

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19-01-2018

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.36302 of 2007

And

M.P.Nos.1 of 2007 and 1 of 2011

THE MADRAS HIGH COURT
STAFF ASSOCIATION,
REPRESENTED BY ITS SECREARY,
T.J.LAKSHMIPATHI,
CHENNAI-104.

... PETITIONER

Vs.

1. SECRETARY TO GOVERNMENT,
HOUSING AND URBAN DEVELOPMENT
DEPARTMENT,
SECRETARIAT,
CHENNAI-600 009.
2. SECRETARY TO GOVERNMENT,
PUBLIC WORKS DEPARTMENT,
SECRETARIAT,
CHENNAI-600 009.
3. THE REGISTRAR GENERAL,
HIGH COURT OF MADRAS,
CHENNAI-600 104.

... RESPONDENTS

Prayer: Writ Petition is filed under Article 226 of the Constitution of India for the issuance of a Writ of Mandamus, directing the first and the second respondents to allow the members of the petitioner-Association who have been allotted rental quarters by either the first or the second respondents and who have been transferred to Madurai on a temporary basis to retain the quarters even during their absence from Chennai for a period of not more than two years subject to the conditions that the quarters should be occupied only by their families and they should pay the concessional rent foregoing House Rent Allowance at City rate which he would draw had he continued to work in the Chennai City and the rent should be on no account be lesser than the rent which was paid by them at the time of their relieving from Chennai.

For Petitioner : Mr.S.Namasivayam

For Respondents 1&2 : Mr.E.Manoharan,
Additional Government
Pleader.

For Respondent-3 : Mr.V.Ayyadurai,
Senior Counsel for
Mr.A.Durai Eswar.

O R D E R

The relief sought for in this writ petition is for a direction to direct the first and the second respondents to allow the members of the petitioner-Association, who have been allotted rental quarters by either the first or the second respondents and who have been transferred to Madurai on a temporary basis to retain the quarters, even during their absence from Chennai for a period of not more than two years, subject to the conditions that the quarters should be occupied only by their families and they should pay the concessional rent foregoing the House Rent Allowance at City rate, which he would draw had he continued to work in the Chennai City and the rent should be on no account be lesser than the rent which was paid by them at the time of their relieving from Chennai.

2. The writ petitioner is the Madras High Court Staff Association, represented by its Secretary. The petitioner-Association claims that it is a Service Association with a membership of around 1400 and registered under the Societies Registration Act. The petitioner-Association is having its Office at New Building High Court, Chennai-104. The petitioner-Association represents all the categories of High Court Staff, both at Madras and at Madurai, including the Watch and Ward, Cleaners, Typists, Assistants, Copyists, Assistant Section Officers, Section Officers, Court Officers, Appeal Examiners, Personal Assistants and Deputy Registrars. It is further stated that consequent to the establishment of the Madurai Bench of Madras High Court in 2004, some members of the staff, working in the Principal Bench, had been transferred to the Madurai Bench. Members of the staff hailing from Southern Tamil Nadu and, who have roots there, opted to work in the Madurai Bench permanently. Thereafter, the members of the staff, who could not, for domestic reasons, work permanently in the Madurai Bench, were transferred to Madurai for a specific period of one year. The third respondent, namely, the Registrar-General, High Court, Madras, issued a Circular bearing No.Roc. 133/ A/ 2005/Madurai Bench Cell dated 22.6.2005, made it clear that who opt for Madurai Bench will have an option to be retransferred back to the Principal Seat at Madras, after one year of their transfer, if they so desire. It was further clarified by a

Circular dated 2.8.2007 that the leave availed by the employees will be excluded for calculation of one year of their service in Madurai Bench and their re-transfer to the Principal Seat at Madras, would be postponed to that extent.

