

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.07.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.12412 of 2010

and

M.P.No.1 of 2013

V.Selvaraj

...Petitioner

Vs.

1. The Secretary to Government,
Public (L & OP) Department,
Secretariat,
Chennai 600 009.
2. The Accountant-General,
(Accounts and Entitlements),
No.361, Anna Salai,
Chennai 600 018.
3. The Superintendent of Police,
District Police Office,
Thoothukudi District.
4. The Treasury Officer,
Tirunelveli.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus calling for the records pertaining to the order passed by the 2nd Respondent herein vide proceedings No.Pen5/III/Org.1363/PA11610/dated 23.04.2010, and quash the same and consequently direct the Respondents herein not to recover Rs.27,049/- from the Petitioner's pension and repay the amount already recovered.

For Petitioner : Mr.Ravi Shanmugam

For 1st Respondent : Mr.K.Magesh,
Special Government Pleader

For 2nd Respondent : Mr.S.Balaji

For Respondents 3 & 4 : Mr.A.Zakir Hussain,
Government Advocate

O R D E R

Petitioner has come up with the present Writ Petition seeking to quash the order dated 23.04.2010 passed by the 2nd Respondent herein vide proceedings No.Pen5/III/Org.1363/PA 11610 and for a consequential direction to the Respondents herein not to recover Rs.27,049/- from his pension and repay the amount already recovered.

2. According to the Petitioner, he joined the services of the Police Department as Grade-II Police Constable on 20.06.1968 and promoted as Grade-I Police Constable in the year 1992. He was further promoted as Head Constable in the year 1998. He had received 50 rewards including Chief Minister's Medal for his efficient service and had maintained a clean record of service.

3. The Revenue Divisional Officer, Thoothukudi conducted an enquiry under P.S.O.145 regarding the custodial death of one Veeerababu at Eral Police Station on 14.07.1990. In that regard, the Government vide G.O.Ms.No.792, Public (L&O-E) Department, dated 22.06.1994, issued orders to initiate criminal prosecution and departmental action against the Petitioner and two others. Charge Sheet was laid before the Judicial Magistrate, Srivaikundam as P.R.C.No.57/1998 and the case was committed to District Sessions Judge, Thoothukudi under Sections 120(b), 341, 302 and 220 I.P.C. in S.C.No.279/2001. The Additional District Judge, Thoothukudi vide judgment dated 28.06.2002, honourably acquitted the Petitioner and two others.

4. With regard to the said allegation, the Superintendent of Police, Thoothukudi framed departmental charges under Rule 3 (b) in P.R.11/95. The Enquiry Officer held the charges as proved and the Disciplinary Authority imposed a punishment of reduction in time scale of pay by three stages for three years with cumulative effect, vide his order dated 09.08.2000. Challenging the same, the Petitioner filed O.A.No.4731 of 2001 before the Tamil Nadu Administrative Tribunal and he had also filed O.A.No.7420 of 1998 to grant him due promotions and O.A.No.2573 of 2003 to treat the suspension period as duty. On 04.08.2003, the Tribunal heard all the three Original Applications together and allowed the same.

5. Pursuant to the order of the Tribunal, the Superintendent of Police, Thoothukudi District vide D.O.391/2004 ordered retrospective promotion to the Petitioner as Head Constable with effect from 08.01.1998 and vide D.O.1651/2003, the punishment was cancelled and the period of suspension was treated as duty. Thereafter, vide D.O.641/2004 dated 28.04.2004, the Superintendent of Police, Thoothukudi District

allowed the Petitioner to retire from service on attaining the age of superannuation, with effect from 30.04.2004 without any conditions and all his retirement benefits were paid.

6. While so, vide proceedings dated 23.04.2010, the 2nd Respondent herein passed an order to recover a sum of Rs.27,049/- in 41 instalments from the Petitioner's pension as per Government Letter dated 21.01.2008. According to the Petitioner, except the proceedings dated 23.04.2010, he was not issued any prior notice and that, recovery from his pension has been given effect to for the months of May and June 2010, as per the impugned proceedings dated 23.04.2010.

7. Denying the averments of the Petitioner, the 2nd Respondent/Accountant General (Accounts and Entitlements), Chennai, has filed Counter Affidavit. It is stated therein that, the Petitioner is a retired Head Constable and is alleged to have involved in the custodial death of one Veerababu at Eral Police Station on 14.07.1990. The Superintendent of Police, Thoothukudi District vide proceedings dated 21.08.2009, conducted an enquiry in terms of G.O.No.153 Public (L & O-P) Department, dated 31.01.1998 and compensation of Rs.1 lakh was sanctioned by the Government. But, the father of the deceased Veerababu, viz. C.Subramanian filed W.P.No.6182 of 1999 seeking a sum of Rs.2 lakhs as compensation. In D.O.No.960 of 2009, dated 21.08.2009, the Superintendent of Police, Thoothukudi, vide Government Letter No.13380/L&O-E/2006-9, dated 21.01.2008, had instructed that, a total sum of Rs.2 lakhs paid to the legal heirs of the deceased Veerababu should be recovered from the erred Police Officers at the ratio of the starting pay scale as on 14.07.1990 (date of incident). The amount recoverable from the Petitioner was fixed at Rs.27,049/- in 40 instalments at the rate of Rs.675/- and the last instalment at Rs.49/-.

