



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.06.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.(MD) No.11513 of 2015

and

M.P.(MD) No.1 of 2015

T.V.Devarajan

... Petitioner

vs.

1.The Director General of Police
Mylapore, Chennai-4

2.The Commissioner of Police
Madurai City, Madurai

3.The Pay & Accounts Officer
Madurai City, Madurai

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of certiorari calling for the records relating to the impugned order passed by the 2nd respondent in his proceedings in Na.Ka.No.IT3/8816/2009 dated 01.12.2014 and quash the same as illegal.

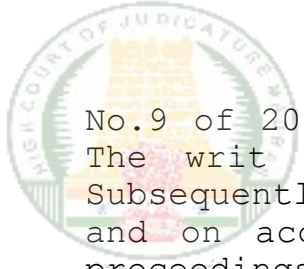
For Petitioner : Mr.Ajmal Khan, Senior Counsel
for M/s.Ajmal Associates

For Respondents : Mr.M.Jeyakumar
Additional Government Pleader

O R D E R

The order dated 01.12.2014, issued by the second respondent, imposing penal rent for the overstay of the writ petitioner in the Government Police Quarters, is under challenge in the present writ petition.

2. The learned Senior Counsel appearing on behalf of the writ petitioner strenuously contended that the writ petitioner was appointed as Grade-II Police Constable and promoted upto the level of Inspector of Police during the year 2006. On account of an allegation of demand and acceptance of Rs.1,000/- as bribe from one Mr.T.G.Kannan, for returning a gold ring, which was seized from him, a criminal case was registered against the writ petitioner in Crime



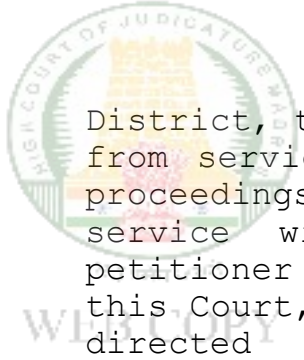
No.9 of 2007, under Section 7 of the Prevention of Corruption Act. The writ petitioner was placed under suspension on 06.09.2007. Subsequently, he attained the age of superannuation on 31.07.2008 and on account of the pendency of the departmental disciplinary proceedings as well as the criminal case, he was not allowed to retire from service and an order to that effect was issued by the competent authority in proceedings dated 29.07.2008.

3. The second respondent issued a notice to the writ petitioner in proceedings dated 08.10.2010 calling upon him to vacate the official quarters, which was allotted to him. The writ petitioner submitted his reply on 30.10.2010 stating that he was not allowed to retire from service and therefore, the employer-employee relationship was retained and accordingly, he is entitled to continue in the Government Police quarters allotted to him. Once again, a notice was issued to the writ petitioner on 02.03.2013 calling upon him to vacate the quarters allotted to him. Immediately, the writ petitioner filed a writ petition in W.P.(MD) No.18042 of 2013 and the same was dismissed by this Court vide order dated 07.11.2013. In obedience of the orders passed by this Court, the writ petitioner vacated the quarters, which was allotted to him. Consequently, the second respondent issued the impugned order in proceedings dated 01.12.2014 imposing a penal rent for the overstay of the writ petitioner in the Government Police quarters. Challenging the same, the present writ petition is filed.

4. The second respondent / Commissioner of Police filed a counter affidavit stating that the Government Police Quarters No.34 at Crime Branch Police Quarters was allotted to the writ petitioner, while he was posted in Madurai City as Head Constable. The writ petitioner was transferred to Ramnad District on administrative grounds. Even after his transfer from Madurai City, he had not vacated the quarters allotted to him. No Police Officer should be allowed to retain the Police quarters after his transfer to another District. The writ petitioner was residing in the quarters with his wife and two male children as per his nomination filed in the Service Roll and not with female child as stated by him in the present writ petition.

5. The writ petitioner was transferred to Ramnad District on 08.09.2006 on administrative grounds and vacated the quarters only on 25.11.2013. Thus, the penal rent of Rs.2,22,740/-, for the period from 08.09.2006 till 25.11.2013, was ordered to be recovered from his salary on installment basis as per the proceedings in CPO No.1032/2012 in C.No.T3/44717/2011, dated 25.06.2012.

