



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 16.03.2020

DELIVERED ON : 20.11.2020

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P(MD)No.11998 of 2016

and

M.P. (MD) .No.9180 of 2016

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S.Karthikeyan

... Petitioner

Vs.

(*) 1.The Home Secretary,
Home Department,
State of Tamil Nadu,
Secretariat,
Chennai - 600 009.

2.The Director General of Police,
Chief Office,
Kamarajar Salai,
Chennai - 600 004.

3.The Additional Director General of Police,
(Law and Order),
Kamarajar Salai,
Chennai - 600 004.

4.The Deputy Inspector General of Police,
Thanjavur Range,
Thanjavur.

5.The Superintendent of Police,
Thanjavur District,
Thanjavur.

... Respondents

(*) (The name of the first respondent is deleted as per the order of this Court dated 16.03.2020 made in W.M.P.(MD).No.18218 of 2018 in W.P.(MD).No.11998 of 2016)

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, calling for the records relating to the impugned order in D.O.No.492/2016, dated 22.06.2016, passed by the fifth respondent, quash the same.

For petitioner

: Mr.I.Robert Chandrakumar
for Mr.G.Prabhu Rajadurai

For respondents

: Mr.K.Mu.Muthu,
Additional Government Pleader



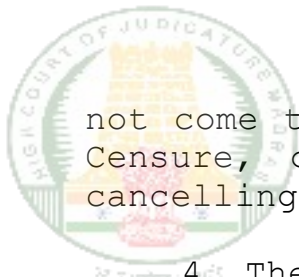
ORDER

This writ petition has been filed by the petitioner challenging the order of recovery passed by the fifth respondent dated 22.06.2016.

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2. The learned counsel appearing for the petitioner submitted that the petitioner, while working as Inspector of Police, Ammapettai Police Station, Thanjavur District, investigated a case registered in Crime No.155 of 2010 under Section 302 IPC. In the course of investigation, the petitioner examined various persons including one Krishnamoorthy S/o.Vembaiyan. On 31.05.2010, the said Krishnamoorthy consumed poison and died at Medical College Hospital, Thanjavur. The Sub Divisional Magistrate/Revenue Divisional Officer, after enquiry, submitted a report dated 16.06.2011 to the District Collector to the effect that the death of the said Krishnamoorthy was not due to harassment or torture of the Police, but due to consumption of poison. Acknowledging the said view, the District Collector forwarded a report to the Government. While so, without considering the said report of the District Collector, based on the recommendations of the National Human Rights Commission's, the Government issued G.O.Ms.No.352, Public (Law and Order-A) Department, dated 13.05.2014, sanctioning Rs.5 lakhs to the family of the deceased Krishnamoorthy and directing the 4th to take departmental action against the petitioner for torturing the deceased Krishnamoorthy and effect recovery of Rs.5 lakhs from the erred police personal if he is found guilty at the end of disciplinary proceedings.

3. He would further submit that in the month of August, 2015, the third respondent had framed a charge under Rule 3(b) of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955, against the petitioner to the effect that he had assaulted Krishnamoorthy to bring out the truth and the said Krishnamoorthy had consumed poison on 31.05.2010 and hence, the petitioner is responsible for his suicide. On 16.03.2016, the Enquiry Officer, has held that the charge framed against the petitioner is proved, based on the statements recorded behind the back of the petitioner during R.D.O. enquiry. On 18.05.2016, the 4th respondent had imposed the punishment of stoppage of increment for a period of two years with cumulative effect. At the same time, on 22.06.2016, the 5th respondent has passed an order of recovery of Rs.5 lakhs from the salary of the petitioner under 100 monthly installments ie., Rs.5,000/- p.m. Aggrieved by the order of recovery, the petitioner has preferred this writ petition. Aggrieved by the order of punishment, the petitioner filed an appeal before the 3rd respondent. On 01.09.2016 the 3rd respondent partly allowed the appeal and thereby modified the punishment as ~~consure deferred~~ for six months. Thereafter, as the petitioner did

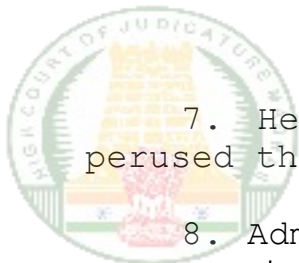


not come to any adverse notice during the period of punishment as Censure, on 16.12.2016, the 5th respondent had passed an order cancelling the punishment of deferred censure.

4. The learned counsel for the petitioner would further submit that while so, after about 11 months of cancelling the punishment ie., on 09.10.2017, the Additional Chief Secretary took a *suo motu* review to enhance the penalty and issued a show cause notice to the petitioner in this regard. Subsequently, by G.O.(D).No.259, Home (Police IV) Department dated 16.03.2018, the Government passed an order modifying the punishment of deferred censure for six months into that of compulsory retirement from service. Aggrieved by the same, the petitioner filed a writ petition in W.P.(MD).No.17716 of 2018 before this Court and this Court, by order dated 31.01.2019, allowed the said writ petition and thereby set order the order of punishment. The said order of the learned Single Judge was subsequently confirmed by a Division Bench of this Court and by the Hon'ble Supreme Court.

5. He would further submit that the impugned order of recovery has been passed by the 5th respondent without issuing any notice and without getting any explanation from the petitioner and therefore, it is liable to be dismissed on the ground of violation of principles of natural justice. He would further submit that the orders imposing, modifying and enhancing punishment were already set aside by this Court and the same were affirmed by the appellate courts. Therefore, the order of recovery is not sustainable. Thus, he prayed to set side the impugned order of recovery and to direct the 5th respondent to return the recovered amount with interest to the petitioner.

