

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 16.11.2016
CORAM
THE HONOURABLE MR.JUSTICE R.SURESH KUMAR
W.P.Nos.30497 and 30498 of 2008
and
M.P.Nos.1 & 1 of 2008 and 1 & 1 of 2010

P.Madhaiyan
Head Constable-1763 .. Petitioner
in W.P.No.30497 of 2008

R.Krishnan,
Head Constable-913 ...Petitioner
in W.P.No.30498 of 2008

Versus

Superintendent of Police
District Police Office
Salem .. Respondent
in Both Writ Petitions

Common Prayer: These Writ Petitions are filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari to call for the records relating to the impugned order passed by the respondent herein in his proceedings D.No.1341/2008, C.No.P.R.No.30/H3/2006 dated 06.12.2008 and quash the same.

For Petitioners : Mr.G.Bala & Daisy
For Respondent : Mr.V.Jayaprakash Narayanan
Special Government Pleader

C O M M O N O R D E R

The prayer in these Writ Petitions are for a Writ of Certiorari calling for the records relating to the impugned order passed by the respondent herein in his proceedings in D.O.No.1341/2008, C.No.P.R.No.30/H3/2006 dated 06.12.2008 and quash the same in so far as the petitioners are concerned.

2. These two writ petitioners were Head constables. When they were working at Kariakoil Police Station, Salem District, the petitioners had proceeded to for a search operation at the residence of a prohibition offender one Thoppalan. Since the suspect was not available at his

house, they had informed his family members that he had to come to the police station with regard to an enquiry. At that time, the said Thoppalan's daughter Jayarani was present when the police party had made search for the suspect. Immediately after the police left the village, the said Jayarani went inside her house and committed suicide. Consequent to the said incident, a criminal case was registered against the petitioners under section 174 Cr.P.C read with 306, 354, 506(1) IPC, read with Section 3(1)(X) of SC & ST Act. Thereafter based on the investigation, the Deputy Superintendent of Police, Vallapadi Sub-division had filed a charge sheet before the Trial Court and the same had been taken on file in PRC.No.18 of 2008 on 28.11.2008. In the meantime, a disciplinary proceedings was also initiated against the petitioners under rule 3(b) of Tamil Nadu Police Subordinate Service Rules for the very same allegation.

3. Subsequently, departmental proceedings were concluded and the charges framed against the petitioners were proved and immediately an order of punishment of reduction in time scale of pay was issued against the petitioners against which they filed an appeal before the Appellate Authority and the same was also dismissed. Therefore, the departmental proceedings ended in the said punishment against the above said petitioners had reached its finality.

4. When the criminal case against the petitioners were pending, on 06.12.2008 the respondent had passed an order for recovery of a sum of Rs.30,000/- from each of the petitioners and that order of recovery was passed by the respondent without notice to the petitioners. The further case of the petitioners is that since for their violation of Human Rights charges were framed under Rule 3(b) of Tamil Nadu Police Subordinate Service Rules and punishment was awarded on them and they have also undergone the same. For the involvement of the same set of charges, criminal cases were also pending against them. Before it is concluded, the respondent had initiated proceedings for recovery of money from the petitioners, which was paid to the said victim viz., Jayarani's family by the State Government as an ex-gratia payment, that too without any notice to the petitioners. Therefore, challenging the same, the petitioners have come forward to file this writ petition with the aforesaid prayer.

5. Heard both sides. The facts involved in these Writ Petitions are similar arising out of the same occurrence/incident. Hence, both writ petitions were taken

up for final disposal and decided by way of this common order.

6. The learned counsel appearing for the petitioners would contend that, there is no doubt for the alleged violation on the part of the petitioners , departmental proceedings were initiated and it was concluded in punishment for a reduction in time scale of pay of the petitioners and the said punishment since had been confirmed by the Appellate Authority the petitioners have undergone the same. For the same set of charges/allegations, criminal proceedings were initiated as stated above and the same were pending adjudication before the Criminal Court of Law. Whiles, now the respondents have proceeded with for recovery from the petitioners and therefore, the said impugned order for recovery dated 06.12.2008 without any prior notice to the petitioners cannot be sustained.

7. Per contra, the learned special government pleader appearing for the respondents would contend that infact the petitioners who were part of the police team had visited the victim's residence for searching operation regarding a prohibition case and during the time of search these petitioners exceeded their limit and they misbehaved with a 15 year old girl, who was the daughter of the offender and left the house of the victim. The same day evening between 4.00 and 6.00 hours, the victim (daughter of the offender) committed suicide. In view of the said shocking incident, enquiry was conducted by the RDO under police standing order and ultimately it was found that the petitioners were guilty.

