

KARNATAKA LOKAYUKTA

No. Compt/Uplok/BCD-26/2019/ARLO-1

M.S. Building,
Dr. B.R. Ambedkar Veedhi,
Bengaluru, dated 20/03/2020.**REPORT UNDER SECTION 12(3) OF
KARNATAKA LOKAYUKTA ACT, 1984**

Sub: Initiation of proceedings against Sri. K.V. Palaiah, Senior Assistant Director of Boilers, Kalburgi division, Department of Factories and Boilers Industrial Safety Health, Kalburgi about his misconduct as Public/Government servant- reg.,

An investigation was taken up under Section 9 of the Karnataka Lokayukta Act, 1984, on the basis of complaint filed by Sri. K. Lakshmana, S/o Late Kariyappa, No. 44-45, 1st main road, Nehru road, Avalahalli, BDA Layout, Girinagar, Bengaluru (hereinafter referred to as 'Complainant' for short) against Senior Assistant Director of Boilers, Kalburgi division, Department of Factories and Boilers Industrial Safety Health, Kalburgi (hereinafter referred to as 'Respondent' for short).

2. The substance of the complaint is that the respondent who was working at Bengaluru was transferred to Mangaluru on 16/01/2014. Thereafter he has been

transferred to Kalburgi and he has taken charge on 03/09/2014 and he is presently working at Kalaburgi. The respondent was allotted quarters No.504, Krishna Block, National Games Village, Koramangla, Bengaluru on 10/10/2003 and he is residing in the said quarters till date even after he has been transferred out of Bengaluru. It is stated that as per Rule 5(8) of the Karnataka Government (Allotment of Government Quarters) Rules, 1999, registration of Government Quarters stands cancelled from the date of relieving and such applicants have to inform the PWD Secretariat/Divisional Commissioner about the fact of transfer at once. Further as per Rule 10, the allotment is deemed to have been terminated when the allottee has been transferred out of Bengaluru. Further as per Rule 11, the allottee has to intimate the allotment committee within 10 days of his transfer and not later than one month about the date on which he is likely to vacate the Government Quarters. The complainant has alleged that the respondent has violated these rules and he is residing in the quarters allotted to him even on the date of complaint even after his transfer out of Bengaluru on 16/01/2014.

3. Though a report was called from the Secretary, PWD Department, Bengaluru, no such report has been submitted even after service of notice and repeated reminders.

4. Respondent has submitted comments dated on 18/07/2019 and further comments dated 16/03/2020 stating that he has vacated quarters No.504, B3, Krishna Block, NGV on 27/05/2019 and handed over to Executive Engineer-2, building division, PWD Bengaluru. Further he has stated that he has furnished the no due certificate regarding payment of electricity bill along with the receipt. Further it is stated that he has sought for no due certificate from the PWD Department by writing letters dated 28/06/2019 and 13/09/2019. He has stated that according to the complainant, he (respondent) was transferred as Senior Assistant Director of Boilers, Mangaluru on 20/02/2014 but the complainant has given this complaint on 03/01/2019 after a lapse of 5 years stipulated u/s 8(2)(d) of Karnataka Lokayukta Act. Further the respondent has stated that the complainant had alternative remedy of filing a complaint before the PWD Department under Rule 13 of the Karnataka Government (Allotment of Government Quarters) Rules 1999 within the meaning of section 8(1)(b) of the Karnataka Lokayukta Act. In this regard, he has relied upon the decision of the Hon'ble High Court of Karnataka in writ petition no. 25078-80/2016(GM-KLA) between *Subhindra A Gumaste and others v. State of Karnataka and others* dated 15/07/2016. The respondent has stated that he has submitted requisition to the competent authority

as he had reasons for continuing in the quarters in question. He has stated that he will submit the no due certificate after the same is issued by the Executive Engineer-2. He has requested this authority to close this complaint.

