



W.P.(MD)No.18959 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.06.2023

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.18959 of 2017

and

W.M.P(MD)No. 15320 of 2017

D.Kalyanasundaram

... Petitioner

Vs.

The Commissioner of Police,
Tirunelveli City,
Tirunelveli.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of *Writ of Certiorari*, to call for the records on the file of the respondent in connection with the impugned orders of Recovery of Penal Rent passed by him in his proceedings in Na.Ka.No.B4/9014/2017, dated 01.09.2017 and Na.Ka.No.B4/9014/2014-Ma.Ka.Aa.No.470/2017, dated 03.10.2017 and quash the both as illegal and arbitrary.

For Petitioner : M/s.G.Thalaimutharasu

For Respondent : Mr.M.Lingadurai
Special Government Pleader



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ORDER

This writ petition is filed challenging the impugned order of recovery of penal interest, vide proceedings, dated 01.09.2017 and 03.10.2017.

2. Heard M/s.G.Thalaimutharasu, learned counsel appearing for the petitioner. Heard Mr.M.Lingadurai, learned Special Government Pleader appearing for the respondent. Perused the material documents available on record.

3. The petitioner was working as Grade I Constable, subsequently he was upgraded as Head Constable on 09.06.2008. While, he was discharging his duty in Tirunelveli City, he was allotted quarters at C-1 Block, D.No.2, Melapalayam Police Lane, Nethaji Road, Tirunelveli. Thereafter, he was transferred on 27.08.2012 to Villuppuram District on administration ground and joined in the transferred place on 28.10.2012. However, the petitioner has submitted a representation, dated 21.10.2012 to permit his family to reside in the said allotted quarters continuously, since his children are studying at Tirunelveli. Again, the petitioner was transferred to Virudhunagar District and joined there on 10.03.2014. Finally, on 17.08.2017, the petitioner was transferred to Tirunelveli



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City. During the transfer period from 28.10.2012 to 17.08.2017, the petitioner's family was residing in the said quarters.

4. The contention of the petitioner is that he has submitted a representation, dated 21.10.2012. Since there is no communication, the petitioner was under the impression that his request was considered and the respondents had allowed his family to continue in the said quarters. But the respondent through the impugned order, dated 01.09.2017, in which they cited an order, dated 17.05.2014, directing the respondent to recover a sum of Rs.50,659/-, which is a penal rent imposed for occupying the house for a period from 21.10.2012 to 30.04.2014. Subsequently, the respondent, vide order, dated 03.10.2017, directed the petitioner to pay a sum of Rs.4,628/- in 35 monthly installments.

5. The contention of the petitioner is that, he had already submitted a representation, dated 21.10.2012 through a proper channel, requesting the respondent to permit his family continuously to reside in the said quarters, hence the impugned order imposing penal rent is illegal and hence the petitioner is before this Court.



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6. At the time of admission, this Court has granted an interim order on condition that a sum of Rs.1500/- shall be recovered every month from the salary of the petitioner, which was commencing from 1st November 2017. The respondent had acted upon the interim order and has recovered the same, which is evident from the communication, dated 02.11.2017.

7. The learned counsel appearing for the petitioner submitted that the respondent ought to have acted upon his representation which was submitted as early as 21.10.2012. If the respondent has passed any order on the representation, the petitioner would not have incurred any penal interest, which was imposed through the impugned order. Moreover, the penal interest was three times of the regular rent, which is on higher side.

8. The learned Special Government Pleader appearing for the respondent vehemently submitted that the petitioner has not intimated the non-deduction of the rent from his salary. While the petitioner is receiving the regular salary, the petitioner has knowledge of non-deduction. The petitioner ought to have intimate the same to the respondent, but failed to do so. The respondent has



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failed to recover the rental portion from the salary, when the petitioner was transferred to Vilupuram District and subsequently to Virudhunagar District.

9. Since the respondent had not considered the petitioner representation dated 21.10.2012 requesting to allow the petitioner's family to occupy the quarters, the respondents is at fault. But the petitioner ought to have reminded the respondent and obtained order. Moreover, the respondent failed to deduct the rent from the salary and the petitioner has knowledge that rent is not deducted from the salary. It is seen that the penal rent is imposed three times the regular rent, which is on the higher rate. In view of the foregoing reasons, that both the petitioner as well as the respondents are at fault, this Court is of the considered opinion that the respondent is not entitled to collect three times the rent, but entitled to collect only normal regular rent. The impugned order is modified to this extent.

10. It is made clear that this order is passed based on the peculiar facts and circumstances of the case and this may not be cited as precedent for any other case.



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11. With these observations and directions, this Writ Petition is disposed of. No Costs. Consequently, connected miscellaneous petition is closed.

Index : Yes / No
Internet : Yes
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To

The Commissioner of Police,
Tirunelveli City,
Tirunelveli.



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S.SRIMATHY, J

ksa

**Order made in
W.P.(MD)No. 18959 of 2017**

01.06.2023