



W.P.No.24499 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2023

CORAM

THE HONOURABLE MR.JUSTICE K.KUMARESH BABU

W.P.No.24499 of 2010 &
M.P.No.1 of 2010 and 1 of 2011

K.Balasubramanian

... Petitioner

Vs

The Superintendent of Police,
Villupuram District,
Villupuram

... Respondent

PRAYER:- Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari to call for the entire records in pursuant to the Recovery Order vide Na.Ka.No.N4/32849/367/2010, dated 23.09.2010 on the file of the respondent and quash the same.

For Petitioner : Mr.T.P.Prabakaran

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For Respondents : Mr.R.Neethiperumal GA

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ORDER

The challenge in this Writ Petition is an order of recovery dated 23.09.2010, on the ground that the petitioner had been responsible for an accident thereby causing liability on him.

2. Heard Mr.T.P.Prabakaran, learned counsel appearing for the petitioner and Mr.R.Neethiperumal, learned Government Advocate appearing for the respondent.

3.The learned counsel would submit that the petitioner was undergoing driver training in the Police Training vehicle under a trainer. On 18.05.2005, when the petitioner was undergoing training, he noticed a person signaling to the vehicle by waiving his hand. The petitioner stopped the vehicle and the petitioner along with others got down from the vehicle and it was noticed that a person was lying on the

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side of the road with blood injury. Therefore, immediately the trainer of the vehicle had informed the nearby police station and to arrange for an ambulance and thereafter they continued to proceed the training. However, it is later understood that the injured had died and his legal heirs have initiated a proceedings under the Motor Vehicles Act for compensation and also a criminal proceedings was initiated against the petitioner for rash and negligent driving. The petitioner was acquitted by the judgment of the Trial Court holding him not liable and no appeal was filed against the order of acquittal, a charge memo was also issued under Rule 3(b) of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules 1955, on 03.10.1955. After detailed enquiry, the Enquiry officer had also submitted his report stating that the charges have been proved and based upon the enquiry report, the Commandant had imposed a punishment of stoppage of increment for two years. Being aggrieved against the order of punishment, the petitioner had filed an appeal, the same was dismissed and the petitioner had preferred a review with the Director General of Police,

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who had modified the punishment by imposing the punishment of postponement of increment for one year. Against which, the petitioner had preferred a Writ Petition before this Court, pending that Writ Petition, an order of recovery had been passed and hence the petitioner had filed this present Writ Petition.

4. He would submit that the Writ Petition filed by the petitioner in W.P.No.27057 of 2007 against the order of punishment was allowed by this Court wherein a categorical finding had been given by the learned Single Judge that the petitioner was not responsible for the accident.

5. The learned counsel appearing for the petitioner would submit that even in the criminal proceedings, the petitioner had been acquitted by holding that the petitioner is not liable for the accident and this Court on the disciplinary proceedings initiated against him had held that the petitioner is not responsible. In such circumstances, he would

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submit that the order of recovery would have to be set aside.

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6. Countering his arguments, Mr.R.Neethiperumal, learned Government Advocate appearing for the respondent would submit that the accident had taken place for which the legal heirs of the deceased had initiated proceedings under the Motor Accident Claims Tribunal and the legal heirs had been awarded a compensation for a sum of Rs.4,26,731/-. The Enquiry officer had also given a categorical finding that it was because of the conduct of the petitioner the accident had occurred and had imposed a punishment. He would submit that the order of acquittal in the criminal case was not a honourable acquittal which do not exonerate the petitioner. But however, the learned Single Judge had held in view of the acquittal, the petitioner cannot be proceeded with departmentally. According to him it is an undisputed fact that the Government had been fasten with the responsibility of paying compensation for the conduct of the petitioner and therefore, it was decided to recover 10% of the amount of the compensation paid so

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as that the petitioner is reprimand and would be careful in future.

Therefore, he would submit that there was no necessity to interfere with the order of recovery.

7.I have heard the rival submissions made on either side and perused the materials placed on record.

8. It is an admitted fact that the petitioner had been acquitted in the criminal case. The Writ Court had set aside the order of punishment, as the punishment imposed was not on the charges that had been framed, but on a different set of charges, no appeal had been filed against the same. The Writ Court had also given a specific finding that even the Enquiry Officer had not found fault with the petitioner for the accident, but had found fault with the petitioner in not helping the victim immediately. Therefore, from the said finding, it could be clear that the petitioner was not responsible for the accident to

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be fastened with the order of recovery of 10% on the presumption that the petitioner was responsible for the payment of any compensation arising out of the accident. In such an event, I am of the clear view that the order of recovery imposed on the petitioner is without any basis and the same is liable to be set aside.

9.In fine, the Writ Petition is allowed and the impugned order is set aside. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

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Index : Yes/No

Speaking order : Yes/No

Neutral Citations : Yes/No

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K.KUMARESH BABU,J.

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