# IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : **20.06.2023**

Pronounced on : **25.07.2023**

Coram:

**THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR**
and
**THE HONOURABLE MR. JUSTICE P. DHANABAL**

Writ Petition No. 18088 of 2023
and
W.M.P.Nos. 17275 and 17276 of 2023
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T. Jeevanandam .. Petitioner

Versus

1. The Regional PF Commissioner-1,
Regional PF Commissioner Office
Dr. Balasundaram Road
Coimbatore - 641 018.

2. The Assistant PF Commissioner (Adm)
Regional PF Commissioner Office
Dr. Balasundaram Road
Coimbatore - 641 018. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling for the entire records pertaining to the order passed in O.A.No. 1163 of 2018, dated 10.03.2023 by the Central Administrative Tribunal, Chennai Bench, quash the same and consequently to direct the second respondent to repay the withheld amount from the petitioner's gratuity with due interest.

For petitioner : Mr. S. Saravanan

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**ORDER**

**P. Dhanabal, J.**

This Writ Petition has been filed to quash the order passed in O.A. No. 1163 of 2018, dated 10.03.2023 on the file of Central Administrative Tribunal, Chennai Bench, and consequently to direct the second respondent to repay the withheld amount from the petitioner's gratuity with due interest.

**2.** The case of the petitioner is that he worked as Section Supervisor in the office of the first respondent and retired from service on 30.04.2015. During the course of his employment, he was allotted a house bearing Door No. 62 in EFP Staff Quarters for dwelling. Subsequently, he made a request for retention of the Quarters and the same was ordered upto 31.10.2015 by order dated 19.10.2015. However, due to family dispute, he came out from the said Quarters even in the month of August, 2015 and also intimated the same to the respondents Office on 21.10.2015 and requested to take possession of the said Quarters after completion of retention period that is 31.10.2015. The first respondent, without considering his request, sent a letter dated 29.10.2015 by directing the petitioner to handover the possession of the Quarters to the care-taker stating that the retention period expires on 31.10.2015. Again, the first respondent sent another letter dated 16.11.2015 by directing the petitioner to handover the possession of the Quarters to the care-taker immediately otherwise further action will be initiated for eviction. After receipt of the said letter, the petitioner issued reply dated 25.11.2015 requesting the respondents to take action for eviction of the Quarters and return the withheld amount of retirement benefits. However, on 04.12.2015 the first respondent sent a memorandum directing the petitioner to vacate the Quarters and hand over the possession to the care-taker along with inventory. The petitioner had given reply for the aforesaid memorandum through his letter dated 04.12.2015 by indicating his family dispute. Thereafter, the first respondent issued the eviction notice dated 01.02.2016 and also sent a letter to the Manager, State Bank of India, ESI/EPF Cell, Centralized Pension Processing Centre to recover a sum of Rs.34,520/- in three instalments as Rs.14,094/- in May 2016, Rs.14,094/- in June, 2016 and Rs.6,332/- in July 2016 from his pension amount for using the Quarters allotted to him. Aggrieved by the said order, the petitioner filed a Writ Petition in W.P.No. 18475 of 2016 before this Court and the same was closed on 28.06.2018 with liberty to approach the Central Administrative Tribunal (CAT) to redress his grievances. Subsequently, on 06.08.2018, the second respondent sent a letter to the petitioner by directing to recover and remit a sum of Rs.34,520/- towards the market rent for four months from 01.11.2015 to 29.12.2016. Aggrieved by the aforesaid letter, the petitioner has filed O.A.No. 1163 of 2018 before the Central Administrative Tribunal, Chennai, and the same was dismissed on 10.03.2023. As against the said impugned order, the present writ petition has been filed. According to the petitioner, recovery order from the Dearness Relief is illegal as per Rule 73 (7) of CCS (Pension) Rules, 1972.

**3.** When the said writ petition was taken up for hearing at the stage of admission, this Court has heard the learned counsel for petitioner elaborately and taken up the case for final disposal.

**4.** Before the Central Administrative Tribunal, the respondent has filed a counter statement stating that the petitioner was working as Section Supervisor in the respondent's organization and superannuated on 30.04.2015. He was allotted a staff Quarters No. 62 in EPF staff Quarters, Peelamedu, Coimbatore. The petitioner, prior to the date of superannuation i.e., 30.04.2015 requested for retention of staff Quarters allotted to him for a period of three months from 01.05.2015 to 31.07.2015 vide his representation dated 17.04.2015. The applicant has also submitted an undertaking for withholding a reasonable amount from his terminal benefits to meet the rent towards his stay in the Quarters. Accordingly, permission for retention was accorded by the Estate Officer vide order dated 07.05.2015. Since the amount of license fee was not determined at the time and considering the applicant's undertaking an amount of Rs.25,000/- was withheld from his retirement gratuity. Prior to the completion of the permitted period of retention of three months from 01.05.2015 to 31.07.2015 the applicant sought further extension for a period of another three months from 01.08.2015 to 31.10.2015 vide his representation dated 10.07.2015 and the extension was also granted upto 31.10.2015 vide order dated 03.08.2015.

