

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.01.2018

CORAM

THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HON'BLE MR.JUSTICE RMT.TEEKAA RAMAN

W.P.No.10905 of 2017
and
W.M.P.No.11856 of 2017

Dr.K.R.Mani Petitioner

-vs-

- 1.Union of India
rep.by its Secretary and Chairman of
Governing Body of the Pasteur Institute of India,
Ministry of Health and Family Welfare,
Nirman Bhavan, New Delhi-110 011.
- 2.The Director,
Pasteur Institute of India,
Coonoor, Nilgiris District,
Tamil Nadu-643 103.
- 3.The Registrar,
Central Administrative Tribunal,
Madras Bench, Chennai-600 104. ... Respondents

Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari calling for the connected records leading to the issue of the impugned order of the third respondent dated 16.12.2016 in O.A.No.1780 of 2014 and quash the same.

For Petitioner :: Mr.T.Mohan for Mr.R.Amardeep for
M/s.Tamizh Law Firm

For Respondents :: Mrs.P.T.Asha for
M/s.Sarvabhauman Associates for R2

ORDER

(Made by HULUVADI G.RAMESH, J.)

The petitioner herein is said to be a Veterinary Assistant Surgeon, who joined the second respondent's institute on

02.05.1979. By virtue of his position, he was allotted quarters by the Pasteur Institute of India, Coonoor. It appears that a day before his normal retirement on 30.11.2011, he was suspended from service by order dated 29.11.2011. In the suspension order, it was made clear that he should not leave the Headquarters without obtaining prior permission from the Chairman. By virtue of the same, he continued to stay all along in the Headquarters. Subsequently, alleging that he has overstayed beyond the permitted period, the damages rate has been calculated as Rs.9,15,805/- and it was ordered to be recovered from the final settlement amount, of the petitioner, by proceedings of the second respondent in Office Order No.PII/Accts/A.G.Audit/2014-15/3283 dated 30.10.2014.

2.Challenging the said order, the petitioner preferred an application before the Central Administrative Tribunal, Madras Bench, in O.A.No.1780 of 2014 and the Tribunal, considering the facts and circumstances of the case, confirmed the said recovery stating that the action taken by the official respondents cannot be found fault with, by order dated 16.12.2016. Challenging the order passed by the Tribunal, the present writ petition has been filed by the petitioner.

3.It is seen from the records that based on certain irregularities committed by the petitioner during his tenure in the Department, he was issued with charge memo, one day prior to his retirement date. But, the issue before this Court is with regard to exorbitant charges imposed towards license fee / damage rates, due to overstaying of the petitioner in the quarters allotted to him.

4.The argument of the learned counsel for the petitioner is that, the petitioner, with fond hope, was expecting conclusion of enquiry at the earliest, as he was ordered not to leave the Headquarters as per the proceedings of the second respondent dated 29.11.2011, but the enquiry even as of now, has not been completed. It is his further submission that the representation of the petitioner to the authorities to conclude the enquiry, went in vain. He also submitted that in the normal course, when enquiry has commenced, till its completion, the person should not be disturbed from the quarters. He submitted that the petitioner continued to stay in the quarters and he vacated the quarters on 28.02.2014. Thereafter, the second respondent has calculated the damages and arrived at the sum of Rs.9,15,805/- towards damages on account of the overstay in the quarters. He further submitted that the petitioner has given a house address in Coonoor to the authorities for communication, but it was not ready for occupation. He further submitted that though the request of the petitioner to continue to stay in the quarters was considered only for a period of two months, since the

enquiry was not completed and that he was asked to stay in the Headquarters by the order of the second respondent dated 29.11.2011, he stayed in the quarters and after vacating the quarters, a sum of around Rs.43,032/- was deducted from the provisional pension of the petitioner, in excess of the normal rent.

5. On the other hand, the learned counsel for the second respondent has submitted that the petitioner was given only two months on considering his request to continue to stay in the quarters, and since he overstayed, necessary calculations have been made as per law and it was directed to recover a sum of Rs.9,15,805/- of which a sum of Rs.13,500/- and a sum of Rs.750/- were received from the petitioner by way of a cheque and hence the balance sum of Rs.9,02,305/- was ordered to be recovered from his final settlement. The learned counsel has also submitted that the petitioner was deemed to have been superannuated on the date of his normal retirement and hence, he cannot occupy the quarters any further and she relied upon the letter dated 24.12.2011 issued by the second respondent, to that effect.

6. In reply to the above submissions, the learned counsel for the petitioner has submitted that only because the petitioner has been ordered not to leave the Headquarters, it became inevitable for him to stay in the quarters, and hence he is not at fault for the alleged overstay. He also submitted that the petitioner was not able to occupy in the house address which was given to the second respondent, since it was not ready for occupation at the relevant point of time. He further submitted that the letter of the second respondent dated 24.12.2011 stating that the petitioner was deemed to have been superannuated on 30.11.2011 on attaining the age of superannuation, is only an afterthought.

7. Heard the learned counsel for the petitioner and the learned counsel for the second respondent and perused the materials available on record.

