
(1986) 08 KAR CK 0026
In the Karnataka High Court
Case No : W.A. No. 997 of 1982

State of Karnataka

APPELLANT

Vs

Yaseen

RESPONDENT

Date of Decision : 29-08-1986

Acts Referred:

Karnataka Civil Services Rules, 1958 — Rule 1, 26

Citation : (1986) ILR (Kar) 3310

Hon'ble Judges : Ramakrishna, J; Jagannatha Shetty, J

Bench : Division Bench

Advocate : S.V. Jagannath, for the Appellant; H.N. Narayan, for the Respondent

Final Decision : Dismissed

Judgement

Jagannatha Shetty, J.—This appeal is preferred against the order of the Learned Single Judge dated August 31, 1981 made in Writ Petition No. 19631 of 1980.

2. The respondent was a Sub-Inspector of Police attached to a Police Station in the City of Bangalore. He was in occupation of an official quarters for residential purposes. He was promoted as Inspector and transferred to C.O.D. (Corps of Detectives) Bangalore. Upon transfer he did not vacate the quarters under his occupation. Appellants therefore levied penal rent or penal licence fee under Rule 26 of the K.C.S. Rs.

The respondent challenged the validity of the levy of penal rent before this Court contending inter alia, that it was illegal and un-authorised. The Learned Single Judge has accepted the plea of the respondent on two grounds ; Firstly, it was held that the authorities before levying penal rent must form an opinion that the officer is not entitled to allotment of official quarters in the post to which he is transferred. Secondly, it was held that the order levying penal rent has got civil consequences and therefore it could not have been made without giving an opportunity to make representation against the proposed action.

On both these grounds the Learned Single Judge quashed the demand of penal

rent with liberty to the Appellants to pass a fresh order after giving notice to the respondent.

The State being aggrieved by the order of the Learned Single Judge has preferred this appeal.

3. In our opinion the first reason given by the Learned Single Judge is well founded and must be accepted as correct Rule 26 of the K.C.S. Rs. as amended with effect from April 3, 1975 reads :

26. "Levy of penal rates of licence fee in cases where the officials do not vacate the quarters either on transfer or retirement or on posting to another post in the same or in the other office in the same head-quarters station for which allotment of Government quarters is considered to be not essential under Rule 1 of these Rules."

4. Rule 1 of the Appendix IV to the K.C.S. Rs. which is also relevant in this connection provides :

"1. No houses should be built or purchased by Government as residences for Government servants, except in the following cases :--

(i) When it is the recognised duty or established custom of Government to provide quarters at Government expense.

(ii) When it is necessary on public grounds for the Government servant to reside in, or close to, the premises in which his duties have to be performed, such as "a jail, a police station, a school or a factory".

By a combined reading of these provisions, it becomes clear that the penal rate of rent or licence fee could be levied against the officials who do not vacate Government Quarters upon transfer to another post for which allotment of Government Quarters is considered to be not essential. In other words, when such a transferred Government servant is not in need of official quarters at his transferred post for due discharge of his duties, he should not continue to occupy his previous official quarters and he could do so only by paying penal rent or licence fee. There is no such finding recorded by the respondents in this case before levying the penal rent. The impugned order cannot therefore, be sustained.

5. In the conclusion that we have reached it is not necessary to express any opinion on the second reason given by the learned Single Judge as to the requirement of notice to be given to the Government official before levying penal rent.

6. In the result, the appeal fails and it is dismissed.