3. There are approximately 600 posts in the Madurai Bench. Of this, around 150 posts have been filled up on a permanent basis and the other posts are filled up by rotation for a specific period of one year. Some of the members of the staff, numbering around 100, are the occupants of Government rental quarters of Public Works Department as well as Tamil Nadu Housing Board in various parts of Chennai like Shenoy Nagar, Anna Nagar, Kilpauk Garden, Peters Road, Foreshore Estate, Todhunter Nagar (Saidapet) etc., These quarters are constructed, allotted and maintained by either the first or the second respondent, directly or through the respective Boards. The allotments made are subject to several conditions. In the Allotment Rules prescribed by the first and the second respondents, it is provided inter alia that allottees can retain the quarters (a) on transfer till the academic year; (b) on retirement for three months and beyond three months, only on specific orders of the Government; and (c) on death for three months or till the end of the academic year. It is further provided in the said Rules that those, who are deputed for training and, whose period of training is treated as on duty, is allowed to retain the apartment for a period not exceeding two years, subject to the conditions that it should be occupied by the family of the allottees and the allottees they should pay the concessional rent foregoing the House Rent Allowance at City rate, which he would draw had he continued to work in the City and the rent should on no account be lesser than the rent which was paid by him before the relief for the training.

4. The members of the petitioner-Association hail from different parts of the State and neighbouring States. At the time of recruitment, as there was no Madurai Bench, their job was non-transferable. The members of the petitioner-Association were allotted quarters by either the first or the second respondent, after a long wait, perseverance and enormous difficulties in view of the acute housing problem in Chennai. As before the establishment of Madurai Bench, their job was non-transferable, they have admitted their children in the educational institutions nearer to their quarters. In most of the cases, their spouses are also working in Madras either in private companies or in quasi Government organisations. For all practical purposes, they have made arrangements for their stay all through their long service in Madras. They have been occupying the houses at a comparatively comfortable rent, greater security and without any harassment of the landlords.

5. The grievances of the petitioner-Association is that nearly around 400 members of the petitioner-Association, have

been transferred to Madurai Bench for a specific period of one year. Of those, around 50 are occupying quarters allotted by either the first or the second respondent. The members, who were transferred to Madurai Bench, immediately applied for retention of quarters and they were permitted to retain them till the end of the academic year. Thereafter, the first and the second respondents have directed the allottees to vacate and hand over possession immediately failing which action will be initiated for eviction and collection of penal rent. The transfer of the members of the petitioner-Association to Madurai Bench for a specific period of one year with their return to City, is a certainty, cannot be treated as transfer in the normal sense for the purpose of retention of quarters.

6. In the event of vacating the quarters by the members of the petitioner-Association, they will never be able to get allotment again in view of the fact of long waiting list. In view of the acute housing difficulties, they and their families will be put to enormous problem. Under these circumstances, the petitioner-Association is constrained to move the present writ petition, seeking a direction to allow the members of the petitioner-Association to continue in the quarters for a period of one year till they return from Madurai Bench to the Principal Seat at Madras.

7. The learned Senior Counsel, appearing on behalf of the Madras High Court, Shri V.Ayyadurai, made a submission that 15% of the houses are already reserved for the Judiciary pursuant to the orders of the Hon'ble Division Bench of this Court passed in W.P.No.24603 of 2016 dated 8.1.2016. The orders of the Division Bench of this Court, specifically states that 15% of the accommodation in priority housing areas should be given to the Judiciary. Thus, the situation, as of now, is adjudicated and the respondents 1 and 2 are bound to reserve 15% of the houses at the disposal of the Judiciary and it is for the Judiciary to take appropriate action in respect of granting allotment to the staff members of the Madras High Court.

8. On behalf of the third respondent, the Registrar (Administration), Madras High Court, filed a report on 18.1.2018, reads as under:-

"It is respectfully submitted that as per the direction of the Hon'ble First Bench in W.P.No.24603 of 2010, dated 8.1.2016, the Government, vide G.O.(Ms.) No.202, Housing and Urban Development [HB3(1)] Department, dated 23.12.2016, issued orders, reserving 15% of rental quarters in each type of accommodation in each scheme to the staff of the Judicial Department.

As and when vacant quarters are intimated by the Tamil Nadu Housing Board to the High Court, the applications of the staff members, who have applied for allotment of quarters are processed on the basis of their seniority i.e., date of appointment and placed before the Hon'ble Committee dealing with allotment of quarters to staff members, for orders regarding allotment. Thereafter, the decision of the Committee is placed before the Hon'ble Chief Justice, for approval.

