

(2009) 01 KAR CK 0034
In the Karnataka High Court
Case No : Writ Petition No. 14769 of 2008

K.B. Mulla

APPELLANT

Vs

State of Karnataka and Another

RESPONDENT

Date of Decision : 31-01-2009

Acts Referred:

Karnataka Government (Allotment of Government Quarters) Rules, 1999 — Rule 13, 22, 9 (3)

Citation : (2009) 3 KarLJ 310 : (2009) 2 KCCR 1166

Hon'ble Judges : P.D. Dinakaran, C.J.;V.G. Sabhahit, J

Bench : Division Bench

Advocate : Vinod Prasad, for the Appellant; B. Veerappa, Government Advocate, for the Respondent

Judgement

P.D. Dinakaran, C.J.—Challenging the order of the Karnataka Administrative Tribunal, Bangalore dated 21st August, 2008 refusing to quash the proceedings of the first respondent dated 5-8-2006, where the request of the petitioner to waive the penal licence fee/rent was rejected, the petitioner has filed the present writ petition.

2. The brief facts of the case is:

2.1 The petitioner while he was working as Assistant Commissioner of Police was transferred from Bangalore to Gokak on 16-12-1999 and after rendering his service as Assistant Commissioner of Police retired as Superintendent of Police on 28-5-2003 holding that he was overstayed in the quarters at Bangalore despite his transfer.

2.2 The respondents have demanded penal licence fee/rent as per Rule 13 of the Karnataka Government (Allotment of Government Quarters) Rules, 1999 (for short hereinafter referred as "Allotment Rules") which reads as hereunder:

13. Penal licence fee.--Without prejudice to Sub-rule (3) of Rule 9 or to Rule 2 an allottee who overstays, in contravention of these rules, shall be liable to pay

penal licence fee at the rate twice the normal licence fee, for the overstay of first three months. After that, it is four times the normal licence fee for the next three months. Beyond that it is eight times the normal licence fee.

2.3 That apart, on the ground that he had not paid the penal rent as per Rule 13 referred to above, his terminal benefits viz., DCRG and leave benefits are not settled. His request to waive the penal rent was also turndown by proceedings dated 5-8-2006, which is impugned in the present writ petition.

2.4 The petitioner also brought notice of the Official Memorandum dated 17-4-2000 which was in force till 22-11-2001 and he contended that he was liable to pay only the regular rent and not penal rent till he vacated the premises on 28-11-2002 and thereafter, if at all, he is entitled to pay penal rent, he is liable to pay the same only from the date on which the memo dated 17-4-2000 got withdrawn i.e., on 22-11-2001 till he vacated the premises.

2.5 The Tribunal placing strong reliance on Rule 13, referred to above, rejected the case of the petitioner and dismissed the application. Aggrieved by the order dated 21-8-2008, the petitioner has filed the above writ petition.

3. The learned Counsel appearing for the petitioner and the learned Government Advocate appearing for the respondents reiterated the submissions made before the Tribunal.

4.1 In the light of the facts and circumstances of the case, it is not in dispute that Rules 9(3) and 22 are not attracted to the facts of the case at all; but, we are convinced that Rule 13 is relevant and the same is applicable to the facts of the case as the petitioner was transferred from Bangalore to Gokak in the middle of the academic year.

4.2 Rule 12 reads as follows.:

12. Transfer in the middle of the academic year.-Notwithstanding anything contained in Rule 10, when the allottee in occupation of the quarters is transferred out of Bangalore or retires in the middle of the academic year, the Allotment Committee may grant permission for continued occupation till the end of the academic year only at normal licence fee:

Provided that in the case of an allottee who has retired from service and permitted to be in occupation of the quarters as above, an amount calculated at the average monthly consumption charges towards electricity and water supply shall be obtained as deposit, which shall be adjusted and finally settled at the time of actual vacation of the quarters and handing over the key.