6. The learned Additional Government Pleader appearing for the respondents submitted that the National Human Rights Commission has, by proceedings dated 28.03.2013, directed the Government to grant a financial relief of Rs.5 lakhs to the legal heirs of the deceased Krishnamoorthy and accordingly, the Government, vide G.O.No.352, dated 13.05.2014, sanctioned Rs.5 lakhs to the legal heirs of the deceased and directed the 4th respondent to initiate disciplinary proceeding against the petitioner and in the event, the petitioner found guilty at the end of the departmental proceedings, compensation amount of Rs.5 lakhs given to the legal heirs of the deceased shall be recovered from the petitioner. After enquiry, the disciplinary authority has imposed punishment of stoppage of increment for two years with cumulative effect on the petitioner. As the petitioner was found guilty and imposed with punishment, as per G.O. dated 13.05.2014, the 5th respondent issued the order of recovery and therefore, the same need not be interfered with. Thus, he prayed to dismiss this writ petition.



7. Heard the learned counsel appearing for both sides and perused the records carefully.

8. Admittedly, in this case, the 5th respondent has not issued any notice before passing the impugned order of recovery. Therefore, as rightly stated by the petitioner, the impugned order is liable to be set aside on the sole ground of violation of principles of natural justice.

9. A perusal of record shows that the National Human Rights Commission had not issued any notice, before issuing the recommendation dated 21.01.2014, recommending the Government to pay Rs.5 lakhs to the legal heirs of the deceased Krishnamoorthy. It is only after the order of the National Human Rights Commission, a departmental enquiry was initiated against the petitioner and after enquiry, the petitioner was imposed with punishment and it was subsequently modified in the appeal and then, it was cancelled. After some time, it was again reopened and the punishment was enhanced as compulsory retirement from service. The petitioner has subsequently filed writ petition in W.P.(MD).No.17716 of 2018 challenging the orders imposing, modifying and enhancing the punishment as compulsory retirement from service. This Court, by order dated 31.01.2019, set aside the impugned orders and made it clear that the petitioner would be entitled to continuity of service with all attendant benefits as if the orders impugned had not been passed. The said order was subsequently affirmed by the appellate courts.

10. In respect of the recommendation of the Human Rights Commission, a learned Single Judge of this Court in **Rajesh Das Vs. Tamil Nadu Human Rights Commission, Chennai**, reported in 2010 (5) CTC 589 has summed up the following ratio:

"41. To sum up:-

(I) What is made under Section 18 of the Protection of Human Rights Act by the State Human Rights Commission is only a recommendation and it is neither an order nor an adjudication.

(ii) Such a recommendation made by the State Human Rights Commission is not binding on the parties to the proceeding, including the Government.

(iii) But, the Government has an obligation to consider the recommendation of the Commission and to act upon the same to take forward the objects of the Human Rights Act, the International Covenants and Conventions in the back drop of fundamental rights guaranteed under the Indian Constitution within a reasonable time.

<https://hcservices.ecourts.gov.in/hcservices> (137) In the event of the Government



tentatively deciding to accept the recommendation of the State Human Rights Commission holding any public servant guilty of human rights violation, the Government shall furnish a copy of the report of the Commission to the public servant concerned calling upon him to make his explanation, if any, and then pass an appropriate order either accepting or rejecting the recommendation of the Commission.

(v) Until the final order is passed by the Government on the recommendation of the Commission, neither the complainant(s) nor the respondent(s) in the human rights cases can challenge the recommendation of the Commission as it would be premature except in exceptional circumstances.

(vi) On the recommendation of the Human Rights Commission, if the Government decides to launch prosecution, the Government have to order for investigation by Police which will culminate in a final report under Section 173 of the Code of Criminal Procedure.

(vii) On the recommendation of the Human Rights Commission, if the Government decides to pay compensation to the victims of human rights violation, the Government may do so. But, if the Government proposes to recover the said amount from the public servant concerned, it can do so only by initiating appropriate departmental proceeding against him under the relevant service rules, if it so empowers the Government."

11. As stated in the ratio (vii), the Government has decided to recover the amount and hence, initiated departmental proceedings. Further, in G.O.Ms.No.352, dated 13.05.2014, the Government has specifically stated that if the charges held proved, the amount ie., Rs.5 lakhs will be recovered from the erred Police personnel. Though, in this case, initially the petitioner was imposed with punishment, in view of the subsequent developments, that is the impugned orders imposing, modifying and enhancing the punishment have already been set aside, the impugned order of recovery cannot be sustained. Hence, this Court is inclined to set aside the impugned order on this ground also and to direct the respondents to return the recovered amount to the petitioner with interest at the rate of 7.5% p.a. from the date of recovery till the date of realization.

12. In the result, this Writ Petition is allowed and the impugned order of recovery dated 22.06.2016 is set aside and the respondents are directed to refund the recovered amount to the



petitioner with interest at the rate of 7.5% p.a. from the date of recovery till the date of realization. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CRL.SIDE)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

gcg

To

1.The Director General of Police,
Chief Office,
Kamarajar Salai,
Chennai - 600 004.

2.The Additional Director General of Police,
(Law and Order),
Kamarajar Salai,
Chennai - 600 004.

3.The Deputy Inspector General of Police,
Thanjavur Range,
Thanjavur.

4.The Superintendent of Police,
Thanjavur District,
Thanjavur.

+1 CC to Mr.G.PRABHU RAJADURAI, Advocate (SR-22277[F] dated
20/11/2020)

order made in
W.P(MD)No.11998 of 2016
20.11.2020

NA(CO)

KM (08.12.2020) 6P 6C