

(2016) 02 KAR CK 0303

In the Karnataka High Court

Case No : Writ Petition No. 44596 of 2012.

Farm Superintendent, Central Cattle Breeding Farm and
another

APPELLANT

Vs

Siddalingaiah

RESPONDENT

Date of Decision : 23-02-2016

Acts Referred:

Constitution of India, 1950 — Article 16, 309

Citation : (2016) 2 AirKarR 484 : (2016) 3 KCCR 210 : (2016) LIC 2346

Hon'ble Judges : Mohan M. Shantanagoudar;K. N. Phaneendra, JJ.

Bench : Division Bench

Advocate : Aniyam Joseph, CGC, for the Appellant; Basararj Vearabhadra,
Advocate, for the Respondent

Final Decision : Allowed

Judgement

Mohan M. Shantanagoudar, J. - The order dated 19th January 2012 passed by the Central Administrative Tribunal ("CAT" for short), Bangalore Bench, Bangalore in Original Application No. 109/2010 is called in question in this writ petition. By the impugned order, the Tribunal has directed the petitioners to pay House Rent Allowance ("HRA" for short) in favour of the respondent.

2. The respondent is a driver working under the petitioners. He was transferred from Central Poultry Development Organisation ("CPDO" for short) to Central Cattle Breeding Farm ("CCBF" for short), Hesaraghatta on 16.11.2004 and he was allotted official residential quarters at CCBF on 20.11.2004. Though the respondent was transferred from CPDO on 16.11.2004. he vacated the quarters at CPDO only on 28.9.2007. Thereafter the petitioners directed the respondent to occupy the quarters allotted to him in CCBF at Hesaraghatta on 16.10.2007. The respondent however did not occupy the official quarters allotted to him in CCBF, Hesaraghatta. On the other hand, he requested for payment of HRA on 23.2.2008. The petitioners informed the respondent that he is not entitled for HRA. Questioning the said order of the petitioners dated 22.2.2010 refusing to

pay the HRA in favour of the respondent, he moved CAT in O.A. No. 109/2010, which came to be allowed by the impugned order on 19.1.2012. The Review Application No.18/2012 in O.A. No. 109/2010 along with M.A. No.297/2012 (the application for condonation of delay) came to be dismissed by CAT, Bangalore on 4.7.2012. Both these orders are questioned in this writ petition.

3. Undisputedly, the respondent is working under petitioners. It is also not in dispute that official quarters are constructed for the purpose of occupation of the drivers. Though the respondent has occupied official quarters at CPDO till 2007, he did not occupy the official quarters in CCBF at Hesaraghatta i.e., the place to which he was transferred. On the other hand, he claimed HRA in order to occupy the house on rent in a different area. In our considered opinion, the petitioners were justified in refusing the prayer of the respondent in respect of grant of HRA.

4. The question as to whether the concerned employee is entitled for HRA in the similar circumstances is fully covered by the Judgment of the Apex Court in the case of Director, Central Plantation Crops Research Institute, Kesaragod and others v. M. Purushothaman and others (1994 Suppl (2) SCR 267, wherein it is concluded as under:

"It is clear from the aforesaid provisions that paragraph 4(a)(i) and (ii) - lay down the procedure for making application for accommodation. Paragraph 4(b)(i) lays down the consequences on refusal to accept the accommodation when offered. There is no doubt that paragraphs 4(a)(i) and (ii) state that an application has to be made to secure accommodation. However, that does not mean that Government or the organisation such as the appellant - organisation to which the said provisions apply, cannot on their own offer accommodation to the employees. Hence the reason given by the Tribunal that it is only if the employee applies for such accommodation and be refuses to accept the same when offered that he would be dis entitled to the HRA, is not correct. It must be remembered in this connection that the Government or the organisation of the kind of the appellant spends huge public funds for constructing quarters for their employees both for the convenience of the management as well as of the employees. The investment thus made in constructing and maintaining the quarters will be a waste if they are to lie unoccupied. The HRA is not a matter of right. It is in lieu of the accommodation not made available to the employees. This being the case, it follows that whenever the accommodation is offered the employees have either to accept it or to forfeit the HRA. The management cannot be saddled with double liability viz., to construct and maintain the quarters as well as to pay the HRA. This is the rationale of the provisions of paragraph 4 of the said Government Office Memorandum.

It is for this reason again that paragraph 4(b)(i) provides that the HRA shall not be admissible to those who occupy accommodation provided for them as well as to those to whom accommodation has been offered but who have refused to accept it. The provisions of paragraph 4(b)(i) are independent of the provisions of paragraph 4(a)(i) and (ii). Whereas paragraphs 4(a)(i) and (ii) speak of

procedure to be followed by the employees who are in need of accommodation, paragraph (v)(i) provides for the forfeiture of the HRA even when the accommodation has been offered on its own by the management whether be application for the same has been made or not. There is no distinction made in this provision between those who have applied and those who have not applied for accommodation. Even otherwise, we are of the view that the distinction sought to be made by the Tribunal is on the face of it, irrational, particularly taking into consideration the resources spent on constructing the quarters."

(Emphasis supplied)

5. In this matter also, the Tribunal is wrong in making an observation that the respondent is entitled for HRA despite the fact that he has refused to occupy the official quarters. The Tribunal, in other words, has held that HRA is as a matter of right and it is not in lieu of the accommodation made available to the employees. Such observations of the Tribunal are totally against law. It is by now well settled that HRA is not as a matter of right. It is in lieu of the accommodation not made available to the employees. Whenever the accommodation is offered, the employees have to either accept it or have to forfeit the HRA. The Management cannot be saddled with double liability, viz., to construct and maintain the quarters as well as to pay the HRA. Paragraph 4(a)(i) and (ii) of H.R.A. and C.C.A. - General Rules and Orders clarifies that the employee would not be entitled for HRA if he/she has refused to occupy the official quarters. Same is the dictum laid down by the Apex Court in the paragraph mentioned supra. In view of the same, we conclude that order of the Tribunal runs contrary to the dictum laid down by the Apex Court in the decision cited supra. Hence the impugned order of the Tribunal is liable to be quashed and accordingly the same stands quashed.

6. Petition is allowed accordingly.