8. Based on the instructions of the 3rd Respondent, the 2nd Respondent Office issued instructions to the Treasury Officer, Tirunelveli in Letter No.Pen 5/III.Org.1362/PA-11610/11312, dated 27.04.2010, to effect recovery of Rs.27,049/- from the Petitioner's pension amount. Pursuant to the order of interim injunction issued by this Court, the 4th Respondent issued proceedings dated 12.07.2010 ordering refund of recovery. Therefore, according to the 2nd Respondent, there is no reason on the part of the Petitioner to find fault with the 2nd Respondent, who had only carried out the instructions of the Administrative Department.

9. In the same lines, the 3rd Respondent has filed draft counter Affidavit.

10. Learned counsel for the Petitioner contended that, as per Section 9(2) of the Tamil Nadu Pension Rules, 1978, there

cannot be any departmental proceedings in respect of an incident which took place four years before such institution and that, in the case on hand, the Petitioner has retired in the year 2004 and recovery proceedings were issued only in the year 2010. Further, prior to the issuance of recovery order, no notice was issued to the Petitioner, which is against the principles of natural justice. Hence, according to the learned counsel, the order of the 1st Respondent herein and the consequential order of the 2nd Respondent herein are without jurisdiction and are liable to be quashed.

11. It is also his contention that, when the competent Tribunal had declared the Petitioner innocent regarding the death of one Veerababu in Police custody, by quashing the punishment and when the competent Criminal Court had acquitted the Petitioner honourably from the very same allegation, ordering recovery of amount from the Petitioner's pension that too six years after his retirement, is an arbitrary exercise of power.

12. On the other hand, learned counsel appearing for the 2nd Respondent submitted that, the Petitioner along with others were involved in a serious offence, which ultimately resulted in the custodial death of one Veerababu. That apart, disciplinary action and criminal action were initiated against the Petitioner and a sum of Rs.27,049/- was ordered to be recovered from his Pension towards payment of compensation to the legal heirs of the deceased Veerababu. According to the learned counsel, though the criminal case initiated against the Petitioner ended in acquittal, criminal proceedings and departmental proceedings are independent of each other and that, even after acquittal from the criminal proceedings, departmental proceedings can be initiated.

13. Heard the learned counsel for the parties and perused the material documents available on record.

14. Though, it is stated that the Petitioner was involved in an offence involving the custodial death of one Veerababu, he was acquitted from the said charge. Departmental action was also initiated against him and challenging the punishment imposed by the Disciplinary Authority, the Petitioner approached the Tamil Nadu Administrative Tribunal. Pursuant to the order passed by the Tribunal, departmental proceedings initiated against the Petitioner were dropped and he was granted service benefits with retrospective effect.

15. On a reading of the Petitioner's relieving order dated 28.04.2004, it is seen that, the Petitioner was allowed to retire on 30.04.2004 A.N. and that, the Respondent/Department has not reserved any right against the Petitioner. Dehors the communication dated 28.04.2004, the 3rd Respondent could have

proceeded against the Petitioner, provided there was no communication dated 09.03.2004, exonerating the Petitioner from all the charges and promoting him as Head Constable. Though, the learned counsel appearing for the 3rd Respondent has stated that, the 2nd Respondent had only carried out the instructions of the Administrative Department, which is based on the order of the State Government and as such, the impugned order was only a consequential order, nearly after six years of the Petitioner's retirement, an order of recovery was passed, for which, no notice was issued to the petitioner and it is certainly against the principles of natural justice.

16. In view of the aforesaid discussion and findings, I find much force in the contention of the learned counsel for the Petitioner and the impugned order of recovery dated 23.04.2010 passed by the 2nd Respondent herein is set aside and the Petitioner is entitled to the relief sought for. Amount, if any, recovered from the Petitioner, shall be paid to him within a period of three months from the date of receipt of a copy of this order.

This Writ Petition is allowed with the above direction. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

(aeb)

To:

1. The State of Tamil Nadu,
Public (L & OP) Department,
Secretariat,
Chennai 600 009.
2. The Accountant-General,
(Accounts and Entitlement),
No.361, Anna Salai,
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3. The Superintendent of Police,
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4. The Treasury Officer,
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AJS (CO)
KKV/19/12/2020



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