
(1992) 04 MP CK 0010

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 1877 of 1991

Brahm Swaroop Agarwal and Another	APPELLANT
Vs	
State of Madhya Pradesh and Others	RESPONDENT

Date of Decision : 01-04-1992

Acts Referred:

Citation : (1992) JLJ 621 : (1992) 37 MPLJ 574 : (1992) MPLJ 574

Hon'ble Judges : T.N. Singh, J; R.C. Lahoti, J

Bench : Division Bench

Advocate : K.N. Gupta, for the Appellant; R.A. Roman, Government Advocate, for the Respondent

Judgement

Herad counsel.

In public interest two learned counsel of this Court have preferred this petition complaining that judicial officers are not getting fair deal in the matter of allotment of residential accommodation at Gwalior. They have complained that the Executive is unmindful of the constitutional imperatives that judiciary is an independent wing of the Government and to protect judicial independence is the duty of all the wings of the Government for proper functioning of the judiciary the officers posted at Gwalior should suffer no discrimination and they should get this "due share" in the matter of allotment of Government Accommodation. Reliance is placed on a latest decision of their Lordships of the Supreme Court in All India Judges' Association v. Union of India and Ors. (1992) ISCC 119.

However, there is another special feature of this case to which we must pay attention because on one side allotment rules (which are in fact executive directives) are cited and relied on and on the other side reliance is placed on Annexure P-3 which is a special directive of the State Government issued on 22-4-1992 under the signature of Special Secretary to Government of M. P., Home Department. Government Advocate, Shri Roman, also referred to us another letter bearing the date 12-10-1987 which is filed on behalf of the respondents

along with a copy of the relevant Rules aforesaid and a chart showing list of Government bungalows available for allotment at Gwalior.

The complaint really and mainly is of subordinate judiciary suffering and officers who are entitled to "F" type bungalow being denied their due share. From the chart it appears that total number of 101 "F" type bungalows are available for allotment at Gwalior out of which 10 are earmarked for judicial pool. There is also remark that too general pool quarters are allotted to judicial officers. It is submitted that this position obtains after 1987. Obviously, this supposed generosity is shown pursuant to the direction dated 22-4-1982. The Government letter dated 11-10-1987 herein referred to in our view, has not modified in any manner the earlier directive dated 22-4-1982 but it has simply reinforced the position obtaining all along that the judicial officers who were entitled to occupy quarters from the judicial pool would not be denied their entitlement. The purport and effect of the letter dated 12-10-1987 is only that and nothing more.

The complaint which is made to us is that although there is clear directive in Annexure P-3 (dated 22-4-1982), which followed on a move made by the High Court for the judicial officers being given "due share of the non-earmarked residential accommodations" they are not getting their "due share".

It is submitted before us by Shri Roman that allotment is made in terms of the Rules keeping in mind the priority date contemplated under Rule 2(e). We are informed that the ambiguous definition is here that priority in the matter of allotment to a "Government employee" would be reckoned with respect to his seniority in service, question of "emolument" would be and is considered because that will determine entitlement to his particular type of residential accommodation. It is also submitted that proviso clause (i) prohibits consideration of allotment of any "F" type quarter on any other basis on the footing that the provision is for "date of joining at a particular place of duty" to be reckoned in respect of Class III and Class IV employees. Indeed, during the course of hearing one pro forma is also placed for our consideration in which applications are to be made by Government servants for allotment of residential accommodation.

After giving our anxious consideration to the matter we have found the view taken by the local authorities to be unreasonable and irrational. We have not been able to appreciate the consideration and reliance placed by the authorities on clause (e) and proviso (1) thereof, of Rule 2. We have not been able to appreciate the contention that the directive dated 22-4-1982 is relaxed in any manner by subsequent letter dated 12-12-1987. We have perused the second chart, Annexure P-3 filed subsequently in regard to list of applicants of "F" type quarters. That is a common statement in respect to all Government servants, executive officers and judicial officers. The entitlement as also priority date are indicated in separate column as also the emoluments. However, that to be lawful and legal. There may not be complaint of discrimination but, as earlier observed,

we do not accept the practice as correct and legal.

The Supreme judicial mandate in *All India Judges' Association (supra)* at para 33 of (1992) 1 MPJR is clear that "provisions for an official residence for every judicial officer should be made mandatory". The reason is also clear "a judicial officer is to work in a manner expected of him and he has to free himself from undue obligations of others particularly owners of a building without a jurisdiction who ordinarily may have litigation before him. According to us, the State Government wholesomely anticipated the recent judicial directive made at the Apex level and on move in that regard by this Court issued the directive dated 22-4-1982 for "due share" of judicial officers in the non-earmarked residential accommodation. We do not think if that directive runs counter to Rule 2(e) and proviso clause (i) because no prohibition is contemplated in the proviso and for such a directive to be issued in derogation of what is contemplated in respect of Class III and Class IV employees. In our view the State Government meant rather to say under the directives (which is to be read to be supplemental to the Rules) that in case of a judicial officer it would be not necessary to examine his entitlement to allotment of Government accommodation with respect only to the date of his entry into service, when the case is of allotment of "F" type quarter.

In our view for "due share" to be granted to the judicial officers on their being posted at a particular place to discharge judicial duties their entitlement is to be determined in terms of their joining at a particular place of duty irrespective of their entry into the service when it is a case of such an officer claiming "F" type accommodation. If that view is not taken, no judicial officer shall get any share not to say of "due share" in the non-earmarked Government accommodation for the short and simple reason that the so-called "judicial pool" is virtually an excuse, out of 101 bungalows only 10 are earmarked for judicial pool.

We shall hope and expect that when application is made by any judicial officer who is entitled to "F type accommodation his case shall be considered in accordance with the law herein laid down. In that connection we would also like to observe that the pro forma is misleading and that needs revision. It does not indicate obviously in clear terms of the applicant's date of entry in service. It simply indicates the requirement of notifying the Allotment Authority the date of application drawing emolument in a particular pay-scale so that his entitlement to allotment of a particular type of quarter is determined. What also appears to be a crucial flow is care for as well. Prescribed application forms are not available readily to the judicial officers and it is for this reason that in the statement there is a remark that two judicial officers, Sarvashri Sanjay Shukla and A. K. Paliwal have "not applied in the prescribed form". In case of another judicial officer, Shri Kashif Nadim, the remark is that "details not given in the form". We would make therefore a direction also that in sufficient quantity blank forms of application prescribed for allotment of Government accommodation would be kept available with the District Judge of the concerned district. As and when a judicial officer joins at a particular place of posting one form shall be made available to him and

he shall submit the application form through the District Judge, when it shall be ensured that the form is duly and properly filled up and on any flimsy ground the application is not rejected and its disposal is duly communicated to the District Judge.

This petition is accordingly disposed of in terms of the above direction.

C. C. today.