After getting approval of the Hon'ble Chief Justice, the approved list of staff members is forwarded to the State Government, as well as the Managing Director, Tamil Nadu Housing Board, Chennai, for issuance of allotment of orders."

9. The learned Additional Government Pleader, appearing on behalf of the respondents 1 and 2, submitted the compilation of Government Orders in respect of the terms and conditions of allotment and the procedures to be followed for granting allotment of houses. The learned Additional Government Pleader for respondents 1 and 2 is of the opinion that pursuant to the orders of the Division Bench of this Court, the respondents 1 and 2 had issued an order, allotting 15% of the houses at the disposal of the Judiciary and G.O.(Ms.)No.202, Housing and Urban Development [HB3(1)] Department, dated 23.12.2016, was issued in this regard. Thus, the third respondent has to follow the terms and conditions, as stipulated in various Government Orders, in respect of allotment of houses to the staff members of the Madras High Court.

10. Now, the question arises whether the third respondent is following the terms and conditions and the procedures to be adopted for the purpose of allotting Government accommodation to the staff members of the Madras High Court. Though the grievances raised in this writ petition is relating to the retention of the accommodation, even after transfer, this Court has to consider the facts in respect of allotment and continuance of Government accommodation in its terms and conditions. It is of paramount importance that the procedures for allotment issued in Government Regulations are to be followed scrupulously in its letter and spirit.

11. The Government accommodation is a concession and a facility provided to the employees. Accommodation on concessional rent, can never be claimed as a matter of legal right. Allotment of houses on concessional rent are to be provided in accordance with the procedures settled by the

Competent Authorities. Equal opportunity in allotment is a constitutional mandate. Equality clause enunciated under the Constitution can never be violated by the public authorities. The employees, in its category, have to be treated equally and the procedures are to be derived for the purpose of providing equal opportunity to all the employees. There cannot be any preferences, favouritisms or nepotisms in respect of granting allotment to the staff members of the Madras High Court.

12. Equal treatment of the employees of the High Court is of utmost important. Providing allotment of Government accommodation based on their respective application seniority in their respective category is the rule prescribed by the Government. However, it is not clarified by the third respondent that whether the Government Rules and Regulations in the matter of allotment of accommodation has been followed by the third respondent or not. A Seniority Register is to be maintained, terms and conditions and the procedures stipulated in the allotment, regulations and Government Orders are to be scrupulously followed and periodical inspections are to be conducted to weed out the illegal occupations and other illegalities, including subletting the houses or otherwise. At the outset, this Court is of an opinion that the report of the Registrar (Administration) is absolutely vague and non-specific in respect of the adherence of Rules and Regulations stipulated in the Government Orders.

13. Constitutional obligations on the part of the Courts are to see that the Executives are following the rules and the procedures uniformly, so as to ensure equality and to avoid any discrimination amongst the Government employees. Favouritism and nepotism are the concepts of enemies to the noble principles of equality. Thus, any discrimination in any form is to be held as unconstitutional. Equal opportunity in employments the promotions and other service benefits, are the constitutional mandates and perspective. Treating the employees in a fair and reasonable and equal manner is the minimum requirement of an Executive functioning both under the Constitution or under any Statute. It is needless to state that no employee can be deprived of his privilege or facility, so as to avail the Government accommodation in accordance with his application seniority in the respective category. Allotments made contrary to the Regulations are to be held illegal and arbitrary. Our Great nation is fastly approaching a vibrant democracy. Thus, the components of the constitutional organisations have to undoubtedly adopt the transparent procedures in the matter of providing certain facilities equally to all the public servants and Government employees. Current day situation warrants transparent procedures in order to eradicate any unnecessary doubts in the minds of the public, so also the Government employees. Transparency in procedures and any executive actions

undoubtedly make the Nation more glorious. All the procedures and regulations of allotment and cancellations etc., are to be made available to all the public servants, so as to understand the procedures and to avail the facilities in accordance with their application seniority in their respective categories and to abide by the Rules and Regulations thereon scrupulously.

