

(2004) 11 MAD CK 0022

In the Madras High Court

Case No : Writ Petition No. 5731 of 2002

S. Jayaraman, Senior Time Keeper Grade II, Time Office,
Thermal Power Station II, Neyveli Lignite Corporation Ltd.

APPELLANT

Vs

Disciplinary Authority Cum Senior Personal Manager, Thermal
Power Station II, Neyveli Lignite Corporation Ltd., The
Buildings Inspector, Town Ship Administrative Office, Neyveli
Lignite Corporation Ltd. and The Assistant Township
administrator/TA, Township Administrative Office, Neyveli
Lignite Corporation

RESPONDENT

Date of Decision : 19-11-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 11 MAD CK 0022

Hon'ble Judges : A.K. Rajan, J

Bench : Single Bench

Advocate : V. Dhanapalan, for the Appellant; N.A.K. Sarma, for the Respondent

Final Decision : Allowed

Judgement

A.K. Rajan, J.—The Writ petition has been filed challenging the order of recovery of penal interest.

2. The petitioner is an employee of Neyveli Lignite Corporation who was allotted the official quarters and the allotment is subject to various

conditions. One of the conditions as found in para 9 is that the allottee shall not sublet or part with the possession of the premises, or any part

thereof to anyone, under any circumstances." It appears that the inspection has been conducted on 6.10.2001 and in the premises allotted to the

petitioner herein, one by name Murugesan working in T.P.T.C. was residing along with his family and he has also given a statement that he was

residing there for four years. Thereafter, a show cause notice was issued to the

writ petitioner calling for his explanation as to why action should not be taken against him. For that a reply had been sent on 11.10.2001 by the writ petitioner stating that his wife met with an accident and sustained fracture and in order to help for speedy recovery of the petitioner's wife, the sister of the petitioner came and resided in the said quarters helping the petitioner's wife. During that circumstance, the inspection has been conducted and after the inspection was over, since the petitioner's wife was also recovered, the petitioner's sister's family was sent away. While so, by order dated 26.10.2001, a show cause notice has been issued to the petitioner. For the said show cause notice, a reply was also given by the petitioner with the very same explanation. But, an order was passed on 2.1.2002 holding that the writ petitioner herein as ""admitted"" the charges. Therefore, the order of stoppage of increment was also passed with cumulative effect for one year. After that, the impugned order was passed on 9.1.2002 whereby the writ petitioner has been levied with penal rate of interest at the rate of Rs. 250/- per month from January '98 to 31.5.98 and at the rate of Rs. 1,670/- from June '98 to 6.10.2001 to be recovered from the petitioner's salary. This order of recovery was now challenged before this Court.

3. Mr. V. Dhanapalan, learned counsel for the petitioner submitted that even at the time of inspection it was stated that they have resided in the said quarters only for one year, but the impugned order has been passed for recovery of penal interest for four years. The learned counsel further submitted that there is no question of subletting and the petitioner was residing along with his sister jointly. There was no enquiry to hold that there was sub-letting and the same was not proved and hence, there is no question of levying penal interest or recovery of the same from the salary of the petitioner.

4. The learned counsel appearing for the respondents submitted that there was evidence to show that there was subletting of the quarters in the name of Murugesan who is alleged to be the husband of the petitioner's sister and that they were residing there for four years and hence, the impugned order has been passed for recovering penal interest for four years from the petitioner's salary.

5. The evidence obtained by the Neyveli Lignite Corporation has not been put on

notice to the writ petitioner herein. Further, no enquiry was conducted. No witness was examined to prove this aspect. No opportunity was given to the petitioner to deny or explain this. Under these circumstances, the conclusion that the petitioner has sublet the same for four years and not for one year to one Murugesan cannot be accepted and the same is not legally sustainable. Therefore, the impugned order has no basis. Since the impugned order has been passed only on the basis that the petitioner has sublet the premises, the same has to be set aside as it is not based on any sustainable evidence. Therefore, the impugned order is set aside. The Writ Petition is allowed. No costs.

6. The learned counsel appearing for the respondents submitted that he may be permitted to proceed with the enquiry and may pass appropriate order. It was objected by the counsel for the petitioner. This Court does not express any opinion on the same. It is open to the parties to act as per the rules.