



W.P.(MD) No.5758 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDERS RESERVED ON : 25.08.2023

ORDERS PRONOUNCED ON : 26.09.2023

CORAM

THE HON'BLE MR.JUSTICE BATTU DEVANAND

W.P.(MD) No.5758 of 2018

and

W.M.P.(MD) No.5636 of 2018

P.Samayamuthu

... Petitioner

Vs.

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

2.The Superitendent of Police,
Railway Police,
Trichirappalli.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorari to call for the impugned order passed by the 2nd respondent in ந.க.எண்.பி3/14412/2017 dated 29.11.2017 based on the order by the 1st respondent in ந.க.எண்.பி3/5728/2011/கா.ஆ.ஆ.எண். 1312/2017 தேதி 30.08.2017 and quash the same as illegal.



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W.P.(MD) No.5758 of 2018

For Petitioner : Mr.G.Thiruvarutselvan
For Respondent : Mr.P.Subbaraj
Special Government Pleader

ORDER

Heard learned counsel for the petitioner and the learned Special Government Pleader appearing for the respondents and perused the record.

2. The petitioner, while serving as Grade-II Police Constable, on 27.12.2012, was placed in Trichy Railway Police Station as 'On Duty' and subsequently allotted other duty (OD) to Madurai Railway Police Station. In the month of November, 2011, he was allotted house, which is situated in NJ5/502, Police Quarters, Reserve Line, Madurai and subsequently shifted to NAC8, Police Quarters, Reserve Line, Madurai on 26.04.2012 and subsequently, vacated the premises after a period of time. In the year 2017, once again he was placed in Madurai City Armed Reserve after completion of other duty tenure in Trichy Railway Police Station. On 29.11.2017, the 2nd respondent issued an order dated 29.11.2017 based on the order of the 1st



W.P.(MD) No.5758 of 2018

respondent dated 30.08.2017 imposing a penal rent of Rs.1,97,916/- for the reason that the petitioner has not vacated the Police Quarters allotted to him after getting transfer. The 2nd respondent had deducted an amount of Rs. 70,400/- through order No.443/2017, dated 12.09.2017 and by order dated 29.11.2017, instructed the petitioner to pay the remaining amount of Rs. 1,27,476/-. Aggrieved by the same, the present writ petition is filed.

3. A counter affidavit has been filed by the 1st respondent, wherein it is stated that the petitioner was transferred from Madurai City on 02.03.2010, but the Police Quarters was vacated by him on 27.07.2017 only. No Police Officer and Personnel should be allowed to remain in the Police Quarters after his transfer to another District. He has over stayed in the Quarters for nearly 58 months and 28 days. Accordingly, penal rent recovery for the period from 30.04.2012 to 27.07.2017 to the tune of Rs.1,97,916/- was ordered to be recovered from the petitioner by order dated 30.08.2017 of the 1st respondent. Subsequently, the 2nd respondent issued revised penal rent recovery after deducing the eligible house rent allowance amount from the petitioner. Accordingly, the 2nd respondent



W.P.(MD) No.5758 of 2018

WEB COPY

issued order dated 29.11.2017 in which eligible house rent amount of Rs.70,440/- was deducted from the penal rent amount of Rs.1,97,916/- and the balance amount of Rs.1,27,476/- has been ordered to be recovered in 42 instalments.

4. Though the petitioner herein has raised several grounds challenging the impugned order, 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 is liable to be set aside, as it is issued in violation of the principles of natural justice.

5. On careful perusal of the order impugned in this writ petition, it is clearly established that no notice was issued before issuing the impugned order. If the respondents intend to take a stand that the petitioner had illegally occupied the Police Quarters from 30.04.2012 to 27.07.2017 and had calculated penal rent of Rs.1,97,916/-, it is the duty cast on the respondents to inform the petitioner with regard to the contemplated action and call for his objections with regard to the penal rent. Admittedly, in the



W.P.(MD) No.5758 of 2018

present case, the petitioner was not given an opportunity to put forth his objections to the penal rent. The action of a show cause notice prior to the recovery order may amount to denial of opportunity and thereby, would be in violation of the principles of natural justice.

6. It is settled law that any order passed without affording opportunity to the aggrieved person is in violation of the principles of natural justice.

7. The view of this Court is fortified by the order of this Court dated 24.02.2020 in W.P.(MD) No.101 of 2018 and the order of this Court dated 08.11.2021 in W.P.(MD) No.100 of 2018.

8. For the above mentioned reasons, this Writ Petition is allowed with the following directions:

- i. The order issued by the 1st respondent in ந.க.எண்.பிடி3/5728/2011/கா.ஆ.ஆ.எண்.1312/2017, dated 30.08.2017 and the consequential order passed by the 2nd respondent in



W.P.(MD) No.5758 of 2018

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ந.க.எண்.பி3/14412/2017, dated 29.11.2017 are hereby set aside; and

- ii. It is made clear that it is open to the respondents to take fresh course of action by following due process of law.

9. There shall be no order as to costs.

10. Consequently connected miscellaneous petition is closed.

26.09.2023

Note: Issue order copy by 29.09.2023

NCC : Yes/No

Index : Yes/No

Internet : Yes

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W.P.(MD) No.5758 of 2018

To

- 1.The Commissioner of Police,
O/o. The Commissioner of Police,
Madurai City, Madurai.
- 2.The Superitendent of Police,
Railway Police,
Trichirappalli.



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W.P.(MD) No.5758 of 2018

BATTU DEVANAND, J.

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Pre-delivery Order made in
W.P.(MD) No.5758 of 2018

26.09.2023