



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.02.2020

CORAM :

THE HONOURABLE **MR. JUSTICE M.S.RAMESH**

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W.P. (MD) No.102 of 2018

and

W.M.P. (MD) No.114 of 2018

A.Nallaiyan

: Petitioner

Vs.

The Commissioner of Police,
O/o.The Commissioner of Police,
Madurai City, Madurai.

:Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, to call for the impugned order passed by the respondent in Na.Ka.No.T3/56505/777/17 /Ka.Aa.Aa.No.1543/2017 dated 25.10.2017 and quash the same as illegal.

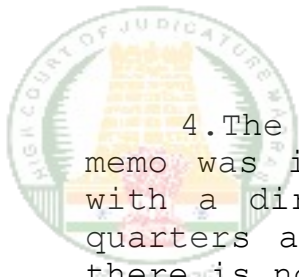
For Petitioner : Mr.M.Ananthapadmanaban

For Respondent : Mr.M.Jeyakumar,
Additional Government Pleader.**ORDER**

The petitioner, while serving Madurai City Armed Reserve Police, was allotted with police quarters and subsequently he was transferred to Trichy Railway Police.

2.It is stated by the respondent that the petitioner was transferred to the Trichy Railway Police on 29.01.2010 and by an order dated 11.12.2013, the petitioner was shifted to the new Police Armed Reserve Line and allotted AO/34. Since the respondent alleged that the petitioner continued his occupation in the quarters, without permission, until his repatriation to Madurai City Police on 26.08.2016, through the impugned order dated 25.10.2017, penalty rent of Rs.1,09,145/- was imposed for the period from 11.12.2013 to 31.12.2013 and the same was ordered to be recovered from the salary of the petitioner.

3.Though the petitioner herein has raised several grounds challenging the impugned order, the learned counsel for the petitioner would submit that prior to the recovery order, no show cause notice was issued to the petitioner and therefore, the impugned order itself is liable to set aside.



4. The learned Additional Government Pleader would submit that a memo was issued to the Superintendent of Police, dated 23.02.2013 with a direction to instruct the petitioner to vacate the police quarters and such memo could be treated as a notice and therefore there is no infirmity in the order.

WEB COPY

5. I am not in agreement with the stand taken by the respondent that serving of memo to the Superintendent of Police with a direction to instruct the petitioner to vacate the police quarters, can be treated as a notice.

6. If the respondent had chosen to take a stand that the petitioner had illegally occupied the quarters from 11.12.2013 to 31.12.2013 and had calculated penalty rent of Rs.1,09,145 /- from the salary of the petitioner, there was a duty cast on the respondent to inform the petitioner on the contemplated action and call for the objections with regard to the penalty rent. A mere memo to the Head of the Department with instructions to the petitioner to vacate the quarters, cannot be considered as a show cause notice. Admittedly, the petitioner was not given an opportunity to put forth his objections to the penalty rent. Hence, the said memo cannot be deemed to be a show cause notice, in the eyes of law. While that being so, the absence of a show cause notice prior to the recovery order would amount to denial of opportunity and thereby would be in violation of the principles of natural justice. Hence, this Court would be justified to invoke its extraordinary powers under Article 226 of Constitution of India and thereby, interfere with the impugned order of recovery.

7. In the light of the above observations, the impugned order is set aside and the matter is remitted back to the respondent for fresh consideration. In case, the respondent is of the view that the penalty rent is to be recovered from the petitioner, they shall issue a show cause notice to the petitioner, calling for his objections within a stipulated and sufficient time and on receipt of such objections, if any, the respondent shall take fresh course of action, in accordance with law. In case, the respondent chooses to pass any order, such an order shall be a speaking order, by consideration of the objections raised by the petitioner.

8. With the above observations, this writ petition stands closed. No costs. Consequently, connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar (AD-II)

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To

The Commissioner of Police,
O/o.The Commissioner of Police,
Madurai City, Madurai.

W.P. (MD) No.102 of 2018
24.02.2020

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