14. The principles of reasonableness and no arbitrariness in actions by the public authorities are the core of our constitutional scheme and structure. Arbitrariness by the public authorities can be demonstrated by the existence of different circumstances. Whenever both the decision making process and the decision taken are based on irrelevant facts, while ignoring relevant considerations, such an action can normally be termed as 'arbitrary'. Where the process of decision making is followed but proper reasoning is not recorded for arriving at a conclusion, the action may still fall in the category of arbitrariness. Of course, sufficiency or otherwise of the reasoning may not be a valid ground for consideration within the scope of judicial review. Rationality, reasonableness, objectivity and application of mind are some of the prerequisites of proper decision making. The concept of transparency in the decision making of the public authority has also become an essential part of our administrative law.

15. An action by a public authority, whether administrative or executive, has to be fair and in consonance with the statutory provisions and rules. Even if no rules are in force to govern executive action, still such action, especially if it could potentially affects the rights of the parties, should be just, fair and transparent. Arbitrariness in the action, even where the rules vest discretion in an authority, has to be impermissible. The exercise of discretion, in line with the principles of fairness and good governance, is an implied obligation upon the authorities, when vested with the powers to pass orders of determinative nature. Thus, it is made clear that any decision in this regard are to be beyond doubt and the principle of reasonableness and fairness are to be adopted by the Madras High Court, while granting allotment to its own employees.

16. On a perusal of the report of the Registrar (Administration) filed on behalf of the third respondent, this Court is of an opinion that the Rules and Regulations prescribed in relation to the allotment of Government accommodation has not been followed in its terms and conditions. The Government Orders and Rules stipulate the procedures to be followed for the purpose of allotment of Government accommodations and the Regulations thereon. This Court with all humility has to place on record that at least hereafter the Rule of Law is to adhered to in order to minimise the discrimination to be caused amongst

the employees in the matter of providing facilities and privileges granted by the State. Keeping up the morale amongst the employees is of utmost important. The morale can be maintained only through administrative fairness and by taking decisions by avoiding any kind of arbitrariness or favouritism. It is experienced by the citizens in general that certain acts of favouritism and nepotism shown in a casual manner without considering the factor that such favouritisms would affect the rights of other employees, who all are otherwise eligible and longing to avail the facilities of Government accommodation. Thus, before making any such decision, the third respondent should be conscious of the fact that such allocation of out of turn privileges or facilities would cause adverse consequences in respect of the rights of other employees, who all are otherwise eligible in accordance with their respective seniority. Thus, it is always a point of self realisation that if we adopt any arbitrariness or non-adherence of Rules and Regulations, the rights of others should be affected. It is a constitutional mandate and perspective that the third respondent can never and ever follow the evil principle of arbitrariness, favouritism and nepotism in the matter of treating the public servants/employees. Allotment of Government accommodation, no doubt, is not a right of an employee. However, consideration is a fundamental right of an employee. Thus, violation of the procedures are certainly in violation of the constitutional right of an employee. Consideration, being a valuable right, conferred on each employee has to be respected and the Regulations in this regard are to be followed scrupulously by the third respondent. Not only the service benefits like seniority, promotions etc., also the facilities and privileges provided to the employees are to be granted equally in an unbiased manner and by providing equal opportunity and there cannot be any violations in this regard. Fair procedures already stipulated by the Government are required to be followed for the purpose of upholding the morale amongst the employees and to avoid frustration in the minds of the employees. After all, it is to uphold the constitutional values of the institution. The institutions will fly high only if the procedures are transparent and the employees are treated in an equal manner. Any unequal treatment will certainly create a frustration in the minds of the employees and the same will paralise the concept of efficiency in the public administration. These all are the characteristic features to be followed to improve the efficiency level in the public administration.