8. In the meanwhile, the issue was taken on file by the National Human Rights Commission and the National Human Rights Commission called for a report from the respondent. The respondent had submitted a detailed report to the National Human Rights Commission, wherein it was brought to the notice of the commission that criminal proceedings were initiated against the erring personnel i.e., the petitioners herein apart from the disciplinary proceedings. However, not satisfied with the said report of the respondent, the National Human Rights Commission by communication dated 08.07.2008 directed the State Government to show cause as to why the commission should not recommend monetary relief to the next of kin of the deceased for violation of Human Rights established as per report submitted by Superintendent of Police, Salem. Only in that circumstances, the State Government has decided to order ex-gratia payment of Rs.1,00,000/- next to the kin of the victim and the said

amount have been paid to the victim's family by way of ex-gratia payment. The State Government had decided to recover the same from the petitioners, who are the erring personnels and thereafter only pursuant to the said decision, the impugned order was passed whereby these two petitioners as well as one Sub-Inspector of Police viz., Gajendran, from whom it was directed to recover the said amount of Rs.1,00,000/- proportionately i.e. 30,000/- each from the petitioners and 40,000/- from the Sub-Inspector of Police-Gajendran.

9. The learned Special Government Pleader would also contend that subsequently the departmental proceedings concluded as against the petitioners, where punishment was imposed for both. In so far as compensation is concerned, since the victim is from the family of a weaker section and reports of the respondent as well as the RDO, who conducted the enquiry under police standing order reveals the involvement of the petitioners and violation of Human Rights. Therefore, the Government has every right to recover the said ex-gratia paid to the victim family, from the petitioners and therefore the impugned order is fully justifiable and need not be interfered with.

10. I have considered the rival submissions made by the learned counsel and perused the material placed before this court.

11. The copy of the Government Order in G.O.Ms.No.1039 Public(Law & Order-(A) Department dated 11.09.2008 was produced before this court, which is the basis for issuance of the impugned order. According to the said G.O one Selvi.Jayarani, D/o.Thoppulan at a village in Attur Taluk, Salem District had committed suicide at her house on 20.01.2005 due to harassment by the Police personnel of Kariyakoil Police Station. Based on the findings of the PSO enquiry, orders were issued in G.O.Ms.No.1888, Public(Law & Order-(A) Department, dated 18.12.2007 to initiate departmental proceedings and criminal action against the three police personnel including the petitioners. The G.O however states that the National Human Rights Commission in their show cause notice dated 07.07.2008 has directed as follows:

“The Commission has perused record. In the considered opinion of the Commission, a grave violation of human rights involving dignity of woman by those who were supposed to protect it has been established during inquiry caused by the

Superintendent of Police, Salem, Tamil Nadu, Deceased belonged to weaker section also. Reports are silent about financial assistance to the Next of Kin of the deceased under the provision of SC/ST Act.

In view of the above, the Commission directs to issue notice u/s 18(c) of the Protection of Human Rights Act, 1993 to the Chief Secretary, Tamil Nadu, to show cause as to why the Commission should not recommend monetary relief to the next of kin of the deceased for violation of human rights established as per reports submitted by the Superintendent of Police, Salem, Tamil Nadu."

12. The G.O. Proceeds to say that based on the observation of the Commission and in terms of the earlier G.O.Ms.No.1888, Public(Law & Order-A) Department dated 18.12.2007, the Government decided to sanction financial relief of Rs.1,00,000/- to next kin of the deceased Jayarani and also recover the same from the erred Police personnel including the two petitioners herein. Accordingly, the said G.O. was issued. Only pursuant to the said G.O., the respondent has passed the impugned order dated 06.12.2008, whereby a sum of Rs.30,000/- was sought to be recovered from each of the petitioner herein as the Government had already sanctioned Rs.1,00,000/- to the victim's family as ex-gratia pursuant to the observations made by the Human Rights Commission.

13. It is also a fact that the departmental proceedings concluded against the petitioners and punishment were inflicted against them which they had undergone. However, the learned counsel appearing for the petitioner would contend that the criminal case against the petitioners ended in acquittal on 19.11.2011. Therefore, the learned counsel submitted that since petitioners have been acquitted in the criminal case under the same set of charges, there is no justification on the part of the respondent-State Government to recover the sum paid to the victim as ex-gratia payment because the involvement of these petitioners in Human Rights violation itself is questionable in view of the acquittal in criminal case, hence the recovery from the petitioners for the said payment made to the victim's family by the Government is also unjustifiable.

