

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.03.2005

CORAM

THE HON'BLE MR.MARKANDEY KATJU, CHIEF JUSTICE
and
THE HON'BLE MR.JUSTICE F.M.IBRAHIM KALIFULLA

W.A.No.4188 of 2004

1. The State of Tamil Nadu,
rep. by its Secretary,
Public Works Department,
Fort St.George,
Chennai - 9.
 2. The Principal,
Central Polytechnic College,
Chennai - 113.
 3. The Chief Engineer (Buildings),
Public Works Department,
Chepauk, Chennai - 5.
 4. The Director of Technical Education,
Chennai - 25.
- ..Appellants.
- Vs.
- V.Mariappan ..Respondents.

Appeal under Clause 15 of the Letters Patent against the order dated 12.05.2004, passed in W.P.No.13635 of 2004 (WP No.13635/04 presented under Article 226 of the constitution of India to issue a writ of Mandamus, directing the second respondent to disburse the petitioner's gratuity amount of Rs.3,50,000.00 to and in favour of the petitioner as sanctioned in the order from the Office of the Accountant General dated 5.3.2004 by obtaining the 'No Demand Certificate' from the respondents 1 and 3).

For Appellants

:: Mr.S.Sivashanmugasundaram
Addl. Government Pleader

For Respondent

:: Mr.S.Sadasharam

J U D G M E N T

(The Judgment of the Court was delivered by The Hon'ble The Chief Justice)

This writ appeal has been filed against the impugned order, dated 12.05.2004, passed by the learned single Judge.

2. Respondent herein (writ petitioner) is a physically handicapped person who suffered from Polio Myelitis of both lower limbs and he cannot move without crutches. He was working as a Senior Lecturer in English at Central Polytechnic, Taramani, Chennai from 07.01.1972 and retired on 31.03.2004. While he was in regular service, he was allotted a Government residential quarters of 'A' Type in Todhunter Nagar, Saidapet. On his retirement, he made an application for sanction of gratuity amount to the tune of Rs.3,50,000/- but the said gratuity amount was not disbursed to him as respondents 1 to 3 therein have not issued No Demand Certificate required for the disbursement of the gratuity amount. A writ petition was filed by the writ petitioner (respondent herein) and the learned single Judge directed the 4th respondent therein to settle the gratuity amount due to the writ petitioner after obtaining No Demand Certificate from respondents 1 to 3 therein within a time-frame. By this appeal, the respondents in the writ petition (the appellants herein) challenge the impugned order of the learned single Judge.

3. Learned Additional Government Pleader submitted that an amount of Rs.4,56,317/- is due from the writ petitioner (respondent herein) as penal rent in respect of the Government residential quarters occupied by him. It is alleged by the learned Additional Government Pleader that the writ petitioner (respondent in this appeal) had continued to occupy the rental premises even after crossing the ceiling limit on basic pay of Rs.4,000/- on 01.01.1994 as per the condition stipulated in G.O.Ms.No.995, PWD, dated 09.05.1990. It is further alleged that the writ petitioner neither paid the penal rent (3 times of normal rent) nor vacated the quarters. Hence, for a period that he over stayed, the rent was fixed and the writ petitioner had to pay the penal rent to the tune of Rs.4,70,839/-. Since, this amount is larger than the gratuity claimed, the petitioner cannot be paid the gratuity.

4. In this connection, we may mention that while in service the respondent/writ petitioner was entitled to the allotment of Government residential quarters and it was on

his application that a residential quarters of 'A' type at Todhunter Nagar, Saidapet, Chennai was allotted to him vide G.O.Ms. No.1384 dated 13.08.1985 and he was in continuous occupation of the said quarters since 30.08.1985. However, by G.O.Ms.No.995, PWD, dated 09.05.1990 the State Government prescribed the revised maximum ceiling limit for the occupation of the P.W.D. quarters at Todhunter Nagar, Saidapet as Rs.4,000/- p.m., when the revised scale of pay was introduced. It is alleged that the writ petitioner had crossed that basic pay limit. Consequently, the Chief Engineer (Buildings) Public Works Department vide his notice dated 26.02.1997 made a demand of Rs.3,50,000/- from the petitioner, and also directed him to vacate the said quarters.

5. The writ petitioner made several representations to the concerned authorities seeking special permission to allow him to continue in the said residential quarters on compassionate and humanitarian grounds since he was a physically handicapped person. Since, his requests for his continuance in the Government residential quarters and for cancellation of the levy of penal rent were rejected by the Chief Engineer (Buildings), Public Works Department, by letter dated 18.06.1995, the petitioner filed an application (O.A.No.6344 of 1997) before the Tamil Nadu State Administrative Tribunal, Chennai challenging the validity of G.O.Ms.No.995 dated 09.05.1990. The Tribunal rejected the application by order dated 18.09.2002, against which he filed the writ petition, W.P.No.45651 of 2002. On that petition, this Court, by its order dated 14.01.2003, observed as follows:

"Learned Government Advocate very fairly states that the petitioner would be provided with a quarters commensurate with his salary. The petitioner has no objection to move to another quarters if so provided.