17. Now let us look into the Government Order issued in G.O. (Ms.) No.202, Housing and Urban Development [HB3(1)] Department, dated 23.12.2016, issued pursuant to the orders of the Division Bench of this Court in W.P.No.24603 of 2010, dated 8.1.2016, the above Government Order states as follows:-

"5. The Government after careful examination of the above reports of the

Shetty Commission and the order of the Supreme Court in light of the order of Hon'ble High Court as extracted in para 4 above, have decided to reserve 15% of the Tamil Nadu Government Servants Rental Housing quarters in each type of accommodation in each scheme in Chennai City and Moffusil areas for the judicial staff subject to the following conditions and issue orders accordingly:-

(i) The powers for issuing allotment order is being delegated to the administrative side of the Court for the above reserved 15% Government rental quarters to the staff of the High Court and Subordinate Court. The Court may fix authority then and there to issue allotment orders directly to the staff of the High Court and Subordinate Courts and the same may be communicated to the Tamil Nadu Housing Board;

(ii) The Managing Director, Tamil Nadu Housing Board may ensure from time to time that the reservation limit of 15% is not breached. In this regard, he should maintain a separate register of allotment to the judicial staff scheme-wise, type wise and carryout a monthly reconciliation of the number of judicial allottees residing in each scheme vis-a-vis number of Government rental houses which can be allotted to the judicial staff as per 15% reservation;

(iii) While making allotment of Tamil Nadu Government Servants' Rental Quarters to the Judicial Staff in any scheme, number of judicial staff already residing in the said scheme has also to be considered while calculating the quota of 15% houses to be allotted to the judicial staff;

(iv) that under any scheme, if no application is pending from judicial staff requesting rental allotment, vacancy shall be filled by making allotment to other Department staff even though 15% of the accommodation under the scheme has not been saturated with allotment to the judicial staff;

(v) If a judicial staff makes an application for allotment in any scheme where reservation of 15% accommodation has not been filled with the judicial staff, his

application will be considered for allotment at the arising of the first vacancy under the said scheme;

(vi) The Government have issued guidelines in G.O.(D) No.203, Housing and Urban Development Department, dated 28.4.1994 for allotment of the vacant tenements under Tamil Nadu Government Servants Rental Housing Schemes on rotation basis. The same may be continued for 85% of the rental houses to be allotted to rest of the Government staff after reserving 15% for the Judicial Staff;

(vii) As regards the allotment to the other Government staff, seniority should be followed strictly. In no circumstances, the roaster should be jumped for allotment through discretionary quota in the next roaster when the earlier roaster has not yet been fully exhausted;

(viii) Reservation of 15% in Government rental housing schemes for the Judicial Staff will not be applicable to SAF Games Village rental housing scheme, Taylors Road rental housing scheme and Government Estates rental housing scheme, since these schemes are earmarked only for All India Service Officers."

18. The learned Additional Government Pleader for respondents 1 and 2 brought to the notice of this Court that the procedures are available for the purpose of according allotment to the Government employees. The procedures are enumerated in G.O.No.963, Public Works Department, dated 14.5.1987, As per the Government Order, elaborate procedures are provided for the purpose of granting allotment to the Government occupation and so also to deal with various other circumstances that may arise. However, it is not made clear by the third respondent as to whether the third respondent is following such rules and regulations at the time of granting allotment or at the time of recommending the names for the purpose of according allotment of houses.

19. The Government initially issued G.O.Ms.No.5949 (Housing), dated 23.12.1965, formulating draft rules and agreement for allotment of Government houses. The Rules for allotment of Government quarters states that "the allotment shall be made in the order of priority as determined by the date of receipt of the applications in the Board's Office." This apart, certain preferences are also granted in respect of the Government employees transferred from one place to another place. Subsequently, modifications and amendments were issued by

the Government and as stated above, G.O.(Ms.) No.963, Public Works Department, dated 14.5.1987 provides revised rules for allotment of quarters. The revised rules prescribed the method of allotment and the maintenance of the occupants on various circumstances. All circumstances are narrated in the above Government Order and therefore, the same has to be followed by the third respondent while granting allotment and further, at the time of granting retention or otherwise, even after transfer of an employee from one place to another. In respect of transfer, the following are the guidelines issued:-

"29. TRANSFER: The Government servant in occupation shall except in cases of sudden transfer give at least a month's advance intimation to the Executive Engineer, Public Works Department in charge of the quarter of their intention to vacate the quarters with copy to the Secretary to Government, Public Works Department, failing which they will be held liable to pay rent for period of one month from the date of receipt of intimation of vacation or till the date of occupation of the quarters by any other Government servant whichever is earlier.

