



W.P.(MD) No.1121 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.11.2023

CORAM

THE HON'BLE MR.JUSTICE BATTU DEVANAND

W.P.(MD) No.1121 of 2017

and

W.M.P.(MD) Nos.942 and 943 of 2017

D.Raghunathan

... Petitioner

Vs.

1. The District Collector,
Thanjavur District,
Thanjavur.

2. K.Raju,
Superintendent,
District Rural Development Authority
Thanjavur.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorari to call for the records relating to the proceedings of the first Respondent made in Na.Ka.No.3855/2016/Ka.4 dated 08.07.2016 and quash the same.



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For Petitioner : Mr.M.Sureshkumar
For Respondent : Mr. A. Kannan - for R1
Additional Government Pleader
Mr.V.Perumal - for R2

ORDER

This Writ Petition has been filed for issuance of Writ of Certiorari to call for the records relating to the proceedings of the first Respondent made in Na.Ka.No.3855/2016/Ka.4, dated 08.07.2016 and quash the same.

2. Heard Mr.M.Sureshkumar, learned counsel for the petitioner, Mr.A.Kannan, learned Additional Government Pleader appearing for the first respondent and Mr.V.Perumal, learned Counsel appearing for the second respondent and perused the material available on record.

3. The case of the petitioner is that the petitioner joined the services of the Government in the year 1990 and thereafter, by various promotions, he became a Block Development Officer and joined at



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Thiruvaiyaru on 21.02.2015. The second respondent herein was holding the post of Block Development Officer at Thiruvaiyaru Panchayat Union from 19.08.2010 to 20.02.2015. On 05.04.2005, there was an electrocution at Kadambangudi Village. One Chinnaiyan @ Chandrasekaran, who was returning from a fair price shop, fell down in the Mud road and kept his hand in the wall of the Elementary School adjacent to the road. Due to rainfall and short circuit, electricity has passed on in the wall which led to Electrocution. The father of the said Chinnaiyan came and tried to rescue his son, who also got electrocuted and died on the way to hospital.

4. The petitioner submits that the legal heirs of the deceased had filed two suits in O.S.Nos.312 and 313 of 2010 before the Additional Subordinate Court, Thanjavur and claimed compensation for the said accident. Originally, the Electricity Board and the District Educational Officer alone were arrayed as defendants and the Block Development Officer, Thiruvaiyaru was made as sixth defendant by order, dated 14.09.2011 and summons were served to the second respondent. Even though the second respondent received summons, he has not taken any steps



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to contest the suits, nor contacted the Government Pleader or engaged any other counsel to represent on behalf of the Block Development Officer, Thiruvaiyaru. Hence, the suits were not contested by the Block Development Officer. The Electricity Board and Education Department contested the case and the Trial Court has awarded a sum of Rs.5,10,000/- as compensation. Thereafter, the plaintiffs filed Execution Petitions in E.P.Nos.53 and 54 of 2015 and attachment was ordered.

5. Learned counsel for the petitioner submits that the first respondent ordered for payment of the decretal amount from the General Funds of the Panchayat Union and subsequently, the first respondent, by the impugned order dated 08.07.2016, directed all the Block Development Officers, who were holding the office from 31.03.2005 to 21.02.2015 to deposit a sum of Rs.4,82,892/-. The said sum was apportioned between 11 Block Development Officers, who were holding office in that particular period. The petitioner was also directed to pay a sum of Rs.43,899/- by the said order as he was also holding office in the said period. In the said proceedings, the petitioner's name was also mentioned at Serial No.11. The



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first respondent failed to consider that the petitioner had joined in the said post on 21.02.2015 after the *ex-parte* judgment was made.

6. Learned counsel for the petitioner further submits that the first respondent issued specific direction to deposit the decree amount on humanitarian grounds to give quietus to the issue and the same was deposited. At any rate, the petitioner is not responsible for the *ex-parte* decree and consequential financial loss to the Government. In this regard, the petitioner made a detailed explanation to the first respondent on 15.07.2016 by enclosing documents to support his stand and he had taken all effective steps to defend the Department and that there is no lapse on his part.

7. Learned counsel for the petitioner contends that the second respondent is the sole person for the above lapse in defending the case. He has already approached this Court in W.P.(MD)No.18590 of 2016 challenging the recovery and the same is pending. Since the first respondent passed the impugned order, without considering the detailed



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explanation of the petitioner, the petitioner is before this Court.

8. Counter affidavit has been filed by the first respondent. No counter affidavit has been filed by the 2nd respondent.

9. It is averred in the counter affidavit that in the year 2005, there was an electrocution in Kadambangudi Village, in which, two persons died. In this regard, two suits in O.S.Nos.312 and 313 of 2010 were filed before the Additional Subordinate Court, Thanjavur. The suits were decreed *ex-parte* on 05.08.2014 and a sum of R.4,82,892/- was awarded as compensation. Subsequently, the plaintiffs filed Execution Petitions in E.P.Nos.53 and 54 of 2015 and attachment was ordered on 11.05.2016. Only after the attachment order was passed by the Court, the Panchayat Union came to know about the suits. However, in order to safeguard from Execution Proceedings, the compensation amount was paid by the Panchayat Union from Thiruvaiyaru Panchayat Union General Fund. Since the concerned Block Development Officers worked in the relevant period have committed dereliction of duty, which resulted in loss to the Panchayat



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Union, the first respondent directed recovery of money from the Officers who worked at the relevant period.

