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W.P.No.38589 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.09.2024

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THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

W.P.No.38589 of 2015 and
W.M.P.Nos.15763 and 31303 of 2016 and
M.P.No.2 of 2015

K.Sakthivel

... Petitioner

Vs

1.The Commandant
TSP X Battalion
Ulundurpet, Villupuram District.

2.The Superintendent of Police,
Cuddalore 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 of the 1st respondent in connection with the impugned order passed by him in Na.Ka.No. C2/8848/2013 B.O.No.241/2014 dated 04.06.2014 and by the 2nd respondent in Na.Ka.No. L1/18333/2014 D.O.No.699/2014 dated 04.07.2014 and quash the same and direct the respondents to reimburse the recovered amount to the petitioner within a reasonable time.



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For Petitioner : M/S.K.Venkataramani,
Senior Counsel.

For Respondents : Mr.A.M.Ayyadurai,
Government Advocate

ORDER

The instant writ petition has been filed challenging the recovery order dated 04.06.2014 passed against the petitioner.

2. The learned Senior counsel for the petitioner would contend that the petitioner was the Police Head Constable attached to the Panruti Police Station, Cuddalore District. It is stated that while he was driving the official vehicle, it involved in an accident. Subsequently the same resulted in filing of M.C.O.P.No.2130 of 2002, wherein, the Motor Accidents Claims Tribunal, Chennai directed the Government to pay a sum of Rs.1,81,069/-. The Government satisfies the award, however, this amount was ordered to be recovered from the petitioner, as a debt to the Government. The learned Senior counsel would contend that no notice was issued to the petitioner prior to passing of such an order, therefore contended that the recovery order is liable to be quashed.



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3. Per contra, the learned Government Advocate would vehemently content that the accident occurred solely due to the negligence of the petitioner and the same was resulting in a loss of Rs. 1,81,069/- to the Court by satisfying the award of the Motor Accidents Claims Tribunal. Therefore, the recovery order issued against the petitioner is liable to be sustainable.

4. I have given my anxious consideration to the submissions made on either side.

5. The sum and substance of the learned Senior counsel's contention is that before issuance of the recovery order, no notice was issued. In this regard, as evident from counter statement, there are no reference as to the issuance of any prior notice. Therefore, on the face of it, the demand against the petitioner to pay a substantial sum of Rs. 1,81,069/- is absolutely illegal. Furthermore, the learned Senior counsel would contend that having pleaded in the M.C.O.P that there was no rash and negligence on the part of the petitioner, the respondents are estopped to issue such recovery notice.



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6. Further, the learned counsel for the petitioner also relied upon the judgment of the Division Bench of this Court in the case of *K.Annadurai v. The Chief Engineer* in W.P.No.34959 of 2006, dated 06.08.2009, wherein, this Court has elaborately examined Section 94(2) of Motor Vehicle Act and the policy decision of the Government in not covering the Government Vehicles by the insurance policies against the third-party risk. After contending the above aspect, this Court observed that even if there is any negligence on the part of the drivers, then the recovery of token amount alone is permissible, under Section 8(V)(a) of the Tamil Nadu Civil Services (CCA) Rules, if any pecuniary loss caused by the negligence of the Government Servants. In the present case, though the Government has stated that there was negligence on the part of the petitioner, there is no proof available to substantiate the alleged negligence of the petitioner or as a matter of fact no disciplinary proceeding initiated for the alleged negligence of the petitioner and its concomitant loss to the government.

7. In view of the peculiar circumstances viz., non-issuance of notice, and on account of the absence of foundational facts as to the negligence on the part of the petitioner, this Court does not find any merit in the issuance of



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the impugned recovery order. Therefore, the order passed by the 1st respondent is liable to be quashed.

8. In the result, the writ petition stands allowed. No costs.
Consequently, connected miscellaneous petitions are closed.

27.09.2024

Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes/No
shk

To:

- 1.The Commandant
TSP X Battalion
Ulundurpet, Villupuram District.
- 2.The Superintendent of Police,
Cuddalore District.



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C.KUMARAPPAN, J.

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