

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 10.09.2015

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

W.P.No.28467/2015 & MP.No.1/2015

A.Wahab

... Petitioner

Versus

1.The Special Commissioner & Commissioner
of Revenue Administration, Chepauk,
chennai 600 005.

2.The Collector
Erode, Erode District.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, seeking for a writ of certiorari calling for the records relating to the impugned order of the 2nd respondent in Na.Ka.No.8190/2009/A7 dated 26.06.2015 and quash the same.

For Petitioner : Mr.P.Rajendran
For RR 1 & 2 : Mr.S.Gunasekaran, GA

O R D E R

By consent, the writ petition is taken up for final disposal.

2 The petitioner was employed as a driver attached to the Tahsildar, Sathyamangalam and on 06.09.2001, he has driven the Government vehicle bearing Registration No.TN-36-G-0115 in a rash and negligent manner and dashed against one Sellamuthu and he died on the spot. In this regard, the legal representatives of Sellamuthu has filed MCOP No.285/2009 on the file of the Court of Motor Accidents Claim Tribunal [Sub Court, Bhavani] and the petitioner was arrayed as the 1st respondent and the State of Tamilnadu represented by the Collector of Erode District, was arrayed as 2nd respondent and after contest, an award came to be passed on 24.07.2003, awarding compensation of Rs.3,25,648/- with interest. Based on the same, the petitioner was dismissed from service and he made challenge to the same by filing WP.Mo.7373/2008 and vide order dated 29.02.2012, this Court partly allowed the said writ petition and the matter was remanded to the Disciplinary Authority for fresh consideration as to the imposition of punishment and accordingly, the petitioner was imposed with a punishment of compulsory retirement from service, vide order of the 1st respondent dated 12.12.2012.

3 Learned counsel appearing for the petitioner would submit that the petitioner was compulsorily retired from service during the year 2012 and nearly 3 years thereafter, he was issued with a memo stating that since compensation amount has been paid by the State Government on account of the fact that the accident was caused on account of the rash and negligent driving of the vehicle by the petitioner, he has to pay the same. It is also the submission of the learned counsel that admittedly before issuing the impugned memo dated 26.06.2015 ordering recovery, the petitioner has not at all been put on notice and hence, prays for interference.

4 Per contra, Mr.S.Gunasekaran, learned Government Advocate who accepts notice on behalf of the respondents would submit that since the State has satisfied the award passed in MCOP No.285/2009 and that the liability is joint and several one, the State is entitled to recover the compensation paid to the legal representatives of the deceased Sellamuthu and accordingly, the impugned memo came to be issued ordering recovery and the petitioner is bound to pay the same.

5 This Court heard the rival submissions made on either side and also perused the materials placed on record.

6 No doubt, the finding has been recorded by the Motor Accidents Claim Tribunal that the petitioner has driven the vehicle in a rash and negligent manner and originally he was dismissed from service and thereafter, in pursuant to the orders passed by this Court, the order of punishment was reviewed and he was imposed with the punishment of compulsory retirement from service. A perusal of the award would also disclose that a finding has been recorded by the Tribunal that the liability imposed on the respondents was also joint and several one and the 2nd respondent/State has satisfied the award.

7 However, as rightly contended by the learned counsel for the petitioner before issuing the impugned memo dated 26.06.2015, the petitioner should have been issued with a notice with regard to the claim of Rs.4,38,154/- and he should have been afforded with an opportunity to put forth his explanation and without doing so, straightaway the order of recovery came to be passed and hence, on this sole ground, the impugned memo warrants interference.

8 In the result, the writ petition is partly allowed and the impugned memo dated 26.06.2015 issued by the 2nd respondent is set aside and the matter is once again remanded to the 2nd respondent for fresh adjudication. The 2nd respondent is directed to issue notice to the petitioner giving the calculation as to the amount of Rs.4,38,154/- sought to be recovered from him within a period of two weeks from the date of receipt of a copy of this order and the petitioner, on receipt of the same, is directed to submit his explanation within a further period of three weeks thereafter to the 2nd respondent, who, on receipt of the same, is directed to consider the said explanation on merits and in

accordance with law and pass orders thereon, within a further period of four weeks thereafter and communicate the decision taken to the petitioner. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

AP

To

1.The Special Commissioner & Commissioner
of Revenue Administration, Chepauk,
chennai 600 005.

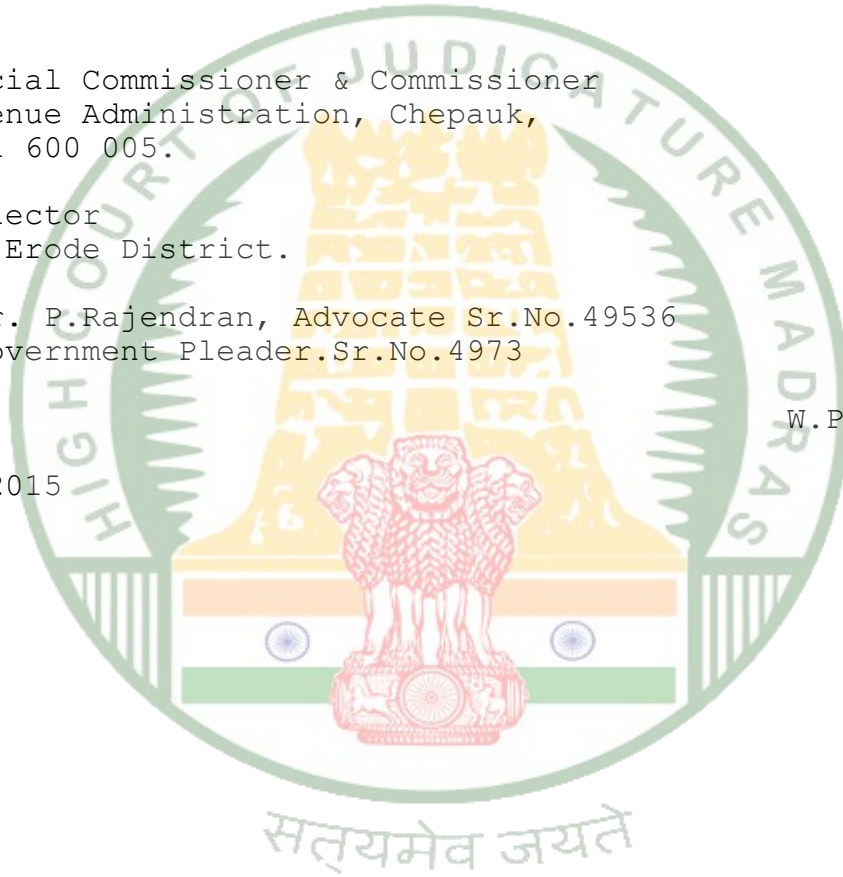
2.The Collector
Erode, Erode District.

1 cc to Mr. P.Rajendran, Advocate Sr.No.49536

1 cc to Government Pleader.Sr.No.4973

W.P.No.28467/2015

kji(co)
pmk.29.9.2015



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