



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P (MD)No.11074 of 2011

and

M.P. (MD)No.2 of 2011

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R.Ayyar

... Petitioner

Vs.

1.The National Human Rights Commission,
represented by its Chairman,
New Delhi.

2.The State Government,
represented by its Secretary to Government,
Public (Law and Order) Department,
Secretariat, Chennai.

3.The Director General of Police,
Public (Law and Order) Department,
Santhome, Chennai-4.

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

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

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus to call for the records relating to the order passed by the second respondent in his proceedings G.O.(D)No.653, dated 21.06.2010 and the consequential order passed by the fourth respondent in his proceedings D.O.No.420/2011, dated 23.07.2011 and the consequential order of recovery passed by the fifth respondent in his proceedings Na.Ka.No.J4/38354/2011, dated 22.08.2011 and quash the same as illegal and consequently to direct the respondents to refund the recovered amount within the period that may be stipulated by this Court.

For Petitioner : Mr.Mohamed Imran
for M/s Ajmal Assciates

For Respondents : Mr.C.M.Marichelliah Prabu
Additional Government Pleader
for R.2 to R.5



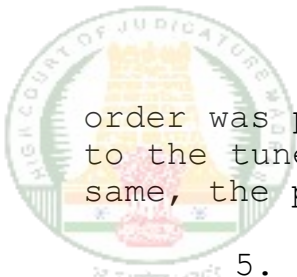
ORDER

The Writ Petition is filed seeking for issuance of Certiorarified Mandamus to call for the records relating to the order passed by the second respondent in his proceedings G.O.(D) No.653, dated 21.06.2010 and the consequential order passed by the fourth respondent in his proceedings D.O.No.420/2011, dated 23.07.2011 and the consequential order of recovery passed by the fifth respondent in his proceedings Na.Ka.No.J4/38354/2011, dated 22.08.2011 and quash the same as illegal and consequently to direct the respondents to refund the recovered amount within the period that may be stipulated by this Court.

2. The case of the petitioner is that the petitioner was appointed as Police Constable Grade-II in the year 1997. While he was working at V&AC Department, Madurai, a case was registered against him in Crime No.7 of 2004, on the file of the Kulithalai All Women Police Station, Karur, for the alleged offences under Sections 509, 506(1) I.P.C., and Sections 3 and 4 of Tamil Nadu Women Harassment Act, 1998, based on the complaint given by one Parvathy. Later another case was registered against the petitioner, on the complaint issued by one Siva Subramaniyan-father of Parvathi, in Cr.No.466 of 2004, for the alleged offences under Sections 417, 376, 506(2) and 306 I.P.C. and both cases were tried together in C.C.No.21 of 2005 and S.C.No.115 of 2005 on the file of the Sessions Court, Trichirapalli and the same were ended in acquittal on 03.06.2007.

3. When the matter stood thus, the petitioner was placed under suspension on 09.11.2004 alleging that he was involved in a criminal case. Challenging the same, the petitioner filed a writ petition in W.P.2418 of 2006 and this Court, vide order dated 14.03.2006 issued a direction to the respondent to revoke the suspension order. Thereafter, a charge memo came to be issued under Rule 3(b) of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules 1955 and after affording opportunity to the petitioner, enquiry was conducted and for the proven charges, the petitioner was removed from service and the said order of removal was also confirmed by the appellate authority. However, the revisional authority modified the order of removal into that of postponement of increment for a period of two years with cumulative effect, vide order dated 02.07.2009.

4. While so, the said Siva Subramaniyan filed a complaint before the Human Rights Commission and after entertaining the complaint, the Human Rights Commission recommended the Government to pay a sum of Rs.1,00,000/- to the next kin of the deceased Parvathy and the second respondent decided to implement the said recommendation vide G.O.(D)No.653, Home(Pol.16) Department, dated 21.06.2010. Pursuant to the said Government Order, the recovery



order was passed by fixing the responsibility against the petitioner to the tune of Rs.1,00,000/- (Rupees One Lakh only). Challenging the same, the present Writ Petition is filed.

5. Learned Counsel appearing for the petitioner would submit that the issue arises for consideration in the present case was decided by the Full Bench of this Court in W.P.No.41791 of 2006, dated 05.02.2021 **[Abdul Sathar Versus The Principal Secretary to Government, Home Department, Fort St. George, Chennai-600 009 and others]** and while answering to the references of (iii) and (iv), the Full Bench of this Court held that before passing the order of recovery, a show cause notice is necessary and in the present case, that procedure was not followed. Hence, this Court may set aside the impugned order, dated 23.07.2011 and the matter may remit back to the authorities to decide the same as per the principles laid down in the decision of the Full Bench of this Court (**cited supra**).

