



W.P.(MD) No.8801 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 21.02.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.(MD) No.8801 of 2018 and
WMP(MD) Nos.8234 and 8235 of 2018

A.Balasingh Daniel

... Petitioner

-VS-

- 1.State of Tamil Nadu
Rep. by the Principal Secretary to Government
Home (Prison) Department
Fort St. George,
Chennai 600 009.
- 2.The Additional Director General of Police,
& Inspector General of Prisons,
6 Whennels Road
Egmore, Chennai. 600 008.
- 3.The Superintendent of Prison,
Central Prison, Trichy 20
- 4.The District Collector,
Trichy District
Trichy.
- 5.The Revenue Divisional Officer,
Trichy Revenue Division,
Trichy.



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6.The Inspector of Police,
CBCID
Trichy District.

7.The Regional Human Rights Commission,
Rep. by its Chairman
Faridkot House,
Copernicus Marg
New Delhi 110 001.

... Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records to the G.O.Ms.No.206 Public 9L&O-A) Department dated 02.03.2010 and the consequential order No.23349/Po.2/2009 dated 23.03.2018 passed by the 3rd respondent and quash the same and consequently direct the 3rd respondent to repay the sum of Rs.50,000/- withheld from the death cum retirement gratuity of the petitioner with interest at 18% from the date of retirement to the date of payment, within a time limit to be fixed by this Court.

For Petitioner : Mr.B.Karunanithi

For Respondents : Mr.G.V.Vairam Santhosh
Additional Government Pleader
for R1 to R6

Mr.K.Ashokkumar Ram for R7



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ORDER

Challenging the impugned G.O.No. 206 Public 9L&O-A) Department dated 02.03.2010 and the consequential order passed by the third respondent dated 23.03.2018 and for a direction to the 3rd respondent to repay the sum of Rs.50,000/- withheld from the death cum retirement gratuity of the petitioner with interest at 18% from the date of retirement to the date of payment, the petitioner is before this Court.

2.The case of the petitioner is that he joined the service of the jail department as Grade II Warder on 07.05.1983 and he was upgraded as Grade I Warder in the year 2005 and in the year 2006, he was subsequently transferred to Central Prison, Trichy.

3. While so, when the petitioner was on duty and was in-charge of Block para duty and one Ragupathy Grade II Warder was also on para duty at CP-5 Block, on 23.12.2006, at that point of time, shockingly, behind a tree at CP5 Block, a remand prisoner by name Sahadevan was hanging by using his lungi. When Grade II Warder shouted, all the



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persons including the petitioner, who were on duty, rushed to that place and rescued the prisoner and he was sent to the jail hospital, however, he was declared dead at the hospital. Subsequently, the petitioner has given his statement and explanation stating that he was not responsible for the death of the prisoner and after Magisterial enquiry also, he gave his statement and no action was taken. Subsequently, he was promoted as Chief Head Warder on 07.06.2010 and he joined at Sub Jail, Thiruchendur, which shows that the petitioner was not responsible for the death of the remand prisoner. While so, after a lapse of four years, a show cause notice was issued to him by the third respondent on 17.05.2010 and an order was issued by the 2nd respondent dated 22.03.2010 alleging that the petitioner was also responsible for the suicide committed by the prisoner, holding so, a recovery of Rs.50,000/- was ordered and it is to be paid to the deceased family as financial assistance. However, it is his case that without hearing the petitioner and without even providing him the materials of G.O.No.206 and order dated 22.03.2010, the recovery was ordered and hence, he sent representation to the respondents to provide him the copy of the orders and thus, on 08.07.2010, he was provided with G.O.206, which reveals that due to the



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negligence of Ragupathy, Grade II Warder and the petitioner herein, the occurrence had happened and compensation was ordered and the 2nd respondent was directed to take action to recover the said amount from the petitioner. Challenging the said G.O.No.206, the petitioner filed W.P.No.4642/2011 and this Court disposed of the said petition by directing the petitioner to submit his explanation and the respondents were directed to consider the materials available on record and pass final orders on merits and in accordance with law. Pursuant to the said order, the present impugned order came to be passed, thereby the third respondent has passed an order to remit the amount of Rs.50,000/-. Aggrieved by the said order, the petitioner is before this Court.