8. It appears that even though the petitioner approached the authorities to complete the enquiry, till now the same has not been completed. Time and again, the petitioner requested the authorities to complete the enquiry and to permit him to continue residing in the quarters. With regard to this point, the learned counsel for the second respondent has submitted that till 15.04.2012, the petitioner was permitted to continue residing in the quarters and not beyond that. But it is the submission of the learned counsel for the petitioner that since the petitioner was directed not to leave the Headquarters as he was kept under suspension, he was not able to leave the quarters. It is the further submission of the learned counsel

for the petitioner that the petitioner had been paying the rent regularly and furthermore, a sum of Rs.43,032/- in addition to the regular rent, has already been deducted from his provisional pension. It is also seen that he was not able to occupy the house in the address furnished by him to the Department. Further, the proceedings stating that the petitioner was deemed to have been superannuated, is only an afterthought to tide over the situation. This stand has been raised only to drive out the petitioner without there being any proper accommodation available and without there being any steps taken to conclude the enquiry. In the said circumstances, it became inevitable for the petitioner to continue in the quarters.

9. Thus it is clear that only in view of the fact that enquiry has not yet been completed; that a direction was given to the petitioner not to leave the Headquarters till enquiry is completed and that the petitioner was not able to occupy the house in the address furnished by him to the Department since the same was not complete at the relevant point of time, the petitioner overstayed in the quarters. It appears that the petitioner vacated the quarters after a period of around two years till the last permission was granted and the second respondent has called for a report from the Public Works Department and assessed the damages. However, it is seen that for this purpose, no show cause notice was issued. No objections were called for from the petitioner for the damages imposed upon him. So long as no intimation was given to the petitioner as regards the penal charges that may be imposed for the occupancy after the period of superannuation and in the absence of any show cause notice issued in this regard, and the fact that enquiry has not been completed, the impugned order of the second respondent charging damages, cannot be sustained. Further, it is also seen that a sum of Rs.43,032/- has been recovered in excess from the petitioner.

10. In view of the above stated circumstances, the imposition of damages to the tune of Rs.9,15,805/- by the second respondent, cannot be sustained and accordingly the proceedings of the second respondent in Office Order No.PII/Accts/A.G.Audit/2014-15/3283 dated 30.10.2014 is set aside. Consequently, the impugned order dated 16.12.2016 passed by the third respondent-Tribunal is set aside and the writ petition is allowed. No costs. Consequently the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1.The Registrar,
Central Administrative Tribunal,
Madras Bench, Chennai-600 104.

+1cc to M/s.Sarvabhauman Associates, Advocate, S.R.No.5009

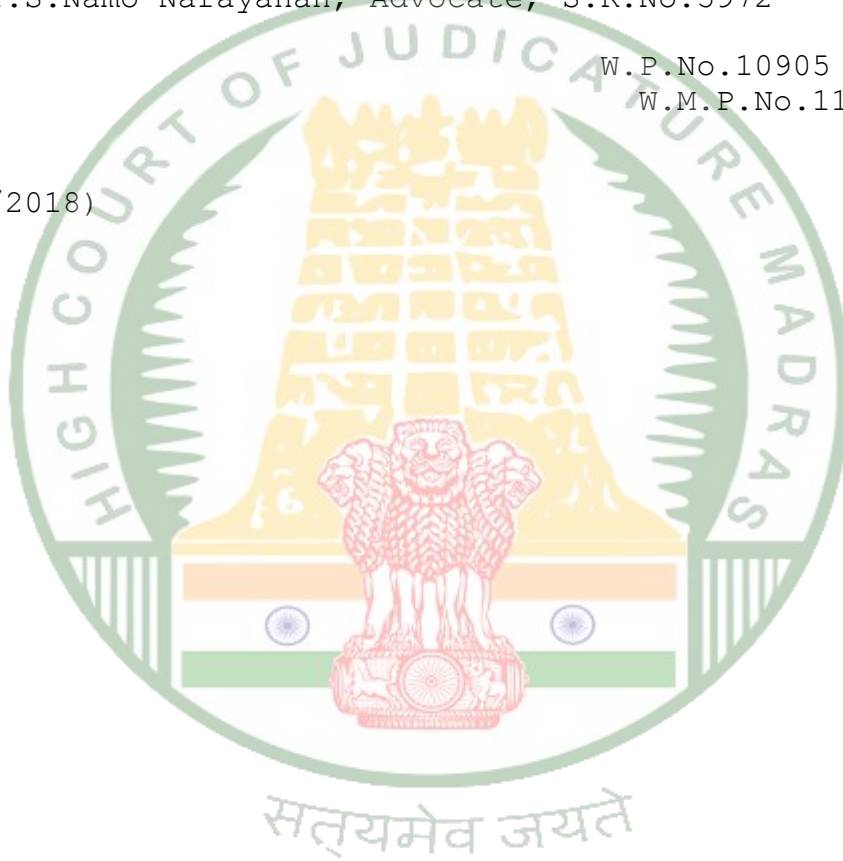
+1cc to M/s.Tamil Law Firm, Advocate, S.R.No.5610

+1cc to Mr.S.Namo Narayanan, Advocate, S.R.No.5972

W.P.No.10905 of 2017 and
W.M.P.No.11856 of 2017

LRS (CO)

RRK (28/02/2018)



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