

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.10.2018

CORAM

THE HONOURABLE MR.JUSTICE R. SURESH KUMAR

W.P.No.39275 of 2003

and W.P.M.P.Nos.47534 & 47535 of 2003

T. Mani

... Petitioner

Vs

1. Tamil Nadu Tea Plantation Corporation Ltd., Rep:
By its Managing Director,
Orange Grove Road,
Coonoor.
2. The General Manager,
Tamil Nadu Tea Plantation,
Corporation Limited,
Nilgris.
3. The Divisional Manager,
Tamil Nadu Tea Plantation,
Corporation limited,
Coonoor Tea Division,
Nilgris District.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari to call for the records relating to the order dated 05.11.2003 of the second respondent herein in proceedings No.E2/20897/2003 confirming the order of the third respondent herein in proceedings No.2608 of 1999 dated 31.12.2002.

For Petitioner : M/s.AL.Ganthimathi

For Respondents : Mr.Haroon

O R D E R

The prayer sought for in this writ petition is for a Writ of Certiorari, to call for the records relating to the order dated 05.11.2003 of the second respondent herein in proceedings No.E2/20897/2003 confirming the order of the third respondent herein in proceedings No.2608 of 1999 dated 31.12.2002.

2. The short facts, which are required to be noticed for the disposal of this writ petition, are as follows:-

The petitioner was working as a Draftsman Grade-III in the respondents-Corporation. When he was working as such in Tiger Hill Tea Factory, Coonoor, the respondents by order dated 20.05.1997, transferred the petitioner from the said factory to Kotagiri Tea Division. He was relieved accordingly on 04.06.1997 and immediately he joined in the transferred place. While the petitioner was working in Coonoor Tea Factory, he was allotted a quarters bearing No.37/A5, BH Colony, Coonoor.

3. In this context, even though the petitioner had been transferred to Kotagiri Tea Division, he had not vacated the quarters allotted to him, on the ground that as per procedure in vague, whoever got transfer within the radius of 30 KMs, need not to vacate the quarters. Since, the petitioner had been transferred to Kotagiri Tea Division, which is only 24KMs from the Tiger Hill Tea Factory, as per the said procedure adopted by the respondents-Corporation, the petitioner need not to vacate the quarters and accordingly he continued in the quarters.

4. However, the continuation of the petitioner in the quarters was objected by the respondents and even disciplinary action was initiated against him. The petitioner has no other option approached this Court, by filing a writ petition in W.P.No.1207 of 2001. In fact, before filing this writ petition, the petitioner on 18.12.2000, had made a request to the respondents to permit him to retain the quarters, since he entitled to retain the same because, the transfer effected on him was only within 30 KMs. In the said writ petition, the petitioner had got an interim order of stay on 02.07.2001, whereby the petitioner was permitted to retain the quarters, accordingly he continued in the quarters.

5. Subsequently, by order dated 12.03.2002, at the instance of the respondents Corporation, this Court had modified the earlier interim order of stay, to the effect that, the petitioner shall be permitted to retain the quarters till the end of the academic year 2001-2002 i.e., till 31.05.2002, and thereafter he can vacate the premises or to pay the market rent to the respondents Corporation for over stay. However, in the meanwhile by April 2001, a disciplinary proceeding was initiated against the petitioner by issuing a charge memo on 20.04.2001, whereby two charges have been framed against the petitioner. The first charge was that the petitioner had not vacated the quarters and the second charge was in respect of his attitude in not obeying the order issued by the superiors. Even though the explanation was given for the said charges by the petitioner,

not satisfying with the same, the respondents conducted an enquiry and based on the Enquiry Officer's report, the third respondent herein by order dated 31.12.2002, imposed a punishment against the petitioner for reduction of his pay to the bottom scale for a period of seven years with cumulative effect.

6. When the petitioner preferred an appeal against the said order of punishment awarded against him before the second respondent, the second respondent by order dated 05.11.2003 has conformed the said order passed by the third respondent. Therefore aggrieved by both the orders passed by the third respondent as well as the second respondent, imposing the punishment of reduction of pay to the bottom level for seven years with cumulative effect, this writ petition has been filed by the petitioner with the aforesaid prayer.

7. I have heard Ms.A.L.Ganthimathi, learned counsel appearing for the petitioner, who would submit that, as per the procedure, which was followed by the respondents Corporation, if any employee gets transfer within 30Kms radius from the Tea Factory, he need not vacate the quarters for which, he had been allotted and in occupation. Taking note of the said fact, this Court has passed an interim order of stay in W.P.No.1207 of 2001 dated 02.07.2001, which reads thus:-

"Learned Counsel for the petitioner has contended that the respondents adopted the procedure following in the Government in its 89th meeting in respect of recovery of possession of quarters maintained by the Respondent. The Government in Government order Ref.No.374 dated 06.09.2000 has issued an order that if a person is transferred within 30 Kms. away from the office from which he is transferred, he need not vacate the accommodations given by the Respondents. In view of this, the petitioner has been transferred to the place, which is 24 Kms. away from the area he is working. Hence there will be an order of interim stay. Notice".

8. Even prior to approaching this Court by the petitioner in the year 2001, in the year 2000 itself, the petitioner had made a request to the respondents to permit him to retain the quarters as the place, where the petitioner had been transferred, is only 24 Kms away from the factory, which is within 30 KMS Rule and therefore he would be entitled to retain the quarters. During the pendency of the said writ petition

filed in the year 2001, there had been a stay and subsequently, when the vacate stay petition was filed by the respondents Corporation, the order of interim stay was modified on 12.03.2002, permitting the petitioner to retain the quarters up to 31.05.2002.