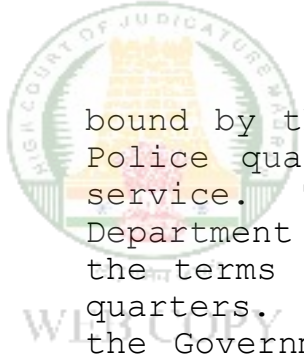
6. It is further contended by the second respondent that there is no necessity to instruct the writ petitioner to vacate the quarters and it is his primary duty to vacate the same on his transfer to the other District. However, the writ petitioner has failed to do so in obedience of the terms and conditions of the allotment of the official quarters. During his service in Ramnad



District, the writ petitioner was awarded with punishment of removal from service by the Superintendent of Police, Ramnad District, in proceedings dated 14.04.2008. Accordingly, he was removed from service with effect from 21.04.2008. Thereafter, the writ petitioner filed a writ petition W.P.(MD) No.2810 of 2009, before this Court, against the order of removal from service and this Court directed the authorities concerned to pass fresh orders. Accordingly, the writ petitioner was awarded with the modified punishment of reduction in rank from the rank of Head Constable to the Grade-I Police Constable for a period of three years to be spent on duty on 09.06.2010. The writ petitioner reported back for duty on 24.06.2010 at Ramnad District. The Director General of Police, Chennai, has already given instructions in Chief Office Memo in proceedings dated 08.10.2002 regarding vacation and occupation of Police quarters for the above unemployment period from 21.04.2008 to 23.06.2010 i.e., the period during which he was in removal from service in Ramnad District. In spite of all these facts and circumstances and despite the fact that the writ petitioner was removed from service, he continued in the Government official quarters and vacated the quarters only on 25.11.2013.

7. The writ petitioner had received monthly house rent allowance of Rs.560/-, while he was serving in Ramnad District for the period from 01.07.2010 to 30.04.2012. Though the writ petitioner was in occupation of Government Police Quarters in Madurai City, for which he is not entitled to receive the house rent allowance, it is stated that he had received house rent allowance in Ramnad District and was in occupation of the quarters in Madurai District. Hence, the penal rent was calculated at Rs.2,22,740/- and it was ordered to be recovered from his salary in 16 installments (Rs.13,940/- in first installment and Rs.13,920/- in 15 equal installments). In this connection, an endorsement was given to the writ petitioner on 25.01.2016 informing the above said facts. Citing all these facts and circumstances, the learned Additional Government Pleader appearing for the respondents states that the writ petitioner had committed various irregularities and illegalities and hence, the present writ petition deserves no consideration at all.

8. Considering the facts and circumstances of the case as well as the arguments advanced by the learned counsel on either side, this Court is of the considered opinion that the writ petitioner on transfer to Ramnad District from Madurai District was not entitled to continue in the Government Police quarters allotted to him at Madurai City. On transfer, every Police personnel is bound to vacate the quarters allotted to them. The terms and conditions of the allotment of the Government Police quarters unambiguously enumerate that on transfer or retirement or removal from service, the employee concerned should vacate the official quarters allotted to him. When the conditions are stated in clear terms and a Police personnel has occupied the Government Police quarters accepting the terms and conditions of allotment, he is



bound by those conditions and he cannot continue in the Government Police quarters after his transfer or retirement or removal from service. Thus, the writ petitioner, who was working in the Police Department for many number of years, cannot plead any ignorance of the terms and conditions of the allotment of the Government Police quarters. Thus, the act of the writ petitioner in continuing with the Government Police quarters in Madurai District, even after his transfer to Ramnad District, was undoubtedly intentional and with an idea to continue in the Government Police quarters by providing some evasive reasons. Such an attitude of the Police personnel can never be tolerated. Discipline is heart and sole of the Police Force. Thus, the maintenance of discipline, even in the allotment or vacation of the Government Police quarters and performance of duties and responsibilities, are to be monitored properly by the higher official concerned for efficient administration of Police Department, who all are responsible for the maintenance of law and order and controlling of crime in the State. When such Police personnel commits such misconducts or illegalities, undoubtedly, stringent actions are warranted and there cannot be any leniency or misplaced sympathy in this regard by the Courts. In event of misplaced sympathy, the same will demoralize the discipline in the Police Force and Courts cannot contribute for such ideas of some Police officials, who all are committing such misconducts and illegalities. Thus, compromising the discipline in the Police Force can never be done by the higher officials of the Police Department as well as by the Courts. In the event of compromising the discipline, undoubtedly, the same would cause greater impact in the maintenance of orderliness in the Society.

9. In the present case on hand, it is an admitted fact that the writ petitioner was in occupation of the Government Police quarters in Madurai District. Further, he was transferred to Ramnad District on 08.09.2006 on administrative grounds. The writ petitioner was removed from service by the Superintendent of Police, Ramnad District on 14.04.2008. Thereafter, he was reinstated into service only on 24.06.2010. It is brought to the notice of this Court that the writ petitioner had received the house rent allowance while he was working in Ramnad District. One hand, he occupied the Government Police quarters in Madurai City and on the other hand, he received the house rent allowance in Ramnad District. Undoubtedly, such an action of the writ petitioner is a misconduct and illegal. It is further contended that in spite of the notice given by the competent authority during the year 2010 itself, the writ petitioner submitted an explanation stating that he was under suspension and his services are retained. Therefore, the writ petitioner is entitled to continue in the Government Police quarters. Even in that case, the writ petitioner was removed from service on 21.04.2008 and reported for duty on 24.06.2010. Even before that, as per the memo from the Police Head Quarters, the writ petitioner was informed to vacate the Police quarters allotted to him in Madurai City. In spite of all these terms and conditions of allotment of the Government Police quarters and issuance of notice



by the competent authorities, the writ petitioner was in occupation of the quarters in Madurai City till 25.11.2013.