30. The Government servant who has been transferred outside Madras City will not be allowed to retain the quarters irrespective of his/her re-transfer to the City.

31. The Officers responsible for the recovery of rent from the Government servants occupying Government quarters should ensure themselves that a copy of the proceedings on the orders of transfer of such Government servants and a copy of relieving order served to the employee under their control, are communicated promptly to the Chief Engineer (Buildings) and to Government in Public Works Department and to the authorities concerned.

32. The Assistant Executive Engineer, South West Sub Division, Government House Sub Division concerned shall submit a report to Government as soon as he received intimation to vacate the quarters and also when the quarters actually fall vacant so that steps may be taken to allot the quarters to an applicant in the waiting list.

33. The Government servants under the

orders of transfer shall give intimation of their intention to vacate the quarters immediately on receipt of such orders of transfer specifying date of receipt of such order to the Executive Engineer, South Presidency Division with copy to Government, failure on the part of the Government servant to intimate the date of receipt of the transfer order and to vacate the quarters before the expiry of the joining time allowed to time will entail disciplinary action being taken against him, by the head of his office. Besides the penalty imposed in such disciplinary action the head of office may order the recovery of market rate of rent with reference to Para 275 of 'D' Code in addition to making him forego the House Rent Allowance for the period of his unauthorised occupation of the quarters starting from the date of expiry of joining time till the date of vacation of the quarters.

34. The Government servants who are transferred from Madras 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 under their occupation till the end of the academic year (i.e., 30th April) subject to the payment of market rate of rent. Specific orders of Government will be necessary in each case.

The above concession shall not be applicable to the occupants of post-attached quarters.

35. The transferred Government servants shall retain the Government quarters in the old station for a period of one month on payment of market rate of rent from the date of joining duty in the new station and even after the period of joining on payment of concessional rent at eligible percentage of pay foregoing House Rent Allowance in respect of post attached quarters if it is not required by incoming Government servant. They will not be allowed to continue to occupy the quarters even after their transfer to Madras City.

36. The transferred Government officials from Madras City to outstation

in Mofussil of vice versa be allowed to draw House Rent Allowance in the new station provided the market rate rent of rent is in excess of the eligible percentage of his emoluments and HRA at the new station wherever HRA is admissible.

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 Government reserve the right to reject any such application for reasons, which need not be communicated to the party. If either, the husband or wife is not a State Government employee then such a transfer in favour of one who is not a State Government servant is not admissible.

i. If the husband/wife of the allottee is a Government servant he/she should register himself/herself for allotment of Government Residential quarters.

ii. When the allottee a Government Servant is transferred, the spouse if he/she has registered for a quarters is permitted to retain that quarter till he/she is allotted with quarters of his/her eligibility.

iii. The transferred Government Servant shall lose the concession of allotment of Government quarters at the transferred place."

When there is a provision for granting retention even after transfer of an employee, the third respondent also should follow the same in its terms and conditions.

20. The third respondent/Registrar-General, submitted a set of orders wherein a model allotment order has been made available. The model allotment order stipulates several terms and conditions have to be followed by the respective allottee. Undoubtedly, these conditions are binding on the allottee. However, it is brought to the notice of this Court that the occupants are continuing in Government accommodation beyond

their eligibility and there are certain irregularities and illegalities in respect of the Government accommodation, more specifically, in violation of the Rules and Regulations. It is the duty mandatory on the part of the third respondent to ensure that no such irregularity or illegality exists. Further, it is the duty of the third respondent to eradicate and wipe out all such illegalities and irregularities by initiating appropriate actions under the Rules and Regulations and if necessary under the Conduct Rules and Discipline and Appeal Rules. The terms and conditions stipulated are unambiguous in respect of the maintenance of the accommodations both by the allottee as well as by the respondents. Violation of the terms and conditions are the ground for eviction. Further, it is brought to the notice of this Court that illegal occupants are continuing in the Government accommodation and illegalities are being committed even in allotments and in violation of the application seniority in category wise. All those discrepancies and irregularities are to be sorted out and the same are to be settled by adopting the fair procedures and the regulations issued by the Government in this regard. It is just to uphold the Rule of Law and the constitution.

