

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.25669 of 2011
and
M.P.Nos.1 and 2 of 2011

G.Kalairaju

... Petitioner

vs.

1. The Secretary to Government,
Public (Law and Order - E) Department,
Secretariat, Chennai - 9.
2. The Superintendent of Police,
Thoothukudi Range,
Thoothukudi.

... 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 Government Letter No.13380/L&O/E/2006-09, dated 21.01.2008 on the file of the 1st Respondent and the proceedings in D.O.No.960/2009 C.No.C1/25372/464/2009, dated 21.08.2009 on the file of the 2nd respondent and quash the same and direct the Respondents to refund the amount recovered from the Petitioner.

For Petitioner : Mr.M.S.Soundararajan

For Respondents : Mr.A.Zakir Hussain,
Government Advocate

O R D E R

Petitioner has come up with the present Writ Petition challenging the proceedings of the 1st Respondent vide Government Letter No.13380/L&O-E/2006-09, dated 21.01.2008 and the proceedings of the 2nd Respondent vide C.No.C1/25372/464/2009, D.O.No.960/2009 dated 21.08.2009 and for a consequential direction to the Respondents to refund the amount recovered from him.

2. According to the Petitioner, while he was working as Sub-Inspector of Police, Eral Police Station, an enquiry was conducted for the allegation of ill-treating and torturing one Veerabhabu and others, which resulted in the death of Veerabhabu in Eral Police Station, which was registered in Crime Nos.341/90 to 349/90. For the said allegation, criminal prosecution was launched against the Petitioner before the Additional Sessions Judge cum Chief Judicial Magistrate, Thoothukudi in S.C.No.277/2001 under Sections 341, 342 and 120B read with I.P.C. 220. Subsequently, the same ended in acquittal on 28.06.2002.

3. It is further stated by the Petitioner that, departmental proceedings initiated against him were also dropped. Even in the Writ Petition filed by the legal heirs of the deceased Veerabhabu in W.P.No.6182 of 1999 seeking compensation of Rs.2 lakhs for the death of Veerabhabu, the Court foisted the liability to pay compensation, on the Government, and not on the Petitioner. However, the Government wanted to recover money from the Officers concerned.

4. Learned counsel for the Petitioner contended that, dehors the criminal proceedings, after the initiation of departmental proceedings, if the Criminal Court comes to the conclusion that, the Petitioner caused the death of the said Veerabhabu, then, the liability of paying compensation to the legal heirs of the deceased can be foisted on him, and not otherwise. Thus, according to the learned counsel, when the Petitioner has not been found guilty of the charges and the departmental proceedings against him were also dropped, orders of recovery passed by the 1st and 2nd Respondents herein are liable to be quashed. In support of his stand, learned counsel relied on a recent order dated 08.07.2020 passed by this Court in W.P.No.12412 of 2010 (V.Selvaraj vs. The Secretary to Government), relevant portion of which reads thus:

"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."

5. Heard the learned counsel on either side and perused the material documents available on record.

6. In the case on hand, admittedly, departmental proceedings initiated against the Petitioner were dropped. Merely because, the Government has been foisted the liability to pay compensation to the legal heirs of the deceased Veerabhabu, it will not entitle the Respondents herein from recovering the amount from the Officers concerned including the Petitioner herein, more particularly without notice. If the Respondents intend to foist the liability on the Petitioner, they should have issued notice to him, at first. In the absence of issuance of notice to the Petitioner, orders impugned in the present Writ Petition are liable to be interfered with. Accordingly, impugned orders passed by the 1st and 2nd Respondents herein are set aside.

This Writ Petition is allowed accordingly. No costs. Consequently, connected Miscellaneous Petitions are closed.

सत्यमेव जयते
Sd/-

Assistant Registrar

//True Copy//

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Sub Assistant Registrar

(aeb/jas)

To:

1. The Secretary to Government,
Public (Law and Order - E) Department,
Secretariat, Chennai - 9.

2. The Superintendent of Police,
Thoothukudi Range,
Thoothukudi.

+1 cc to M/s.M.S.Soundararajan, Advocate Sr.No. 28407

W.P.No.25669 of 2011
and
M.P.Nos.1 and 2 of 2011

RSV (CO)
RMP (16/10/2020)



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