



Writ Petition No.31730 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.02.2024

CORAM

THE HON'BLE MR JUSTICE D.BHARATHA CHAKRAVARTHY

Writ Petition No.31730 of 2013

V.T.Gokulakrishnan

...Petitioner

Versus

The Personal Assistant to the District Collector,
Panchayat Development Department,
Tiruvannamalai District,
Tiruvannamalai.

...Respondent

Prayer: This writ petition is filed under Article 226 of the Constitution of India, with a prayer to issue a writ of certiorari or direction to call for the records pertaining to the order bearing Roc. No.2516/20-12/PA4 dated 22.10.2013 of the respondent herein.

For Petitioner : Mr.K.S.Viswanathan & Ms.T.Hemalatha

For Respondent : Mr. A.Anandan
Government Advocate



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ORDER

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This writ petition is filed to call for the records relating to the impugned order of the respondent dated 22.10.2013 by which the petitioner was imposed with a punishment of recovery for a sum of Rs.1,08,000/-. The said sum was paid by the respondent as compensation under the award of the Motor Accident Claims Tribunal in MCOP No.169 of 2007 dated 25.10.2010. As per the claimant in the said MCOP by rash and negligent driving of the writ petitioner, an accident happened, resulting in injuries. Accordingly, compensation was claimed.

2. In the said petition a counter-affidavit has been filed by the respondents claiming that the Jeep was properly driven by the Official Driver and it is only the injured who carelessly rode the two-wheeler. Despite the horn and shouting by all persons present on the spot, the injured lost his balance and hit the Jeep which was already stopped. However, the Tribunal found that the accident happened due to rash and negligent driving of the Jeep belonging to the Government and ordered the compensation as above.



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3. Thereafter a show cause notice dated 12.07.2012 under Rule 17 A of The Tamil Nadu Civil Services (Disciplinary Appeal) Rules was initiated levelling 3 charges against the petitioner, the first charge is that the petitioner caused an accident with the Government Vehicle by negligent and lethargic performance of duty. The second charge is that he failed to drive the Government vehicle cautiously, causing the accident, resulting in unnecessary loss to the Government and the 3rd charge is that he has violated Rule 21 of The Tamil Nadu Government Servants' Conduct Rules, 1973.

4. The petitioner submitted his detailed explanation denying the charges and explaining that he was not the reason for the accident. However, the same was not accepted and by the order impugned, the petitioner was punished with recovery of a sum of Rs.1,08,000/- from his salary. Aggrieved by the same, the present writ petition is filed.

5. Heard Mr K.S. Viswanathan & Ms T.Hemalatha, learned counsel for the petitioner and Mr A. Anandan, learned Government



Advocate for the respondent.

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6. The learned counsel appearing on behalf of the petitioner would submit that when the petitioner was driving the Jeep in his official capacity, merely because the vehicle was not insured and the compensation amount was mulcted on the Government, the same cannot be passed on to the driver who only drove the vehicle in his official capacity. The learned counsel placed reliance on the judgment of this Court in **R.Anbalagan Vs. The Director General of Police**¹ in which under identical circumstances it was held that the Government cannot recover the amount from the driver. The said judgment in turn relies on a Division Bench judgment of this Court in **Gunasekaran Vs. The Commissioner of Police and Ors.** in W.P.No.11002 of 1999 dated 10.03.2010. The said principle was also approved by yet another Division Bench in **Sevugaperumal Vs. Superintendent of Police.**²

7. Per *contra*, the learned counsel for the respondent would submit that the recovery of any loss is a mode of punishment as per The Tamil

1 (2010) SCC Online Mad 4026

2 (2009) 2 MLJ 849



Nadu Civil Services (Disciplinary Appeal) Rules under Rule 8 (v) and the same is a minor punishment. The amount paid by the Government under the award is a loss to the Government. The Government is entitled to impose such a punishment. The Motor Accident Claims Tribunal has come to the conclusion that the accident had happened only due to the negligence of the petitioner. Therefore, the impugned order cannot be interfered with.

8. I have considered the rival submissions made on either side and perused all the available materials on record.

9. The compensation payable to a third party in respect of a motor accident is as per the provisions of the Motor Vehicles Act, 1988. Upon the claimants filing an application under Section 166 of the Act, the Motor Accident Tribunal is to determine the quantum of compensation, to whom the compensation is paid or by whom the compensation is payable, that is, the insurer, owner or driver as per Section 168 of the Act. In this case, the driver is neither made as a party nor the Tribunal fasten the liability on the Driver and it had determined that the



respondents being the owners of the vehicle are liable to pay the compensation. That being the position, under the garb of disciplinary action, the same cannot be passed on to the Driver. If it is the contention of the Government being the owner of the vehicle, compensation shall be payable by the driver, such plea ought to have been taken before the Tribunal. Therefore, the impugned action is virtually rewriting the award of the Tribunal, is a colourable exercise of power and is illegal.

10. The finding of negligence by the Tribunal to determine the liability to pay compensation is specific to its context of fastening the liability of the owner of the vehicle. To equate the same to 'Negligence in duty' as misconduct under the Conduct Rules would be violence to the context in which it is made. When the petitioner has driven the vehicle as part of the official duty to the satisfaction of his superiors, the impugned order is not sustainable. It may be necessary in a given set of facts to initiate disciplinary action against the driver if there is misconduct on his part. But that cannot result in a penalty to recover the compensation ordered to be paid by the Owner of the vehicle, which only the respondents have to bear.



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11. Under identical facts and circumstances, a Coordinate Single Bench of this Court in **R. Anbalagan -Vs- Inspector of Police** ³ has held that if the vehicle is driven as part of his official duty, compensation is not recoverable from the Driver. The said view has been followed in (i) **V. Gunasekarn -Vs- Superintendent of Police** in W.P.No.19613 of 2012 dated 29.06.2012; (ii) **M. Thangavel -Vs- The Commissioner of Police** in W.P.No.10614 of 2014 dated 09.12.2019 and (iii) **M. Nallathambi -Vs- The Commissioner of Police** in W.P.No.11994 of 2011 dated 03.09.2018. It should be noted that a Division Bench of this Court in **Sevugaperumal -Vs- Superintendent of Police** ⁴ though had held that amount is recoverable, has noted that in the particular case, the Driver was not on official duty. In the Judgment in **M. Thangavel(Cited supra)**, the Learned Judge has also taken into account the view of the Hon'ble Supreme Court of India in **State of Punjab -Vs- Harjit Singh & others** ⁵ wherein the Hon'ble Supreme Court of India viewed that before the Tribunal, when the Driver is not made a party to defend himself, without any further finding as to negligence in the department

³ (2010) SCC Online Mad 4026

⁴ (2009) 2 MLJ 849

⁵ (2002) 10 SCC 178



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proceedings, there cannot be punishment based on the finding of the Tribunal alone.

12. In view thereof the writ petition stands allowed, the impugned order of the respondent dated 22.07.2013 shall stand quashed, there shall be no order as to costs.

27.02.2024

Speaking Order/ : Yes
Index : Yes
Neutral citation : Yes
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To:
The Personal Assistant to the District Collector,
Panchayat Development Department,
Tiruvannamalai District,
Tiruvannamalai.



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D.BHARATHA CHAKRAVARTHY, J.
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