



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.03.2018

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THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.(MD) No.348 of 2011

and

M.P(MD) Nos.2,3 and 4 of 2011

S.Karuvelan
Son of Shanmugam,
Police Constable No.749,
Ottapidaram Police Station,
Thoothukudi District.

... Petitioner

-vs-

The Superintendent of Police,
Thoothukudi District,
Thoothukudi.

... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned recovery order passed by the respondent in C.No.C1/46566/2010 D.O/1224/10, dated 21.10.2010 and to quash the same and consequently to direct the respondent to refund the amount so far recovered from the pay of the Petitioner from the month of October 2010.

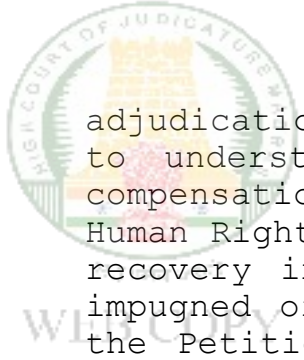
For Petitioner	: Mr.R.Gandhi for M/s.J.Karthikeyan
For Respondent	: Mr.R.Sethuraman Special Government Pleader

ORDER

The order of recovery, dated 21.10.2010 is under challenge in this Writ Petition.

2.The Writ Petitioner was working as Head Constable and he was posted in Vaigai Express to serve in the running train. However, certain incidents took place in the running train and the learned counsel for the Petitioner states that the Writ Petitioner was no way connected with any such incident at all.

3.A case before the Human Rights Commission was preferred by some victims, wherein, the Writ Petitioner was not at all a party. The Writ Petitioner had not received any notice from the Human Rights Commission nor the Petitioner participated in the



adjudication before the Human Rights Commission. The Petitioner came to understand that the Human Rights Commission imposed certain compensation on the State and pursuant to the order passed by the Human Rights Commission, the respondent issued the impugned order of recovery in proceeding, dated 21.10.2010. Even while passing the impugned order of recovery, no notice or opportunity was given to the Petitioner. Thus the entire episode regarding the proceedings before the Human Rights Commission as well as the impugned order were issued behind the back of the Writ Petitioner and the Writ Petitioner had no knowledge about these incidents. It is the contention of the Petitioner that no notice or opportunity was given to the Writ Petitioner even to defend his case. Therefore the impugned order is in violation of the principles of natural justice.

4.The learned Special Government Pleader appearing for the respondent states that the order of recovery was issued based on the orders passed by the Human Rights Commission. The Writ Petitioner was posted in the running train to guard. However, on account of certain incidents, the victims travelled in the train filed a complaint before the Human Rights Commission and the Human Rights Commission imposed compensation on the State. Therefore it is necessary for the competent authorities to recover the compensation from the person concerned as per G.O.Ms.No.298 Public(Law and Order-B) Department, dated 31.1.1998. Under these circumstances, there is no irregularity in respect of the order of recovery.

5.This Court is not inclined to go into the factual details of the present Writ Petition in view of the fact that the impugned order of recovery was passed even without issuing show cause notice or opportunity to the Writ Petitioner. Thus the description of factual details in respect of the incident took place need not be narrated in this Writ Petition. However, the fact remains that no show cause notice or opportunity was given to the Writ Petitioner. Any order affecting the rights of the Government servants cannot be passed without providing an opportunity and therefore the impugned order is in violation of principles of natural justice. In respect of the incidents and in respect of the orders passed by the Human Rights Commission, the Writ Petitioner must be provided with an opportunity to defend his case. Under these circumstances, this Court is of an opinion that the order of recovery, at the outset, is liable to be set aside, when the same was issued in violation of the principles of natural justice.

6.In this view of the matter, the impugned order passed by the respondent in C.No.C1/46566/2010 D.O/1224/10, dated 21.10.2010 is quashed and the matter is remitted back to the respondent for issuing show-cause notice to the Petitioner and on receipt of explanation/objection from the Writ Petitioner and after providing a reasonable opportunity, if necessary, a personal hearing to the Writ Petitioner and thereafter take a decision and pass orders on merits and in accordance with law.



7. Accordingly, the Writ Petition stands allowed. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

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Sd/-
Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar

To

The Superintendent of Police,
Thoothukudi District,
Thoothukudi.

+ 1 CC TO Mr.R.GANDHI, ADVOCATE IN SR No. 52684

VSN

TE/KKR/SAR-3 : 13/03/2018 : 3P/3C

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