

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.08.2018

CORAM

THE HONOURABLE Mr.JUSTICE R.SURESH KUMAR

W.P.No.14223 of 2003

R.Natarajan

... Petitioner

vs.

1.State of Tamil Nadu

Rep. by its Special Secretary to Government
Public Works Department,
Fort, St. George,
Chennai - 9.

2.The Chief Engineer [Buildings]

Public Works Department,
Chepauk, Chennai - 5.

3.The Junior Engineer [Guindy Section]

Public Works Department
Todhunter Nagar,
Saidapet, Chennai - 15.

4.The Registrar General,
High Court of Madras,
Madras.

.... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records, pertaining to the order of the first respondent passed in his proceedings letter No.4540/H2/2003-1 dated 31.03.2003, and quash the same and consequently direct the respondents to recover only 1 ½ times of the H.R.A of the petitioner towards penal rent as per the G.O.Ms.No.831, Public Works Department, dated 19.05.1988, for the quarters bearing No.E-24 Todhunter Nagar, Saidapet, Chennai - 15.

For Petitioner : Mr.K.Rajasekaran

For Respondents : Mr.K.Ravikumar
Additional Government Pleader
for R1 to R3

Mr.C.T.Mohan for R4

O R D E R

This writ petition is filed for issuance of a writ of certiorarified mandamus calling for the records, pertaining to the order of the first respondent passed in his proceedings letter No.4540/H2/2003-1 dated 31.03.2003, and quash the same and consequently direct the respondents to recover only 1 ½ times of the H.R.A of the petitioner towards penal rent as per the G.O.Ms.No.831, Public Works Department, dated 19.05.1988, for the quarters bearing No.E-24 Todhunter Nagar, Saidapet, Chennai - 15.

2. Heard Mr.K.Rajasekaran, the learned counsel appearing for the petitioner, Mr.K.Ravikumar, learned Additional Government Pleader appearing for R1 to R3 and Mr.C.T.Mohan learned panel counsel appearing for the fourth respondent.

3. The petitioner was appointed as a driver at the High Court Madras and he joined duty as probationer on 30.10.2000 and completed the probation on 30.10.2002 and his probation was declared with effect from 01.11.2002 and thereafter he became the regular employee of the Madras High Court. His salary at that time was Rs.5,288/- inclusive of all allowances and after statutory deductions his net salary was Rs.4,623/- and after other miscellaneous deductions his take home salary was Rs.3700/-.

4. On the strength of the petitioner having been appointed as a driver of the Madras High Court, he had requested for Government accommodation and the same had been allotted to him at a Government rental quarters bearing door No.E-24, Todhunter Nagar, Saidapet, Chennai - 15. In this regard, it is to be noted that, normally such Government accommodation will be provided only after that person completes the probation successfully and became the permanent employee of the organisation.

5. Here the case in hand it seems that, even before the petitioner completes the probation, as a special case, he has been allotted with a quarters as mentioned above and since it was a special allotment, the first respondent in the order dated 31.03.2003 directed the second respondent either to collect the market rent from the petitioner or to direct him to vacate the quarters, According to the first respondent, the petitioner was not entitled to stay in the Quarters allotted to him by way of special allotment by merely paying the regular HRA amount alone as the petitioner was only a probationer at that time.

6. Aggrieved over the said order dated 31.03.2003 directing the petitioner either to pay the market rent for the Quarters allotted to him or to vacate the same, the petitioner filed this petition with the aforesaid prayer.

7. I have heard Mr.K.Rajasekaran, the learned counsel appearing for the petitioner who would submit that as has been averred in the affidavit that the petitioner's take home salary was only Rs.3,700/- whereas the market rent at that time fixed for the quarters was Rs.3,990/-, therefore the said huge amount was beyond the take home salary of the petitioner which cannot be recovered from the petitioner as rent. In this regard, the learned counsel further submitted that as per Government Order in G.O.Ms.No.831 dated 19.05.1988 instead of fixing the market rent, the authorities can prescribe either 1 ½ times or 3 times of HRA as a penal rent which can be collected from Government employees who over stay in the Government Quarters either with the concurrence of the authorities concerned or without the concurrence of the authorities as the case may be and in this regard the learned counsel would rely upon the following prescription made by the Government through the said G.O.Ms.No.831 which is extracted as hereunder:-

"4. The Chief Engineer (Buildings), has therefore, proposed a special rate of rent called "PENAL" rate of rent instead of the existing "Market rate of rent" to be adopted in all cases of P.W.D.,

a. In case of extension granted by Government for the occupancy of the quarters beyond the date of retirement or transfer etc., the penal rent rate may be one and half times of the rent last paid (the rent last paid is the normal rate of rent plus House Rent Allowance).

b. In case of continued occupation of the quarters without proper authority after retirement or transfer etc., the penal rent rate may be three times of the rent last paid (the rent last paid is the normal rate of rent and House Rent Allowance).

5. The Government after careful examination approve the proposal of the Chief Engineer (Buildings) to collect the penal rent from the Government servants who occupy the Government P.W.D., Quarters even after their retirement and transfer etc. instead of market rate of rent as was collected hitherto.

i. In case of extension granted by the Government for the occupancy of the Public Works Department Quarters beyond the date of retirement or transfer etc., the penal rent rate may be one and half times of the rent last paid.

ii. In case of continued occupation of the quarters without proper authority after retirement

or transfer etc., three times of the rent last paid.

