Sh. Barjesh Mittal for respdt. No. 3

ORDER

MR. SANJEEV KAUSHIK, MEMBER(J):-

1. The applicants have challenged the office orders dated 30.12.2013 (Annexure A-11) and 29.08.2016 (Annexure A-16), being contrary to Regulation 40 and 41 of PGI Act, 1966 and Rule 2 (g) of PGIMER (Allotment of Residences) Rules, 1970, the impugned decisions dated 06.07.2013 (Annexure A-10) and 08.12.2017 (Annexure A-20) of Governing Body which is also contrary to Regulations 40, 41 of PGI Act, 1966 and Rule 2 (g) of PGIMER (Allotment of Residences) Rules, 1970 approved by Governing Body on 11.12.2007 and against its own decisions to levy licence fee @ rates of UT Chandigarh taken on 12.07.1994 and 03.12.2008. The applicants have sought issuance of directions to the respondents to charge license fee at the rates of UT Chandigarh in the light of provisions of Regulations 40 & 41 of PGI Act and



Rule 2 (f) of PGIMER (Allotment of Residences) Rules, 1970.

2. Before noticing the arguments raised by the learned counsel for the parties, the facts which led to filing of the present OA need to be recapitulated.

3. The respondent No.1, Post Graduate Institute of Medical Education & Research (for short PGIMER) is a creation of statute by Act No. 51 of 1966 of the Parliament. The Act is known as Post Graduate Institute of Medical Education & Research Chandigarh Act, 1966 (for short 1966 Act). Sub-Section (b) of Section 3 defines the Government Body. Sub-Section (c) of Section 3 defines "Institute" to be the Institute known as the Post Graduate Institute of Medical Education & Research Chandigarh incorporated under the 1966 Act. The composition of the Institute is provided under Section 5. Section 10 provides the constitution of Governing Body and other Committees of the Institute. As per provision of Section 10(2), the Governing Body shall be the Executive Committee of the Institute and shall exercise such powers and discharge such functions as the Institute may, by regulations made in this behalf, confer or impose upon it. Sections 31 and 32 empower the Institute to frame Rules and Regulations



consistent with Act and Rules framed there under Regulation 40 of 1966 Act.

4. The applicant union is a Registered Union under the Trade Unions Act, 1926 vide Registration No. 156 of 1978 with Registrar, Trade Unions, U.T. Administration, Chandigarh, as Postgraduate Institute Employees Union (Group B, C and D employees), Chandigarh. The applicant-Union and applicant-Association are duly recognized by the respondent Institute under the Central Civil Services (Recognition of Staff Association) Rules, 1993 and they have been allowed to file a common OA on behalf of its members.

5. The applicant No. 3 is working as Clerk since 1988 in the Department of Hospital Engineering and Planning. He was allotted a Government accommodation, i.e. House No. 3288-A, Type XI, Sector 24 D, Chandigarh. The license fee of Type XI houses has been charged from the applicant on the rates prescribed by Chandigarh Administration from time to time which is now sought to be changed and charged at Central Government rates, contrary to rules.

6. The solitary issue which came up for consideration before this court raised at the hands of the applicants is



whether the PGIMER can charge license fee at the Central rates, in violation of Regulation 40 & 41 of 1966 Act and Rule 2(g) of 1970 Rules.

7. Much has been said by the applicants in the OA about the action of the respondents in debating themselves about charging license fee at the rates of Chandigarh Administration than that of Central Government. It has been submitted that while deriving power under Regulation 40 of 1966 Act, the other conditions of service and Regulation 41 thereof (Building and land belonging to the Institute), particularly Regulation 41(2), the respondents PGIMER have framed their own rules for allotment of residences known as PGIMER (Allotment of Residences) Rules, 1970. As per Rule 2(g) of 1970 Rules, the license fee means a sum of money payable monthly in respect of residents allotted under these Rules shall be as decided by UT Administration from time to time.

8. A decision was taken by Standing Finance Committee on 07.01.1994 that they will continue to follow UT pattern for realisation of license fee in respect of various categories of houses allotted to the Institute employees. Subsequently, the respondents took a



decision to change license fee at the rates applicable to the Central Government employees. When a protest was lodged by the applicants, then, the decision was reversed and they started charging the enhanced license fee as done by Chandigarh Administration.

