

(1984) 10 KAR CK 0039
In the Karnataka High Court
Case No : W.P. No. 14986 of 1984

Gangavathi S.S.

APPELLANT

Vs

Chairman and M.D. Karnataka Land Army Ltd., and Another

RESPONDENT

Date of Decision : 22-10-1984

Acts Referred:

Karnataka Civil Services Rules, 1958 — Rule 104(1)

Citation : (1985) 1 KarLJ 356

Hon'ble Judges : M. P. Chandrakantaraj Urs, J

Judgement

1. This matter coming up for orders is taken up for final disposal by consent of counsel for parties and disposed of by the following order.

2. Counsel for parties have been heard.

3. Petitioner is aggrieved by the stoppage of payment of subsistence allowance since 5.4.1984. He is an employee of the Karnataka Land Army Limited. He was kept under suspension by an order dated 18.11.83. He was being paid subsistence allowance in accordance with the Karnataka Civil Service Rules, but as noticed earlier the same having been stopped without any justification, he has approached this Court for relief inter alia contending that the respondents. The Chairman and Managing Director and the Deputy Director in Uttara Kannada of the Karnataka Land Army Limited have no authority to stop the subsistence allowance.

4. After notice, respondent-1 entered appearance and filed statement of objections on behalf of both the respondents. The facts themselves are not in dispute. However, what is relevant is to be found in paragraph 3 of the statement of objections, which is as follows:

"It is submitted that the payment of subsistence allowance is stopped because the petitioner has stayed away from going to the Office of Deputy Director, Sirsi, from 5.4.1984 till this day. It is further submitted that while the petitioner kept in suspension, he was working in the Office of the Deputy Director, Sirsi, and he

was required to remain at Sirsi during the period of suspension and without obtaining the permission of the authority competent to fill up the appointment, the petitioner under suspension could not have left the station where his office is situated under Rule 104(1) of KCSR. Hence, as the petitioner has left Sirsi without the prior permission of the competent authority from 5.4.1984 is not entitled for the subsistence allowance....."

5. From the above, it is seen that the respondent contend that the petitioner has violated Rule 104(1) of the Karnataka Civil Service Rules. The Rule does not except the suspended officer to attend the office everyday. All that the Rule excepts an officer under suspension is to stay in the station at which he was posted and leave that station only with the previous leave or permission of the competent authority.

6. Learned counsel for the respondents was unable to explain the basis for the ascertain that the petitioner had left Sirsi without permission. Unless the respondents can place material before this Court that the petitioner was found somewhere outside Sirsi after 5.4.1984 or just before that date, their assertion cannot be believed. No averment is made in the statement of objections as to how the first respondent came to the conclusion that the petitioner had left Sirsi without his permission. It is evident that the first respondent's office is at Bangalore. Even to take permission petitioner has to leave Sirsi and take the permission of the first respondent at Bangalore.

7. I am of the view that sub-rule (1) of Rule 104 of the Karnataka Civil Service Rules should be so construed as not to give a meaning by which the suspended servant is imprisoned in the station at which he is posted when the suspension order was passed. The object of that Rule is to enable the authorities concerned to have access to the suspended servant if an enquiry is pending or contemplated. The object is not to deprive him his freedom of movement. There may be occasions which compels a person to leave the Headquarters in the course of a day on account of death, marriage or some such reasons. Under such circumstances the Rule cannot be construed as permitting the competent authority to stop the subsistence allowance.

8. As already pointed, there is no material placed before this Court as to the circumstance in which the petitioner was found to be absent from Sirsi. In that view of the matter, on a mere affidavit filed, this Court cannot sustain what appears to be prima facie an arbitrary exercise of power in stopping the payment of subsistence allowance.

9. Therefore, the petitioner succeeds and a Writ in the nature of Mandamus shall issue to the respondents to pay to the petitioner his subsistence allowance from April 5, 1984, and continue to do so unless there is positive evidence in their possession to withhold the subsistence allowance on account of the petitioner committing an act in violation of sub-rule (1) of Rule 104 of the Karnataka Civil Service Rule.

10. Rule will accordingly issue and made absolute.