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W.P. No.24987 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.09.2022

CORAM

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P. No.24987 of 2022 and
W.M.P.Nos.23918 & 23920 of 2022

Prabhakaran

... Petitioner

Vs.

Estate Officer,
Estate Welfare and Community Policing,
Greater Chennai Police,
Chennai – 600 007.

... Respondent

PRAYER : Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari calling for the records relating to the impugned show cause in R.C.No.159/ACP/E & W/Form “A”/22 dated 16.07.2022 issued to the petitioner by the respondent and quash the same and consequently restrain the respondent from evicting the petitioner from the police quarters allotted to the petitioner without following due process of law.

For Petitioner : Mr.C.Vigneswaran

For Respondent : Mr.M.Rajendran
Additional Government Pleader

ORDER

The prayer sought for herein is for a writ of Certiorari calling for the records relating to the impugned show cause in R.C.No.159/ACP/E & W/Form “A”/22 dated 16.07.2022 issued to the petitioner by the



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respondent and quash the same and consequently restrain the respondent from evicting the petitioner from the police quarters allotted to the petitioner without following due process of law.

2. The petitioner was working as Grade II Police Constable and due to disciplinary action he was removed from service as against which he filed writ petition and that was allowed by this Court by order dated 09.08.2021 whereby reinstatement was ordered. Though such an order was passed on 09.08.2021 so far no action was taken, the petitioner has not been reinstated and he has been giving representation to that effect to the respondents.

3. Be that as it may, now the grievance espoused by the petitioner in this writ petition is, as the facet of the issue where in view of the earlier dismissal order passed against the petitioner, the petitioner since is occupying a Government quarters have to be vacated, however the petitioner was continuing in that quarters, therefore in order to vacate the petitioner from the quarters treating him as an unauthorised occupant, the respondent issued notice under Section 4(1) of the Tamil Nadu Public Premises [Eviction of Unauthorised Occupants] Act, 1975 seeking show



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cause within three days from the petitioner as to why order shall not be passed against the petitioner to evict him from the quarters.

4. As against the said notice under Section 4 of the Act dated 16.07.2022, the petitioner has moved the present writ petition.

5. In fact on receipt of the said notice dated 16.07.2022, the petitioner has given reply on 21.07.2022 where he has stated about the aforestated facts where the order of dismissal made against the petitioner since has been set aside by the orders of this Court dated 09.08.2021, he is entitled for reinstatement that should have been given to him earliest and based on which he may be continued in the quarters i.e. the line of reply given by the petitioner to the impugned show cause notice.

6. However, it is the apprehension on the part of the petitioner as projected by the learned counsel appearing for the petitioner that, unmindful of the said reply given by the petitioner, the respondent would evict him immediately, therefore to prevent such eviction from the quarters where he is in occupation he has moved this writ petition, he contended.



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7. However, Mr.M.Rajendran, learned Additional Government Pleader appearing for the respondent would submit that, several such cases where there has been over staying of the police personnel in the quarters allotted to them even after they have been either transferred or dismissed from service and in those cases, Courts have taken a view that once the personnel has been transferred or has been removed from service, their continuous occupation in the service quarters is impermissible, immediate action to be taken to evict, by citing a line of judgments he would canvass the point that, insofar as the petitioner is concerned, since he was removed from service, he was not entitled to continue in that quarters. Therefore, the reply given by the petitioner to the show cause even though would be considered by the respondent, by taking clue from the line of judgments referred to above by the learned Additional Government Pleader, the respondent, would take a decision as to whether the petitioner is to be vacated from the quarters or to be permitted to continue.

8. I have considered the said submissions made by the learned counsel appearing for the parties and have perused the materials before this Court.



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9. The submission made by the learned Additional Government

Pleader for the respondent not to permit those who have been removed from service or who have been transferred in the Government quarters or service quarters is concerned, there can be no quarrel on that proposition. However, the fact remains in this case is that, on 09.08.2021 the removal order passed against the petitioner has been set aside by this Court whereby reinstatement was ordered. Therefore, from that date the petitioner is entitled to get reinstatement, the moment once he gets reinstatement, he would be in the quarters atleast from 09.08.2022 as before 09.08.2022 and no action seems to have been taken by the respondent to evict him from the quarters.

10. As against the order passed by the Writ Court dated 09.08.2021 admittedly so far no appeal has been filed and in this regard, though it is submitted by the learned Additional Government Pleader that after getting legal opinion, steps would be taken to file appeal, that would not cure the defect as to why reinstatement has not so far been ordered for the petitioner even after one year of the judgment dated 09.08.2021.



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11. Anyhow as of now the petitioner cannot be treated as a person who has been dismissed from service, therefore in that capacity, he cannot be removed from the quarters by invoking the provisions referred to above, therefore the reply given in this regard by the petitioner dated 21.07.2022 shall be considered objectively by the respondent in the light of the aforesaid discussions and accordingly orders should be passed permitting the petitioner to continue in the quarters till a decision is taken by the respondent to prefer an appeal against the order dated 09.08.2021 and get any order from the higher forum i.e. the Appellate Authority against the order dated 09.08.2021. If any adverse orders to that effect is passed against the petitioner reversing the order passed by the Writ Court, then only the respondent would be entitled to evict the petitioner on the ground that he is not a member of the disciplined force i.e. Tamil Nadu Police Force. In the meanwhile if reinstatement is ordered by the respondent in favour of the petitioner and thereafter if he is subjected to any transfer on administrative reason even in that circumstances also, it is open to the respondent to ask him to vacate the quarters, because, once he is transferred from where he was originally posted he may not be entitled to continue in the quarters allotted to him. Only in those



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circumstances under which the petitioner can be vacated from the quarters not otherwise as proposed now through the impugned notice.

12. In that view of the matter, this Court is inclined to dispose of this writ petition with the following orders:

That there shall be a direction to the respondent to consider the reply given by the petitioner dated 21.07.2022 and pass orders thereon in the line as indicated or discussed herein above within a period of four weeks from the date of receipt of a copy of this order.

13. With this direction, this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

16.09.2022

Index : Yes / No
Speaking Order : Yes / No
Sgl

To
The Estate Officer,
Estate Welfare and Community Policing,
Greater Chennai Police,
Chennai – 600 007.



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R.SURESH KUMAR, J.

Sgl

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