



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.05.2017

CORAM

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P. (MD) .No.8841 of 2013

and

MP (MD) No.1 of 2013

Vijayan

.. Petitioner

Vs.

1. The Commissioner of Agriculture,
Chepauk, Chennai-5.
2. The District Collecotr,
Theni District, Theni.
3. The Joint Director of Agriculture,
Theni District, Theni.
4. The Assistant Executive Engineer,
Agricultural Engineering Department,
Usilampatti, Madurai District.
5. The Agricultural Officer,
Uthamapalayam, Theni District.

6. Navas @ Navaskhan

.. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, to call for the records from the third respondent in his proceedings in No.M4/10081/2009, dated 21.02.2013 and quash the same.

For Petitioner : Mr. N.Sathish Babu

For Respondents 1 to 5 : Mr. S.Kumar

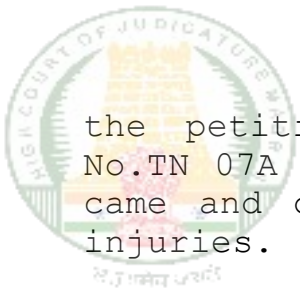
Additional Government Pleader

For Respondent 6 : No appearance

O R D E R

The Prayer in the Writ Petition is for a Writ of Certiorari, to call for the records from the third respondent in his proceedings No.M4/10081/2009, dated 21.02.2013 and quash the same.

2.The short facts leading to file the writ petition is that, the petitioner was appointed as Office Assistant cum Driver at the Agricultural Engineering Department at Madurai, and at present the petitioner is working as Jeep Driver at the fourth respondent office. While so, on 12.06.2001, when



the petitioner drove the department jeep bearing Registration No.TN 07A 0801 as part of the official duty, the sixth respondent came and dashed against the jeep and as a result, he sustained injuries.

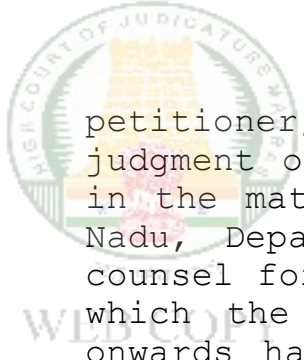
3. Because of the said accident, the sixth respondent filed a claim petition in M.C.O.P No.473 of 2003 on the filed of the Motor Accident Claims Tribunal, Pudukottai, and the same was dismissed on 31.10.2006, on the ground that the accident took place was purely due to rash and negligent driving of the sixth respondent. As against which, the sixth respondent preferred an appeal before this Court in C.M.A. No. 311 of 2008, where, this Court allowed the appeal filed by the sixth respondent and directed to pay a compensation of Rs.3,10,000/- (Rupees Three Lakhs and Ten Thousand only) along with interest at the rate of 9% from the date of claim application, till the date of payment to the sixth respondent.

4. Pursuant to which, the sixth respondent filed an Execution Petition in E.P.No.8 of 2012 before the Principal District Judge, Theni, for attachment of movable properties of the second respondent office, as the compensation award directed to be paid to the sixth respondent, was not paid.

5. As a result, instead of paying the compensation to the sixth respondent, as ordered by this court, in the appeal filed by the sixth respondent for the said accident, the third respondent has issued a recovery proceedings, against the petitioner, on 21.02.2013, whereby the third respondent directed to recover a sum of Rs.5,52,310/- (Rupees Five Lakhs Fifty Two Thousand Three Hundred and Ten only) in 150 equal monthly installments from December 2012 salary. Challenging the said order of recovery dated 21.02.2013 issued by the third respondent, the petitioner has filed this writ petition with the aforesaid prayer.

6.Mr. N.Sathish Babu, learned counsel appearing for the petitioner would submit that first of all the petitioner being a driver, drove the department jeep on official duty cannot be said to be the person responsible to pay the compensation out of the motor accident which took place, as the said function is a sovereign function where the petitioner drove the department vehicle. The learned counsel would also submit that before passing the impugned order, no prior notice was issued. The learned counsel would also submit that, the compensation for the deceased or victim out of the motor accident claim can only be made by the owner of the vehicle and not by the driver who drove the vehicle.

