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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.01.2022

CORAM

THE HONOURABLE MR. JUSTICE M.S.RAMESH

W.P.No.24922 of 2018
and W.M.P.No.28958 of 2018

1. K.Vaiyapuri
2. P.Manisekar
3. E.Muthkumar
4. P.Karuppuswamy
5. R.Nithiyanandam
6. C.Karuppuswamy
7. Anil.K.Babu
8. S.Baskar
9. Shaji Varghese
10. Muralitharan
11. R.Tamilselvan
12. A.Winston Jayakumar
13. N.Ashok
14. G.Narayan
15. T.Rajendran
16. K.S.Jayachandran
17. P.Palavesam
18. K.Masilamani
19. T.Babu
20. R.Sajikumar
21. Puduraj
22. K.Tharif
23. R.Ganapathy
24. Suresh Babu
25. P.Prejithraj
26. A.Anbu
27. D.Iruthaya Muthu Prakasam

...Petitioners

Vs

1. The Senior Divisional Security Commissioner,
Railway Protection Force,
New General Office (Annex),
Fifth Floor,
Chennai-600 003.



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2. The Principal Chief Security Commissioner
Railway Protection Force,
Integral Coach Factory,
Administrative Office,
Shell Division,
Chennai-600 038.

...Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India praying to issue a Writ of Certiorari or any other appropriate writ or direction in the nature of writ calling for the records of the respondents in connection with the impugned order issued by the first respondent in No.MXG/101/Qrs/Retn/2018 dated 11/09/2018 and quash the same in so far as the petitioners are concerned and grant such other further relief.

For Petitioners : Mr.R.Venkataramani, Senior Counsel
for M/S.T.Ayngaraprabhu

For Respondent : Mr.P.T.Ramkumar
Standing counsel

O R D E R

All the petitioners herein were the erstwhile Police Constables working in Integral Coach Factory (hereinafter referred to as 'ICF') and have been subsequently transferred to other divisions in Chennai. While serving under ICF, they were allotted with quarters during their tenure of service. The dispute covered in the present case is that, though the petitioners have been relieved from ICF long back and thereafter some of them have been again issued with transfer orders, they have not vacated the ICF quarters and are unauthorisingly continuing in the same quarters respectively. In view of this unauthorised stay in the ICF quarters, the respondents have demanded "penal rent" for their period of over stay, which order is impugned in the present Writ Petition.

2. Pending the Writ Petition, some of the petitioners are said to have vacated the premises and some of them have retired from services.

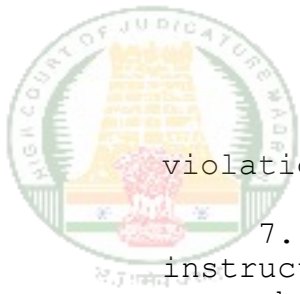
3. The learned Senior Counsel for the petitioners would submit that the petitioners were not given any notice, either to vacate the quarters or for the proposal to levy the penal interest and therefore the impugned order of recovery cannot be sustained.



4. Per contra, P.T.Ramakumar, learned Standing Counsel for the respondents would submit that when the quarters allotment order was given to these petitioners, while they were serving under ICF, there was a specific condition that they should vacate the quarters when they are relieved from ICF or obtain prior permission to retain the same. Subsequent transfer orders were also given to these petitioners with a similar clause. Since, the petitioners have neither obtained prior permission to retain the quarters nor have vacated, they are entitled to levy "penal rent" as per the regulations governing the Railway Board. In this background, the learned Standing Counsel would submit that they are justified in passing the impugned order.

5. I have given careful considerations to the submissions made by the respective Counsels. In so far as, the claims raised by the petitioners that they were not given notice to vacate the quarters is concerned, I do not find it to be a ground of violation of natural justice, for the reason that all of the petitioners were put on advance notice in their respective quarters-allotment order itself, which states that, they are required to vacate the quarters when they are transferred to Southern Railway or to other departments or medically decategorised and given alternate appointment or posted to any other departments when they proceed on retirement, resignation, etc. Similar conditions are also found in the subsequent transfer orders issued to some of these petitioners. As such, it cannot be said that the petitioners herein were not aware that they had to vacate the respective quarters and therefore this may not amount violation of the Principles of the natural justice.

