

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.04.2015

CORAM :

THE HON'BLE MR. JUSTICE V. DHANAPALAN
AND
THE HON'BLE MR. JUSTICE G. CHOCKALINGAM

Writ Appeal No: 575 of 2011

S. Subramani
D-122 PWD Quarters
Todhunter Nagar
Saidapet
Chennai - 600 015.

.... Appellant/Petitioner

-vs-

1. The State of Tamil Nadu
rep. by its Special Secretary
Public Works Department
Secretariat
Chennai - 600 009.
2. The Assistant Executive Engineer
Public Works Department
South West Sub Division
Chepauk
Chennai - 600 005.

.... Respondents/Respondents

Writ appeal under clause 15 of the Letters Patent against the order of the learned single Judge dated 10.11.2010 made in W.P. No: 3633 of 2005.

Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus to call for the records relating to the letter bearing reference No.35839/H2/2004-2 dated 29.12.2004, issued by the 1st respondent read with Letter உசெபொ.தெ,மே/கோ,6 dated 11.1.2005 issued by the 2nd respondent, quash the same as being illegal, arbitrary and unconstitutional and consequently direct the respondents to permit the petitioner to retain the quarters until 30.04.2005.

For appellant : Mr.N.G.R. Prasad for
M/s. Row & Reddy

For respondents : Mr. R. Rajeswaran
Special Government Pleader

J U D G M E N T

(Judgment of the Court was delivered by V. Dhanapalan, J.)

This writ appeal is filed against the order passed by a learned single Judge of this Court dated 10.11.2010 made in W.P. No: 3633 of 2005 dismissing the writ petition filed by the appellant praying for issuance of a writ of certiorarified mandamus to call for the records relating to the letter bearing ref. No: 35939/H2/2004-2 dated 29.12.2004 issued by the 1st respondent read with Letter cbrbgh/bj/nk-nfh/6 dated 11.01.2005 issued by the 2nd respondent, quash the same as being illegal, arbitrary and unconsitutional and consequently, direct the respondents to permit the petitioner to retain the quarters until 30.05.2005.

2. The case of the writ petitioner before the learned single Judge is stated hereunder :

" Petitioner is working as a Driver in this Court. He was allotted a quarters by a Government Order 3-D No. 158 dated 29.11.2001 and he was permitted to occupy Quarter No: D-122 in Todhunter Nagar, Saidapet, Chennai, where he started residing with his family consisting of his wife, daughter and parents. Petitioner's wife is also employed as an Office Assistant in this Court. Petitioner's daughter is aged 10 years and is studying in School. While so, by an order dated 22.07.2004, petitioner was transferred to the Madurai Bench of this Court and accordingly, petitioner reported for duty at Madurai. Petitioner was not allotted any quarters at Madurai. Since petitioner's daughter was studying in a School at Chennai, he submitted a request to the Special Secretary, Public Works Department, State of Tamil Nadu, 1st respondent herein, on 20.09.2004 seeking retention of quarters until 30.04.2005. However, by an order dated 29.12.2004 petitioner's request to retain the quarters was rejected by

stating that it is not feasible. It was also stated in that order that petitioner is eligible to occupy the quarters only for a period of one month on payment of market rent from the date of transfer; he should vacate the premises immediately and also pay three times rent

for the period of unauthorised occupation. Again, by an order dated 11.01.2005, the 2nd respondent herein directed the petitioner to pay the damage rent at three times the normal rent and vacate the premises immediately, failing which coercive action will be taken against him. Challenging these two orders, petitioner filed the writ petition."

3. The 1st respondent herein, namely the Special Secretary to Government, Public Works Department, Government of Tamil Nadu, filed counter affidavit before the learned single Judge and contended that as per G.O. Ms. No: 963, Public Works Department dated 14.05.1987 as well as the condition stipulated in the allotment order issued to the petitioner, he is not eligible to retain the quarters after his transfer to Madurai. It is the case of the 1st respondent before the learned single Judge that as per para 34 of G.O. Ms.No: 963, PWD dated 14.05.1987, the Government servants, who were transferred from Chennai to outstation after the first of September, if they have School / College going children residing with them, may be permitted to retain the Government quarters till the end of the academic year i.e. 30th April, subject to the penal rate of rent. According to the respondent, since the petitioner was transferred during July 2004, the above said concession is not available to him and that the request of the petitioner could not be complied with because there is no provision under the existing set of Rules permitting the petitioner to retain the quarters even after the joining duty at Madurai on transfer. According to the 1st respondent, since the petitioner was transferred in July 2014, no concession could be given to him and this Court must direct him to pay the penal rent around Rs.1,200/- per month till the date of vacation of the premises.

4. The learned single Judge, after considering the rival submissions, passed the following order :

"10. A perusal of the impugned order would disclose that the request made by the petitioner herein was rejected on the ground of non-feasibility, as per Rule.

