



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.08.2017

CORAM :

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.(MD)No.5145 of 2016

N.Muthupandi

... Petitioner

Vs.

The Commissioner of Police,
Head Quarters,
Madurai City.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to direct the Respondent to issue a direction to stop the proceeding of the impugned order passed by the respondent in Na.Ka.No.T3/44717/2011 dated 04.01.2016 and deduct only the usual rent amount from the salary by analyzing the representation of the petitioner.

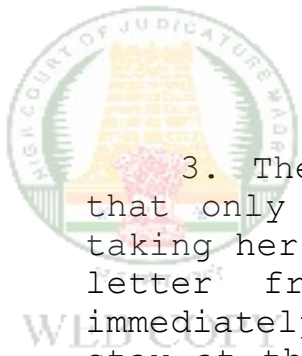
For Petitioner : Ms.V.Jeyarani

For Respondent : Mr.D.Muruganantham,
Additional Government Pleader

O R D E R

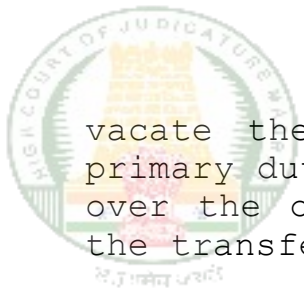
The present writ petition is filed seeking a writ of Certiorarified Mandamus, questioning the impugned order of the respondent dated 04.01.2016 and to direct the respondent to deduct only the usual rent from the petitioner's salary.

2. The learned Counsel for the petitioner assailing the impugned order, has submitted that the petitioner was working in Madurai and was allotted with an official quarters at Door No.34, Crime Branch Police Quarters, Madurai. He was residing there along with his family members, his wife being an insane (Half minded) person and continuously taking treatment at the nearby hospital. In addition to that, his children were also continuing their studies in a nearby school. While serving as Special Sub-Inspector of Police, (HC.3175) in Madurai City, on 13.08.2006, he was transferred to Ramnad District, on Administrative grounds. It was for the aforesaid reasons, the petitioner was unable to shift his official quarters. Moreover, the official quarters allotted to him was fully a condemned one. In view of the condemned condition of the quarters, the officials also had not taken any steps to vacate the petitioner.



3. The learned Counsel for the petitioner further submitted that only due to his wife's health condition, he was afraid of taking her out. In the meanwhile, in the year 2011, he received a letter from his higher officials, to vacate the quarters immediately or else, he had to pay penalty rent for his continuous stay at the same official quarters. Again the petitioner was not able to shift the house, since his girl child was about to write her School Leaving Examination. Hence, he has requested his higher officials to permit him to pay the penalty rent to his residence. But the respondent, upto 2015, never came forward to receive the rent. Only thereafter, when he went to ask about his rent, the respondent orally informed the petitioner that they were not interested to collect even the penalty amount, as it was a condemned house. Finally, the petitioner has vacated the quarters on 30.06.2012. For a period of 69 months and 23 days, he stayed in the aforementioned official quarters. But, unfortunately the respondent issued a letter on 04.01.2016, stating that he had to pay the entire penalty rent amount from 08.09.2006 to 30.06.2012, namely 93 months and 23 days, on the ground that the petitioner unlawfully stayed and for which, he had to pay the penalty rent. The respondent authority has overlooked to see one vital aspect that even according to them, the petitioner stayed only in a condemned house and there is no provision for charging penalty rent on a condemned house. When the matter stood thus, without deducting any penalty amount for more than six years, all of a sudden, the respondent started deducting a sum of Rs.13,940/- per month, with the result that they have deducted 14 monthly installments. Therefore, the impugned order passed is liable to set aside, on the ground that they are not entitled to calculate the penalty rent from 08.09.2006 to 30.09.2006, at the rate of Rs.3,000/- per month and from 01.10.2006 to 30.06.2012, at the rate of Rs.3000/- per month as well as from 01.07.2010 to 30.06.2012, at the rate of Rs.560/- per month.

4. The learned Additional Government Pleader appearing for the respondent filed a detailed counter affidavit and took a stand that the petitioner was allotted the official quarters at Door No.34, Crime Branch Police Quarters, Madurai, while he was serving as Special Sub-Inspector of Police (H.C.3175) in Madurai, with a monthly rent of Rs.1000/- per month. Since he was transferred from Madurai to Ramnad District on 08.09.2006, on administrative grounds, he has to vacate and hand over the police quarters immediately, so as to enable the other police officials, who got transferred to Madurai to occupy. No police officer/official should be allowed to remain in the police quarters after their transfer to another district. Ignoring the said transfer, the petitioner continued to reside in the police quarters, along with his wife and two children. There is no necessity to instruct the petitioner to



vacate the quarters on his transfer. On transfer, it is the primary duty of a disciplined force like Police to vacate and hand over the official quarters and take another official quarters in the transferred place.