<https://hcservices.ecourts.gov.in/hcservices/> learned counsel for the petitioner would also submit that the petitioner being a Group-D employee, cannot be recovered, even otherwise, anything from the salary of the



petitioner, as the law has been settled in this regard by the judgment of the Hon'ble Apex Court, reported in (2007) 6 MLJ 513 in the matter of V.Babu Rajan Vs. Secretary, Government of Tamil Nadu, Department of Health and others. Therefore, the learned counsel for the petitioner would submit that the impugned order by which the recovery proceedings is going on from December 2012 onwards has to be quashed and the amount already recovered from the petitioner may be directed to be refunded to the petitioner.

8. Per contra, Mr. S.Kumar, learned Additional Government Pleader appearing for the respondents 1 to 5 would submit that in order to handle the case like this, as to whether the compensation payable by the Government due to Motor Accident Claim, because of the rash and negligent act / driving of the Government drivers is to be recovered from them, were considered by the Government and a Government Order to that effect in G.O.Ms.No.393, Home Department dated 01.03.1988 was issued. The import of the said Government Order is hereunder reproduced for better appreciation of the issue:

HOME (TR.IV) DEPARTMENT

G.O.Ms.No.393.

Dated: 1.3.1988.

Order:

Under section 94(2) of the Motor Vehicles Act 1939, vehicles owned by Central and State Governments need not be insured. According to rule 22 of the Tamil Nadu Departmental Vehicles Control Rules, 1976, all Government owned vehicles used for Government purposes unconnected with commercial enterprise are exempted from insurance against third party risks and the Government have to settle the claims, if any, arising out of the accidents in which departmental vehicles are involved, in the same way as the private insurance companies with which private motor vehicles are generally insured. The Government have examined the question of insuring the State Government vehicles in consultation with the Director, Motor Vehicles Maintenance Department. The Director, Motor Vehicles Maintenance Department is of the opinion that the Government Vehicles need not be covered by insurance policies, against third party risks, since it will involve payment of a huge amounts as premium.

2. Government accept the views of the Director Motor Vehicles Maintenance Department. Government also direct that the present procedure laid down in rule 22 of the Tamilnadu Department vehicles control



rules, 1976 to settle claims, if any by the Government be allowed to continue.

3. In order to enforce strict discipline among the drivers of Government vehicles, Government have examined the question of recovering a token amount from the drivers incases 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 to Government by the negligence of the Government servants, 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 get involved in accidents.

/By order of the Governor/

9. Therefore, the learned Additional Government Pleader would submit that the recovery of the amount payable towards the deceased / victim for motor accident claim, from the erring driver can be made by invoking Rule 8(v)(a) of the Tamil Nadu Civil Service (Classification Control and Appeal) Rules. Since, the petitioner is also a Government servant and the said rule would govern his service also, certainly, he can also be put under the said Service Rule and recovery can be made, as if no fault of the Government, the Government has to pay a huge sum of more than five lakh rupees to the injured sixth respondent by way of motor accident claim. The learned Government Pleader would also submit that the said issue in fact was considered by this Court and a decision was rendered interpreting Rule 8(v)(a) of the said rule by this court in a reported decision in (2007) 6 MLJ 513 in the matter of V.Babu Rajan Vs. Secretary, Government of Tamil Nadu, Department of Health and others.

10. The learned Additional Government Pleader very fairly submits that though, in the said decision it was decided in favour of the Government that recovery can be made from erring drivers / Government servants by invoking Rule 8(v)(a) of the said rule, the said judgment was appealed before the Division Bench of this Court. However, the Division Bench in their judgment, in W.A.No.507 of 2008 dated 24.03.2009, in the matter of V.Babu Rajan Vs. The Government of Tamil Nadu, represented by Secretary, Department of Health and others. has held that recovery cannot be made from the drivers / Government servants by invoking the said rule of the Tamil Nadu Civil Service (Classification Control and Appeal) Rules without completing any disciplinary proceedings against such erring drivers / Government servants. In



view of the said Division Bench Judgment, the judgment of the learned Judge, in (2007) 6 MLJ 513 (cited supra) since has been reversed, the law governing the field is to some extent in favour of the petitioner.