6. However, in so far as the levy of "penal rent" is concerned, the respondents placed reliance on the Circular of ICF, dated 28.06.2001, which states that all occupations beyond the permitted period would be subject to levy of "penal rent" for the period of over stay. The respondents also placed reliance on another Circular, dated 17.03.2005 issued by the Ministry of Railways (Railway Board) to the General Managers of All Indian Railways including Production Units, which describes the revised rates for levy of the damages for unauthorised occupations. For the purpose of claiming the penal rent, the respondents are required to take into account the period of unauthorised stay, as well as other factors like the plinth area of occupation and the respective rates of licence fee for such areas. These proposals to claim penal rent requires calculations. Whenever such calculations are made based on various factors, the proper procedure is to put the concerned person on notice, with a proposal to claim the penal rents. The absence of such a prior notice, would clearly amount to



violation of the Principles of natural justice.

7. Moreover, there is nothing on record to show that the instructions given by the Railway Board to the General Managers, on mode of calculation of the penal rent was appraised to the employees. Though the Circulars directing the concerned departments to claim damage rent for the period of over stay, can be taken to be within the knowledge of the employees, the mode of calculation is an internal communication between the Railway Board and the General Managers. Above all, the Rules governing the Railway Board does not provide for dispensation of such a notice. In the case of "State Bank of India and others Vs. Ranjit Kumar Chakraborty and another", reported in [(2018) 12 SCC 807], had reiterated this principle in the following manner:-

"It is now settled principle that whenever the Rule is silent, the principles of natural justice shall be read in it. A hearing should be given to a person who is being punished with a major penalty. Therefore, the principle of natural justice has to be read in this Rule. A notice ought to have been issued to the delinquent by the authority to whom papers were sent to show cause why the major penalty may not be imposed on him. It is true that the competent authority could pass the order of major penalty but not without hearing the incumbent."

8. It is in this background, this Court is of the view that the demand of penal rent without prior notice or proposal to levy such a penal rent, is in violation of the Principles of Natural Justice. On this ground, the impugned order may require interference.

9. Though this Court has found that the impugned order cannot be sustained for a direct levy of the penal rent, without a prior notice, there is no justification on the part of the petitioners herein, to continue the possession of their respective quarters, after they have been transferred from ICF to other Chennai divisions. Hence, the petitioners are required to forthwith vacate their respective quarters, which would also enable the respondents to allot the quarters to other staffs of the ICF, who have been waiting for their allotment.

10. For all the forgoing reasons, the impugned order dated 11.09.2018, in so far as relates to the petitioners herein are concerned, stands quashed. However, this order will be subject to the condition that these petitioners, who have not already vacated the quarters, shall vacate their respective quarters



within a period of 2 months from the date of receipt of a copy of this order. It is further made clear that, in case the petitioners do not vacate their respective quarters within the aforesaid period of 2 months, the respondents would be at liberty to recover the "penal rent" as mentioned in the impugned order, dated 11.09.2018, without reference to the present order of this Court, and also claim further "penal rent" till the date of their actual vacating the quarters. This Writ Petitions stands ordered accordingly. The connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar (CS-V)

//True copy//

Sub Assistant Registrar

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To

1. The Senior Divisional Security Commissioner,
Railway Protection Force,
New General Office (Annex),
Fifth Floor,
Chennai-600 003.
2. The Principal Chief Security Commissioner
Railway Protection Force,
Integral Coach Factory,
Administrative Office,
Shell Division,
Chennai-600 038.

+1cc to Mr.T.Ayngaraprabhu, Advocate SR.No.1826

+1cc to Mr.P.T.Ramkumar, Advocate SR.No.1785

W.P.No.24922 of 2018

MT (CO)

GMV (11/02/2022)