



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

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W.P. (MD) No.17108 of 2014
and
M.P. (MD) Nos.1 & 2 of 2014
and
W.M.P. (MD) No.3157 of 2016

C.Rajkumar

... Petitioner

vs.

The Commissioner of Police
Tirunelveli City, Tirunelveli
Respondent

...

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of certiorari to call for the records on the file of the respondent in connection with the impugned order of recovery passed by him in his Proceedings Na.Ka.No.B4/9014/2014 dated 17.05.2014 and the consequential impugned rejection order passed by him in his Proceedings Na.Ka.No.B5/9014/2014 dated 25.09.2014 and quash the both as illegal and arbitrary.

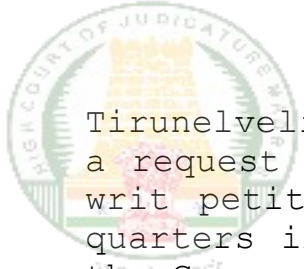
For Petitioner : Mr.G.Thalaimutharasu

For Respondent : Mr.S.Dhayalan
Government Advocate

O R D E R

The impugned order of recovery dated 17.05.2014 and the subsequent order of rejection, dated 25.09.2014, passed by the respondent, are under challenge in the present writ petition.

2. The writ petitioner was appointed as Grade-II Police Constable and thereafter, promoted as Grade-I Police Constable in the year 2007. He was promoted as Head Constable in the year 2012. The father of the writ petitioner was also served as a Head Constable and allotted with a Police Quarters, which was later on occupied by the writ petitioner from the year 2008. The allotted Police quarters number is E67, Police Quarters, Bharathi Nagar, Tirunelveli. The writ petitioner was transferred from Tirunelveli to Krishnagiri during the month of December, 2010. In view of the fact that the children of the writ petitioner were studying at Tirunelveli, the writ petitioner retained his family at



Tirunelveli and he was staying in Krishnagiri and after submitting a request application, he was re-transferred to Tirunelveli. The writ petitioner states that he had not availed any other Police quarters in Krishnagiri nor claimed any house rent allowance from the Government. Therefore, the recovery of penal rent imposed for the overstay is to be set aside.

3. The learned counsel appearing for the writ petitioner states that the impugned order of recovery was passed without giving any notice or opportunity. Therefore, the impugned order of recovery is in violation of natural justice.

4. It is further contended by the learned counsel for the writ petitioner that the respondent has not considered the fact that the writ petitioner had not availed any Police quarters in Krishnagiri nor claimed any house rent allowance and therefore, the penal rent cannot be imposed.

5. The learned Government Advocate appearing on behalf of the respondent states that the Government Police quarters was allotted in favour of the writ petitioner on certain terms and conditions. As per the terms and conditions, in the event of transfer / retirement / dismissal from service, the employee should vacate the Police quarters and handover the possession to the competent authorities.

6. The Government quarters are meant for the personnel, who all are serving within the particular jurisdiction and the Government Police quarters cannot be granted in respect of the Police Officers, who all are serving outside the jurisdiction. The very terms and conditions state that in the event of transfer, the Police Officer should vacate the Police quarters enabling the Department to allot the same to the Police Officer, who had been transferred in the place of the Police Officer concerned or to allot the quarters to persons, who all are working within the jurisdiction. This being the terms and conditions of the allotment, the writ petitioner had illegally continued in the Police quarters beyond his eligibility, when he was working in Krishnagiri. When the writ petitioner was transferred and working in Krishnagiri, he is not entitled for Government Police quarters in Tirunelveli. In such an event, the very purpose and object of providing Government Police quarters would be defeated.

7. The issues in relation to the recovery of penal rent was adjudicated by this Court vide order dated 16.04.2019 in W.P.No.10908 of 2019 and the relevant paragraphs of the said order



"22. The Government Accommodation/Police quarters 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 staff members of the Police Department.

23. Equal treatment of the employees of the Police Department 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 respondent that whether the Government Rules and Regulations in the matter of allotment of accommodation has been followed by the 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.

24. Constitutional obligations on the part of the Police department 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



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employee can be deprived of his privilege or facility, so as to avail the Police quarters 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.

25. 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.

26. 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



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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 Police Department, while granting allotment to its own employees."

8. In view of the facts and circumstances of the case on hand, this Court is of the considered opinion that the recovery of penal rent in respect of overstaying of the writ petitioner in the Government Police quarters, is in consonance with the terms and conditions of the allotment of the Police quarters. This being the factum, there is no infirmity as such in the impugned order passed by the respondent.

9. Accordingly, the writ petition is devoid of merits and the same is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (Records)

// True Copy //

Sub Assistant Registrar (CS)

To:

The Commissioner of Police,
Tirunelveli City, Tirunelveli.

+1cc to Mr.G.Thalaimutharasu, Advocate, SR.No.75245

+1cc to Spl.Govt.Pleader Sr.No.75198

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