



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE **ABDUL QUDDHOSE**

W.P.(MD)No.7675 of 2011

and

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

N.Palaniappan

: Petitioner

Vs.

1.The Director of Medical Education,
Chennai - 10.

2.The Medical Superintendent,
Annal Gandhi Memorial,
Government Hospital,
Puthur, Trichy - 17.

Respondents

:

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified mandamus, to call for the records pertaining to the impugned order of the 2nd respondent dated 22.06.2011 made in L.Dis.No.12228/P&D2/2001 and quash the same and direct the respondents herein to disburse the entire gratuity amount due to the petitioner.

For Petitioner : Mr.G.Mohan Kumar

For Respondents : Mr.N.Shanmugaselvam,
Additional Government Pleader

ORDER

The instant Writ Petition has been filed challenging the impugned order dated 22.06.2011, passed by the 2nd respondent demanding a sum of Rs.1,05,789/- from the petitioner being the award amount paid to the claimants in M.C.O.P.No.2570 of 2001, on the file of the III Additional Sub Court, Trichy.

2.It is the case of the petitioner that while he was an ambulance driver, the said ambulance belonging to the 1st respondent met with an accident causing injuries to the victim, for which, a motor accident claim was instituted by the victim in M.C.O.P.No.2570 of 2001, before the Motor Accident Claims Tribunal. According to the petitioner, the 1st respondent has categorically stated in their counter filed before the Motor Accident Claims Tribunal that the petitioner is not liable for the accident. Having taken a categorical stand that the petitioner is not liable for the



accident. It is the case of the petitioner that the 1st respondent cannot seek recovery of the amount paid to the victim for the accident caused by the ambulance.

3. The learned counsel for the petitioner would submit that the instant issue is covered by a Division Bench judgment of this Court in the case of **Tamil Nadu Transport Corporation Vs. P. Karuppasamy** reported in **2008 3 L.W. 90**. The relevant paragraphs of the said judgment referred to the learned counsel for the petitioner are reproduced here under.

"23. Learned counsel for the respondent also garnered support from a decision of the Apex Court in *Kali Prasad V. Dy Director of Consolidation*, AIR 2000 SUPREME COURT 3722, for a legal proposition that the finding recorded by the civil court on the question of jurisdictional fact is binding on the parties to the suit. He further placed reliance upon a decision of the Supreme Court in *Venkatappa alias Moode V. Abdul Jabbar*, 2006(9) S.C.C 235, in which it was decided that the parties are bound by the pleadings in the statements filed by them and they cannot be permitted to put forth a new case.

24. The principles laid down in the aforesaid rulings are squarely applicable to the facts of the present case. The appellant Corporation, having taken a plea that the driver of the bus was not responsible for the accident, could not turn around to say that he was responsible for the accident. As such, it is very much bound by the pleadings raised by it before the Tribunals and this Court. The law is well settled as to the aspect that the standard of proof in both the proceedings before the criminal court and the domestic enquiry officer are entirely different. However, since the Corporation has consciously raised the contention in favour of the bus driver before the judicial fora, it is precluded from proceeding against him in departmental proceedings. Though the extent of proof is sufficient to the commission of delinquency in the matter of departmental proceedings, the management could not lay its hands on the workman, detrimental to his interest, after defending him before various judicial fora and accepting the findings of the Motor Accident Claims Tribunal, Karur. Further, in the dismissal order, dated 09.12.1998, it is mentioned that even though a scrutiny of the service records would show that the respondent was not at all penalised at any point of time, since he caused a fatal accident, it was proposed to dismiss him from service, which shows that the past records of the respondent were also clean."

4. The aforesaid judgment is identical to the facts of the instant case. Applying the same analogy, as rightly contended by the learned counsel for the petitioner, the impugned demand dated



22.06.2011 has got to be necessarily quashed. Since the issue has been well settled, the submissions of the learned Additional Government Pleader that the pecuniary loss was caused to the Government only due to the gross negligence of the petitioner cannot be accepted by this Court.

WEB COPY

5. Accordingly, the instant Writ Petition is allowed and the impugned order of the 2nd respondent dated 22.06.2011, in L.Dis.No.12228/P&D2/2001, is hereby quashed. The 1st respondent is directed to disburse the entire gratuity amount payable to the petitioner within a period of 2 months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar (CS)

To

1. The Director of Medical Education,
Chennai - 10.

2. The Medical Superintendent,
Annal Gandhi Memorial,
Government Hospital,
Puthur, Trichy - 17.

+2cc to Mr.R.VIJAYAKUMAR, Advocate, SR.No.59502

W.P. (MD) No. 7675 of 2011
and
M.P. (MD) No. 1 of 2011

das

KK/SAR/29.04.2019/ 3P- 5C