

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.02.2017

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

W.P. No. 25808 of 2013
and MP No.1 of 2013

S.Ditto Prabhakaran

.. Petitioner

Vs.

- 1 The Secretary to Government Co-operation,
Food and Consumer Protection Department,
Fort St. George, Chennai 600 009.
 - 2 The Registrar of Co-operative Societies,
Kilpauk, Chennai 600 010.
 - 3 The Deputy Registrar of Co-operative Societies,
Erode Circle, Erode.
- .. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, calling for records pertaining to the orders of the first respondent in G.O.Ms No.97 Co-operation, Food and consumer Protection Department dated 21.06.2013 in so far as it directs the recovery from the petitioner and the consequential orders of the third respondent in Na.Ka.No.2831/2013 Pa.Tho dated 14.08.2013 and quash the same.

For Petitioner : Mr.S.Kamadevan

For Respondents : Mr.V.Selvaraj,
Additional Government Pleader

O R D E R

The Writ Petition has been filed praying for issuance of Writ of Certiorari, calling for records pertaining to the orders of the first respondent in G.O.Ms No.97 Co-operation, Food and consumer Protection Department dated

21.06.2013 insofar as it directs the recovery from the petitioner and the consequential orders of the third respondent in Na.Ka.No.2831/2013 Pa.Tho dated 14.08.2013 and quash the same.

2. Heard Mr.S.Kamadevan, learned counsel appearing for the petitioner and Mr.V.Selvaraj, Additional Government Pleader appearing on behalf of the respondents.

3. According to the petitioner, the petitioner joined as Driver in the Co-operative Department on 01.09.1989. The petitioner drove a jeep bearing Registration No.TCQ 8515, on 11.05.2009 accompanying the Returning Officer concerned. At that time, the vehicle met with an accident, as one Suresh who was driving a two wheeler came in the opposite direction hit against the jeep and he sustained injuries. In view of the said accident, FIR was registered against the petitioner. Further, another accident took place on 20.08.2009, for which departmental proceedings were initiated by the 3rd respondent and a charge memo u/r 17(b) of the Tamil Nadu Civil Services (Disciplinary and Appeal) Rules was issued to the petitioner. Thereafter, an enquiry was conducted and a punishment of stoppage of increment for three months without cumulative effect was passed by the 3rd respondent vide proceedings dated 05.04.2010. As against the same, the petitioner preferred an appeal and the same is pending.

4. According to the petitioner, the injured person Suresh filed claim petition before the Motor Accidents Claims Tribunal, Karur in MCOP.No.318 of 2009 claiming compensation with reference to the accident took place on 11.05.2009. The petitioner was also one of the respondents in the said MCOP, and he was set ex-parte. After trial, the Tribunal awarded a sum of Rs.2,77,249/- to the aforesaid claimant Suresh alongwith interest at the rate of 7.5% p.a., against the department. There was no order against the petitioner. In order to comply with the award passed by the Tribunal through the 2nd respondent, the 1st respondent has passed the impugned order in GO Ms No.97 Co-operation, Food and Consumer Protection Department dated 21.06.2013, wherein the Government gave permission to deposit the award amount with interest as awarded by the Tribunal and also directed the second respondent to initiate recovery proceedings against the petitioner to recover the same from the petitioner's salary. Based on the directions of the first and second respondents, the third respondent passed the order of recovery dated 14.08.2013 to recover a sum of Rs.8,000/- from the petitioner's salary till the date of retirement. Challenging the above orders, the petitioner has filed the present Writ Petition before this Court.

5. It is stated by the learned counsel for the petitioner that the second respondent cannot pass the impugned order to recover the amount awarded to the claimant in MCOP No.318 of 2009 dated 11.05.2009. If at all, the respondents could follow the procedure as contemplated under the Government of Tamil Nadu, in its G.O.Ms.393, Home (Transport IV) Department dated 01.03.1988. Therefore, it is clear that the 3rd respondent, without following the procedures, straight away, passed recovery order which is liable to be quashed. The learned counsel for the petitioner further stated that the same authority already initiated disciplinary proceedings against the petitioner and a punishment was awarded by the 3rd respondent. Therefore, the impugned order passed by the 3rd respondent is liable to be quashed.

