

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.12.2016

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

W.P.No.11368 of 2001

E.Natarajan

Petitioner

Vs

1.The State of Tamil Nadu
rep by Commissioner and Secretary
to Government
Home Department
Fort St.George
Chennai 600 009.

2.Inspector General of Police
Armed Reserve, Chennai 600 010.

3.The Commandant
Tamil Nadu Special Police
8th Battalion, Veerapuram
Chennai 600 055.

Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India to issue a writ of mandamus directed the respondents to pay the compensation of Rs.20,00,000/- to petitioner for the negligent act of the respondents' officials.

For petitioner	Mr.V.Antony Elangovan Raj
For Respondents	Mr.V.Jayaprakash Narayanan Special Government Pleader

RESERVED ON	PRONOUNCED ON
07.12.2016	09.12.2016

ORDER

This petition has been filed seeking a writ of mandamus directing the respondents to pay a compensation of Rs.20,00,000/- to petitioner for the negligent act of the respondents officials.

2. Heard the learned counsel for the petitioner and the learned Special Government Pleader appearing for the respondents.

3. For the sake of convenience, the parties will be referred to by their name.

4. Natarajan, the petitioner herein, was working as Havildar Jeep Driver in the Office of the Commandant, 8th Battalion, Tamil Nadu Special Police, Chennai. On 19.01.1994, Mr.C.K.Gandhi Rajan, IPS, who was the Commandant, had left his briefcase in his Office in Chennai and had gone to the volley boll ground for the evening rounds. At that time, Arulnathan, Police Constable 682, who was the Orderly, attached to Gandhi Rajan, presumed that his Boss will not return to the Office and so, he wanted to deliver the briefcase to him. He carried the briefcase and got into the jeep, which was driven by Natarajan. Arulnathan opened the briefcase and

meddled with the pistol, on account of which, fire was opened and the bullet hit Natarajan in his pelvis and got embedded beneath his spinal cord. Hence, Natarajan is before this Court seeking Rs.20 lakhs as compensation.

5. The respondents have filed their detailed counter setting down the facts. The manner in which the incident had taken place has been unequivocally admitted by the respondents, inasmuch as Arulnathan had opened the briefcase and had operated the pistol resulting in serious injury to Natarajan. In fact, a case in F2 Tank Factory Police Station Cr.No.78 of 1994 u/s 338 IPC was registered on 19.01.1994 against Arulnathan and he was arrested and left off on bail. He was also placed under suspension with effect from 19.01.1994.

6. For the incident that had taken place in the year 1994, the writ petition has been filed in the year 2001, and therefore, on the short ground of laches itself, the present writ petition deserves to be dismissed. It is also seen that a sum of Rs.1 lakh has been paid to Natarajan by the Government, vide G.O.Ms.No.419, Home Department dated 16.03.1995, from the Tamil Nadu Police Benevolent fund. However, in paragraph 13 of the counter filed by the Government, it is stated as follows:

"13. It is submitted that the Medical Board which examined the petitioner on 22.10.03 has given opinion to the effect that Police Constable is unfit to do police constable duty. Accordingly he was Medically

Invalidated from Service with effect from 22.10.2003. It was not feasible to provide the petitioner with desk job in the physical condition narrated by the petitioner. It is also submitted that the first respondent has been addressed by the Director General of Police, Tamil Nadu and recommended that invalid pension equivalent to the pay last drawn by the petitioner and to sanction compassionate gratuity as deemed fit by the first respondent as a special case in Letter No.74890/PBA.II(2)/03 dated 12.01.04. It is also submitted that the first Respondent has also been addressed to regulate leave availed by the petitioner for 9 years, 9 months and 8 days in Letter No.74890/PBA.II(2)/03, dated 04.03.04 of the Director General of Police, Tamil Nadu.

From the above, it is evident that Natarajan who was just 33 years old when the incident took place, had to be medically invalidated from service, because of the injury sustained by him.

7. In **Nilabati Behara v. State of Orissa**, [1993 (2) SCC 746], the Supreme Court has held as follows:

"The defence of sovereign immunity being inapplicable, and alien to the concept of guarantee of fundamental rights, there can be no question of such a defence being available in the constitutional remedy. It is this principle which justifies award of monetary compensation for contravention of fundamental rights guaranteed by the Constitution, when that is the only practicable mode of redress available for the contravention made by the State or its servants in the purported exercise of their powers, and enforcement of the fundamental right is claimed by resort to the remedy in public law under the Constitution by recourse to Articles 32 and 226 of the Constitution."

8. The State is vicariously liable for the misdeeds of its servants and it cannot repudiate the liability.

9. Taking into consideration the age, nature of injury and the sufferings undergone by Natarajan and to serve the interest of justice, the first respondent is directed to pay a compensation of Rs.2 lakhs to Natarajan, within six weeks from the date of receipt of a copy of this order.

With the above direction, this petition is disposed of. No costs.

09.12.2016

gms

To

The Commissioner and Secretary to Government
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P.N.PRAKASH,J.

gms

Pre-delivery order in

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<http://www.judis.nic.in>