5. On perusal of **Karnataka Government (Allotment of Government Quarters Rules) 1999**, a copy of which is placed on record for reference, it is noted that **Rule 5 (8)** provides that an applicant who has registered for allotment of a Government Quarters shall automatically lose his claim for allotment on his transfer outside Bangalore/Bengaluru and his registration shall stand cancelled from the date of his relief. Such applicant has to inform the Public Works Department Secretariat/ Divisional Commissioner, as the case may be, of the fact of his or her transfer at once and seek cancellation of his or her registration. Further **Rule 10(1)(c)** provides that the allotment shall be deemed to have been terminated when the allottee is transferred out of Bengaluru. **Rule 10(2)** provides that an allottee may be allowed to stay in the quarters for a period not exceeding thirty days after termination of allotment and shall be liable to vacate and deliver vacant possession thereof to the Government immediately thereafter. **Rule 10(3)** provides that any allottee who overstays in contravention of the rules shall be liable to be evicted summarily and shall also be liable for disciplinary action according to rules

treating such overstay as an act of misconduct. **Rule 11(1)** provides that when an allottee is transferred out of Bengaluru, he shall, within 10 days of such transfer intimate the Allotment Committee about the date by which he is likely to vacate the Government Quarters, which shall not be later than the period specified in sub-rule (2). The said **sub-rule (2) of Rule 11** provides that on transfer, an allottee may be allowed to continue in occupation of his quarters for only one month on payment of rent at normal rate. If such transfer is in the middle of the academic year, as per **Rule 12**, the Allotment Committee may grant permission for continued occupation till the end of the academic year only at normal licence fee. **Rule 15** provides that the allottee shall hand over the key of the premises to the Assistant Executive Engineer concerned or the Engineer in charge of the building soon after the allotment terminates in accordance with the rules. If an allottee overstays in contravention of the rules, he shall be liable to pay licence fee at the rate twice the normal licence fee for the overstay of first three months as per **Rule 13**. 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.

6. On perusal of the comments submitted by the respondent, it is noted that he has not denied that he was transferred out of Bengaluru on 20/02/2014. He has not specifically denied that he has overstayed at

the quarters in question even after his transfer out of Bengaluru. Rather he has categorically stated in his comments that he has vacated the quarters in question only on 27/05/2019. Thus it appears that there is prima-facie material to show that the respondent has overstayed at the quarters in question beyond the date of his transfer out of Bengaluru. The respondent has not furnished any material to show that he was permitted to overstay at the quarters in question. He has not furnished any material to show that he had intimated the allotment committee about the date by which he is likely to vacate the Government Quarters or that he had complied with the aforementioned Rules. Therefore, it appears that there is prima-facie material to infer that the respondent has committed misconduct within the meaning of Rule 10(3) of the Karnataka Government (Allotment of Government Quarters) Rules, 1999 by overstaying at the quarters in question in violation of the said Rules and more specifically Rules 5, 10, 11 and 15 of the said Rules.

7. The respondent has taken a defence in his comments that starting from the date of his transfer on 20/02/2014, five years have lapsed before the date of filing of the complaint on 03/01/2019 and that therefore this complaint is barred u/s 8(2)(d) of Karnataka Lokayukta Act. It is noted that the respondent has categorically admitted in his comments that he had vacated the quarters only on 27/05/2019.

Such being the case the alleged act of misconduct of the respondent in overstaying in the quarters in question would continue till 27/05/2019 and therefore it cannot be said that the period of limitation u/s 8(2)(d) of Karnataka Lokayukta Act commences from 20/02/2014. Even otherwise, assuming *arguendo* that the period of five years would commence on 20/02/2014, it is noted that complaint has been filed well within a period of five years from 20/02/2014 i.e., on 03/01/2019. Thus it appears that the said defence of the Respondent cannot be accepted.

8. Further the respondent has taken a defence in his comments that there was alternative remedy as per Rule 13 of the Karnataka Government(Allotment of Government Quarters) Rules 1999 and has relied upon the decision of the Hon'ble High Court of Karnataka in the case of *Sri. Subhindra A Gumaste and others v. The State of Karnataka* in Writ Petition No. 25078-80/2016(GM-KLA) dated 15/07/2016. On perusal of the copy of said judgement printed from the website of the Hon'ble High Court of Karnataka, which is placed on record for reference, it is noted that the report of this authority under section 12(3) of the Karnataka Lokayukta Act and the Government Order entrusting the enquiry to this authority was challenged. The complaint in that case was that the entries in the revenue records were changed in favour of the decree holders of a suit without notice to the complainant.