**5.** On completion of extended period, the applicant neither sought for further extension nor vacated the staff Quarters allotted to him. Therefore, the second respondent's Office issued a letter dated 19.10.2015 advising the applicant to vacate the Quarters retention period. Thereafter, so many requests were made by the respondents to vacate from the Quarters but the petitioner did not vacate. Therefore, 01.12.2016 eviction notice was served to the applicant through post and also the same was displayed at the entrance of the Quarters. In response to the eviction notice the Quarter was vacated on 29.02.2016 and possession of the Quarters was taken over by the respondent's Office. Hence, the applicant is liable to pay damages for use and occupation of the residence, service charges, furniture and garden charges equal to the market rate as may be determined by the Regional PF Commissioner, Employees PF Organization, Regional Office, Coimbatore, from time to time. Hence, the Government dues to the tune of Rs.59,520/- was assessed in accordance with Rule 72 (8) of CCS (Pension) Rules, 1972. Despite several notices issued to the applicant to vacate the Quarters, there was no reply. Hence, the respondent issued the recovery order vide a letter dated 02.05.2016.

**6.** In this case, it is an admitted fact that the petitioner was working in the respondent's institution and he was superannuated on 30.04.2015. Prior to the date of superannuation, the petitioner made requests for retention of the Quarters and thereafter, again sought extension upto 31.10.2015. Thereafter, the second respondent issued notice requesting the petitioner to vacate from the Quarters but the respondent citing family dispute left the Quarters and his family members were residing in the Quarters. Finally, after several exchange of notices the Quarters was handed over to the respondent on 29.02.2016. For the period from 01.11.2015 to 29.02.2016, the respondents have calculated the market rate at Rs.59,520/- and recovery notice was issued. On 02.05.2016, the said order dated 02.05.2016 was challenged by the petitioner before this Court in W.P.No. 18475 of 2016 and the same was closed with liberty to the petitioner to approach the Central Administrative Tribunal to redress his grievances.

**7.** According to the petitioner, he requested for extension of time after his superannuation and the time was also extended. Due to the family dispute he came out from the Quarters in the month of August, 2015 itself and also intimated the same to the respondent on 21.10.2015 and requested to take possession of the said house, but without considering the same the respondent repeatedly sent letters to hand over the possession of the property.

**8.** It is an admitted fact that the Quarters was allotted in the name of the petitioner since he was the employee of the second respondent and therefore, it is the duty of the petitioner to hand over the possession to the respondent. Per contra, the petitioner sent a letter to the respondent stating that due to the family dispute he left from the house and requested the respondents to take possession of the property from his family members. The aforesaid action of the petitioner cannot be permitted. Once the petitioner has taken of the possession of the Quarters it is his bounden duty to hand over the possession to the concerned authorities. The dispute between him and his wife cannot be a ground to seek the respondents to take over the possession of the property instead of handing over the possession by himself. Moreover, the petitioner only gave a request for retention of the Quarters and the same was first extended from 01.05.2015 to 31.07.2015. At that time the applicant also submitted an undertaking for withholding a reasonable amount from his terminal benefits to meet the rent for stay in the Quarters. Therefore, the petitioner himself agreed for withholding a reasonable amount towards rent for staying in the Quarters from his terminal benefits and thereafter once again he made a request for extension of time for three months from 01.08.2015 to 31.10.2015 and the same was also granted. The respondent also withheld an amount of Rs.25,000/- towards license fee.

**9.** While so, the petitioner having given an undertaking to withhold his terminal benefits towards rent for staying in Quarters, he cannot deny the same. Later, once the petitioner received the notice from the respondent it is his duty to hand over the possession of the Quarters but he has failed ho hand over the possession and his family members were staying in the Quarters. Therefore, he is liable to pay the charges whatever payable as per Rules. The respondents have also calculated market rate for the period from i.e., 01.01.2015 to 22.01.2016 and calculated Rs.55,520/- and sent notice for recovery of the amount. Initially the petitioner had challenged the said notice dated 02.05.2016 through a writ petition in W.P.No.18475 of 2016 and the same was closed with liberty to approach the Central Administrative Tribunal to redress his grievances. But unfortunately, the petitioner has not challenged the said recovery order dated 02.05.2016 before the Central Administrative Tribunal. Once the petitioner challenged the order dated 02.05.2016 through earlier writ proceedings in W.P.No.18475 of 2016 and the same was closed on 28.06.2018 with liberty to approach the Central Administrative Tribunal to redress his grievances, the petitioner ought to have challenged the said order dated 02.05.2016 before the Central Administrative Tribunal as per order passed by this Court in the previous writ petition, but the petitioner failed to do so. The O.A.No.1163 of 2018 has been filed by the petitioner challenging the subsequent order dated 06.08.2018 and it is not maintainable as the petitioner failed to challenge the earlier order dated 02.05.2016. On this ground also the application is not maintainable.

