

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

WRIT PETITION NO. 7577 OF 2011

Lalkha Rustumkha Pathan

....Petitioner.

Versus

The State of Maharashtra and Anr.

....Respondents.

Mr. H.A. Joshi, Advocate for petitioner.

Mr. P.G. Borade, AGP for respondents.

**CORAM : T.V. NALAWADE AND
SUNIL K. KOTWAL, JJ.
DATED : APRIL 19, 2018.**

ORDER : [PER T.V. NALAWADE, J.]

1. The petition is filed under Article 226 of the Constitution of India to challenge the orders made on 16.12.2008 and 8.5.2009 by respondent No. 2, the immediate Superior Officer of the petitioner in police department by which the petitioner is directed to pay Rs.83,454/- as the charges and penalty in respect of use of Government residential quarter. Direction is also claimed to see that the amount already recovered is returned to the petitioner. Both the sides are heard.

2. The submissions made and the record show that the petitioner was working as Police Constable and he was posted at Vaijapur Police Station up to the year 2003. In January 2003,

the petitioner was transferred to Police Head Quarter Aurangabad Rural. Then he was transferred to Gangapur Police Station in the month of January 2006. One crime was registered against him about the illegal gratification and so, he came to be suspended on 3.7.2006. Initially, in the suspension order, his headquarter was shown as Police Head Quarter Aurangabad Rural and he was expected to report Deputy Superintendent of Police of that office during the period of suspension. He applied for changing the head quarter and Vaijapur Police Station was made his headquarter during suspension period. The record produced by respondents and reply filed show that one more order came to be passed on 3.11.2008 and his headquarter was again changed and it was made Police Head Quarter Aurangabad Rural.

3. The order made on 16.12.2008 shows that as the petitioner had not vacated the residential quarter allotted to him when he was working at Vaijapur, he was directed to pay 10% amount of basic pay as the charges and pay Rs.10 per sq.ft. as the penalty. The amount was calculated as Rs. 83,815/-. In the order, it was mentioned that the quarter was in his possession from August 1998. The order dated 8.5.2009 also shows that it

was noticed that after transfer of the petitioner to Police Head Quarter Aurangabad Rural, he had not vacated the quarter and so, he was liable to pay the amount of Rs. 83,454/- which included the amount of charges from 3.7.2006 to 31.3.2009 and it included the penalty also. Thus, the period for which the charges and penalty are claimed starts from the date of his suspension order.

4. A Government employee can keep residential quarter in his possession at particular station only till that time when he is posted there. After his transfer, he is to vacate the residential quarter within the prescribed time and only in special case for some period like six months the authority can allow him to retain the possession. Beyond that the employee cannot kept the possession. In the present matter, it can be said that no such permission was given to the petitioner to retain the residential quarter after his transfer which was made in the year 2003 from Vaijapur Police Station. It can be said that already the department has probably taken lenient view by not asking the petitioner to pay the charges and penalty for the period between 2003 and 3.7.2006. Under the Rules made for the allotment of quarter and use of quarter, there is such power with

the authority. If the quarter is not vacated, the next incumbent faces inconvenience and that can affect the discharge of his duty also. So, in such cases atleast in the police department, the authority needs to be very strict and needs to take immediate action after transfer of employee from one place to another. Though it is true that in many cases at new place of posting, the residential quarter is not available, but it is not service condition that the employer is bound to provide residential quarter. Only if on the place of posting the residential quarter is available as per the seniority of employees if the employee is entitled to get residential quarter, he gets the residential quarter. Due to these circumstances, this Court holds that it is not possible to interfere in the orders made by the respondent No. 2 against the present petitioner. In the result, the petition stands dismissed.

[SUNIL K. KOTWAL, J.]

[T.V. NALAWADE, J.]

ssc/