10. Learned Additional Government Pleader appearing for the first respondent submits that during the pendency of the recovery order, dated 08.07.2016, the petitioner herein, who was holding the post of Block Development Officer, Thiruvaiyaru, without considering the orders of the first respondent, passed a separate order on his own *vide* proceedings in Na.Ka.No.1094/2016/A2, dated 22.07.2016 to recover the entire compensation amount from the second respondent herein. Aggrieved against the said recovery order issued by the petitioner, the second respondent filed a Writ Petition in W.P(MD)No.18590 of 2016 and this Court passed an order to recover the amount of Rs.43,899/- from the salary of the second respondent herein. A sum of Rs.43,899/- was fully recovered from the second respondent along with four others, who were in service at the time of passing of orders by the District Collector and the same was also permitted *vide* order, dated 16.12.2016 passed in W.M.P(MD)No.13460 of 2016 by this Court.



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11. Learned Additional Government Pleader further submits that the petitioner is one among the 11 Block Development Officers on whom the recovery orders were passed. Therefore, the impugned order is legally sustainable and prays for dismissal of the Writ Petition.

12. Having heard the submissions of the respective counsels and upon careful perusal of the material available on record, there is no dispute with regard to the admitted facts in this case.

13. The main contention of the petitioner is that he joined in the post of Block Development Officer, Thiruvaiyaru on 21.02.2015 only, much after the date of *ex-parte* decree dated 05.08.2014 and hence, he cannot be put into responsibility for the fault committed by the earlier officers, who held the post of Block Development Officer, Thiruvaiyaru. Even in the impugned proceedings dated 08.07.2016 of the first respondent, it is clearly mentioned that the petitioner is working as Block Development Officer, Thiruvaiyaru from 21.02.2015 to till the date of the impugned order. So, it is clear that the petitioner was not working as Block Development Officer,



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Thiruvaiyaru in the year 2010 when O.S.Nos.312 and 313 of 2010 were filed before the Additional Subordinate Court, Thanjavur, which were decreed *ex-parte* on 05.08.2014.

14. After passing *ex-parte* decree dated 05.08.2014, by the learned Subordinate Court, Thanjavur, the plaintiffs therein filed execution petitions in E.P.Nos.53 and 54 of 2015. In the said execution proceedings, summons were served to the Block Development Officer, Thiruvaiyaru Panchayat Union on 10.03.2015. Immediately on the next day, i.e., on 11.03.2015, the petitioner, being the Block Development Officer, Thiruvaiyaru Panchayat Union addressed a letter to the concerned learned Government Pleader to appear in the execution proceedings. Subsequently, an attachment order was passed in the execution proceedings on 11.05.2016. As per the direction of the 1st respondent, the compensation amount was paid. As such, it appears that as on the date of the *ex-parte* decree dated 05.08.2014, the petitioner was not holding the post of Block Development Officer, Thiruvaiyaru and immediately after receipt of the summons in the execution proceedings, he took steps by addressing the learned Government Pleader to



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contest the execution proceedings. In view of the same, in the considered opinion of this Court, there is no fault on the part of the petitioner in the entire episode, i.e., from the date of unfortunate incident of electrocution at Kadambangudi Village on 05.04.2005 to till the date of the attachment order passed in the execution proceedings. The 1st respondent, without considering all these aspects, in a routine way, passed the impugned order.

15. One more issue to be noted is that before issuing the impugned proceedings dated 08.07.2016, by the 1st respondent, no notice was issued to the petitioner calling for his explanation. As and when the 1st respondent passed the order of recovery of some amount from the petitioner, the petitioner ought to have been put on notice to putforth his case before the 1st respondent.

16. Accordingly, in the opinion of this Court, the impugned order issued is against to the principles of natural justice and as such, it is not sustainable under law and accordingly, liable to be set aside.



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17. For the above mentioned reasons, this Writ Petition is allowed with the following directions:

- i. The impugned order in Na.Ka.No.3855/2016/Ka.4, dated 08.07.2016 of the Respondent No.1 is hereby set aside; and
- ii. The Respondent No.1 shall return the amount of Rs.43,899/-, which was recovered from the petitioner within a period of four weeks from the date of receipt of a copy of this order to the petitioner.

18. There shall be no order as to costs.

19. Consequently, connected miscellaneous petitions are closed.

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NCC : Yes/No
Index : Yes/No
Internet : Yes

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BATTU DEVANAND, J.

RM/ABR

To

The District Collector,
Thanjavur District,
Thanjavur.

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