

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.03.2017

CORAM:

THE HON'BLE MR. JUSTICE T. RAJA

W.P. No.5651 of 2017

V. Dhandapani

Petitioner

vs.

- 1 The Secretary to the Government
Education Department
Secretariat
Chennai 600 009
- 2 The Director of School Education
DPI Campus
Chennai 600 006
- 3 The Chief Educational Officer
Villupuram District
Villupuram
- 4 The District Elementary Educational Officer
Villupuram District
Villupuram

Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of mandamus directing the respondents to refund the amount recovered from the petitioner's retirement benefits with interest.

For petitioner Mr. R. Rengaramanujam

For respondents Mr. V. Anandhamoorthy
Addl. Government Pleader

ORDER

Mr. V. Anandhamoorthy, learned Additional Government Pleader, accepts notice for the respondents.

2 This writ petition has been filed seeking a writ of mandamus directing the respondents to refund the amount recovered from the petitioner's retirement benefits, with interest.

3 A vignette of the facts would suffice:

3.1 The petitioner, while working as Jeep Driver under the control of the District Elementary Educational Officer, Villupuram, the fourth respondent herein, is said to have caused an accident on 05.05.1997, due to his rash and negligent driving of jeep bearing Regn. No.TN 32 G 0110, as a result of which, one Chandra sustained multiple injuries. Subsequently, an FIR was filed against him and he was also arrested and subsequently, he was released on bail. A case was also filed against him in C.C. No.332 of 1998 on the file of the Judicial Magistrate No.I, Villupuram, in which, he was acquitted vide order dated 14.08.2000.

3.2 Meanwhile, the injured Chandra filed a claim petition in M.A.C.T.O.P. No.662 of 1997 before the Motor Accident Claims Tribunal, Villupuram (for brevity "the Tribunal") arraying the Chief Educational Officer, Villupuram, as the sole respondent. The Tribunal, after a long trial, by award dated 30.10.2001, ordered payment of compensation of Rs.1,05,000/- to the petitioner by the respondent therein.

3.3 Challenging the award passed by the Tribunal, the respondent therein has preferred an appeal before this Court, which is under consideration. Such being the background, the petitioner has preferred the instant writ petition seeking the aforestated relief.

4 It is the stand of the learned counsel for the petitioner that in the claim petition before the Tribunal, the petitioner was not arrayed as a party respondent and therefore, he had no knowledge of the proceedings of the claim petition before the Tribunal. It is his further stand that albeit the accident had taken place on 05.05.1997, in the criminal case in C.C. No.332 of 1998 booked against the petitioner, he has been acquitted by the Judicial Magistrate No.I, Villupuram, by order dated 14.08.2000 and hence, he cannot be mulcted with the liability of paying Rs.1,30,000/-, which was wrongly deducted from the retirement benefits due to him. The next contention of the learned counsel for the petitioner is that when the Department itself has taken a stand before the Tribunal that there was no negligence on the part of the petitioner, they are estopped from deducting a sum of Rs.1,30,000/- from his retirement benefits.

5 In support of his contention that the petitioner is entitled to refund of the amount deducted from his retirement benefits, the learned counsel for the petitioner has drawn the attention of this Court to the communication dated 03.10.2016 addressed by the Chief Educational Officer, Villupuram, to the Director of School Education, wherein, the former has recommended for the refund of Rs.1,30,000/-.

6 Per contra, the learned Additional Government Pleader, by taking this Court through para no.9 of the Tribunal's award, submitted that though the petitioner, who was examined before the Tribunal as R.W.1, has deposed that he was not rash and negligent in his driving, the Tribunal, finding no merit in his deposition, has found him guilty of having caused the accident and has further held that the Department is vicariously liable to pay the compensation to the victim and hence, the deduction of the sum of Rs.1,30,000/- by the Department from the petitioner's retirement benefits, cannot be said to be illegal.

7 This Court gave its anxious consideration to the rival submissions.

8 Coming to the petitioner's contention that when the Department has taken a stand before the Tribunal that he was not rash and negligent in his driving and hence, the Department ought not to have deducted the compensation from his retirement benefits, the above contention of the petitioner was considered by the Tribunal and ultimately, it was held by the Tribunal that the petitioner was responsible for causing the accident, which had resulted in Chandra, the victim, sustaining multiple injuries. Hence, this contention of the petitioner is noticed to be rejected.

9 Further, when the Tribunal has passed an award holding that the Department is vicariously liable for the accident caused by the petitioner resulting in multiple injuries being sustained by the victim Chandra, it is beyond the ken of this Court as to how the Chief Educational Officer, Villupuram, can address the Director of School Education recommending refund of Rs.1,30,000/- citing the poor financial condition of the petitioner's family. Hence, based on the said recommendation, the petitioner cannot fortify his stand that he is entitled to refund of recovery.

10 That apart, as stated above, when the Tribunal has held that the Department is vicariously liable for the act of the petitioner, the Department is entitled to deduct the compensation amount from the petitioner's retirement benefits and that is what has been done by the Department. In such view

of the matter, it is not open to the petitioner to come to this Court seeking refund of the amount recovered, on the basis of the recommendation made by the Chief Educational Officer, Villupuram.

In the result, this writ petition fails and is accordingly dismissed as being devoid of merits. Costs made easy.

-s/d-
Assistant Registrar(CSIII)

True Copy

Sub-Assistant Registrar

To

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+1 cc to Mr.R.Rengaramanujam Advocate sr 14652

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