2. We therefore direct that on being provided with a commensurate quarters only, steps shall be taken to vacate the quarters presently occupied by the petitioner. With this, we dispose of the writ petition. No costs. This exercise should be done as early as possible and as far as possible within four months from today".

The learned Additional Government Pleader submitted that the order of this Court dated 14.01.2003 cannot be interpreted to mean that the order of the Tribunal dated 18.09.2002 has been set aside. We do not agree. W.P.No.45651 of 2002 was specifically directed against the order of the Tribunal dated 18.09.2002. Hence, although it has not been expressly mentioned by this Court in its order

dated 14.01.2003 that the order of the Tribunal has been set aside, in our opinion, by necessary implication it has been set aside and superseded by the order of this Court dated 14.01.2003. This could be the only correct interpretation, because any other interpretation would make the order of this Court dated 14.01.2003 redundant.

6. A perusal of the order of this Court dated 14.01.2003 in W.P.No.45651 of 2002 clearly shows that the writ petitioner was permitted to continue to occupy the said Government residential quarters until he was provided with alternative accommodation commensurate with his salary. In our opinion, by implication this means that the writ petitioner would have to pay only the rent which he was paying for this official accommodation and would not have to pay penal rent as fixed by G.O.Ms.No.995 dated 09.05.1990.

7. In our opinion, this can be the only import of the order dated 14.01.2003 passed by this Court in Writ Petition No.45651 of 2002. We cannot accept the submission of the learned Additional Government Pleader to the contrary. There is no dispute that the writ petitioner was not provided with alternative accommodation commensurate with his salary, and hence, in our opinion, he was not liable to pay penal rent. This is a clear case of harassment of a retired, invalid teacher by the authorities.

8. In view of the above, we confirm the impugned order of the learned single Judge dated 12.05.2004 and dismiss the appeal. Connected W.A.M.P.Nos.7938 of 2004 and 828 of 2005 are closed.

सत्यमेव जयते
Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

Jai/sm

To

1.The Secretary to the Government of Tamil Nadu,
Public Works Department, Fort St. George, Chennai 600 009

2.The Principal Central Polytechnic College,
Chennai-113

3.The Chief Engineer (Buildings) Public Works Department,
Chepauk, Chennai -5

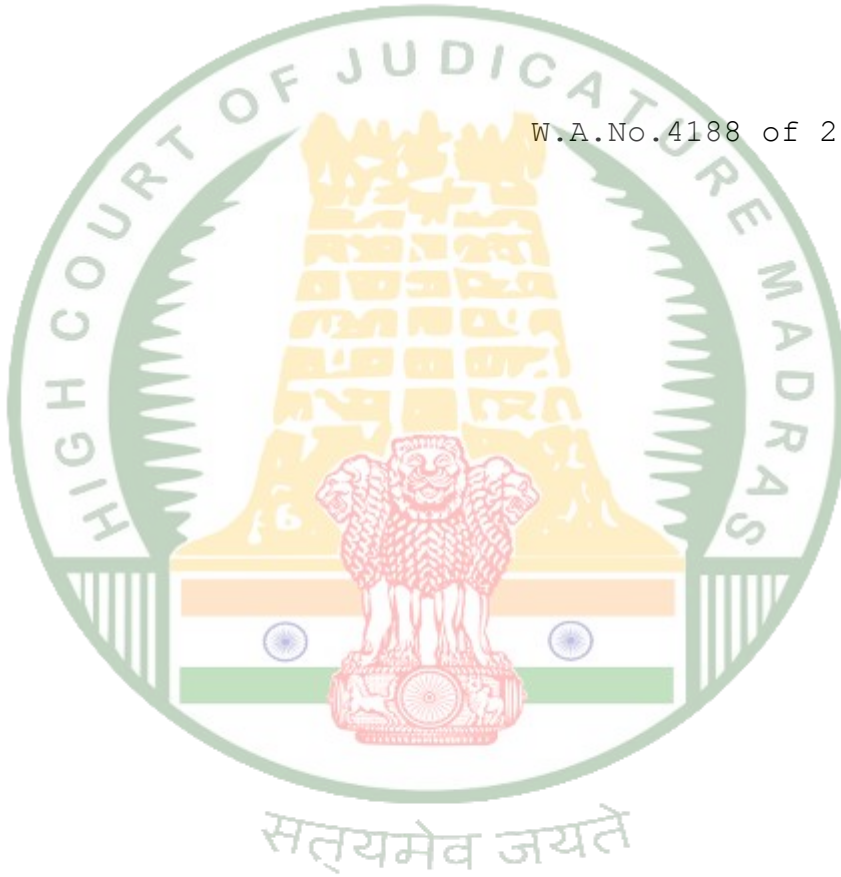
4.The Director of Technical Education, Chennai-25

+1cc to the Govt. Pleader Sr 15416

+1cc to Mr.S.Sadasharam Advocate Sr 15301

JRG (CO)
km/5.4.

W.A.No.4188 of 2004



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