



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.07.2017

CORAM:

**THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN**

**W.A. (MD) .No.1541 of 2011
and
M.P. (MD) Nos.2 of 2011 and 1 of 2012**

G.Purushothaman

... Appellant/Petitioner

Vs.

1.The Commissioner of Police,
Trichy City,
Trichy.

2.The Superintendent of Police,
Trichy District,
Trichy.

... Respondents/Respondents

PRAYER : Writ Appeal is filed under Clause 15 of the Letters Patent Act, to set aside the order dated 02.11.2010 in W.P.(MD) No.13886 of 2009 on the file of this Court and thereby allow the writ petition.

Prayer in WP(MD) . 13886/ 2009 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court Writ of Certiorari to call for the records pertaining to the impugned orders passed by the 1 and 2 respondents herein vide their proceedings in Na.k.aNo. 304/09 Na.Ka.No.B6/5314/09 dated 29.04.2009 and Na.Ka.Aa.No.331/09, Na.ka.No. N4/216/13634/09 dated 21/05/09 respectively and quash the same .

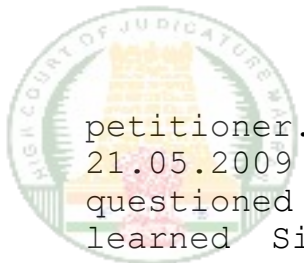
For Appellant : Mr.T.Senthil Kumar
For Respondents : Mr.T.S.Md.Mohideen, AGP

J U D G M E N T

[Judgment of the Court was delivered by **G.R.SWAMINATHAN, J.**]

The unsuccessful writ petitioner is on appeal questioning the order dated 02.11.2010 dismissing W.P(MD)No.13886 of 2009.

2.The appellant herein was allotted E.1 Government Quarters Srirangam on 01.12.1995, when he was working as a Sub Inspector of Police. He was promoted as Inspector, Q Branch in the year 2002 and transferred to Chennai. The writ petitioner retired from service on 31.08.2008. He vacated the quarters only on 06.12.2008. For unauthorised overstay from 2002 to 2008, the first respondent directed recovery of a sum of Rs.1,20,735/- from the writ



petitioner. Orders were passed to that effect on 29.04.2009 and 21.05.2009 by the respective respondents. When the same was questioned in WP(MD)No.13886 of 2009, the same was dismissed by the learned Single Judge placing reliance on the decision of the Honourable Supreme Court reported in (2005) 13 SCC 495 -State of Orissa V. Gopinath Dash. Aggrieved by the same, the present writ appeal has been filed.

3.It is beyond dispute that the order for recovery was passed after the writ petitioner was allowed to retire. It is not the case of the respondents that the appellant was directed to vacate the quarters and that he did not do so. It is seen that the writ petitioner was all along working in Special Branch and Q-Branch. Directing recovery after the employee had been allowed to retire would certainly cause great hardship to him. The appellant had specifically contended in the affidavit filed in support of the writ petition that he was allowed to occupy the said quarters, because, he was neither given house rent allowance nor allotted any Government quarters in the place where he was posted. When admittedly the appellant was posted only in Special Units and it is not the case of the respondents that the appellant was occupying the originally allotted quarters and also one in the transferred place, it is not open to the respondents to pass the orders impugned in the writ petition. The order of recovery was passed without hearing the appellant. Looked at from any angle, the orders impugned in the writ petition ought to have been set aside. The said orders have been passed without any application of mind.

4.We therefore set aside the order dated 02.11.2010 dismissing the writ petition in WP(MD)No.13886 of 2009. The orders of recovery impugned in the writ petition are quashed. The writ appeal is accordingly allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar

To

- 1.The Commissioner of Police,
Trichy City,
Trichy.
- 2.The Superintendent of Police,
Trichy District,
Trichy.

+1cc to M/s. T.SENTHIL KUMAR Advocate in SR. No.69098

+1cc to THE SPECIAL GOVERNMENT PLEADER in SR. No.69762

SKM/ARUL

JS/GT/SAR.1/22.08.2017/ 2P-5C

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and

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