

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 08.06.2018

Coram

The Honourable Mr. Justice M.M.SUNDRESH
and
The Honourable Mr. Justice N.ANAND VENKATESH

Writ Appeal No.2291 of 2010
and
M.P.No.1 of 2010

- 1.The Chief Engineer,
Agricultural Engineering Department,
Chennai-600 035.
- 2.The Superintendent Engineer,
Agricultural Engineering Department,
Salem.
- 3.The Assistant Executive Engineer,
Agricultural Engineering Department,
Perambalur.

... Appellants

...Vs...

K.Annadurai

... Respondent

Writ Appeal filed under Clause 15 of Letters Patent Appeal
against the order dated 06.08.2009 made in W.P.No.34959 of 2006.

W.P. No. 34959/2006:

Writ Petition filed under Article 226 of the constitution of
India praying for a Writ of Certiorari to call for the records
relating the Proc. No. E.1304/94 dt. 26.12.2000 of the 3rd
Respondent and quash the same.

For Appellants : Mr.B.Manoharan,
Additional Government Pleader

For Respondents: No Appearance

JUDGMENT

(Judgment of the Court was delivered by N.ANAND VENKATESH., J.)

This Writ Appeal has been filed against the order of the learned Single Judge passed in W.P.No.34949 of 2006, dated 06.08.2009.

2.The short facts that are necessary for the purpose of deciding this Writ Appeal; The respondent was working as a Jeep Driver in the Agricultural Engineering Department. On 23.05.1994 while he was on duty, he parked his vehicle in front of a Hotel. On returning back he found that the vehicle was missing and on enquiry came to know that one Arjunan took away the vehicle unauthorisedly and involved the vehicle in an accident resulting in serious injuries to one Tmt.Saraswathi. The injured person filed Motor Accident Claim claiming compensation of Rs.1,00,000/- [Rupees One Lakh Only] from the Government for the injuries suffered by her.

3.The 3rd appellant by his proceedings dated issued Charge Memo under Rule 17(a) of the Tamil Nadu Civil Services [D & A] Rules against the respondent where the specific charge was that the respondent had caused loss to the Government due to his negligence. Thereafter, the 3rd appellant passed the Impugned Order dated 26.12.2000 against the respondent for recovery of a sum of Rs.79,626/- [Rupees Seventy Nine Thousand Six Hundred and Twenty Six Only] from the salary of the respondent in monthly installment

4.Aggrieved by the Impugned Order passed by the 3rd appellant, the respondent filed O.A.No.628 of 2001 before the Tamil Nadu Administrative Tribunal challenging the recovery proceedings. This O.A. Came to be transferred to this Court and was renumbered as W.P.No.34959 of 2006.

5.The learned Single Judge after considering the averments made in the affidavit filed along with the writ petition and the reply filed in the writ petition and also the documents filed along with the writ petition and after considering the submissions made on either side, was pleased to allow the writ petition by an order dated 06.08.2009 as a result of which the impugned proceedings came to be quashed. Aggrieved by the same, the department has filed this writ appeal.

6.The learned counsel representing the appellant would submit that the respondent was negligent in leaving the vehicle unlocked which resulted in another person Arjunan taking away the vehicle and causing the accident. The further submission of the learned counsel for the appellants is that if not for the negligence of the respondent, this accident would not have happened and only because of the gross negligence, the Government suffered loss due to payment of compensation in the M.A.C.T proceedings to the injured person. The further submission of the learned counsel for the appellants is that the

learned single Judge failed to appreciate the fact that even though it was Arjunan who caused the accident, the accident itself would not have happened if the respondent had been careful in keeping the vehicle in his safe custody.

7. In spite of notice being sent to the respondent, it has not been served and the service was awaited. Taking into consideration that the writ appeal is of the year 2010 and respondent by now would have superannuated and gone out of service, we decided to hear the case on merits.

8. We have taken into consideration the submissions made by the learned counsel for the appellants and also the materials placed before us. We find from the records that even though the department had initiated proceedings by issuing a charge memo to the respondent, no enquiry was conducted and the Impugned Order came to be passed summarily directing the recovery of a sum of Rs.79,629/- [Rupees Seventy Nine Thousand Six Hundred and Twenty Six Only] from the salary of the respondent. This order was passed without giving any opportunity. That apart the department has taken specific stand before the Motor Accidents Tribunal that there was no negligence on the part of the department and that the department is in no way responsible for the accident. Having taken a stand to that effect and more particularly when the respondent was not a party before the tribunal to put forth his case, simply because compensation has been awarded by the tribunal to a 3rd party who suffered injuries due to the accident caused by one Arjunan, that liability cannot be mulcted upon the respondent.

9. We find that the learned Single Judge has also taken into consideration the fact that no proper opportunity was given to the respondent before passing the Impugned Order directing recovery of amount from the respondent. The recovery proceedings is of the year 2000 and even at the time when the respondent filed the O.A. before the Tamil Nadu Administrative Tribunal in the year 2001, he was 42 years. By now the respondent would have retired from service. At this length of time we do not propose to remit the case back to the department to conduct a fresh enquiry after affording an opportunity to the respondent. The amount involved in this case is also not very high and we do not find any ground to interfere with the order of the learned single Judge. While confirming the order of the learned Single Judge, we make it clear that the order confines itself to the facts and circumstances of this case and this cannot be taken as precedent in any other case of similar nature that may arise in future.

10.For all the reasons stated above we dismiss this Writ Appeal. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

-s/d-
Assistant Registrar (CS-IX)

True Copy

Sub-Assistant Registrar

KP

To

- 1.The Chief Engineer,
Agricultural Engineering Department,
Chennai-600 035.
- 2.The Superintendent Engineer,
Agricultural Engineering Department,
Salem.
- 3.The Assistant Executive Engineer,
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Perambalur.

W.A.No.2291 of 2010

NRL (CO)
SP (19/06/2018)

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