The Hon'ble High Court has observed that the revenue records are necessarily to be changed pursuant to the decree passed in Civil Suit. It has observed that a party aggrieved by the entries made in the record of rights may make an application to the Deputy Commissioner. In this view of the matter, it has been held that as the complainant in that case had remedy by way of appeal, revision review or other proceedings before any Tribunal, or other authority and has not availed of the same, it was not open for the Lokayukta or Upa-Lokayukta to conduct investigation under the Act in such matters.

It is most respectfully noted that the said decision in *Sri. Subhindra A Gumaste and others v. The State of Karnataka* in Writ Petition No. 25078-80/2016(GM-KLA) dated 15/07/2016 cannot be relied upon by the respondent for the simple reason that a plain reading of the facts and circumstances in that case as well as the facts and circumstances in this complaint would show that the facts and circumstances in that case and facts and circumstances in this complaint are not one and the same. Moreover Rule 13 provides only liability to pay penal license fee to the effect that if an allottee overstays in contravention of the Rules, he shall be liable to pay 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. Thus the provision under Rule 13 cannot be treated as alternative remedy within the meaning of Section 8(1)(b) of the Karnataka Lokayukta Act, 1984 and especially in view of Rule 10(3) of the Karnataka Government (Allotment of Government Quarters) Rules, 1999 that categorically provides that an allottee who overstays shall be liable for disciplinary action according to rules by treating such overstay as an act of misconduct. Thus it appears that even this defence of the Respondent cannot be accepted.

9. Though the Respondent has stated that he had submitted requisition to the Competent Authority for overstaying as he had reasons for the same, he has neither stated as to what was the reason for such overstaying nor has he furnished any material in support of the same. Moreover there appears to be no provision in the Karnataka Government (Allotment of Government Quarters) Rules 1999 for permitting overstay for such a long period without any justification. Therefore the comments of the respondent cannot be accepted.

10. Though a report was called in this complaint from Secretary, PWD Department, no such report has been submitted. The respondent has also not stated anything about recovery of penal license fee from him as per Rule 13 of the said Rules. Therefore it appears

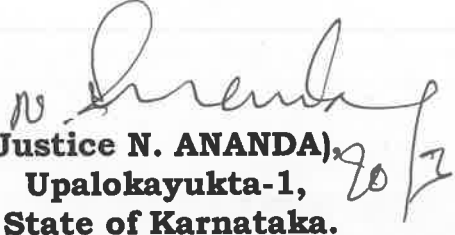
that it may be inferred that no penal license fee has been recovered from the Respondent as per Rule 13 of the aforementioned Rules. This inference is fortified by the fact that the Respondent has indicated in his comments that the Executive Engineer concerned has not issued him the no due certificate as on the date of the further comments dt.16/3/2020.

11. Therefore, it appears that there is prima-facie material to infer misconduct on the part of the respondent for overstaying in the quarters in question allotted to him in violation of Karnataka Government (Allotment of Government Quarters) Rules, 1999 and more specifically Rules 5, 10, 11 and 15 of the said Rules.
12. The facts and material on record prima-facie show that the Respondent has committed misconduct as per Rule 3 (i) to (iii) of Karnataka Civil Services (Conduct) Rules, 1966 r/w Rule 10(3) of the Karnataka Government (Allotment of Government Quarters) Rules, 1999. Accordingly, now, acting under Section 12(3) of the Karnataka Lokayukta Act, recommendation is made to the Competent Authority to initiate disciplinary proceedings against the Respondent - **Sri. K.V. Palaiah**, Senior Assistant Director of Boilers, Kalburgi division, Department of Factories and Boilers Industrial Safety Health, Kalburgi (**Date of Retirement is 30/09/2022**), and to entrust the inquiry to this Authority under Rule 14-A of the Karnataka Civil

Services (Classification, Control and Appeal)
Regulations, 1957.

13. Further, as per Section 12(4) of Karnataka Lokayukta Act, 1984, the Competent Authority shall intimate to this Authority within three months from the date of receipt of this report, as to the action taken or proposed to be taken on the basis of this report.

Connected records are enclosed.


(Justice N. ANANDA),
Upalokayukta-1,
State of Karnataka.