11. This Court has considered the said submissions made by both sides. After having gone through the G.O.Ms.No.393, dated 01.03.1988, the judgment of the learned Judge in (2007) 6 MLJ 513, as well as Division Bench Judgment of this Court made in W.A. No.507 of 2008 and M.P. No.1 of 2008, dated 24.03.2009, this Court is of the view that the issue raised in this writ petition is covered by the said Division Bench decision of this Court (cited supra).

12. The learned Judge in the said judgment in 2007 (6) MLJ 513, after having considered the import of Rule 8 (v)(a) of Tamil Nadu Civil Services (Classification Control and Appeal) Rules, has ultimately concluded in the following terms:

"6. I have gone through the decisions relied on by the learned Counsel for the petitioner. But with great respect, I would like to say that the Hon'ble Division Bench would not have passed the above order, if the relevant rules relating to recovery and Government Order in G.O. Ms. No. 393 Government of Tamil Nadu Home (TN IV) Dept. Dated 01.03.1988 were brought to notice of the Hon'ble Bench. As per Rule 8 (v)(a) of the Tamil Nadu Civil Services (CCA) Rules, when any pecuniary loss is caused to the Government due to the negligence of the Government Servant, recovery from their pay, whole or part of such pecuniary loss, can be made by way of penalty. Since the Government vehicles are not insured as per Section 94(2) of the Motor vehicles Act, 1989, Government is constrained to pay huge sum of compensation to the third parties, due to the negligence of the drivers of the Government vehicle. Therefore, the Government thought it fit to enforce strict discipline among the drivers of the Government vehicles and it recovered the amounts from their pay, if the accident caused was due to the negligence of the drivers. Under such circumstances, the Government in G.O.Ms. No. 393 Government of Tamil Nadu Home (TN IV) Dept. Dated 01.03.1988 has observed that there is no need for making separate rules for effecting token recovery from the drivers, if the drivers are responsible for the accident.

7. If the erring Government servant is left to shoulder the loss, caused due to the negligence of the driver, has to be borne by the Government and huge amount of compensation has to be paid from the



Government funds. Invariably, in all these cases, Government as an employer, has to pay the compensation caused to the injured or the legal representatives of the deceased, as the case may be. Even if departmental action taken against the erring Government servant for causing accident, it would not be a substitute for the monetary loss caused due to his negligence. The Government Order issued to enforce strict discipline cannot said, to-be arbitrary or unreasonable. The Government Order is to ensure that the drivers of the Government vehicles exercise due care and caution while driving the vehicles and reduce number of the accidents. Unless the above said Rule and the Government Order is enforced strictly against the erring Government drivers, then the Government has to spend huge money towards litigation and payment of compensation."

13. However, when the said judgment was appealed before the Division Bench, after having analysed the issue in detail, the Division Bench has given its reasoning for reversing the said decision and the said reasoning and conclusions arrived at by the Division Bench of this Court is as follows:

"4. We have considered the rival submission and also perused the records.

5. As rightly pointed out by the appellant, the Division Bench of this Court in W.P.No.11002 of 1939 has taken the view that such recovery is not permissible under law. We do not find any reason to take a different view and we fully concur with the said view taken by the Division Bench for the following reasons:-

(i) Of course, the Government has got power to recover any amount from a Government servant by way of penalty to recover the pecuniary loss sustained by the Government due to the negligence on the part of the Government servant, under Rule 8(v) (a) of the Tamil Nadu Civil Services (CCA) Rules, but, before doing that, the authority has to follow the procedure contemplated under the Rules. Such a penalty under Rule 8(v)(a) has been defined as a minor penalty. But since huge amount is involved, as provided in Rule 17(a) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules, it should be dealt with as a penalty to be dealt with under Rule 17(b) of the Rules.

(ii) It is needless to say that before imposing any punishment, there is a long procedure provided



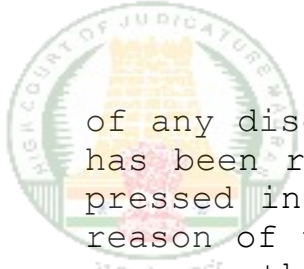
in Rule 17(b) of The Tamil Nadu Civil Services (Discipline & Appeal) Rules, which undoubtedly is mandatory. In the case on hand, it is not the case of the respondents that any charge memorandum was issued or explanation was called for or any punishment was imposed to the appellant by way of penalty. Even the impugned order of the third respondent does not indicate any such thing.