6. The learned Additional Government Pleader would submit that the impugned order passed by the 1st respondent is in accordance with law and by impugned order in GO Ms No.97 Co-operation, Food and Consumer Protection Department dated 21.06.2013, the 2nd respondent was directed to comply with the award passed by the MCOP Tribunal, and also to take steps to recover the same from the petitioner. In the aforesaid order, the 1st respondent has also directed the 3rd respondent to initiate recovery proceedings against the petitioner to recover the amount. In view of the same, the 3rd respondent has passed the impugned order of recovery. Therefore, he prays that the Writ Petition may be dismissed.

7. According to the petitioner, even though the petitioner has challenged the order passed by the first respondent in G.O.Ms. 97 Cooperation, Food and Consumer Protection Department dated 21.06.2013, insofar as it relates to the direction to the respondents 2 and 3 to initiate recovery proceeding against the petitioner is concerned and the said direction is only to respondents 2 and 3 to recover the award amount, from the petitioner, the third respondent, without following the procedure as contemplated under the Government orders as well as the Rules under the Motor Vehicles Act, has directed recovery of the said amount from the petitioner, for the compensation paid by the Department. Therefore, the petitioner has challenged the Government order as well as the impugned order passed by the 3rd respondent.

8. The learned Special Government Pleader clarified that since the Government has passed in G.O.Ms.No. 97 Co-operation, Food and Consumer Protection Department dated 21.06.2013 directing the 3rd respondent to initiate recovery proceedings against the petitioner, the recovery order passed by the 3rd respondent, cannot be interfered with by this Court.

9. I have considered the submissions made by both the parties and perused the materials available on record.

10. The point for consideration in this Writ Petition is whether the 3rd respondent has authority to recover the award amount with interest from the petitioner, without following any procedure.

11. The learned counsel for the petitioner, relied on the Division Bench decision of this Court in WA(MD).No.277 of 2006, between S.Krishnasamy and The Superintendent of Police, Dindigul District, Dindigul, wherein in paragraph 9 to 12, it was observed as follows:

9. In view of the analysis above, a fortiori we hold that the action of the respondent is a misconceived one. Nowhere, G.O.Ms.No.393, Home (Transport VI) Department, dated 01.03.1988, envisages that without adhering to the principles of natural justice, the amount should be recovered under Rule 8(v)(a) of the Tamil Nadu Civil Services (Discipline and Appeal Rules, Previously nomenclature as TNCS (CCA) Rules) There is no ambiguity or double entendre in the G.O. in addition to there being no carte blanche given to anyone to arbitrarily recover from the driver, any amount. Paragraph No.3 of the said G.O.is extracted here under for ready reference.

"3. In orders to enforced strict discipline among the drivers of Government vehicles, Government have examined the question of recovering token amount from the drivers in cases of accidents to Government vehicles. Government consider that under the provisions of rule 8(v)(a) of the Tamil Nadu Civil Services (C.C.A.) Rules, when any pecuniary loss is caused, recovery from their pay of the whole or part of such pecuniary loss may be made by way of penalty. In these circumstances, Government consider that there is no need for making separate rules for effecting token recovery from the drivers in case Government vehicles got involved in accidents". (emphasis supplied)

10. What the said G.O. Inter alia evinces, is that it is for the disciplinary authority to consider on merits, whether whole or part of such pecuniary loss could be recovered. In the impugned order passed by the respondent, absolutely there is no iota or shred of evidence to show as to why the appellant should be ordered to pay the entire compensation amount, including the

interest and costs paid by the police department. The G.O. By specifically referring to the words "whole or part of such pecuniary loss". Mandates the disciplinary authority concerned to apply his mind based on facts and evidence whether whole or part of such loss should be recovered or not. Without, in any way considering all these legal requirements set out supra, the respondent has passed the impugned order which is liable to be set aside.

