

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 17.08.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. No. 30703 of 2013

and

M.P.Nos.1 & 2 of 2013

1.K.Paramasivam (deceased)

2.P.Bakkiyam

3.P.Vyshali

4.P.Gobika

5.K.Papaye

(P2 to P5 are substituted as Lrs of Deceased Sole petitioner as per order dated 04.02.2020 made in WMP.No.27530/2019)

.. Petitioners

- Vs -

1.The Director of Public Health

and Preventive Medicines,

Chennai 06.

2.The Joint Director of Public Health Services,

Namakkal District

Namakkal.

.. Respondents

Writ petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorari, to call for the records of the 2nd respondent in connection with the impugned order passed by him in Na.Ka.No.10003/A3/1997 dated 16.04.2012 and the rejection order passed by the 1st respondent in Na.Ka.No.91952/ON/iru3/12 dated 11.06.2013 and quash the same and grant such other further relief.

For Petitioners

:Mr.Manikandan for

M/S.S.Sivakumar

For Respondents

: Mr.S.Thangavel, Spl.G.P.

ORDER

Initially, this writ petition has been filed by the 1st petitioner, during the pendency of the writ petition, the original writ petitioner has passed away, hence the legal heirs are impleaded as petitioners 2 to 5 in this matter.

2.The case of the petitioners is that the petitioner's husband entered into service as Driver in the Health Department in the year 1987 and was posted at Manickampalayam Primary Health Center initially and after completion of ten years of service, he was granted with selection grade and subsequently served in various places and he was finally transferred to the present station in the year 1994 and he rendered a meritorious service without any adverse remark.

2.1.It is the averment of the petitioner that while the petitioner's husband was working as driver at Primary Health Centre at Periyamanali, Thiruchengode Taluk, Namakkal District, the concerned Medical Officer had driven the vehicle with the "Polio" affected child to the Deputy Director of Health Services, Namakkal for further treatment. While he was driving the vehicle, he caused an accident at about 07.00pm on 13.11.1997 and thereby one Srinivasan sustained head injury and died thereafter. However, the Medical Officer who had driven the vehicle has handed over the key of the said vehicle after the accident to the writ petitioner and thereby the petitioner was implicated as accused in the criminal case. Based on the implication of name in the criminal case, the petitioner's husband was placed under suspension. Further he was issued with a charge memo for the same delinquency and the same was served on him on 13.01.1998 and for which the petitioner's husband submitted his detailed explanation to the respondent on 07.02.1998 and clearly stated that the medical officer only driven the vehicle and it was not driven by him. After the receipt of the explanation the 2nd respondent has not proceeded with the charges levelled against him and the same was kept in cold storage.

2.2.While such being the case the legal heirs of the deceased Srinivasan had filed a claim petition under Motor Vehicles Act in M.C.O.P.No.306 of 1998 on the file of Motor Accident Tribunal, Namakkal claiming compensation of Rs.5,00,000/- (Rupees Five Lakhs only) against the District Collector, Namakkal and the Medical Officer of Periyamanali Health Centre. After contest the Tribunal has passed an exparte decree on 12.10.2004 by directing the respondents in the above claim petition to pay a compensation of Rs.2,04,000/- to the

legal heirs of the said Srinivasan.

2.3. In the meanwhile the petitioner has filed an application challenging the suspension order and by virtue of the order of the State Administrative Tribunal, the petitioner's husband was reinstated into service. In the meanwhile the legal heirs of the deceased Srinivasan filed execution petition before the Tribunal for recovery of compensation amount. Immediately thereafter the disciplinary proceedings which was initiated against the petitioner, the 2nd respondent herein passed the impugned order dated 16.04.2012, after lapse of 16 years and imposed the punishment of reduction of pay into a lower stage which is a major penalty codified in rule 8 of the TNCS rules and further punishment of recovery to recover a sum of Rs.3,53,539/- which is highly arbitrary and discriminatory and amounts to double jeopardy.

2.4. Aggrieved by the 2nd respondent's order, the petitioner preferred an appeal before the 1st respondent, which was rejected by the 1st respondent by confirming the order passed by the 2nd respondent. Under such circumstances, challenging the said punishment, the petitioner's husband has filed the present writ petition with the above said prayer.

