



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.11.2023

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.No.26896 of 2021
and
W.M.P.Nos.28346 & 28347 of 2021

K.Malarvizhi,
Sub Inspector of Police,
SJ &HR OD (AT),
DCRB, Ooty,
The Nilgiris District.

...

Petitioner

versus

1.State of Tamil Nadu,
Rep. by its Secretary to Government,
Home (Police) Department,
Secretariat, Chennai - 600 009,

2.The Director General of Police,
Head of Police Force Tamilnadu,
Chennai - 4.

3.The Superintendent of Police,
Dharmapuri District, Dharmapuri,

4.The Superintendent of Police,
District Police officer,
The Nilgiris District.

...

Respondents



Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the order passed by the 1st respondent vide G.O.Ms.No.522 Public (L&O-A) Department dated 15.06.2010 and consequential order passed by the 4th respondent in his proceedings D.O.No.885/2021C.No.D1/15929 dated 15.09.2021 and quash the same and direct the respondents to refund the recovered amount to petitioner within time stipulated and confer all the consequential benefits.

For Petitioner : Mr.P.Ganesan

For Respondents : Mr.T.Arunkumar
Additional Government Pleader

ORDER

The petitioner has filed this writ petition to quash the order of recovery passed by the first respondent *vide* G.O.(Ms).No.522, Public (L&O-A) Department, dated 15.06.2010 and consequential order passed by the 4th respondent in D.O.No.885/2021C.No.D1/15929 dated 15.09.2021 and quash the same and direct the respondents to refund the recovered amount to the petitioner.

2. Heard Mr.P.Ganesan, learned counsel for the petitioner, Mr.T.Arunkumar, learned Additional Government Pleader for the respondents and perused the materials available on record.



3. When the petitioner was working as Sub Inspector of Police at Pennagaram Police Station, she arrested 3 accused for possessing arrack; one of the accused by name Murugan suffered fits and seizures and he was admitted into the prison and later died on 16.02.2007, without responding to the treatment given to him; it was treated as a custodial death and a case was registered against the petitioner and one Head Constable namely Siddeswaran. Hence, the petitioner was given with the charges and subjected to domestic enquiry. At the end of the enquiry, the petitioner was found guilty and she was imposed with the punishment of reduction of 5 increments for 5 years with cumulative effect. However, on appeal the punishment was modified and it was reduced to 2 increments for 2 years with cumulative effect.

4. In the meanwhile, the family of the deceased Murugan filed complaints before the State Human Rights Commission in S.H.R.C.No.2518/2007. In pursuant to that, a recovery order was passed to recover Rs.60,000/- from the petitioner in 30 installments. Challenging the said proceedings, the petitioner has filed a Writ Petition in W.P.No.27144 of 2010 and the same was dismissed. Once again the petitioner has filed



another Writ Petition in W.P.No.25196 of 2011 by challenging the order and the same was also dismissed by citing the earlier dismissal.

5. Now the petitioner has filed this Writ Petition seeking to sanction the financial relief of Rs.1,00,000/- to the next kin of the deceased Murugan by recovering the same from the erring police officials. But the earlier orders passed rejecting the relief sought by the petitioner, the proceedings before the State Human Rights Commission was pending.

6. The order of the State Human Rights Commission dated 21.07.2011 has been produced for perusal and in which, the following observation has been made:-

“17. The complainant's husband did not have any injury on his person while being produced before the Magistrate for remand and did not have any external or internal injuries till 15.2.2007. This victim Murugan did not complain of any assault or anything else to the Magistrate when he was produced before the Magistrate.

18. This commission examined the matter carefully and is of the view that there are no acceptable materials before the Commission for it to come to the conclusion that the victim



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Murugan died only because of the assault at the hands of the respondents and that there were human rights violation by the respondents. Therefore the complaints in SHRC Nos. 1110 of 2007, 2518 of 2007 and 8556 of 2007 are dismissed.”

7. However, the departmental proceedings against the petitioner ended prior to the order passed by the State Human Rights Commission. Even though the recovery was ordered against the petitioner and another Head Constable viz. Siddeswaran and some instalments have been recovered from both, pursuant to the order dated 23.02.2011 made in W.P.No.23983 of 2010, the amount recovered from Siddeswaran was refunded to him. In this regard, an order has been passed by the Superintendent of Police, Dharmapuri on 20.05.2011. The said order has been passed by taking into account of the fact that the recovery orders were issued without giving any notice to the petitioner.

8. So it is appropriate to extract the above order passed in W.P.No.23983 of 2010:-

“4. Be that as it may, even though the respondents are entitled to recover the above mentioned amount, without



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disposing of the statutory appeal filed by the petitioner against the reduction in time scale of pay from Rs.10,440/- to Rs.9,540/- for three years with cumulative effect as per the order dated 13.07.2010, the respondent, in my considered view, should not have issued the impugned order of recovery, that too, without putting the petitioner on notice.

5. In that view of the matter, to meet the ends of justice, since the State Government has already paid a sum of Rs.1,00,000/- to the deceased family, I direct the respondents to treat the impugned order as show cause notice issued to the petitioner. Therefore, the petitioner is directed to give explanation to the impugned show cause with in a period of two weeks from the date of receipt of a copy of this order. After the receipt of the explanation from the petitioner, the respondents shall pass an appropriate order in accordance with law. Further, the respondents are directed to refund the entire amount, till day recovered from the petitioner, within a period of two weeks from the date of receipt of a copy of this order. Recovery, if any, can be made only after his appeal is disposed of.”

9. Since the petitioner is also similarly placed, a different yardstick cannot be adopted in the case of the petitioner. Hence the petitioner can also submit her representation in the light of the order of State



Human Rights Commission. On receipt of the same, the respondents shall consider and issue an order for stopping further recovery and to refund the amount to the petitioner so far recovered, within a period of four (4) weeks from the date of receipt of a copy of this order.

With these observations, this Writ Petition is **disposed**. No costs.
Consequently, connected Miscellaneous Petitions are closed.

29.11.2023

Speaking order / Non-speaking order

Index : Yes / No

Neutral Citation : Yes / No

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R.N.MANJULA, J.

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