Admittedly, the challenge has not been made to G.O.Ms.No.963, Public Works Department, dated 14.5.1987 which prescribes guidelines/conditions in respect of Government quarters.

12. Even according to the petitioner, his wife is also employed as a staff in the High Court and both of them are earning. Though the plea has been made before this Court, to relax the conditions stipulated in the above said G.O., and treat the case of the petitioner as a special case, the facts and circumstances do not warrant

this Court to exercise such a power. If the case of the petitioner is considered positively, in all similar cases, it may be cited as a precedent.

13. As rightly submitted by the learned Additional Government Pleader, number of Government servants who have been transferred to Chennai, are in queue to get occupation in Government Quarters and if the petitioner in spite of transfer to Madurai, is allowed to retain his quarters at Chennai and permitted to pay normal rent, their interest would suffer and they also will be put to difficulties and hardship.

14. In view of the said reasons, the challenge made to the impugned order fails and accordingly, the writ petition is dismissed.

15. According to the petitioner, his wife is also employed as a staff in the services of High Court Madras and it is open to her to submit a representation to the respondents for retention of Government quarters and on such representation, the 2nd respondent is directed to consider the same on merits and in accordance with Rules and pass orders as expeditiously as possible."

Challenging the said order, petitioner has filed the present appeal.

5. We have heard Mr.N.G.R. Prasad learned counsel appearing for the appellant and Mr. R.Rajeswaran learned Special Government Pleader appearing for the respondents and perused the material documents made available on record.

6. The learned counsel appearing for the appellant would submit that the transfer order issued by this Court is on account of the opening of a Bench at Madurai and it was not a voluntary order and hence, the appellant can neither leave his entire family at a new place nor he can shift his family to Madurai. He would also submit that the transfer order issued by this Registry is not a permanent order of transfer and as long as it is only a temporary order, he cannot vacate the quarters allotted to him by the Government as getting back the quarters on his re-transfer to the principle seat at Chennai would be a mere impossible task. Learned counsel also contended that the House Rent Allowance being received by the appellant at Madurai would be lesser compared to the one received by him at Chennai and still the appellant was paying the House Rent without any default and hence, the order directing him to pay penal rent is unsustainable in law.

7. On the other hand, Mr.R.Rajeswaran learned Special Government Pleader, by filing counter affidavit, would contend that

as per G.O. Ms. No: 963/PWD dated 14.05.1987 as well as the condition stipulated in the allotment order issued to the petitioner, he is not eligible to retain the PWD quarters after his transfer to Madurai. The representation dated 20.09.2004 given to the Secretary to Government of Tamil Nadu, PWD Department, Chennai, to continue the occupation in the same quarters was negatived by the Government vide Lr. No: 35839/H2/2004-2 dated 29.12.2004. Based on the said letter, a notice was issued vide Lr. No. 1/AEE/SWSA/Chepauk/Chennai-5 dated 11.01.2005. But instead of vacating the quarters the petitioner has filed a writ petition which was dismissed by a learned single Judge of this Court on 10.11.2010 and that till date, the appellant has not vacated the quarters. According to the learned Special Government Pleader the order passed by the learned single Judge does not warrant any interference at the hands of this Court.

8. We have heard the learned counsel on either side and perused the materials made available on record.

9. This appeal arises on a peculiar circumstance. Even before the learned single Judge, the writ petitioner has not challenged his order of transfer on any ground. His only contention is he cannot be asked to vacate the quarters just because he had been transferred to Madurai. To appreciate the case put forth by the writ petitioner, it would be appropriate for us to highlight some facts such as, this Chartered High Court established its Bench at Madurai in the year 2004. It is obvious that initially the requisite staff members must be transferred from the Principal seat at Madras to the Madurai Bench. Though certain number of staff willingly opted to get transferred to the Madurai Bench, they were not sufficient to administer the Madurai Bench effectively. Therefore, the Registry was compelled to transfer certain number of staff on all cadres to the Madurai Bench. Unlike in other Departments of the Government, the Registry has started uniformly adopting a stand of effecting transfer and re-transfer for a period of one year. Thus, though each and every staff member of this Registry would like to be retained at the Principal seat at Madras alone, looking into the need arising at the particular place, staff of this Registry are being transferred to Madurai Bench for a minimum period of one year. This differentiates the staff of this Registry from that of the other Government servants working under the State of Tamil Nadu. In other words, the transfer of the Government servants takes place within the territory of the State of Tamil Nadu whereas the staff of this Registry are being transferred and re-transferred only from Madras to Madurai and vice versa. We are emphasizing this point because the contention of the Government is that once a Government employee is transferred he/she cannot be permitted to reside in the quarters allotted to him/her in one place. More over, the