3. Learned counsel appearing for the petitioner submitted that though the accident had happened, but it was the Medical Officer who had driven the vehicle and that the petitioner was falsely implicated as accused. Further, the claim petition was filed by the legal heirs of the deceased Srinivasan, and in spite of receipt of the notice, the respondents failed to appear before the Tribunal, which resulted in passing an ex parte decree directing the respondents to pay the compensation to the legal heirs of the said Srinivasan. Further the respondents initiated disciplinary proceedings against the petitioner's husband after lapse of sixteen years and imposed double punishment, which is wholly unsustainable. It is the further contention of the learned counsel for the petitioner that even if any accident happened in the course of discharging the official work, the respondents alone are liable to pay the compensation and the same cannot be recovered from the petitioner, which issue has been settled long back in a catena of decisions. However, in the present case, double punishment has been imposed on the petitioner, which is wholly unsustainable. Hence he prays for allowing the writ petition.

4. Per contra, learned Special Government pleader appearing on behalf of the respondents denied the averments, and submitted that the accident had been caused by the petitioner,

and the same has been informed by the medical officer to the police authorities, which resulted in the law enforcing agency filing a criminal case against him and after trial the petitioner was convicted by the learned Sub Judge, Namakkal. In the circumstances the disciplinary action was also taken by the second respondent under rule 17(c)(i) (1) of Tamil Nadu Govt. Servant conduct rules, and punishment was also imposed as also recovery of a sum of Rs.3,53,539/-. The same having been confirmed in appeal, which orders are well considered orders, the same does not call for any interference.

5. This Court heard the submissions advanced by the learned counsel appearing on either side and also perused the materials available on record.

6. The facts in issue are not in dispute. Further, the charge memo was issued in the year 1998 and simultaneously a criminal case was also initiated against the petitioner, which was ended in acquittal, and after a lapse of sixteen years, the respondents have proceeded with the departmental enquiry against the petitioner for which there is no worthwhile explanation submitted by the respondents. On conclusion of the departmental proceedings, the punishment, as stated supra has been imposed. A perusal of the punishments reveal that dual punishment, reduction in pay and another of recovery has been imposed as punishment, which is nothing but double punishment and the same is against the well established judicial precedents. Dual punishment cannot be imposed for a delinquency on the part of an individual. Such an action of the respondents is highly arbitrary, unjust and unreasonable. However, this Court, while entertaining the petition, had granted interim stay of recovery of the amount and, therefore, no amount has been recovered. In such a backdrop, this Court is of the considered view that major relief has been granted to the petitioner even at the initial stage, by staying the recovery. As has been held in a catena of decisions, unless a case is made out that the punishment imposed on an employee shocks the conscience of this Court, the Courts shall not normally interfere with the said punishment. In the case on hand, this Court had interfered with a portion of the punishment, which was nothing but a second punishment relating to recovery of the amount, which was stayed and by virtue of the stay, no amount was recovered and the employee had enjoyed the fruits and had since deceased. In such a backdrop, this Court is not inclined to interfere with the other portion of the punishment relating to reduction in pay as that same cannot be said to be disproportionate, arbitrary or shocking the conscience of this Court. In such view of the matter, while the order relating to recovery is set aside, the other portion

of the impugned order relating to the punishment of reduction in pay does not call for any interference.

7. It appears that the petitioner's husband passed away during the pendency of the writ petition. In the above circumstances, if any retirement benefits have not been settled, the same shall be settled in favour of the petitioner relating to pension, DCRG, etc., in accordance with law within a period 3 months, from the date of receipt of copy of this order, if not settled already.

8. With the above observation, this writ petition is disposed off. Consequently connected miscellaneous petitions are closed. However there shall be no order as to costs.

-s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

jrs

To

1. The Director of Public Health
and Preventive Medicines,
Chennai 06.

2. The Joint Director of Public Health Services,
Namakkal District
Namakkal.

+1 cc to M/s.G.Ilamurugu Advocate sr27097

+1 cc to the Government Pleader sr27009

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W.P. NO.30703 OF 2013

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