

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 179 OF 2015

Mr. Vinod Vasudev Malvankar,
Son of Vasudev Malvankar,
37 years of age, married,
Government service, Indian National
and residing at House no. 54,
Bandirwado, Shapora,
Bardez, Goa.

... Petitioner

V e r s u s

1. State of Goa,
Through Chief Secretary,
Having office at Secretariat
Porvorim, Bardez, Goa.

2. Director General of Police,
Having office at Police Head Quarter,
Panaji, Goa.

3. Superintendent of Police,
Having office at Police,
Head Quarter, Panaji, Goa.

... Respondents

Mr. Shivan Desai, Advocate for the Petitioner.

Ms. Susan Linhares, Addl. Government Advocate for the Respondents.

Coram :- **F. M. REIS,**
 K. L. WADANE, JJ.

Date : **28th July, 2015**

ORAL JUDGMENT (Per F. M. Reis, J.)

Heard Shri Shivan Desai, learned Counsel appearing for the
Petitioner and Ms. Linhares, learned Addl. Government Advocate appearing for the
Respondents.

2. Rule. Heard forthwith with the consent of the learned Counsel. Learned Addl. Government Advocate appearing for the Respondents waives service.

3. Upon hearing the learned Counsel appearing for the respective parties, the grievances of the Petitioner is that based on an Award passed by the Motor Accident Claims Tribunal, dated 02.11.2006, whereby the Petitioner and the Respondents were directed to pay jointly and severally a sum of Rs.3,30,000/- along with interest one-third of the said amount was sought to be recovered from the Petitioner herein. The records reveal that based on the allegations that the Petitioner had rashly and negligently driven the vehicle belonging to the State Government which resulted in an accident, disciplinary proceedings were initiated on account of such misconduct and even a chargesheet was filed after the inquiry was completed. Taking note of the fact that the Petitioner was acquitted in the criminal proceedings, the Respondents accepted the inquiry before the Criminal Court and dropped all the charges against the Petitioner. Despite of the above fact, the Respondents chose to proceed to recover a sum of Rs.1,10,000/- from the Petitioner based on the Award passed by the Motor Accident Claims Tribunal.

4. Shri Shivan Desai, learned Counsel appearing for the Petitioner, has pointed out that the recovery of the said amount of Rs.1,10,000/- has no support in law as, according to him, the Government is vicariously liable to pay the amount on account of any careless act committed by the Petitioner. Learned Counsel further pointed out that in such circumstances, as the inquiry has ended in favour of the

Petitioner, the Respondents were not entitled to deduct the said amount. Learned Counsel further pointed out that the Petitioner was also not given any show cause notice alleging that such amounts were being deducted from the salary of the Petitioner. Learned Counsel as such submits that the deduction itself is illegal and, consequently, the Respondents be directed to refund the amounts so deducted.

5. On the other hand, Ms. Linhares, learned Addl. Government Advocate appearing for the Respondents, pointed out that the amounts have been deducted in terms of the Award passed by the Motor Accident Claims Tribunal. Learned Addl. Government Advocate has pointed out that the Award directed the payment of an amount of Rs.3,30,000/- against the Petitioner-State Government and the Respondents were directed to deduct one-third of such amount from the salary of the Petitioner. Learned Addl. Government Advocate as such submits that the Petition be rejected.

6. We have given our thoughtful considerations to the rival contentions. On perusal of the Award passed by the learned Tribunal, there is no direction to the Petitioner to pay any specific amount as contended by the learned Addl. Government Advocate appearing for the Respondents. The fact that no show cause notice was issued to the Petitioners before affecting such deduction has also not been disputed by the learned Addl. Government Advocate. It is also not in dispute that an inquiry which was initiated by the Respondents on account of misconduct has ended in favour of the Petitioner and all the charges were accordingly dropped. Even whilst disposing of such proceedings, there was no direction to the effect that any amounts would be recovered from the Petitioners. In

such circumstances, as the disputed deductions have been effected without any show cause notice nor reflected in the orders referred to herein above, we find that such recovery by the Respondents by Order dated 23.04.2010, cannot be sustained and deserves to be quashed and set aside.

7. In view of the above, we find that the Respondents were not entitled to deduct the said amount as the due process of law has not been complied with. We, therefore, direct the Respondents to refund the amount so deducted of Rs.1,10,000/- in accordance with law.

8. Rule is made absolute in the above terms.

K. L. WADANE, J.

F. M. REIS, J.

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