21. In respect of the grievances set out in the present writ petition, that some of the employees are transferred for a specific period of one year to Madurai Bench, this Court has to consider the grievances, as the same are certainly reasonable. Allotments are granted after waiting for number of years. Thus, serving for a short span of time in Madurai Bench, if the family is relocated, it would be difficult for the family to once again get allotment of Government accommodation, after getting re-transferred to Chennai. In those circumstances, the Regulation itself provides that an application seeking retention of accommodation is to be properly submitted by the allottee. On receipt of an order of transfer by the competent authority and the details and informations in respect of the occupants in the accommodation also to be submitted. On receipt of any such reasonable application, the same can be forwarded to the competent authority and extension of time for retention of accommodation shall be granted on merits and by following a uniform procedure. However, such retention of accommodation cannot exceed the prescribed period as per the Rules in force. The Competent Authorities have to keep in mind that retention of Government accommodation cannot be extended beyond the permissible period, so also beyond the reasonable period. Thus, retention of Government accommodation can be granted within the permissible period as stipulated in the Government Regulations. However, an application in this regard has to be considered on merits and as per the Regulations.

22. It is brought to the notice of this Court that certain employees, who were already transferred to Madurai Bench and

continuing there beyond one year are also in occupation of the Government accommodation beyond the period of one year and such circumstances are creating discriminations in the matter of Government accommodation. Thus, ineligible persons are to be evicted by following the procedures contemplated under Government Regulations without any further delay.

23. The learned Additional Government Pleader for respondents 1 and 2 referred to the condition No.23 stipulated in the Model Allotment Order issued to the High Court employees, which reads as under:-

"23. If the allottee continuous to retain the apartment even after his/her transfer, retirement, resignation etc., unauthorised by (i.e.) over stay without permission, rent will be collected from such allottee at the rates of concessional rent or economic rent is whichever higher in three times as penal rent for every month."

24. Therefore, it is made clear that the retention of Government accommodation can be provided only by way of permission and on special circumstances. While granting retention beyond the permissible period, reasons are to be recorded by the authority issuing such retention. The reasons are to be provided in view of the fact that there should not be any room for any doubt in respect of granting retentions on extraneous considerations. Thus, it is made clear that retention of accommodation can be given by way of permission and on application by the allottee and such orders are to be passed considering the merits of each case and by recording the reasons, so that the discriminations and the arbitrariness can be avoided.

25. Let us once again look into the very condition stipulated in G.O.Ms.No.202, Housing and Urban Development Department, dated 23.12.2016, the Government Order categorically enumerates that "the powers for issuing allotment order is being delegated to the administrative side of the Court for the above reserved 15% Government rental quarters to the staff of the High Court and Subordinate Courts."

26. Thus, it is unambiguous that the principal power vests with the Government, namely, the respondents 1 and 2. The Government, being the principal authority, is bound to monitor the exercise of power by the delegated authority. It is the duty of the respondents 1 and 2 to ensure that the allotment conditions and the regulations issued then and there, and in force are scrupulously followed by the third respondent. When the delegated authority exercise the power as per the Government Orders, it is the duty of the original authority to ensure that the delegated powers are used and not abused. Thus, it is made

clear that the original power vests with the respondents 1 and 2 and the power of allotment is delegated to the third respondent, who in turn is supposed to exercise the power in accordance with the Rules and Regulations and any violation, if found, the power of delegation is liable to be revoked. It is clarified that if any delegated power is misused or abused by the authorities, then the original authority is at liberty to revoke the power of delegation and they can exercise the power directly in respect of allotment and maintenance of the accommodations, as the accommodations belong to the Government, more specifically, to the Public Works Department.

27. In the report filed by the third respondent, it is stated that the allotment of quarters are processed based on the seniority i.e., date of appointment. On what basis such a procedure is prescribed has not been explained. However, the Government prescribes the date of application submitted, seeking willingness to occupy the Government accommodation shall be the seniority. In other words, the date of application submitted by the respective employees are to be registered and the seniority has to be followed based on the date of application in the category wise. The reason being that allotment of Government accommodation is not a service condition. It is a facility or privilege provided to the employees which is unconnected with their regular service conditions. Separate terms and conditions are formulated for the purpose of occupying the Government accommodation. Thus, the application seniority is followed to avoid discrimination and to maintain equal opportunity to all the employees in their respective categories.

