

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 09.07.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO. 22112 OF 2013

S.Pugazhendhi

.. Petitioner

- Vs -

1. Government of Tamil Nadu
rep. By the Secretary to Government
Public Health & Family Welfare Dept.
Secretariat, Chennai 600 009.
2. The Director of Medical &
Rural Health Services
Chennai 600 006.
3. The Senior Civil Surgeon
Govt. Periyar Hospital
Mayiladuthurai, Mayiladuthurai Dt. ... Respondents

Writ petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified mandamus calling for the records relating to the orders in (1) G.O. Ms. No. (Pa) 1106, Public Health & Family Welfare (A.D.1) Dept., dated 22.10.12 of the 1st respondent to the limited extent of directions in Para 3 (ii) thereof (2) Pro. Na. Ka. No.1782/NI.4/2008 dated 14.7.2011 of the 3rd respondent and (3) Pro. Na.Ka. No.1782/NI.4/2008 dated 05.07.2013 of the 3rd respondent, quash the said orders and to issue consequential directions to refund to the petitioner the amount recovered.

For Petitioner : Mr. M.Ravi

For Respondents: Mr. Thangavel, Spl. GP

ORDER

It is the case of the petitioner that while serving as Driver in the Government Hospital, Mayiladuthurai, on 19.8.08 the petitioner, being the driver of the Ambulance van, was directed to take a patient from Ananthanallur in the van bearing Regn. No. TN-51-G-0315 to the Thanjavur Medical College Hospital

in the night hours for further treatment.

2. The petitioner, while completed the assignment given to him by his superiors, however, on the return trip, the van driven by the petitioner met with an accident at Narasingampettai Village at about 3.30 a.m. on the early morning hours of 20.8.08 in which the relatives of the patient and others suffered injuries. In connection with the said accident, while a criminal case was registered against the petitioner for the offences u/s 297, 337 and 338 IPC, by the Thiruneelakkudi Police Station, the same ended in acquittal before the learned Special Magistrate, Kumbakonam in C.C. No.9/2011.

3. One of the persons, who had travelled by the said ambulance on its return and who was injured in the accident, filed a claim petition in MCOP No.306/09 before the Motor Accident Claims Tribunal (Addl. Sub Judge), Mayiladuthurai and by award dated 20.6.11, the Tribunal awarded a compensation of Rs.63,080/- with interest at 7.5% from 23.12.09 till the date of disbursement to the claimant.

4. In such a backdrop, the 3rd respondent issued a show cause notice dated 29.10.10 calling upon the petitioner as to why disciplinary action should not be initiated against him for allowing the patient's relatives to travel in the ambulance van, which is in violation of the rules and for being responsible for the accident and as to why the repair charges for the van to the tune of Rs.43,210/- should not be recovered from the petitioner. The petitioner submitted his reply dated 2.11.10 stating there was no cause for initiating action as such. The 3rd respondent, without enquiry passed proceedings directing recovery in a sum of Rs.43,210/- being the repair charges for the damaged vehicle from the petitioner. Another order was also issued by the 3rd respondent directing recovery in a sum of Rs.81,458/- being the compensation amount along with interest from 23.12.09 to 30.9.12, payable to the claimant as per the order of the Tribunal. It is the further case of the petitioner that appeal has been filed before the 2nd respondent and since in the meantime, the respondents are taking steps to recover the said amounts, the present petition has been filed.

5. Learned counsel appearing for the petitioner submits that the stand of the Department before the Tribunal was that the accident was not due to the rash and negligent driving by the petitioner. Such being the defence taken by the Department, it is not open to the department to come back and issue the impugned order that the cause for the accident is the petitioner. Reliance was placed on the decision of this Court in M.Thangavel - Vs - The Commissioner of Police, Madurai (W.P. (MD) No.10614 of 2014 - Dated 9.12.19).

6. It is the further contention of the learned counsel appearing for the petitioner that even assuming but not admitting that the petitioner is the cause of the accident, however, the accident had happened in the course of his official duties, which is not in his hands as the accident happened when the petitioner tried to avoid a buffalo crossing in the middle of the night, which is beyond his control and, therefore, fastening the liability on the petitioner to pay the repair charges towards the van is wholly unsustainable.

7. It is the further submission of the learned counsel for the petitioner that the order to recover the amount, which has been awarded to the claimant, from the petitioner has been passed without affording an opportunity to the petitioner to defend himself, as no enquiry was conducted. Therefore, the same reveals that there is total violation of principles of natural justice, and, therefore, the impugned orders are liable to be set aside.

8. Per contra, learned Special Government Pleader appearing for the respondents submitted that the decision relied on by the learned counsel for the petitioner would not stand attracted to the case on hand, as in the present case, though the accident had happened in the course of carrying out his duties, however, the petitioner had carried the relatives of the petitioner, without intimation and approval of his superiors, which is not in consonance with the rules and, therefore, imposition of recovery of the amount is wholly sustainable.

9. Insofar as the contention relating to recovery of amount towards the repair of the van, it is fairly conceded by the learned Special Government Pleader that the said recovery is impermissible, as even otherwise in the absence of the relatives, the accident had happened in the course of carrying out his duties and, therefore, the recovery is not sustainable. Learned Special Government Pleader also fairly concedes that passing the impugned proceedings without conduct of enquiry is not sustainable and, therefore, it is submitted that this Court may consider setting aside the impugned proceedings and permit the respondents to proceed with the enquiry.

