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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.06.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD) No.4670 of 2011

and

M.P. (MD) No.1 of 2011

P.Shanmugam (Died)

... Petitioner

1.Packiam

2.Prabhu Vijay

[P1 & P2 are substituted of the deceased
sole petitioner vide court order dated
01.11.2017 in W.M.P.(MD) No.15918 of 2017]

vs.

1.The Director

Public Health and Preventive
Medicine Department
Chennai-6

2.The Deputy Director

Office of the Health Services
(Collector of Office Premises)
Virudhunagar
Virudhunagar District

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of certiorari calling for the records pertaining to the impugned order passed by the 2nd respondent dated 23.03.2011 in Na.Ka.No.432/Aa1/2000 and quash the same.

For Petitioner : Mr.R.Vijayakumar

For Respondents : Mr.D.Muruganantham

Additional Government Pleader

ORDER

The impugned order, dated 23.03.2011, issued by the 2nd respondent to recover the award of compensation by the Motor Accident Claims Tribunal in M.C.O.P.No.225 of 2000 is sought to be quashed in the present writ petition.

2. The original writ petitioner passed away and subsequently his wife as well as son had been impleaded as writ petitioners in the present writ petition.



3. The original writ petitioner was working as a driver in the Office of the Deputy Director, Health Services at Virudhunagar. The original writ petitioner was put in charge of a Jeep bearing registration No.TM08861. The Jeep driven by the original writ petitioner met with an accident along with a TVS 50 Motor vehicle. A criminal case was registered against the original writ petitioner in Crime No.9 of 2000, under Sections 279 and 338 I.P.C. The original writ petitioner was acquitted from the criminal charges in C.C.No.179 of 2000, on the file of the Judicial Magistrate No.I, Virudhunagar, by its Judgment dated 30.01.2002. However, the Motor Accident Claims Tribunal proceeded with the claim for compensation against the accident victim in M.C.O.P.No.225 of 2000. The Motor Accident Claims Tribunal proceeded with the trial and passed an award on 12.11.2003 holding that the claimant is entitled for the compensation. It is pertinent to note that the original writ petitioner was a party to the Award issued by the Motor Accident Claims Tribunal at Virudhunagar. The Award became final and consequently, the second respondent issued the impugned order in proceedings, dated 23.03.2011, stating that the award amount settled by the Government to the claimant pursuant to the Judgment of the Motor Accident Claims Tribunal is to be recovered from the driver, who was held responsible for the accident occurred and for the payment of compensation to the victim. Accordingly, the second respondent issued an order directing the original writ petitioner to pay the award amount of Rs.1,26,061/- along with interest to be recovered by way of installments, more specifically in 13 installments.

4. The writ petitioner states that no notice or opportunity was given to him before issuing the impugned order. Repeatedly, the ground of non-issuance of notice is raised in this writ petition. This apart, it is contended that the impugned order has been passed after a lapse of eight years.

5. The learned counsel for the writ petitioner states that already the original writ petitioner was punished in the departmental disciplinary proceedings and the punishment of stoppage of increment for one year without cumulative effect was imposed by the authority competent. Thus, the present impugned order is to be construed as a second punishment for the same allegation, which is impermissible.

6. This Court is of the considered opinion that the ground raised by the writ petitioner that no show-cause notice has been issued deserves no merit consideration at all in view of the fact that the original writ petitioner was a party respondent in the Motor Accident Claims Tribunal proceedings in M.C.O.P.No.225 of 2000. When the original writ petitioner himself was a party respondent in M.C.O.P.No.225 of 2000, he would be fully aware of the entire proceedings as well as had the knowledge about the Judgment of the Motor Accident Claims Tribunal. Issuing further notice pursuant to the Judgment of the Motor Accident Claims Tribunal to



the original writ petitioner is an empty formality and the non-issuance of such a show-cause notice had not prejudiced the rights of the original writ petitioner with reference to the impugned order of recovery, which is under challenge in the present writ petition.

7. As far as the delay is concerned, this Court is of the considered opinion that the Judgment of the Motor Accident Claims Tribunal is to be officially processed and the payment is to be made to the victim by following the due procedures and after concluding all the procedures only, the administrative authorities can initiate recovery proceedings against the driver, who was held responsible for the accident occurred with reference to the Government vehicle. Thus, the delay is of no avail to the original writ petitioner as the factum regarding the accident was established and the liability also was fixed by the Motor Accident Claims Tribunal and the payment of compensation was settled by the Government at the first instance to the victim and consequently, the said award amount is liable to be recovered from the Government servant, who was held responsible for the accident occurred.