10. The learned Senior Counsel appearing for the writ petitioner states that as per the service jurisprudence, the writ petitioner was placed under suspension on 06.09.2007 and not allowed to retire from service on 29.07.2008 and therefore, for all purposes, the employer - employee relationship was existing and hence, the writ petitioner is entitled to continue in the Government Police quarters. In this regard, the learned Senior Counsel referred to Rule 53(1)(c) of the Tamil Nadu Government Fundamental Rules, which states as follows:

"Government servants under suspension shall be paid house rent allowance in full at the rates admissible at the place where they are ordered to stay during suspension with reference to the pay last drawn before suspension. Where the headquarters of Government servant under suspension is changed on his request, he shall be eligible for the house rent allowance at the rates admissible at the earlier headquarters or at the new headmasters whichever is less."

11. The learned Senior Counsel also referred to the rulings of Rule 53 of the Tamil Nadu Government Fundamental Rules, which states that *"House rent and allied charges, i.e, electricity, water, furniture etc."* Relying on the said rule, the learned Senior Counsel states that the service of the writ petitioner was retained and therefore, for all purposes, employer-employee relationship exists and therefore, the writ petitioner is entitled to continue in the Government Police quarters and hence, the impugned order imposing penal rent on the writ petitioner is liable to be scrapped.

12. This Court is of the considered opinion that the order of suspension has to be distinguished in two circumstances. One is in respect of the employee, who has not attained the age of superannuation and secondly, in respect of the employee, who is placed under suspension on the last date of retirement. The retention of the services is only for the limited purpose of the continuance of the disciplinary proceedings initiated against such employees. Therefore, the employee, who is under suspension, cannot be compared with the employee, who attained the age of superannuation and was continuing under suspension beyond the period of his actual date of retirement.

13. The order of suspension and retention of services are issued by the competent authorities only for the limited purpose of the continuance of the disciplinary proceedings and there is no possibility of the employee to join duty and perform his official duties and responsibilities. After completion of the disciplinary proceedings, such employees are entitled to get their pensionary benefits alone and there cannot be any reinstatement into service or



they cannot be permitted to perform their official duties and responsibilities. When such being the distinction to be drawn in respect of the employees, who all are placed under suspension beyond the date of their superannuation, those employees on attaining the age of superannuation, if at all continued under suspension, are not eligible to retain the Government official quarters as they were not performing the official duties and responsibilities and also there is no possibility of performing the official duties in future, even after completion of the disciplinary proceedings or the criminal case, as the case may be.

14. The rules in relation to the allotment of Government Police quarters are to be interpreted constructively. A pragmatic approach is to be adopted for the purpose of achieving the purposes for which the Government Police quarters are allotted. The very allotment of the Government Police quarters is made only in respect of the Police officials, who all are working in the particular jurisdiction. Providing Government Police quarters undoubtedly is a concession and it can never be claimed as a matter of legal right by the Police officials. When the allotment of Police quarters itself is not a legal right, the officials, who all are in occupation of Government Police quarters, are bound to follow the terms and conditions of the allotment order. When the terms and conditions of the allotment order stipulates that the Police Officers, on transfer or retirement or termination from service, are bound to vacate the Government Police quarters, they are obligated to vacate the same and handover the possession of the same to the competent authority. There cannot be any contrary interpretation in this regard. Constructive interpretation of rules by adopting the principles of constructive interpretation is to be employed in such circumstances, so as to ensure that the purpose and object of such concessional schemes are implemented. No Police Officer can claim the allotment of Government Police quarters as a legal right. Allotment of Government Police quarters is made subject to the availability of quarters. While allotting quarters, the rules and regulations, seniority etc., are to be followed scrupulously. So also, vacation of the quarters must be done by the Police personnel promptly in terms of the rules in force and in the event of allowing any such ineligible persons to continue in the Government Police quarters, the rightful claim of the Police officials, who all are working in the jurisdiction, will be denied. The very purpose of allotment of the Government Police quarters is to maintain effective and efficient policing in the particular jurisdiction. In order to maintain efficient Police administration, the jurisdictional Police Officer must reside within the jurisdiction. This being the very purpose and object, if the ineligible persons are allowed to continue even after their transfer, the same will affect the effective and efficient Police administration in that particular jurisdiction. Under these circumstances, the Department would be causing injustice to the Police Officer, who is on duty in the particular jurisdictional area. Such situations are to be averted. The Higher Officials are bound to monitor the allotment, vacation



and maintenance of the Government Police quarters in accordance with the rules in force and there cannot be any lapses, negligence or dereliction and also leniency or misplaced sympathy in the matter of maintenance of efficiency in the Police administration.