9. On implementation of 6th CPC, again the respondents at their own have taken a decision to charge license fee at the rates prescribed by the Central Government. The matter was again agitated and ultimately a decision was taken on 21.10.2003 rescinding their decision taken on 16.01.2003 and agreeing to charge license fee at the rates prescribed by Chandigarh Administration. Respondent No. 3, Comptroller Auditor General of India, through Principal Auditor General Punjab, raised an audit para against the respondents for not charging license fee as prescribed by Government of India. Again, the matter was placed before SFC on 18.02.2008 and without looking into Rule 2(g) of 1970 Rules and blindly accepting the audit report of the year 2006-07, they have decided to charge license fee at the rates of Central Government.

10. The applicants are before this court raising a fundamental plea that the audit note and the decision by



the respondent PGIMER is contrary to Regulations 40 and 41 of 1966 Act and Rule 2 (g) of 1970 Rules. Thus, unless the respondent PGIMER amend the Rules, the impugned decisions are liable to be struck down.

11. On notice of motion, the respondents have filed a written statement wherein they did not dispute the factual accuracy of the averments as made in OA. However, they have submitted that on an audit objection, titled as "Short Recovery of license fee of Residential Accommodation of Rs. 1.27 crore" the matter was looked into and it was decided by the Institute that they are not charging license fee as prescribed by the Directorate of Estates vide letter dated 28.04.2011 and are charging less license fee as prescribed by Chandigarh Administration. Therefore, a decision was taken by the Governing Body to revise the license fee for various types of houses in PGIMER w.e.f. 06.07.2013 vide letter dated 30.12.2013 (Annexure R-2).

12. I have heard learned counsel for the parties.

13. Sh. Munjal, who is appearing on behalf of the Association, vehemently argued that the action of the respondents in passing the impugned orders are illegal, arbitrary and against the aforementioned Regulations and Rules. Thus, the same are liable to be set aside. To



elaborate his submission, he argued that once the Rules governing the field to levy license fee under Rule 2 (f) of 1970 Rules are there, the respondent institute cannot, in an arbitrary manner, decide to charge the license fee at the rates prescribed by the Central Government. It has further been argued that it has already been decided by Standing Finance Committee way back in the year 1994 and 2007 that they will continue to charge license fee at the rates prescribed by Chandigarh Administration in terms of Rule 2 (g). Thus, he pleaded that the impugned orders are liable to be set aside.

14. Per contra, Sh. Moudgil, learned counsel for the respondents vehemently opposed the prayer of the applicants and argued that on an audit objection by respondent No. 3, the matter was looked into and it was decided to charge license fee at the rates prescribed by the Central Government.

15. Sh. Mittal, learned counsel representing the respondent No. 3 submits that being a proforma party, he has nothing to say much on the issue.

16. I have given my thoughtful consideration to the entire matter and have carefully gone through the



pleadings on record with the able assistance of the learned counsel for the respective parties.

17. Regulations 40 & 41 of 1966 Act and Rule 2(g) of 1970 Rules are reproduced hereunder, as the controversy raised in the present OA revolves around these Regulations only:-

"40. Other conditions of service

In respect of matters not provided for in these regulations, the rules as applicable to Central Government servants such as regarding the general conditions of service, pay, allowances including travelling and daily allowance, leave salary, joining time, foreign service terms and orders and decisions issued in this regard by the Central Government from time to time shall apply mutatis mutandis to the employees of the Institute."

"41. Building and land belonging to the Institute

(1) The Institute shall use its lands and buildings for the purpose of the Institute and may, when not required for such purposes, allot them for occupation by such persons or officers as the Governing Body may decide.

(2) Employees of the Institute shall be entitled to the allotment of residence as laid down in Schedule-IV."

"Rule 2 (g)

Rent (license fee) means the sum of money payable monthly in respect of residence allotted under these Rules shall be, as decided by the U.T. Administration from time to time, in view of S.F.C. decision dated 07.01.1994."