14. These arguments advanced on behalf of the petitioners cannot be countenanced for the reason that in

the criminal case, the petitioners might have been acquitted. In this regard the law is well settled that the acquittal in criminal case would be decided on the basis of proving the guilt of the accused by the prosecution beyond reasonable doubt, whereas in the departmental proceedings, the mere preponderance of probability is enough to prove the guilt of the erring employee/officer and based on which punishment can be imposed departmentally. In this case also though the criminal case have ended in acquittal, the departmental proceedings went against the petitioners. Moreover, pursuant to the said incident of suicide of the victim immediately after these petitioners completed their search at the offender's residence, enquiry was ordered to be conducted by the DRO under the police standing order and the report of the DRO has revealed the involvement of the petitioners. Based on this, the respondent had submitted a report to the Human Rights Commission and the said commission after having taken note of the incident found that the petitioners involvement would be the reason for the death of the victim and ultimately made an observation under Section 18 of the Protection of Human Rights Act, 1993 that why proceedings should not be initiated to pay the ex-gratia payment for the victim. Only pursuant to which the Government has taken a rightful decision of paying a compensation of Rs.1,00,000/- as an interim measure, which has been further enhanced to Rs.3,00,000/-

15. It is also informed to this court, that subsequently apart from Rs.1,00,000/- ex-gratia payment, the compensation was further raised by way of additional enhancement of Rs.2,00,000/- and that has been paid to the victim's family. In respect of the said enhanced compensation, proceedings were issued to the petitioners for recovery and aggrieved by the said proceedings for the enhancement of compensation, the petitioners are already before this Court.

16. Be that as it may, in so far as the sustainability of the impugned order in this writ petitions are concerned, this is an order passed pursuant to the conscious decision taken by the State Government and that this Court considered the relevant documents produced by the learned Special Government Pleader. The said decision was taken based on the sound legal principle as enunciated by the Hon'ble Apex Court in D.K.Basu Vs. State of West Bengal and others 1997 (1)SCC 416. The Government while taking the decision has relied upon the judgement of the Hon'ble Apex Court which reads thus:

"54.Thus, to sum up, it is now a well-accepted proposition in most of the

jurisdictions, that monetary or pecuniary compensation is an appropriate and indeed an effective and sometimes perhaps the only suitable remedy for redressal of the established infringement of the fundamental right to life of a citizen by the public servants and the State is vicariously liable for their acts. The claim of the citizen is based on the principle of strict liability to which the defence of sovereign immunity is not available and the citizen must receive the amount of compensation from the State, which shall have the right to be indemnified by the wrongdoer. In the assessment of compensation, the emphasis has to be on the compensatory and not on punitive element. The objective is to apply balm to the wounds and not to punish the transgressor or the offender, as awarding appropriate punishment for the offence (irrespective of compensation) must be left to the criminal courts in which the offender is prosecuted, which the State, in law, is duty bound to do. The award of compensation in the public law jurisdiction is also without prejudice to any other action like civil suit for damages which is lawfully available to the victim or the heirs of the deceased victim with respect to the same matter for the tortious act committed by the functionaries of the State. The quantum of compensation will, of course, depend upon the peculiar facts of each case and no strait-jacket formula can be evolved in that behalf. The relief to redress the wrong for the established invasion of the fundamental rights of the citizen, under the public law jurisdiction is, thus, in addition to the traditional remedies and not in derogation of them. The amount of compensation as awarded by the Court and paid by the State to redress the wrong done, may in a given case, be adjusted against any amount which may be awarded to the claimant by

way of damages in a civil suit."

17. In order to protect the vulnerable sections like women and also weaker sections which includes SC/ST people, these legal protections have been made. The very purpose of enactment of the Protection of Human Rights Act, 1993 is only pursuant to the concern of the state as there had been growing concern in the country and abroad about issues relating to human rights. Whenever human right violation is noticed, the Commission has got every power to take action either suo motu or by way of representation or communication. Only in that context by exercising the power of Section 3 of the Protection of Human Rights Act, 1993, the State Government has taken a due decision for which the State Government has given acceptable and valuable reasons as reflected in the Note File as well as in the Government Order. Only pursuant to these decisions in order to solace the victim's family as they lost a valuable human life by virtue of the act of human rights violation of the petitioners, some monetary relief were able to be given to them. Therefore, this Court feels that absolutely there is no reason for interference of the said decision of the State Government, which is reflected in the impugned order.

17. In view of the above, this court finds that absolutely there is no merit in these writ petitions and resultantly these writ petitions fail. Therefore, these writ petitions are dismissed without order as to costs. Consequently, connected Miscellaneous Petitions are also closed.

Sd/-
Assistant Registrar

//True Copy//

rm

Sub Assistant Registrar

To

The Superintendent of Police
District Police Office
Salem

+1cc to the Government Pleader, S.R.No.66729

W.P.Nos.30497 and 30498 of 2008

and

M.P.Nos.1 & 1 of 2008 and 1 & 1 of 2010

LRS (CO)

RS (07/04/2017)