11. Learned counsel for the appellant cited the decision of the Hon'ble Apex Court in Punjab State Civil Supplies Corporation Limited Vs. Sikandar Singh, reported in (2006) 3 SCC 736. An excerpt from the said decision would run thus.

"18. The appellant is "State" within the meaning of Article 12 of the Constitution. The terms and conditions of service by and between the appellants and the respondents herein are governed by the service rules and/or terms and conditions of contract. If the respondents herein had committed misconduct they could have been and in fact were departmentally proceeded with. In the said departmental proceedings appropriate punishments had been imposed upon them. So far as Respondent-defendant 1 is concerned, therein his negligence had been held to have contributed to the loss of 2/3 rd of the shortages and by way of penalty, he was asked by the Appellant Authority to deposit the requisite number of bags of wheat and/or pay the price thereof. The said order having been complied with and attained finality, it is binding on the appellant. The dispute cannot, therefore, be permitted to be reopened."

In fact, this decision has been cited out of context on the side of the appellant, as the facts in the cited case are different from the one on hand. Even otherwise, from the cited decision, it is clear that departmental proceedings could be initiated by the employer for the loss caused to him.

12. In the result, the Writ Appeal is allowed setting aside the order dated 27.06.2006 in W.P.(MD) No.2878 of 2006 and by giving the following directions.

(a) The order of the respondent in R.C.No.J2/26050/1998 (D.O.168/2006), dated 10.03.2006, is quashed. However, it is open for the respondent to initiate appropriate departmental proceedings, complying with the appropriate

rules and adhering to the principles of natural justice as envisaged in the maxim 'audi alteram partem'.

(b) The learned Advocate for the appellant prayed for refund of the amount so far recovered from the appellant under the impugned order. In view of this Court quashing the order of the respondent, as a sequel, the respondent/government is ordered to refund the amount recovered, so far, to the appellant.

(c) We make it clear that the respondent shall be at liberty to initiate departmental proceedings, as set out supra and the disciplinary authority is at liberty to take independent decision, without in any way influenced by the observations and findings given in this Writ appeal.

12. Learned counsel for the petitioner also relied on the decision of this Court in WP. No.4428 of 2006, between R.Anbalagan and The Director General of Police, Mylapore, Chennai 4 and others, wherein in paragraphs 5 and 6, it is observed as follows:

5. The petitioner was a driver when the accident took place on 31.5.1998. In similar circumstances, the Division Bench of this Court in W.P.No.11002 of 1999 by order dated 7.7.1999 held as follows:

"The Department's action seeking recovery of the amount awarded by the Motor Accident Claims Tribunal from the Driver of the vehicle is wholly unsustainable as the respondent as the employer, is duty bound in law to pay the compensation amount. It is further stated therein that the recovery proceedings made by the employer is misconceived and the said claim was rightly negatived by the Tamil Nadu Administrative Tribunal in O.A.No.6516 of 1996 by order dated 13.8.1998."

Following the said order of the Division Bench, W.P.No.17856 of 2008 was allowed by me by order dated 22.08.2008 against recovery ordered against a Driver of a Police Vehicle. The said order was approved by the Division Bench of this Court in the decision reported in (2009) 2 MLJ 849 (Sevugaperumal v. Superintendent of Police). In para 14 the Division Bench held as follows:

"14. Before us, the learned counsel for the petitioner has cited two judgments in order to show that in similar cases the Courts have held that compensation amount has to be paid by the department or by the employer concerned. Reliance was first placed

on the judgment of a learned Single Judge of this Court in the case of R.Nagendra Boopathi V.Superintendent of Police, District Police Office, Salem, decided on 22.8.2008 passed in W.P.No.17856 of 2008. From the facts of that case, it appears that there was a mechanical failure of the vehicle involved and as a result of which there was an accident. Apart from that it also appears in that case that the driver of the vehicle, whose official duty was to drive the said vehicle, was a party before the Motor Accident Claims Tribunal and the Tribunal exonerated the driver."

