



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P(MD)No.7522 of 2016

and

W.M.P. (MD)Nos.6305 and 6306 of 2016

WEB COPY

N.Thanappan

... Petitioner

Vs.

1.The Director of Medical and
Rural Welfare Department,
Chennai-6.

2.The Joint Director of Health Services,
Usilampatti,
Madurai District.

... Respondents

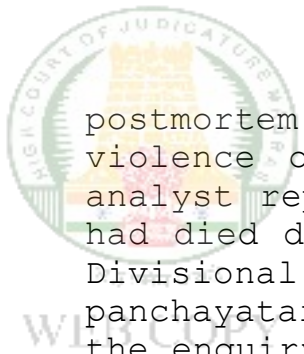
Prayer: Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorari to call for the records pertaining to the Impugned Charge Memo in Na.Ka.No.75031/Si.Ka.2/3/2009 dated 25.02.2016 on the file of the Respondent No.1 and quash the same as illegal.

For Petitioners : Mr.T.Lajapathi Roy
For Respondents : Mr.M.Muthugeethaiyan
Special Government Pleader

ORDER

The Writ Petition is filed seeking for issuance of a writ of Certiorari to call for the records pertaining to the Impugned Charge Memo in Na.Ka.No.75031/Si.Ka.2/3/2009 dated 25.02.2016 on the file of the Respondent No.1 and quash the same as illegal.

2. The case of the petitioner is that one Veeraiya, S/o Karuppiyah was remanded by Judicial Magistrate No.1, Madurai for seven cases pending against him, to the Central Prison, Madurai, on 12.12.2003. On 22.10.2004 and 23.10.2004, he got treatment in the prison hospital at Madurai and on 04.12.2004 at 08.00a.m, he complained of chest pain and difficulty in breathing and hence, the petitioner referred him to the Government Rajaji Hospital, Madurai and on his way to the Government Rajaji Hospital at Madurai, he expired. A team of doctors conducted the



postmortem on the body of the said Veeraiya and found no marks of violence or injuries on the body. On receipt of the chemical analyst report, wherein the doctors have opined that the deceased had died due to occlusion of feeding vessels of heart and Revenue Divisional Officer, Madurai has examined the witnesses and the panchayatars and on receipt of the final opinion, has concluded the enquiry by stating that the deceased had died due to occlusion of feeding vessels of heart.

3. Thereafter, a blood relative of the said Veeraiya preferred a complaint before the State Human Rights Commission on 04.12.2004 and the State Human Rights Commission conducted a detailed enquiry and closed the complaint vide order dated 27.12.2006 and as against the said closure, the aggrieved party filed an appeal before the National Human Rights Commission and as part the recommendation of the National Human Rights Commission, an additional solatium amount of Rs.50,000/- was provided sympathetically to the family of the deceased in addition to the sum of Rs.50,000/- provided to the family of the deceased immediately after the occurrence of the incident and thus a total sum of Rs.1,00,000/- was disbursed to the family of the deceased. Thereafter, the Government Order in G.O.Ms.No.759, General (Law & Order) Department, dated 23.08.2010, was served on the petitioner on 05.09.2012, by directing the first respondent to proceed with the recovery from his salary. As against the said order of recovery, the petitioner filed a writ petition in W.P.No.12402 of 2012 and this Court, vide order dated 19.03.2019, disposed of the said writ petition and against the said order, the petitioner filed a writ appeal in W.A.No.194 of 2018 and an order of interim stay was granted on 24.10.2018. Thereafter the present impugned order charge memo, dated 25.02.2016 has been issued by the first respondent and the same was served on the petitioner on 02.04.2016, levelling the charge of negligence of duty as per Rule 20(1) of the Tamil Nadu Government Servants Conduct Rules, 1973. Challenging the same, the present Writ Petition is filed.

4. Learned Counsel appearing for the petitioner would submit that the State claimed that based on the observations of the National Human Rights Commission, the present charge memo was issued and alleged incident was happened in the year 2004 and the present charge memo has been issued after 12 years from the date of occurrence, which is *non-est* in law. Further, the National Human Rights Commission, without affording an opportunity of hearing to the petitioner, passed an adverse remarks based on the Magisterial enquiry, which cannot be a basis for issuing a charge memo and hence, he would pray for appropriate orders.

5. This Court also heard the learned Additional Government Pleader appearing for the respondents and perused the materials



placed on record.

6. The facts in the present case are not in dispute. One Veeraiya died on 04.12.2004, while he was in judicial custody. It appears that on the earlier occasion, the National Human Rights Commission issued a direction to the State to disburse a sum of Rs.1,00,000/- (Rupees one Lakh only) to the family of the deceased. Further, the National Human Rights Commission observed that there was a Magisterial enquiry and based on the Magisterial enquiry, the National Human Rights Commission observed that there was a negligence on the part of the prison authorities including the petitioner. Following the same, the present charge memo was issued against the petitioner.

7. The main contention raised by the learned Counsel appearing for the petitioner is that the charge memo was issued after period of 12 years from the date of alleged occurrence. However, in the earlier occasion there was a conflict view before this Court regarding the present issue that the direction issued by the State/National Human Rights Commission is mandatory and directory and only after a long point of time, the issue was settled before 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]**. The Full Bench of this Court held that the recommendation of the Human Rights Commission is held to be binding and an officer/employee concerned can resort to appropriate legal remedy at any stage qua complaint or inquiry by the Commission but only on substantial legal grounds. In the present case, based on the observations made by the National Human Rights Commission, the present charge memo was issued against the petitioner. Since the present issue has been settled after lapse of long time, the delay cannot attribute against the Government. If this Court goes into the merits of the petitioner's case and pass any order, that will affect the interest of the petitioner. Hence, this Court is not inclined to interfere with the impugned order. Therefore, the present Writ Petition is dismissed. No costs. Consequently, the connected Miscellaneous Petitions are also dismissed.

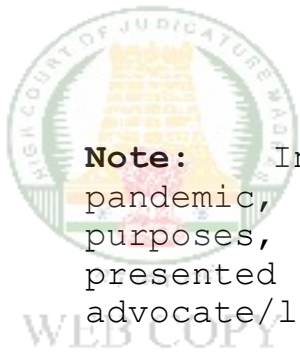
Sd/-

Assistant Registrar(P&A)

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/ /2021

Sub Assistant Registrar(CS)



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 Director of Medical and
Rural Welfare Department,
Chennai-6.

2.The Joint Director of Health Services,
Usilampatti,
Madurai District.

+1 CC to M/s.SPL GP (SR-7273[F] dated 25/02/2021)

W.P (MD) No.7522 of 2016
22.02.2021

MK(CO)
AS(12.05.2021) 4P 4C