28. Each category or group of categories is to be treated as a class. There cannot be any creation of class, within a class which is unconstitutional and in violation of Articles 14 and 16 of the Constitution of India. Thus, each class has to be treated separately and amongst the class, there cannot be any discrimination and equal opportunity is the constitutional mandate. However to provide an equal opportunity amongst a single class is the point to be considered. In the event of providing accommodation, based on the date of appointment, then the circumstances will arise that the seniors in date of appointment alone will get Government accommodation and at no point of time, the other junior employees in the same category will get accommodation. A senior in the date of appointment on submission of his application will get accommodation next day. Even after six months if any other senior submits an application, then he alone will get. What about the other persons appointed later. If such a procedure is adopted, the junior employees working in the same category will be deprived of and the equality class will be in stake. Equal opportunity means that the mechanism should provide an equal opportunity to all the employees in a class and there cannot be any

discrimination within the class. Occupation of Government accommodation, being a facility, has to be provided based on their respective willingness application and a Seniority Register in this regard is to be followed by the third respondent for granting allotment. If the present procedures as contemplated in the report of the Registrar (Administration) is followed, then it will amount to discrimination and violation of Articles 14 and 16 of the Constitution of India. Thus, this Court is of an opinion that the Government procedure being followed for many decades by the respondents 1 and 2, are to be followed by the third respondent to avoid all such sort of discriminations and arbitrariness.

29. Though the relief sought for in this writ petition is for retention of Government accommodation, even during the absence of employees, from Chennai on concessional rent, foregoing house rent allowance at city rate, this Court is of the opinion that the retention would have certain implications in respect of allotment of accommodations. Thus, this Court cannot de-link the principles of allotment with the retention of the Government quarters which necessitated this Court to deal with all terms and conditions in relation to the allotment of Government accommodation and the retention of Government accommodation beyond the terms and conditions. Thus, it is just and necessary, to deal with all these conditions to have a comprehensive revisit in the matter of allotment of houses and retention of houses in certain circumstances.

30. Under these circumstances, the following directions are issued to the third respondent to ensure uniformity in the matter of allotment of Government accommodation to the employees of the High Court of Madras:-

(i) The third respondent is directed to maintain a Seniority Register and the respective applications received from the employees are to be registered in category wise;

(ii) The type of accommodations are to be fixed with reference to the category of employees as per the Regulations issued by the Government;

(iii) Allotments are to be made strictly in accordance with the Rules and Regulations issued by the Government which all are in force;

(iv) In case of transfers, a specific application is to be submitted by the allottee/employee, seeking permission for retention of accommodation and on receipt of the same, the same is to be considered on merits and as per the Regulations in force and issue suitable orders recording the reasons for retention or extension;

(v) The third respondent is directed to inspect all the Government accommodations allotted to the High Court employees with the assistance of the Vigilance Department of the High Court and identify the genuineness or otherwise of the occupation

of the respective quarters and ensure necessary actions to eradicate the illegalities or irregularities if any exist by following the procedures contemplated under the Rules and Regulations;

(vi) If any illegal occupations are found contrary to the terms and conditions of the allotment order, then eviction proceedings are to be initiated without any further delay by following the procedures contemplated for such eviction.

31. Accordingly, the writ petition stands disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

s/d-

Assistant Registrar (CS VIII)

True Copy

Sub-Assistant Registrar

Svn

To

1. SECRETARY TO GOVERNMENT,
HOUSING AND URBAN DEVELOPMENT
DEPARTMENT,
SECRETARIAT,
CHENNAI-600 009.

2. SECRETARY TO GOVERNMENT,
PUBLIC WORKS DEPARTMENT,
SECRETARIAT,
CHENNAI-600 009.

3. THE REGISTRAR GENERAL,
HIGH COURT OF MADRAS,
CHENNAI-600 104.

4. The Legal Cell
High Court, Madras.

+1 cC to The Gov. Pleader sr 4855.

W.P.No.36302 of 2007

GP(CO)
SP(17/02/2018)