The Division Bench in the above cited decision held that if the police vehicle is driven by a driver of the Department and caused the accident, the driver cannot be held liable for the compensation paid or part thereof, and if a person has driven the vehicle, who was not the driver, the department can recover part of the compensation paid to the victims.

6. Following the above cited decisions of the Division Bench of this Court and that of mine, I hold that the impugned order is unsustainable and the order of recovery dated 1.7.2005, confirmed in appeal by order dated 18.11.2005, is quashed. The respondents are directed to repay the amount recovered from the petitioner within a period of two weeks from the date of receipt of copy of this order. No costs. Connected miscellaneous petition is closed.

13. Therefore, in the light of the aforesaid decisions of this Court, I have no hesitation to set aside the impugned order passed by the 3rd respondent. Accordingly, the impugned order passed by 3rd respondent is set aside. Liberty is granted to the 3rd respondent, if it is permissible under law, to initiate recovery proceedings against the petitioner in accordance with law.

14. The Writ Petition is allowed with the above observations. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

jv

Sub Assistant Registrar

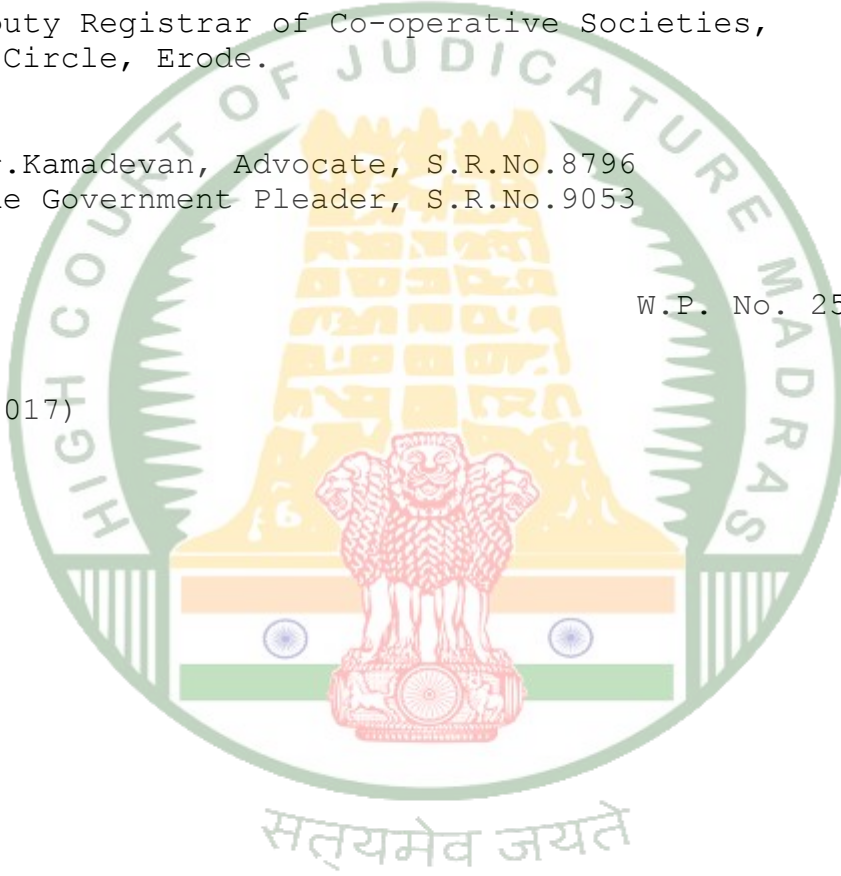
To

- 1 The Secretary to Government Co-operation,
Food and Consumer Protection Department,
Fort St. George, Chennai 600 009.
- 2 The Registrar of Co-operative Societies,
Kilpauk, Chennai 600 010.
- 3 The Deputy Registrar of Co-operative Societies,
Erode Circle, Erode.

+1cc to Mr.Kamadevan, Advocate, S.R.No.8796
+1cc to the Government Pleader, S.R.No.9053

W.P. No. 25808 of 2013

SSI (CO)
RS (18/04/2017)



WEB COPY