9. The learned counsel appearing for the petitioner would further submit that therefore these factors will go to show that the petitioner had never done any illegal occupation or any unlawful occupation in the quarters. Since, he was an employee of the respondents-Corporation, the quarters was allotted to him and even though he had been transferred to Kotagiri Division, the said transfer place is within 24 KMs, as per the procedure invogue, he can retain the quarters and all these factors were taken into account by the Court and an interim order of protection by way of stay had been granted by this Court, which was subsequently modified and of course, till May 2002, the petitioner was permitted to retain the quarters. When that being the position, the charge memo issued against the petitioner on 24.02.2001, framing the very same charges of retaining the quarters, cannot stand and therefore based on the said charges, punishment ought not to have been awarded against the petitioner. Therefore the said punishment awarded by the third respondent as confirmed by the second respondent i.e., the Appellate Authority is unlawful and therefore the same is liable to be interfered with.

10. Per contra, Mr.Haroon, learned Standing Counsel appearing for the respondents would submit by relying upon the counter affidavit filed by the respondents that, in the year 2000, the petitioner was transferred from Kotagiri Tea Division to Nilgiris to Lower Nirar Tea Division in Valparai area, as he had already been completed three years in Kotagiri Tea Division. Since the petitioner had made a representation to retain him in the Kotagiri Tea Division, the same was considered by the respondents and by order dated 29.05.2000, the petitioner was transferred to Hooker Tea Division in Nilgiris District. Thereafter on 18.12.2000, the petitioner was advised that his request to continue to occupy the respondents-Corporation quarters at Coonoor could not be acceded to and that he should vacate the quarter before 30.12.2000. Only against the said order, the petitioner approached this Court and filed the writ petition in W.P.No.1207 of 2001, where interim order originally granted and subsequently modified by an order dated 12.03.2002 and thereafter market rent has been collected from the petitioner. It is also submitted by the learned Standing Counsel appearing for the respondents that, while deciding the issue, the conduct of the petitioner should be taken note of, since the

petitioner, even after the period granted by this Court i.e., after 31.05.2002, he had not vacated the quarters, only by taking much efforts by filing a petition for eviction, the respondents Corporation were able to secure the vacant possession of the quarters.

11. In this context, the learned counsel appearing for the respondents would further submit that, before he approaching this Court in July 2001, in April 2000, itself the charge was framed against the petitioner. Accordingly, the disciplinary proceedings went on and ultimately have found that the petitioner had not vacated the quarters and thereby not obeyed the orders passed by the superiors. Those charges have been proved based on the enquiry and accordingly, the punishment has been imposed against the petitioner. Therefore the said order of punishment passed against the petitioner as confirmed by the Appellate Authority does not require any interference from this Court.

12. I have considered the said rival submissions made by the learned counsel on both sides and also perused the materials placed before this Court.

13. It is not in dispute that the quarters has already been allotted to the petitioner, where he was residing. When he was transferred to Kotagiri Tea Division, since it was within 30 KMs radius, he had retained the quarters, as he was eligible to retain the same because of the distance. Subsequently, some more transfers were effected and the request of the petitioner to retain the quarters was rejected. The said order had been challenged before this Court, wherein interim order was granted in July 2001, and subsequently modified order was given by this Court on 12.03.2002, permitting the petitioner to retain the quarters till 31 May 2002.

14. Even though the charge memo was issued against the petitioner on 20.04.2001, since the very charge itself, is for the non vacation of the quarters on the part of the petitioner and no other charges have been framed, in view of the interim order passed by this Court and subsequently modified order passed by this Court in the writ petition in W.P.No.1207 of 2001, referred above, where the petitioner was permitted to retain the quarters till 31.05.2002, the continues occupation of the quarters by the petitioner had been regularized and therefore within the said period, if at all any charge has been framed against the petitioner, only for the occupation of the quarters, in the opinion of this Court, that cannot be justifiable.

15. The period for which, the charge memo has been issued against the petitioner also got merged with the order passed by this Court, as the petitioner had been permitted to retain the quarters till 31.05.2002. Therefore, very basis of the charge, in the considered opinion of this Court, would have no legs to stand and based on the said charges, punishment made in the impugned order ought not to have been imposed on the petitioner.

16. In that view of the matter, this Court has no hesitation to hold that the impugned order of punishment is liable to be interfered with and accordingly, the impugned order is quashed. It is made clear that, the respondents are at liberty to recover the rental arrears, if any, from the petitioner and after having recovering the rental arrears, if any, the arrears of pay or pensionary benefits, if any, in view of the said setting aside of the order of punishment passed against the petitioner, such emoluments shall be calculated and paid to the petitioner within a period of three months from the date of receipt of copy of this order.

17. With these observations and directions, this writ petition is allowed to the extent indicated above. However, there shall be no orders as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

- 1.The Managing Director, Tamil Nadu Tea Plantation, Corporation Ltd., Orange Grove Road, Coonoor.
- 2.The General Manager, Tamil Nadu Tea Plantation, Corporation Limited, Nilgris.
- 3.The Divisional Manager, Tamil Nadu Tea Plantation, Corporation limited, Coonoor Tea Division, Nilgris District.

+1 cc to M/s.AL.Ganthimathi,Advocate Sr.No. 74980

AKM/10.12.19/6P-5C /

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