8. The learned Counsel for the petitioner submitted a judgment passed by the learned Single Judge of this Court in W.P. [MD]No.19613 of 2012 dated 26.09.2012 in the case of **V. Gunasekaran Vs. Superintendent of Police, District Police Officer, Coimbatore**. In the said case, the recovery for a sum of Rs.8,792/- from the salary of the petitioner in 25 installments was under challenge. The petitioner in that case also met with an accident and relying on the said decision, the learned Counsel for the petitioner stated that the said order was passed relying on the order of the Division Bench of this Court which reads as follows:

"14. Further, as rightly contended by the learned Counsel for the petitioner that in an identical situation, a Division Bench of this Court in W.P.No.11002 of 1999 (decided on 07.07.1999) held that the employer could not recover the compensation paid in motor accident cases from the employee. The relevant passage from the said judgment is extracted hereunder: "..... In our view, the claim made is wholly unsustainable as the petitioners in the capacity of the employers of respondent No.1 are duty bound in law to pay the compensation payable by respondent No.1. Present proceeding which have been initiated for recovery back the said amount from respondent No.1 in the circumstances, is therefore, summarily rejected."

15. The said judgment also applies to this case. Moreover, the departmental action initiated by the respondent ended in the findings recorded by the enquiry officer that the petitioner was not guilty of the charges. A Division Bench of this Court (2009 (3) CTC 388)



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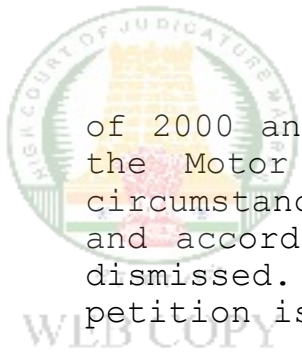
also held that it is mandatory for the employers to record the tentative conclusions on the differing views, if the views of the enquiry officer holding that the charges were not proved, was not acceptable to the Disciplinary Authority and the delinquent employee should be heard before recording a finding of guilt. But the said mandatory procedure was not followed in the present case. In view of the aforesaid infirmities, I am not inclined to remand the matter to the respondent, as requested by the learned Government Advocate.'"

9. The order of the Division Bench which is extracted in the above judgment states that 'it is mandatory for the employers to record the tentative conclusions on the differing views, if the views of the enquiry officer holding that the charges were not proved, was not acceptable to the Disciplinary Authority and the delinquent employee should be heard before recording a finding of guilt. But the said mandatory procedure was not followed in the present case. In view of the aforesaid infirmities, I am not inclined to remand the matter to the respondent, as requested by the learned Government Advocate'.

10. This Court is of the considered opinion that the facts and circumstances put forth are entirely different and unconnected. In the present case on hand, the writ petitioner was impleaded as a party respondent in the Motor Accident Claims Tribunal's case. He had knowledge about the adjudication of the MCOP case before the Tribunal. In the case referred above, the Division Bench took a view that the fixation by the competent authorities must be done only after issuing notice to the delinquent employee. Such a ground raised cannot be compared in respect of the facts and circumstances of the present case.

11. In the present case, the recovery order was issued based on the award passed by the Motor Accident Claims Tribunal and the Tribunal awarded compensation to the victim. Thus, if at all the petitioner was aggrieved, he should have preferred an appeal against the award passed by the Tribunal and in respect of the recovery of the claim amount, the same is to be done by the competent authorities of the Department in order to fructify the compensation already disbursed by the Government to the victim based on the Motor Accident Claims Tribunal award. This being the factum, the case referred by the learned Counsel for the petitioner is of no avail to the writ petitioner and the same cannot be extended to the facts and circumstances of the present case.

12. Under these circumstances, this Court is of the considered opinion that there is no error in the impugned order and the impugned order of recovery has been issued with reference to the award passed by the Motor Accident Claims Tribunal in M.C.O.P.No.225



of 2000 and the original writ petitioner was a party respondent in the Motor Accident Claims Tribunal proceedings and under these circumstances, there is no infirmity as such in the impugned order and accordingly, the writ petition is devoid of merits and stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

/ True Copy /

Sub Assistant Registrar (CS-)

krk / mr

To:

1. The Director,
Public Health and Preventive
Medicine Department,
Chennai-6.

2. The Deputy Director ,
Office of the Health Services,
(Collector of Office Premises),
Virudhunagar,
Virudhunagar District.

+1 CC to M/s.R.VIJAYAKUMAR, Advocate
(SR-67166[F] dated 06/06/2019)

+1 CC to M/s.SPL GP (SR-66926[F] dated 04/06/2019)

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ES/11.06.2019/5P/5C