15. The confidence building amongst the employees in respect of the rights are of paramount importance. The police personnel working in the Force must get the feeling that they are being treated equally by the higher officials and the Department and their benefits will be granted in an uniform manner without any deviation or discrimination. Only when such mandates are followed, the State can maintain the Police Force with discipline.

16. The causes for growing indiscipline in the Police Force are the greatest concern for the public also. The growing indiscipline in Uniformed Services are affecting the interest of the public at large. The misbehaviour of the uniformed personnel in the public domain is a greatest concern and the States as well as the Head of the Police Department must look into these aspects in order to restore the discipline level and provide equal opportunity by implementing the laws without any discrimination.

17. Construction and allotment of Police quarters for the Police personnel is the welfare scheme being implemented by the Government by constituting the Police Housing Board. Thus, the benefit of allotment to be provided equally to all the eligible personnel without causing any discrimination.

18. The Police officials serving in subordinate level, right from the cadre of Grade-II Constable to Inspector of Police are serving for the welfare of our great Nation for 24X7=365 days. They are bound to serve during Rainy, Summer and Winter Seasons and to perform their duties and responsibilities during odd hours and in most difficult and challenging situations. During Disasters, Festivals, Floods, etc., they are bound to perform their duties in an extraordinary manner by showing their courage. Even sometimes, by sacrificing their life, if necessary. This being the nature of the duties and responsibilities of the Police officials, their service benefits and welfare schemes are to be protected and provided uniformly, so as to ensure not even a single Police personnel feels that he is deprived of his legal rights. The Police quarters are allotted, enabling these Police Personnels to perform their services in a better manner and to maintain their family with happiness. Happy family alone make a Police person to work diligently. Happy family is the concept, wherein a public servant, guests a good morale and confident in performance of his duties without fear or favour. The Mantra of happy family can be achieved only if a conducive atmosphere is maintained by these Police personnel. This Court do not understand, what would be the difficulty for these higher officials in following transparency in the matter of allotment of Police quarters. Thus, the competent authorities are bound to monitor the maintenance of seniority on the basis of the



date of application as well as the eligibility with reference to the type of quarters to be allotted.

19. In view of the legal principles settled in this regard, the interpretation offered by the learned Senior Counsel that the writ petitioner, even after the actual date of retirement of superannuation, was continuing in suspension cannot be accepted. The employer - employee relationship is maintained beyond the date of actual retirement only for the limited purpose of continuance of disciplinary proceedings as well as the criminal case and till the conclusion of these proceedings. However, even after the conclusion of these proceedings, there is no possibility of reinstatement of the writ petitioner for the purpose of allowing him to perform his official duties and responsibilities. This being the constructive interpretation to be adopted, the very arguments advanced by the learned Senior Counsel in this regard deserve no merit consideration.

20. The learned Additional Government Pleader appearing for the respondents states that many number of Police officials are continuing in the Police quarters illegally and those ineligible Police officials are also not vacating the Police quarters. In this regard, the respondents have to constitute a team of officials to conduct inspections and enquiry in order to identify and collect the particulars of all such illegal and irregular occupations of the Government Police quarters and initiate immediate actions to vacate all such unauthorized occupations without causing any undue delay. Such an action would be meaningful for the purpose of maintenance of the efficiency level in the Police Department and further the rightful and eligible Police personnel will get the Government Police quarters, so that they can perform their duties and responsibilities in an effective manner.

21. In view of the facts and circumstances, this Court has no hesitation in coming to the conclusion that the writ petitioner has not established any acceptable ground for the purpose of considering the relief as such sought for in the present writ petition.

22. Accordingly, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Writs)

// True Copy //

Sub Assistant Registrar(CS)



To:

1.The Director General of Police,
Mylapore, Chennai-4.

2.The Commissioner of Police,
Madurai City, Madurai.

3.The Pay & Accounts Officer,
Madurai City, Madurai.

+1 CC to M/s.AJMAL ASSOCIATES, Advocate SR-71400.

+1 CC to SPL GP SR-72044.

W.P. (MD) No.11513 of 2015
and
M.P. (MD) No.1 of 2015
25.06.2019

CS: (03/07/2019) 9P 6C