10. This Court heard the learned counsel appearing for the petitioner and the learned Special Government Pleader appearing for the respondents and perused the materials available on record.

11. The facts of the case are not in dispute. The main ground of attack on the impugned orders by the petitioner is two fold. Firstly, the recovery of the amount towards repair

charges for the van, is per se impermissible as the accident had occurred in the course of discharging the duties. Secondly, the impugned proceedings relating to recovery of compensation awarded by the Tribunal without conducting an enquiry, more so, when the department had taken a stand before the Tribunal that the driver was not at fault, is unsustainable, as the principles of natural justice have been violated.

12. Insofar as the attack on the first ground relating to recovery of the repair charges for the van is concerned, the materials available on record reveal that the driver had been discharging his duties when the van met with an accident and, therefore, imposition of recovery of the charges towards repair of the van is wholly unsustainable. When the driver was carrying out the explicit orders of his superiors and was discharging the official duties, this Court is of the considered view that the recovery of the sum of Rs.43,210/- towards repair of the van, which suffered the accident in the course of official duty, is wholly unsustainable and the said recovery deserves to be set aside.

13. Insofar as the contention relating to recovery of the compensation with interest awarded by the Tribunal is concerned, the decision in Thangavel's case (supra) pressed into service on behalf of the petitioner does not stand squarely attracted to the case. It is true that a stand was taken by the department before the Tribunal that the accident had not happened due to the rash and negligent driving by the petitioner, which is the sum and substance of the case in the decision supra, wherein this Court held that the Department cannot take different stands, one in the trial before the Tribunal and another in the disciplinary proceeding and, therefore, held that the department is bound by its stand taken before the Tribunal. However, the said case does not come to the aid of the petitioner for the simple reason that in the present case, the petitioner, without permission of his superiors, had transported the relatives of the patient in the van, which is impermissible and a clear violation of the rules and regulations. The Tribunal has awarded the compensation to the victim, who had travelled in the van, who was transported without the authorisation of the superiors.

14. Though certain grounds have been advanced for transporting those persons in the van by the learned counsel for the petitioner, however, this Court is not inclined to go into those grounds for the reason that the impugned proceedings directing recovery of the amount, which the Tribunal has ordered as compensation with interest, has been done without following the principles of natural justice. It is borne out by record that though show cause notice was issued to the petitioner for

the above act for which the petitioner submitted his reply, no action has been taken on the reply and without proceeding with the conduct of enquiry in accordance with law and providing an opportunity to the petitioner to put forth his case, the respondents have unilaterally passed the impugned orders, which is plainly unsustainable. It has been the consistent view of the Courts that following of principles of natural justice is mandatory and cannot be brushed aside to the detriment of the delinquent. The non-conduct of enquiry and enabling the petitioner to place his side of the case has really prejudiced the issue and, therefore, on that ground, the impugned proceedings relating to recovery of the amount as ordered by the Tribunal towards compensation and interest is liable to be set aside. However, the act of the petitioner in carrying passengers without authorisation of his superiors is clear dereliction of duty for which the respondents should be permitted to proceed with enquiry, if so advised, in accordance with law.

15. It is reported by the learned counsel appearing for the petitioner that pending the writ petition, the petitioner has retired from service and, in such a backdrop, if the Court intends to permit the respondents to proceed in accordance with law by conducting an enquiry for the charge relating to carrying of passengers without authorisation and recovery of the amount directed to be paid as compensation to the injured, this Court may direct the respondents to withhold a sum equivalent to Rs.81,458/- as ordered in the impugned proceedings and the balance of the benefits to which the petitioner is entitled on his retirement may be directed to be paid. The abovesaid submission, in the considered view of this Court is a just and reasonable one.

16. For the reasons aforesaid, this writ petition is allowed. The impugned order directing recovery of amount of Rs.43,210/- towards repair charges for the van is set aside. The impugned orders relating to recovery of Rs.81,458/- is also set aside for violation of principles of natural justice. However, if the department wishes to proceed with enquiry for recovering the amount of Rs.81,458/- towards compensation and interest, payable to the victim as ordered by the Tribunal, the department is at liberty to proceed with the enquiry in accordance with law by issuing a fresh show cause notice and complete the enquiry and pass orders on the enquiry report within a period of six months from the date of receipt of a copy of this order. The respondents are further directed to disburse all the terminal benefits to which the petitioner is legally entitled less the amount of Rs.81,458/-.

17. The writ petition is allowed with the aforesaid

observations and directions. However, in the circumstances of the case, there shall be no order as to costs.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

GLN

To

1. The Secretary to Government
Public Health & Family Welfare Dept.
Government of Tamil Nadu
Secretariat, Chennai 600 009.
2. The Director of Medical &
Rural Health Services
Chennai 600 006.
3. The Senior Civil Surgeon
Govt. Periyar Hospital
Mayiladuthurai, Mayiladuthurai Dt.

W.P. NO. 22112 OF 2013

RSV (CO)

GN (17/08/2020)

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