6. For all these reasons, we are of the view that the view taken by the learned single Judge that in view of Rule 8(v) (a), the impugned order of the third respondent is valid, cannot be accepted.

7. There is yet another ground also in favour of the appellant. The liability to pay compensation under the Motor Vehicle Act by the owner of the vehicle is a statutory liability and not a liability arising out of common law. The said statute does not provide anywhere that the said compensation amount could be recovered by the owner of the vehicle from the Driver after satisfying the award. Contrary to the award, if any such action is taken by the owner of the vehicle to recover the amount from the Driver, it would amount to re-writing the judgment of the tribunal. It is not as though the appellant was not a party before the Motor Accident Claims Tribunal admittedly, the claim was made both against the appellant and the respondents. Having considered the factual as well as the legal aspects, the tribunal has directed only the respondents to pay compensation and not the appellant. The respondents have not challenged the award. Therefore, as pointed out earlier, if the respondents are allowed to recover the amount except by way of disciplinary proceedings as indicated above, it would certainly run counter to the award of the tribunal. Thus, on this ground also, the impugned order is liable to be set aside.

8. In view of the above position, the writ appeal is allowed and the order of the learned single Judge is set aside and the impugned order of the third respondent in Na.Ka.No.1498/A3/2003 dated 26.07.2005 is quashed. No costs. Consequently, connected miscellaneous petition is closed."

14. Here in the case in hand, admittedly there is no disciplinary proceedings initiated against the petitioner. In the absence of such disciplinary proceedings, even imposing penalty on the petitioner is completely ruled out. Therefore, in the absence



of any disciplinary proceedings, even a chance of imposing penalty has been ruled out, G.O.(Ms.) No.393, dated 01.03.1988, cannot be pressed into service of the respondents. Therefore, applying the reason of the Division Bench Judgment (cited supra) in the present case as the facts are similar to that of the said case, where the judgment has been delivered, this Court feels that the impugned order is totally un-sustainable.

15. Moreover, any order of recovery can be made only after putting the Government servant under notice without which a recovery proceedings for a huge sum from the Group 'D' servant cannot be made. Moreover, whatever be the reason, even if the amount is wrongly paid by way of advance or increment or even by way of recovery of loss incurred by the Government Department, because of the negligent act on the part of the Government servant, sofar as Group 'C' and 'D' employees are concerned, it is the only remedy to conduct a departmental proceedings as has been mentioned in the judgment of the Hon'ble apex Court (cited supra).

16. Therefore, for all these reasons, this Court is of the considered view that the impugned order of recovery is totally un-sustainable and unjustifiable, accordingly, it is liable to quashed. Hence the same is quashed.

17. Since, the learned Counsel for the petitioner asserted that pursuant to the impugned order, recovery was started from December 2012 onwards, whatever recovery already been made from the petitioner shall be refunded to the petitioner immediately, at any rate within a period of eight weeks from the date of receipt of a copy of this order.

18. With these directions the writ petition is allowed to the terms indicated above. The impugned order of the third respondent in proceedings No.M4/10081/2009, dated 21.02.2013 is quashed. No costs. Consequently, connected MP(MD) No.1 of 2013 is closed.

Sd/-

Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar

To

1. The Commissioner of Agriculture,
Chepauk, Chennai-5.

2. The District Collector,
Theni District, Theni.



3. The Joint Director of Agriculture,
Theni District, Theni.

4. The Assistant Executive Engineer,
Agricultural Engineering Department,
Usilampatti, Madurai District.

5. The Agricultural Officer,
Uthamapalayam, Theni District.

+1cc to M/S.N.Sathish Babu, Advocate SR.No. 56522

+1cc to Special Government Pleader, SR.No. 56495

ORDER MADE IN
W.P. (MD) .No.8841 of 2013
and
MP (MD) No.1 of 2013
11.05.2017

rm/mr

JM/SV MMS/SAR 1/07.12.2017/9P/8C