7. This order issues with the concurrence of the Finance Department - vide its. U.O.No.41268/All.II/88-1, dated 02.05.1988".

8. By relying upon the Government order, the learned counsel for the petitioner submitted that the petitioner would fall under the category of clause 5(i) referred above and therefore if at all the petitioner had to pay higher rent than the actual rent payable by him equivalent to HRA he can be directed to pay only 1½ times as per clause 5 (i) of the aforesaid Government order and not three times of the rent and therefore the impugned order cannot be sustained.

9. Mr.K.Ravikumar, the learned Additional Government Pleader appearing for the respondents 1 to 3 however submitted that, the G.O.Ms.No.831 Public Works Department, dated 19.05.1988 would not be made applicable to the petitioner because the said Government order is nothing to do with the employee of the High Court and therefore the petitioner cannot seek any shelter under the clause 5(i) of the said Government order and therefore he should have paid the market rent fixed by the authorities concerned during the relevant point of time as he was directed since he did not complete the probation at that time.

10. Mr.C.T.Mohan, the learned panel counsel appearing for the fourth respondent on instructions would submit that, the petitioner after having successfully completed his probation, had been made permanent as driver of the Madras High Court and as per the latest order dated 28.02.2001, the petitioner was posted as driver in the Tamil Nadu State Judicial Academy and he has been working there till date.

11. I have considered the said submissions made by the counsels appearing for the respective parties and have perused the materials placed before this Court. As has been rightly pointed out by the learned counsel for the petitioner that, instead of calculating the market rent as per the order of the Chief Engineer (Buildings), the second respondent herein the Government have accepted the said suggestions and passed in G.O.Ms.No.831, Public Works Department dated 19.05.1988 whereby directed that those who have been allotted Government quarters and those who over stay of course after getting permission for such extension of stay can be permitted to stay till the extended period after collecting 1 ½ times of the normal rent equivalent to HRA and those who over stay without getting extension order from the authorities concerned shall be recovered three times of the normal rent of HRA and this additional rent of 1 ½ or 3 times as the case may be called as penal rent.

12. In the said Government Order it has been specifically mentioned that "Market rate of rent" to be adopted in all cases of Public Works Department buildings. Since the government order made applicable to all the buildings belonging to the Public Works Department, the arguments advanced by the learned Additional Government Pleader that the Government Order would not be made applicable to the case of the petitioner, cannot be accepted and therefore it has to be rejected.

13. As has been pointed out by the learned counsel for the fourth respondent that the petitioner after having completed the probation has become the permanent employee of the Madras High Court and working till date and the only quarrel raised in this writ petition is that whether the writ petitioner is liable to pay the market rent as has been directed by the first respondent through the impugned order during the period when he was under probation for the quarters occupied by him.

14. In order to settle these issues, G.O.Ms.No.831 was passed and the same would be applicable in respect of all buildings belonging to Public Works Department and certainly this Government order is applicable to the case of the petitioner as he occupied the Government quarters at Todhunter Nagar, Saidapet.

15. The next issue is; if the G.O.Ms.No.831 has to be made applicable to the petitioner's case whether he would fall under the category of 5(i). In this regard, the learned counsel for the petitioner pointed out that, the petitioner did not unauthorisedly over stay in the quarters allotted to him and in the impugned order it has been specifically mentioned that even though the petitioner is not entitled for allotment of quarters as he was a probationer, as a special case, such an allotment has been made to the petitioner. Therefore it can safely be construed that the petitioner particularly been staying in the said quarters only authorisedly and not unauthorisedly. Once the employee authorisedly staying in the quarters, if at all any higher rent collected from him, of course, he was under probation at that time, he shall be fitted only in the category of 5(i) and not under 5(ii) and therefore the petitioner has to pay only 1 ½ times of the normal rent equivalent to HRA and not 3 times.

16. In that view of the matter this Court is inclined to pass the following order:

- a. The impugned order is quashed.
- b. The petitioner shall pay 1 ½ times of the normal rent which is equivalent to HRA during the relevant point of time when the petitioner was under probation, for his occupation in

Government quarters at Thodunter Nagar, Saidapet. If at all any rent already been deducted from the salary of the petitioner the same shall be adjusted and still any amount to be paid by the petitioner by calculating 1 ½ times of the normal rent equivalent of HRA as per G.O.Ms.No.831, Public Works Department dated 19.05.1988 paragraph No.5 (i), the same shall be calculated and if any remaining amount has to be paid by the petitioner, the same can be recovered from him. With these observations the writ petition is ordered. No costs.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

dpq

To

1. The Special Secretary to Government
Public Works Department,
Fort, St. George, Chennai - 9.
- 2.The Chief Engineer [Buildings]
Public Works Department,
Chepauk, Chennai - 5.
- 3.The Junior Engineer [Guindy Section]
Public Works Department
Todhunter Nagar,
Saidapet, Chennai - 15.
- 4.The Registrar General,
High Court of Madras, Madras.

+1 cc to Mr.K.Rajasekaran, Advocate Sr.No.57960

+1 cc to The Government Pleader, Sr.No.57894

CP(CO)
CSL/05.04.2019

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