18. It is not in dispute that Regulation 41 (2) as noticed above makes it clear that employees of the



Institute shall be entitled to the allotment of Government residences as laid down in Schedule 4. Rule 2 (g) of 1970 Rules which governs the allotment of Government houses in PGIMER as noticed above, makes it clear that rent (license fee) in respect of residential allotment under these Rules shall be decided by UT Administration from time to time. This has so been held in terms of the decision by the SFC vide order dated 07.01.1984 which makes it clear that for the allotment of residential houses for the employees of PGIMER, Rules of 1970 govern the field and as per Rule 2 (g) thereof, rates decided by UT Administration from time to time will be applicable. No doubt, an objection has been raised by respondent No. 3 in an audit note but as rightly pointed out by the applicants, it has been decided by the Government of India in the meeting held on 08.01.2016 on Issue No. 8, that PGI should write again to the Audit while accepting the contentions raised by the applicants associations. Instead of answering to the audit report, the respondent PGIMER in violation of its own rules and regulations governing the field has taken a decision to levy the license fee at the rates prescribed by the Central Government, which cannot be approved of.



19. It is not in dispute that the payment of licence fee is governed by indicated sub para (g) under "Definition" of 1970 Rules, as per which licence fee is to be same, as decided by the U.T. Administration from time to time. It is also not in dispute that these rules have stood test of time and have not either been amended or superseded particularly in relation to the provision of licence fee. So, the question arises as to whether by passing an order based on an audit objection or by issuance of executive instructions, can the respondents change the indicated clause relating to licence fee, to which the obvious answer would be in negative. It is well settled law that where statutory rules are in existence, the executive instructions can be issued to fill in the gap or clarify an issue. It was ruled in the case of **J & K PUBLIC SERVICE COMMISSION V. NARENDER MOHAN** AIR 1994 SC 1803, that but once rules are made they cannot be by passed through exercise of executive power. In other words, the executive instructions can supplement a rule but these cannot supplant it. It is also well settled that if the statutory rules, framed by the competent quarters under Article 309 is silent on any particular point, the Government can fill up the gap and supplement the rule by



issuing administrative instructions not inconsistent with the statutory provisions already framed or enacted. The Executive instruction in order to be valid must run subservient to the statutory provisions as held in

DISTRICT REGISTRAR, PALGHAT V. M.B.KOYYAKUTTY AIR 1979 SC 1060.

20. It is also well settled principle of law that Executive Instructions shall be inoperative if these are contrary to provisions of the statutory rules, as held in the case of **UNION OF INDIA VS. SHYAMA PADA SIDHANTA**, 1991 (1) SCC 542. The executive instructions are issued only to regulate the rule and not to be inconsistent with the rules, which are valid, as held in **R.K.ANAND, LT.GENERAL VS. UNION OF INDIA AIR 1992 SC 763**. The executive instructions cannot be issued in the field occupied by laws and rules. The executive power of the State cannot be exercised in the field which is already occupied by the laws made by the legislature. It is settled law that any order, instruction, direction or notification issued in exercise of the executive power of the State which is contrary to any statutory provisions, is without jurisdiction and is a nullity as settled in the case of **STATE OF SIKKIM VS. DORJEE TSHERING BHUTIA**



AIR 1991 SC 2148. Thus, court has no hesitation in holding that once a provision for charging licence fee as fixed by Chandigarh Administration is available in 1970 Rules, which have not been either amended or superseded, then it is not competent for the respondents to bring a change by exercise of executive power contrary to the indicated parent rules and such a decision is on the face of it ultra-vires.

21. In the wake of the above noted factual position, I have no hesitation in my mind that the respondents cannot, in an arbitrary manner and under the garb of an audit objection, pass impugned orders contrary to the rules governing the field by forcing the employees to pay licence fee at the rates prescribed by Central Government instead of rates decided by Chandigarh Administration in terms of Rule 2 (g) of 1970 rules. Accordingly, the office orders dated 30.12.2013, 29.08.2016, 06.07.2013 and 08.12.2017 which are contrary to Regulations 40 and 41 of 1966 Act and Rule 2 (g) of 1970 Rules, are hereby quashed and set aside. Respondents No. 1 & 2 may apprise the respondent No. 3 with a detailed note about the factual accuracy and rule position who can withdraw the audit objections raised by it.



22. OA is allowed in the above terms. There shall be no order as to costs. Connected MAs also stand disposed of.

(SANJEEV KAUSHIK)
MEMBER (J)

Dated:
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