4.3 As per Rule 12, the petitioner is entitled to stay back until May 2000. In the meantime, the Government came up with an Official Memorandum dated 17-4-2000, which reads as hereunder:

GOVERNMENT OF KARNATAKA

No. DPAR 3 Services 2000 Karnataka Government Secretariat, Vidhana Soudha, Bangalore, dated 17-4-2000 OFFICIAL MEMORANDUM

1. Regarding transfer of Government Servants as per OM No. DPAR 5th 95, dated 28-4-1995 referred above at (1) wide guidelines have been given but additional three guidelines have been included as per above (2) reference OM No. DPAR 4: : 98. Them O.M. No. referred at (3) above dated 29-2-2000 for the said O.M. some additions have been made for the O.M. dated 28-4-1995. Now the following additional guidelines (that is O.M. dated 28-4-1995) after para 15, paras 16 and 17 are hereby included:

16. Other than North Karnataka that is a Government Servant, who transferred from South Karnataka Districts to North Karnataka Districts after doing duty at North Karnataka (that is after completing the minimum period in one place as prescribed in O.M.) he may be transferred to one place after obtaining his opinion among three places of his discretion; and

17. Other than North Karnataka that is Government Servant who transferred from South Karnataka Districts to North Karnataka Districts, for the period he works in North Karnataka (that is other than North Karnataka Districts that is South Karnataka Districts) he may be permitted to retain the Government quarters (not on the basis of non-rental basis).

2. There is a necessity of economy in Government cost particularly on non-expenditure costs. Therefore, the transfers during 2000-01 must be as far as possible to be in minimum level and mutual transfers should be avoided in any department. Subject to these conditions and subject to the notice prohibiting the transfers of Government servants who are at census work till the date 30-6-2000. Circular issued on 23-2-2000 No. DPAR 2 2000 the general transfers should be completed in the month of May only. According to the conditions and terms these transfers should be made as per the guidelines referred in para 1.

3. In respect of the office-bearers of Karnataka State Government Servants Association it is reiterated that the instructions which has been issued in O.M. at para 10(e), dated 28-4-1995 has to be followed by all the Transfer Authorities.

4. All the Transfer Authorities should comply strictly with the said instructions.

Sd/-17-4-2000 (Abdul Khaleed) Joint Director, DPAR (Service Rules).

5. The memorandum dated 17-4-2000 was issued by the Government exercising its general powers despite the provisions of the Allotment Rules. There is no dispute that the case of the petitioner is governed by the memorandum dated 17-4-2000 as the petitioner was transferred from Bangalore to North Karnataka, in which event, as per Rule 24 the petitioner's case is not covered by the Rules and therefore, it is apparent that as per Rule 24, if there is any dispute arising out of these rules concerning the matter not covered by these rules, the same shall be referred to Government for their decision and the decision of the Government shall be final, which in our considered opinion, would only mean

that even though the impugned issue is not the one relating to the allotment of Government quarters and the rent payable by Government servant and thus arising out of these rules but the same is not covered by these rules as it is governed by the official memorandum dated 17-4-2000.

6. In that view of the matter, when the petitioner had made a representation to waive penal licence fee/rent during the period when the official memorandum dated 17-4-2000 was in force, that is till 22-11-2001, the Government ought to have exercised their powers fairly and pass appropriate orders. But the Government by the impugned proceedings without applying their mind to the official memorandum dated 17-4-2000 which governs the case of the petitioner and as such, the case of petitioner is not covered by the provisions of these rules, ought to have waived the penal rent till the passing of Government order dated 22-11-2001 i.e., until the official memorandum dated 17-4-2000 was in force and for the subsequent period we have no hesitation to hold that Rule 13 governs the case of the petitioner and is liable to pay the penal rent as per Rule 13.

7. The grievance of the petitioner does not get redressed by our above finding because it is not in dispute before us that even though the petitioner had retired from service on 28-2-2003 as his DCRG and leave terminal benefits have not been settled till date, that is, for the last five years, which in our considered opinion, is arbitrary, unreasonable, capricious, mala fide and contrary to the rules governing the settlement of terminal benefits to the Government servants.

Under these circumstances, we pass the following order:

ORDER

(i) The order of the Tribunal dated 21-8-2008 and 10-9-2008 in Application No. 1311 of 2007 is set aside. Consequently, the impugned order of the first respondent dated 5-8-2006 stands quashed;

(ii) The petitioner shall not be liable to pay the penal rent upto 22-11-2001 till the official memorandum dated 17-4-2000 was in force;

(iii) Thereafter, that is, from 22-11-2001, he is liable to pay the penal rent as per Rule 13 till he vacated the premises on 28-11-2002.

(iv) The Government shall pay the terminal dues payable to the petitioner namely, DCRG and the leave terminal benefits, with interest at the rate of 12% p.a. and the writ petition is allowed with a cost of Rs. 5,000/-.