6. Learned Additional Government Pleader appearing for the respondents 2 to 5 would submit that if the State had found to be responsible for causing human rights violation, before effecting recovery from the Officer of the State, the Officer concerned shall be issued with a show cause notice seeking his explanation only on the aspect of quantum of compensation recoverable from him and not on the aspect whether he was responsible for causing human rights violation. Hence, he would pray for dismissal of the writ petition.

7. Heard the learned Counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondents 2 to 5 and perused the materials placed on record.

8. The facts in the present case are not in dispute. Admittedly, the State has issued G.O.(D)No.653, Home(Pol.16) Department, dated 21.06.2010, accepting the recommendations of the Human Rights Commission and for sanctioning of Rs.1,00,000/- (Rupees One Lakh only) as compensation to the victim. Immediately thereafter, the recovery order was passed on 23.07.2011. It appears that the said order of recovery was not passed in compliance of the principles laid down in the decision of the Full Bench of this Court in W.P.No.41791 of 2006, dated 05.02.2021 **[Abdul Sathar Versus The Principal Secretary to Government, Home Department, Fort St. George, Chennai-600 009 and others]**.

9. At this juncture, it is relevant to extract hereunder the relevant paragraphs of the decision of the Full Bench of this Court:

"(iii) Whether the State Human Rights Commission, while exercising powers under sub-clauses (ii) and (iii) of clause (a) of Section 18 of the Protection of Human Rights Act, 1993, could straight away issue orders for recovery of the compensation amount



directed to be paid by the State to the victims of violation of human rights under sub-clause (i) of clause (a) of Section 18 of that enactment, from the Officers of the State who have been found to be responsible for causing such violation? "

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Ans: Yes, as we have held that the recommendation of the Commission under Section 18 is binding and enforceable, the Commission can order recovery of the compensation from the State and payable to the victims of the violation of human rights under Sub Clause (a) (i) of Section 18 of the Act and the State in turn could recover the compensation paid, from the Officers of the State who have been found to be responsible for causing human rights violation. However, we clarify that before effecting recovery from the Officer of the State, the Officer concerned shall be issued with a show cause notice seeking his explanation only on the aspect of quantum of compensation recoverable from him and not on the aspect whether he was responsible for causing human rights violation.

"(iv) Whether initiation of appropriate disciplinary proceedings against the Officers of the State under the relevant service rules, if it is so empowered, is the only permissible mode for recovery of the compensation amount directed to be paid by the State to the victims of violation of human rights under sub-clause(i) of clause(a) of Section 18 of the Protection of Human Rights Act, 1993, from the Officers of the State who have been found to be responsible for causing such violation?"

Ans: As far as the initiation of disciplinary proceedings under the relevant Service Rules is concerned, for recovery of compensation, mere show cause notice is sufficient in regard to the quantum of compensation recommended and to be recovered from the Officers/employees of the concerned Government. However, in regard to imposition of penalty as a consequence of a delinquent official being found guilty of the violation, a limited departmental enquiry may be conducted only to ascertain the extent of culpability of the Official concerned in causing violation in order to formulate an opinion of the punishing Authority as to the proportionality of the punishment to be imposed on the official concerned. This procedure may be followed only in cases where the disciplinary authority/punishing authority comes to the conclusion on the basis of the inquiry proceedings and the



recommendations of the Commission that the delinquent official is required to be visited with any of the major penalties enumerated in the relevant Service Regulations.

10. In view of the above, this Court is not inclined to interfere with the Government Order in G.O.(D)No.653, Home(Pol.16) Department, dated 21.06.2010, issued by the State for implementing the recommendations of the Human Rights Commission. However, this Court is inclined to set aside the order of recovery dated 23.07.2011, on the ground that there must be a show cause notice as directed by the Full Bench of this Court. Hence, the order of recovery passed by the fourth respondent, dated 23.07.2011 is hereby set aside and the respondents 2 to 5 are directed to issue a show cause notice and call for explanation from the petitioner and thereafter pass appropriate orders. The said exercise shall be completed by the authorities within a period of four weeks from the date of receipt of a copy of this order.

11. With the above directions, this Writ Petition stands disposed of. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

SSL

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Chairman,National Human Rights Commission,
New Delhi.

2.The Secretary to Government,
Public (Law and Order) Department,
Secretariat, Chennai.

3.The Director General of Police,
Public (Law and Order) Department,Santhome, Chennai-4.



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

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Virudhunagar,
Virudhunagar District.

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