5. In addition to the above mentioned averments, it is further submitted by the learned Additional Government Pleader that the petitioner had suffered with a Departmental Disciplinary Proceedings initiated under Rule 3(b) of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955, dated 14.04.2008, vide by which, he was removed from service with effect from 21.04.2008. However, the said order was challenged before this Court in W.P(MD)No.2810 of 2009. This Court, finding fault with the infirmities in the above said order, directed the respondent to pass fresh order. Accordingly, a fresh order was passed, thereby, the petitioner was awarded with a modified punishment of reduction in Rank from Head Constable to Grade I Police Constable for a period of three years to be spent on duty, on 09.06.2010. Only after passing the modified punishment of reduction in rank, the petitioner reported back to duty on 24.06.2010 FN, at Ramnad District.

6. The Additional Government Pleader further submitted that the Director General of Police, Chennai, has given instructions in the Chief Office Memo in R.C.No.117282/Building II(I)/2002, dated 08.10.2002, with regard to vacating the official quarters, failing which, the officer/official would be liable to pay penalty rent. As the petitioner failed to vacate the official quarters, in time, a penalty rent of Rs.2,22,740/-, for the period from 08.09.2006 to 30.06.2012, was ordered to be recovered from his salary on installment basis as per CPO No.1032/2012 in C.No.T3/44717/2011, dated 25.06.2012. Moreover, he was not eligible to occupy the police quarters for the period from 21.04.2008 to 23.06.2010, since he was removed from service during the period, in Ramnad District. Therefore, the petitioner is liable to pay the entire penalty rent and the respondent have started recovering the penalty rent of Rs.2,22,740/-, in 16 installments, at the rate of Rs.13,940/- for the first installment followed by Rs.13,920/- for the remaining 15 installments.

7. It is further stated that 14 installments were already recovered from his salary and two more installments were yet to be recovered. In the meanwhile, the petitioner got retired from service on 28.02.2017 and the respondent was not able to recover the balance two installments. Therefore, he prayed for a direction to the petitioner to pay the aforementioned balance two installments. As and when the same got cleared, the respondent department will issue No Objection Certificate to the petitioner and the petitioner can move his pension papers to the Competent Authority, namely Accountant General, Tamil Nadu.



8. Heard the learned Counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondent.

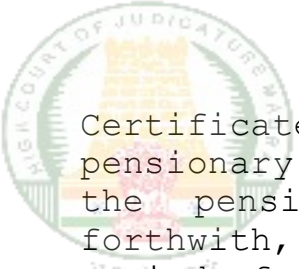
9. It is so clear that the petitioner was on transfer from Madurai City to Ramnad District on 13.08.2006, as a matter of which, the petitioner had to vacate his official quarters in Madurai City and take another official quarters in the transferred place, namely, Ramnad District, which he had not done so.

10. Secondly, from the affidavit filed in support of the petition, it is clear that at any point of time, during his overstay, no representation was given by the petitioner to the respondent, requesting not to charge penalty rent for his overstayed period in the aforesaid official quarters. In view thereof, when the petitioner was on transfer to Ramnad District, on 13.08.2006, he had failed to vacate his official quarters and the penalty rent started getting accumulated.

11. Adding fuel to fire, he also suffered with a Departmental Disciplinary Proceeding, initiated under Rule 3(b) of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955, which ended in an order of removal from service with effect from 21.04.2008. Aggrieved by the same, W.P(MD)No.2810 of 2009 came to be filed by the petitioner, before this Court and the same was allowed and the order of removal was set aside, directing the respondent to pass a fresh order. Pursuant to the same, the respondent passed fresh order, thereby, a modified punishment was imposed, by reducing the Rank of the petitioner from Head Constable to Grade I Police Constable, for a period of three years, on 09.06.2010.

12. It is seen that even during the dismissal period and even after the modified punishment order was passed, he had not vacated his official quarters in Madurai. It is not known, why he had not realised the mistake committed by him. Therefore, the respondent was right in passing the impugned order. The respondent started deducting the penalty rent in 16 monthly installments, first installment at the rate of Rs.13,940/- and the remaining 15 installments at the rate of Rs.13,920/- and 14 installments were already deducted by the respondent authority. As the petitioner got retired on 28.02.2017, the respondent authority is not able to recover the remaining two installments.

13. Therefore, the petitioner is directed to settle the remaining two installments at the rate of Rs.13,920/- within a period of four weeks from the date of receipt of a copy of this order. Immediately after clearing the aforementioned two remaining installments, the respondent is directed to issue No Objection



Certificate to the petitioner for the purpose of getting his pensionary benefits and the respondent is further directed to send the pension proposals to the Accountant General, Chennai, forthwith, who in turn is directed to process the same, within a period of eight weeks thereafter.

14. With the above directions, this writ petition is disposed of. No costs.

Sd/-
Assistant Registrar(Records)

/True Copy/

Sub Assistant Registrar.

To

1 The Commissioner of Police,
Head Quarters,
Madurai City.

2.The Accountant General (A&E),
Tamil Nadu,
361, Anna Salai,
Teynampet, Chennai- 600 018.

+1CC to M/S.V.Jeyarani, Advocate, SR.No. 75476
+1CC to the Special Government Pleader SR.No.75984

W.P. (MD) No.5145 of 2016
30.08.2017

gk
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