

(2009) 11 AHC CK 0149

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 55359 of 2009

Satya Prakash Mishra and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 06-11-2009

Acts Referred:

Citation : (2009) 11 AHC CK 0149

Hon'ble Judges : Sudhir Agarwal, J

Judgement

Sudhir Agarwal, J.—The only prayer made by petitioners is that though they have been transferred from 28th Bn. P.A.C. Etawah to 43rd Bn. P.A.C. Etah vide order dated 05.05.2008 and also relieved on 29.06.2009 but they should be allowed to detain official accommodation at Etawah till June, 2010 since there is no official accommodation available at 43rd Bn. P.A.C. Etah. Learned counsel for the petitioners could not place any provision wherein despite having been transferred to another place, the petitioners have a statutory right to retain the official accommodation at the transferred place.

2. Whether an official who has been transferred from one place to another has a right to retain the official accommodation at the transferred place or not has been considered by this Court time and again. In respect to the employees of the State Government rules have been framed namely, Fundamental Rule 45 read with subsidiary Rule 18 and 18A to 18C. Considering in the light of the above Rules a Division Bench (of which I was also a Member) in Ram Paras Tripathi Vs. State of U.P. and another, 2008(3) ADJ 700=2008(2) ESC 1491 observed as under:

"A judicial notice can be taken of the fact that available accommodations are not sufficient to meet the requirement of the serving Government servants, who are actually holding the post, and a large number of government servants in service are waiting in queue for their turn to get official accommodation after it is vacated by the Government servant, who has ceased to hold the post or is transferred under the Rules."

3. Similarly in the context of the employees of the Central Government again a Division Bench considered the matter in *Union of India and others Vs. Rajeev Kumar Tyagi and another*, 2008(1) ADJ 673 and this Court observed in paras 8 and 9 of the judgement as under:

"8.A government servant holding a transferable post cannot be allowed to retain official accommodation at two places, particularly at the place wherefrom he has been transferred. Further he cannot retain official accommodation at the place of transfer beyond the period permissible in Rules. No provision has been shown to us by respondent no.1 that he could have retained official accommodation at Rampur also despite the fact that he has been allotted official accommodation at Moradabad.

9. Moreover, allotment or non allotment of official accommodation at the place of posting does not vest any right upon the Government employee to retain official residence wherefrom he has been transferred. Irrespective of the fact that whether the government servant has been or not has been allotted official accommodation at the place where he has been transferred, he has to vacate the official accommodation at the place wherefrom he has been transferred after the period permitted under the Rules is expired."

4. Further in para 10 of the judgement in *Rajeev Kumar Tyagi (supra)* the Court held:

"10. In this view of the matter, we are clearly of the view that the respondent no.1 was not entitled either under the Rules or otherwise to retain official accommodation at Rampur once he has been transferred to Moradabad and joined there at and the period prescribed in the Rules for retention of official accommodation at Rampur has already expired. Therefore, the order of the learned Tribunal cannot sustain."

5. In the light of the above exposition of law as discussed above and in the absence of any statutory right of petitioners to retain the official accommodation after having been transferred from one place to another, I am not inclined to grant any relief to petitioners. Another reason for that is, the persons who would have transferred in place of petitioners at 28th Bn. P.A.C. Etawah would also be entitled to be allotted official accommodation and in case the transferred employee retain the official accommodation, that would create a chaos in the administration. Therefore, showing equity in favour of the persons who have no legal or otherwise right would mean that the other persons' right would be adversely affected and such course cannot not be adopted by this Court as it would be a case of misplaced sympathy.

6. The writ petition, therefore, lacks merit and is accordingly dismissed.