respondents rejected the request made by the petitioner to retain the quarters by relying on G.O.Ms. No: 963 Public Works Department dated 14.05.1987. This was stated so in the counter filed by the respondents before the learned single Judge as well as before the Division Bench. According to the respondents that Government Order clearly stipulates that the Government Servants who are transferred from Chennai to outstation after first of September, if they have School/College going children residing with them, may be permitted to retain the Government Quarters under their occupation till the end of the Academic year i.e. 30th April, subject to payment of penal rent. According to them, this Government Order still holds the field. But, we fail to understand as to how the respondents, by placing reliance on a Government Order of the year 1987, can reject the petitioner's claim in the year 2010. Much water has flown in the birdge after 1987. It is not out of context to mention here that new admissions in the schools and colleges now-a-days gets over within February or March of every year. This we are emphatically saying by various writ petitions being filed before this Court every year pertaining to the new admissions in the schools and colleges. So when the respondents reject the petitioner's application for retention of the quarters on the ground that the petitioner was transferred during July 2014 and hence, he will not be entitled for any concession as per G.O. Ms. No: 963 dated 14.05.1987, we are not able to appreciate it.

10. The learned Special Government Pleader appearing for the respondents submitted that since the petitioner's wife is also an employee of this Court, she should have made an application seeking retention of the quarters. In our view, this is not an argument which can be accepted by us because, paragraph 37 of the very same Government Order viz. G.O. Ms. No:963 dated 14.05.1987 categorically states that such a transfer of allotment cannot be claimed as a matter of right and the Government reserves the right to reject any such application for reasons which need not be communicated to the party. Paragraph 37 reads thus,

" 37. When the husband and wife are, both, State Government employees and if either of them is transferred out of Madras, the person who continued in Madras City may send his/her application in the prescribed form for allotment of the quarter in his/her name as the case may be, immediately when the spouse gets the order of transfer to a place outside the city. Such a transfer of allotment cannot be claimed as a matter of right and the Govt. reserve the right to reject any such application for reasons, which need not be communicated to the party."

It is undisputed fact that petitioner alone had moved to Madurai

and that all his other family members were residing at Madras. In such an event, the petitioner cannot be expected to vacate the quarters and thereby allow all the other family members to reside in a place which is strange to them, that too when the head of the family is working in a far away place. At this juncture, we also would like to stress upon one more aspect of the matter. The peculiar circumstance which has arisen in this matter is because of the fact that the staff of the Principal Bench of this Court shall get transferred to the Madurai Bench of this Court for a limited period of one year and thereafter, they are re-transferred to the Principal Bench. This is the system now in practice as to the transfer of staff of this Court from Chennai to Madurai and vice versa. Therefore, it is certain that a driver, who is transferred from Principal Bench at Madras to Madurai Bench for a limited period, cannot avail quarters accommodation at Madurai to avoid any embarrassment to the State head as the rule does not permit for accommodation in two places. In this context, it is pertinent to state that while the staff of High Court at Chennai are allotted the Tamil Nadu Government Staff residential quarters, which are meant to the Government staff of all Departments and are under the control of the State Government, the staff of High Court at Madurai Bench are allotted the residential quarters, exclusively meant for the staff of High Court, which are under the direct control of the Court Registry. Therefore, the appellant driver has taken a stand that, if the quarters at Chennai are surrendered, he cannot get back the quarters from the State and hence, he continued to retain the quarters at Chennai contrary to the Rules of the department. However, the circumstances under which it has been so done by him is a matter for consideration by the stakeholders involved in this transfer process particularly the judiciary and the State Government. The Judiciary and the State Government should have a look into the matter in keeping the transfer policy as well as providing accommodation to the staff of the High Court in a manner as regulated by them, which would resolve the issue.

11. As regards the penal interest, the discretion of the authority is paramount. As the circumstance, which led to the staff continuing in the quarters without surrendering the same, is also a factor to be looked into, we feel, the competent authority, while imposing the penal interest, should also consider the same, either for reducing or waiving the penal portion of interest. Therefore, we are of the considered opinion that the matter requires re-examination. Accordingly, we direct the competent authority, namely, the Secretary to Government, Public Works Department, State of Tamil Nadu, Chennai, to consider the case of the appellant sympathetically as to the reduction / waiver of penal interest to the extent possible and take a decision accordingly.

12. With the aforesaid observations, this writ appeal stands disposed of. Connected miscellaneous petitions are closed. There shall be no orders as to the costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

gp

To

1. The Special Secretary
The State of Tamil Nadu
Public Works Department
Secretariat
Chennai - 600 009.
2. The Assistant Executive Engineer
Public Works Department
South West Sub Division
Chepauk
Chennai - 600 005.

+1cc to M/s.Row & Reddy, Advocate, S.R.No.24846
+1cc to the Government Pleader, S.R.No.24265

W.A. No: 575 of 2011

SR(CO)
CA(26/05/2015)

सत्यमेव जयते
WEB COPY