4. It is the contention of the learned counsel for the petitioner that the order of the third respondent is not a speaking order and without providing any opportunity of hearing, the present impugned order is passed. It is his further contention that when the petitioner was not even responsible for the occurrence that had happened on 23.12.2006, fixing the responsibility and recovering the compensation from the petitioner is illegal and arbitrary. It is also contended that when the petitioner was



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responsible for CP1 Block, fixing the responsibility on the petitioner is wholly not sustainable. It is also contended that the petitioner was allowed to retire subject to the outcome of W.P.(MD) No.4642/2011 and the impugned order suffers from infirmity on the ground of wrongful exercise of the powers conferred by the respondents 1 and 3. On these grounds, the learned counsel prays interference.

5. In the counter affidavit filed by the respondents, it is averred that pursuant to the occurrence happened on 23.12.2006, as per the report submitted by the Revenue Divisional Officer, the Government entrusted the case to Crime Branch Criminal Investigation Department for investigation and the investigation reveals that it is a case of suicide and because of the failure on the part of the officials, the occurrence had happened and hence, fixing the negligence on the petitioner and one Ragupathy, the Government passed G.O.No.206 on 02.03.2010 and for lack of supervision, a show cause notice was issued to the petitioner on 22.03.2010. Since the Government order is not intended to the petitioner alone, it has not been served on him. It is further averred in the counter that the petitioner retired on 31.05.2015 and as per the direction of this



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Court, the said amount of Rs.50,000/- was withheld from the petitioner's DCRG. Since the impugned order is based on the report of the 6th respondent, it cannot be stated that the said order is baseless. The report of the CBCID is a confidential one and hence, the question of furnishing the same does not arise. It is further averred that after thorough investigation by the CBCID, the report has been filed and based on the report only, the impugned order is passed and hence, it is not stated to be illegal and hence, no interference is warranted, it is submitted.

6. Heard the learned counsel for the petitioner and the learned Additional Government Pleader for the respondents.

7. The fact that the petitioner was on duty at the time of occurrence and was in-charge of para duty and the suicide committed by the remand prisoner are not in dispute. The remand prisoner was subsequently rescued and taken to the jail hospital, where he has been declared dead. The family of the deceased member preferred a complaint before the National Human Rights Commission, the 7th respondent herein and after enquiry conducted by the 7th respondent, recommendation was



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made to pay Rs.1 lakh as compensation to the family of the deceased and in order to implement the recommendation of the 7th respondent, G.O.Ms.No.206 dated 02.03.2010 was issued and a show cause notice was also issued to the petitioner, which was also rightly challenged by the petitioner in W.P.No.4642/2011 and the said writ petition was disposed and the petitioner was directed to give explanation. In the meanwhile, the petitioner attained the age of superannuation, and therefore, Rs.50,000/- was withheld from his DCRG and thereafter, pursuant to the direction of this Court, the present impugned order came to be passed.

8. Admittedly, the recommendation of the 7th respondent was not challenged before any forum, which had attained finality and the lapses committed by the petitioner is not in dispute. Though the petitioner claimed that CP Block 5 was entrusted only to Ragupathy Grade II Warder and the petitioner was in-charge of CP Block 1, however, G.O.Ms.No.206 dated 02.03.2010 makes it clear that the persons, who are responsible for para duty, are liable to pay compensation. The respondents, after conducting a detailed enquiry



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passed the impugned order, which cannot be interfered with. It is also brought to the notice of this Court that the said Ragupathy paid the compensation to the Government. Hence, there is no illegality or infirmity in the order passed by the respondents.

9. For all these reasons, the writ petition fails and the same is dismissed. No costs. consequently connected Miscellaneous Petitions are closed.

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NCC : Yes/No
Index : Yes/No

RR



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Chennai 600 009.
- 2.The Additional Director General of Police,
& Inspector General of Prisons,
6 Whennels Road
Egmore, Chennai. 600 008.
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M.DHANDAPANI, J.

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