**10.** Further, as per Rule 21 of the Employees Provident Funds, Central Board Employees [Allotment of Residences] Rules, 1972 - "Overstayal in residence after cancellation of allotment - Where, after an allotment has been cancelled or is deemed to be cancelled under any of the provision of these rules, the residence remains or has remained in occupation of the employee to whom it was allotted or of any person claiming through him, such employee shall liable to pay damages for use and occupation of the residence, services furnitures and garden charges, equal to the market rent as may be determined by the Central Commissioner from time to time." As aforesaid the respondents have arrived the market rent and issued recovery proceedings dated 06.08.2018. On 06.08.2018 the respondent has sent a letter by referring to the order dated 28.06.2018 of this Court and directed the petitioner to remit Rs.34,520/- immediately towards market rate for four months. The above said order has been challenged before the Central Administrative Tribunal i.e., the present impugned order.

**11.** As per Rule 13(1) of the Employees Provident Funds, Central Board Employees [Allotment of Residences] Rules, 1972, the employee to whom a residence has been allotted under these rules shall be personally liable for the payment of rent thereof and for any damage beyond fair wear and tear caused thereto or to the furniture, fixtures or fittings or service provided therein by the Central Board during the period for which the residence has been and remains allotted to him, or where the allotment has been cancelled under any of the provisions in these rules until the residence along with the out house appurtenant thereto have been vacated and full vacant possession thereof has been restored to the Central Commissioner. Therefore, as per Rule 13(1) of Employees Provident Funds, Central Board Employees [Allotment of Residences] Rules, 1972, the petitioner is responsible for the payment of rent and any damages. In this case, it is an admitted fact that the Quarters was alloted in the name of the petitioner and he was also residing there till October 2015 and then from 01.11.2015 to 29.02.2016, his family was residing there without any permission of the second respondent thereunder. Therefore, the applicant is liable to pay the market rent as calculated by the respondents, according to recovery.

**12.** On a perusal of records, it is evident that so many communications were exchanged between the parties in relation to taking possession of the Quarters from the petitioner. The eviction notice was also sent after exchange of so many notices whereby the respondent proceeded to recover the market rent from the petitioner. Therefore, the contention of the petitioner that without affording an opportunity the respondent has passed the order is not acceptable one.

**13.** The another main contention of the petitioner is that as per Rule 73(7) of CCS (Pension) Rules, 1972 only arrears of license fee can be recovered from the Pensioner's relief. "Rule 73(7) of CCS Pension Rules, the Heads of Department has to cause an enquiry that all Government dues recoverable from retiring Government servants should be assessed well before retirement and recovered from the salary/retirement gratuity and that no Government dues other than arrears of license fee can be recovered from Dearness Relief". This Rule refers to the procedure for recovering the dues from the Government Servant prior to retirement. Even according to this Rule amount can be recovered from the salary/retirement gratuity and that no Government dues other than arrears of license fee can be recovered from the dearness relief. In this case, the petitioner was superannuated and thereafter, at his request he was permitted to retain the Quarters on the basis of the undertaking given by him to withhold the amount from his retirement benefits towards rent for his stay in Quarters i.e., license fee. In this case, the petitioner was permitted to retain the quarters upto 31.10.2015 and thereafter, he over stayed in the Quarters. According to the respondent due to urging the license fee was not fixed and only

Rs.25,000/- was withheld from the gratuity. According to the Rule license fee can be recovered from the Dearness Relief.

**14.** The respondent has also relied on Rule 72(8) CCS (Pension) Rules, 1972, which says "Adjustment and recovery of dues pertaining to the Government accommodation, on account of license fee or damages remaining unpaid after adjustment from the withheld amount of gratuity mentioned under sub-rule (5) above, may be ordered to be recovered by the Directorate of Estates through the concerned Accounts Officer from Dearness Relief without the consent of the pensioners and in such cases no Dearness Relief shall be disbursed until full recovery of such dues has been made". Therefore, from the above said Rule, it is clear that the respondents can recover the amount from the petitioner even without his consent. In this case, the petitioner has already gave an undertaking to withhold the amount of his gratuity towards the rent i.e., license fee. Therefore, the contention of the petitioner that the amount cannot be recovered by the respondent is not acceptable. The Central Administrative Tribunal also elaborately discussed about Rule 72(8) of CCS Pension Rules and on perusal of the records dismissed the original application.

There is no infirmity in the impugned order passed by the Central Administrative Tribunal. Therefore, there is no warrant to this Court to interfere with the reasoned order of the Tribunal. Therefore as discussed *supra,* we are of the opinion that the Writ Petition is devoid of merits and deserves to be dismissed.

**15.** Accordingly, the Writ Petition is dismissed. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

**(D.K.K., J) (P.D.B., J)**
**25.07.2023**

Speaking Order: Yes/no
Neutral Citation: Yes/no
MSM

To

1. The Regional PF Commissioner-1,
   Regional PF Commissioner Office
   Dr. Balasundaram Road

Coimbatore - 641 018.

2. The Assistant PF Commissioner (Adm)
   Regional PF Commissioner Office
   Dr. Balasundaram Road
   Coimbatore - 641 018.

3. The Central Administrative Tribunal,
   Chennai Bench.

**D. KRISHNAKUMAR, J.**
and
**P. DHANABAL, J.**

MSM

Pre-Delivery Order in
W.P.No. 18088 of 2023
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