



W.P.(MD).No.1792 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 27.04.2023

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No.1792 of 2019

K.Manickam

... Petitioner

Vs.

1.The Additional Chief Secretary to Government,
Home Department, [Police-XVII],
Chennai – 600 009.

2.The Accountant General (A & E),
Office of the Accountant General,
No.361, Anna Salai,
Chennai – 18.

3.The Director,
The Fire and Rescue Services Department,
No.1, Greams Road,
Ayiram Vilakku,
Chennai.

4.The Zonal Officer,
The Fire and Rescue Services Department,
Karur Zonal,
Karur.

... Respondents



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Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order passed by the first respondent dated 25.09.2018 vide G.O.(D)No.1115 and quash the same and further directing the respondents to refund the recovery amount of Rs.1,84,757/- recovered from the petitioner with all benefits.

For Petitioner : Mr.T.Selvan

For R-1, R-3
and R-4 : Mr.M.Lingadurai,
Special Government Pleader.

For R-2 : Mr.P.Gunasekaran,
Additional Central Government
Standing Counsel.

ORDER

This Writ Petition is filed to quash the order dated 25.09.2018 vide G.O.(D)No.1115 and further directing the respondents to refund the recovery amount of Rs.1,84,757/- recovered from the petitioner with all benefits.



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2. The petitioner has completed 36 years of service as Driver in the Fire and Rescue Service Department and retired from service on attaining superannuation that is on 31.03.2013. On 12.06.2010, an accident occurred while he was driving a water tank fire rescue vehicle to attend the emergency call. Due to accident, the vehicle turned down and co-employees including the petitioner sustained injuries and the vehicle was damaged. A case was registered in Crime No.476 of 2010 on the file of the Velayudampalayam Police Station for offences under Sections 279, 337 I.P.C on 13.06.2010. The contention of the petitioner is that the accident happened because of poor visibility due to rain. The petitioner in order to avoid accident has turned the vehicle but unfortunately it dashed another vehicle. In spite of diligent efforts to avoid the accident, unfortunately the petitioner was not able to do so. The petitioner was temporarily suspended from service on 21.06.2010 and reinstated into service on 11.01.2011. A charge memo dated 19.06.2010 was issued alleging that the petitioner had driven the vehicle in rash and negligent manner and caused injuries to the co-employees. The accident also caused deficiency of service to public and caused bad name to the Department. The petitioner has sent an explanation. In the meanwhile,



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the petitioner was charge sheeted in criminal case in R.C.S.No.2 of 2010 was filed before the learned Judicial Magistrate Court II, Karur. The concerned Police filed a final report by referring the said case as Mistake of Fact. Hence, the contention of the petitioner is that the charge memo, imposing the punishment, especially recovering the expenses for the damage are unwarranted. In the meanwhile, the petitioner attained superannuation and retired on 31.03.2013 and the petitioner's suspension period was regularized. Thereafter, while paying the final benefits, the amount of Rs.1,84,757/- was recovered from the petitioner's gratuity and the salary and the recovery is against law wherein it is stated any recovery cannot be made from the terminal benefits especially gratuity. The petitioner submitted a representation to the first respondent and also to Chief Minister Cell requesting them to reimburse the recovered amount. The fourth respondent recommended to reimburse the said amount vide proceedings dated 24.03.2015. However, the first respondent did not consider the recommendation of the fourth respondent and the first respondent finally passed an order declining to reimburse the said amount. Aggrieved over the same, the present Writ Petition is filed.



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3. The respondents have filed counter stating that the petitioner has made loss to the Government exchequer to the tune of Rs.1,84,757/- towards repairing the damage to the new vehicle. The petitioner ought to have been careful while driving the vehicle since, the damage to the new vehicle is too heavy, then the petitioner is liable to pay the same. The negligent act of the petitioner has caused injuries to the crew. The purpose of attending the bus accident rescue call was also spoiled and thus it brought bad name to the Department. Hence the respondents have imposed the punishment of recovery of a sum of Rs.1,84,757/- from the petitioner and the respondents while paying the pensionary benefits have withheld the amount. The claim of the petitioner to refund the recovered amount which has been already remitted into the Government account, is rejected. Since, the petitioner has not raised any legally sustainable ground to interfere with the impugned order, the respondents prayed to dismiss the writ petition.

4. Heard Mr.T.Selvan, learned counsel for the petitioner, Mr.M.Lingadurai, learned Special Government Pleader, for the respondents 1, 3 and 4 and Mr.P.Gunasekaran, learned Additional Central



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Government Standing Counsel for the respondent no.2 and perused the records.

5. It is seen from the records that the learned Judicial Magistrate II of Karur has closed the file by recording the report as Mistake of Fact. As stated supra, because of rain the water was logging, therefore, the petitioner could not stop the vehicle inspite of applying the break. Therefore, it is not the mistake of the petitioner. The relevant portion is extracted hereunder:

மேல்படி தேதி மணியில் தீயணைப்பு வாகனத்தின் ஓட்டுனர் மணிக்கு 50 கி.மீ. வேகத்தில் வாகனத்தை ஓட்டி சென்றதாகவும். மழை பெய்ததின் காரணமாக எதிரே வந்த வாகனத்தின் மீது மோதி விபத்து ஏற்படாமல் தடுக்க திடீரென பிரேக் போட்டதின் காரணமாகவும், மழை பெய்து ரோட்டில் தண்ணீர் தேங்கியிருந்து காரணமாகவும் தான் மேல்படி விபத்து ஏற்பட்டிருக்க வேண்டும் என தெரிய வருகிறது. சூமலும் சாட்சிகளை விசாரணை செய்ததிலிருந்தும், எனது ரகசிய ரகசிய விசாரணையிலிருந்தும், மேல்படி வாகன விபத்துக்கு அதன் ஓட்டுனர் காரணம் இல்லை என தெரிய வருகிறது. ஆகவே மேல்படி விபத்திற்கு அதன் ஓட்டுனர் காரணம் இல்லை என தெரிய வருவதால் இவ்வழக்கை சங்கதியை பொருத்தமட்டில் (mistake of fact) மிழை என கருதி வழக்கை முடிவு செய்கின்றேன். இது சம்மந்தமாக அறிவிப்பை மனுதாரருக்கு RCS.No.14 / 10 மூலம் சார்பு செய்தும், இறுதி அறிக்கையை Final Report No. 14 / 10ன் படி நீதிமன்ற குற்றவியல் நீதிமன்ற எண்.2 அவர்களுக்கு அனுப்பிவைக்கிறேன் என்பதை தெரிவித்துக்கொள்கிறேன்.



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6. Therefore, by considering the report of the Magistrate, this Court is of the considered opinion that the accident has occurred and it is not due to negligent act of the petitioner. Moreover, the Police has closed the case as “Mistake of Fact” by recording the cause of accident which seems to be very genuine. This Court is inclined to set aside the impugned order. The impugned order is quashed. The respondents are directed to return the recovered amount to the petitioner. However, the petitioner is not entitled to any interest for the said amount. The said exercise shall be completed within a period of six (6) weeks from the date of receipt of a copy of this order.

7. In view of the above, this Writ Petition is allowed. There shall be no order as to costs.

27.04.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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S.SRIMATHY, J.

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