

C. Paramasamy Vs. The Principal Chief Conservator of Forests and Others

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Court : Chennai Madurai

Decided On : Jan-20-2017

Judge : M.V. Muralidaran

Appeal No. : WP. (MD) No. 4415 of 2009 & MP. (MD) No. 1 of 2009 & MP. (MD) No. 1 of 2010

Appellant : C. Paramasamy

Respondent : The Principal Chief Conservator of Forests and Others

Judgement :

(Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari, calling for the records pertaining to the impugned proceedings of the 3rd respondent in Se.Mu.Aa.No.879/1999/M dated 27.02.2009, and quash the same.)

1. The petitioner has filed this writ petition for the issuance of Writ of Certiorari to call for the records pertaining to the impugned proceedings of the 3rd respondent in Se.Mu.Aa.No.879/1999/M dated 27.02.1999 and quash the same.

2. The Petitioner has challenged the order of recovery of Rs. 84, 542/- from his salary on the ground that the impugned order is passed by violating the principles of natural justice. The petitioner was joined as Driver in the Forest Department on 21.09.1992. On 03.04.1997 when the petitioner was worked as Jeep Driver in the Forest Department, a motor cycle driven by a person in a race and negligence

manner, dashed the stationed jeep and in the result two persons injured in the said accident. Though the petitioner is not responsible for the said accident, the police has registered a case against the petitioner and the same was taken on file in S.T.C.No.39 of 1998 by the Learned Judicial Magistrate No.3, Ramanathapuram. After trial the said criminal case against the petitioner was ended in acquittal by Judgment dated 12.10.1999.

3. The further case of the petitioner is that due to his health problem, he could not drive the vehicle and he was given alternative employment as Office Assistant. Thereafter in the year 2001, since there were excess staffs in the Forest Department, the petitioner was migrated to Co-operative Audit Department and the petitioner is presently working in the 4th respondent s office. When the facts are being so, after a lapse of more than 10 years, on 23.04.08, the 3rd respondent issued a show cause notice to the petitioner as to why disciplinary proceedings should not be taken against him for the monetary loss suffered by the government due to the above said accident. The petitioner has informed that the injured person in the above said accident filed claim petition before the Motor Accident Claims Tribunal and an award was also passed against government. Since the petitioner is responsible for the said accident, the amount awarded by the Motor Accident Claims Tribunal has to be paid by the petitioner. The petitioner has sent his explanation on 13.11.2008 to the show cause notice issued to him.

4. While so, the 3rd respondent by proceedings dated 27.02.2009 asked the petitioner to pay a sum of Rs.84,542/- and the said amount was directed to be recovered from his salary. Immediately on receipt of the said recovery order, the petitioner requested the 3rd respondent not to recover the said amount from his salary. However, the 3rd respondent directed the 4th respondent to recover the said amount from the salary of the petitioner commencing from the month of May 2009. Being aggrieved the same the petitioner has filed the present writ petition before this Court.

5. The 3rd respondent has filed a counter affidavit and contented that the petitioner C.Paramasamy, while he was working as a driver in the Divisional Forest Office, Ramanathapuram on 03.04.1997 hit against two persons viz.,

D.Mohammed Bashir and Boominathan and they filed claim petitions in M.C.O.P.No.1091/98 and M.C.O.P.No.145/1998 before the Motor Accident Claims Tribunal, Madurai and Ramnad respectively. In M.C.O.P.No. 1091/1998 the tribunal has awarded a sum of Rs.59,542/- by order dated 26.05.2003. In M.C.O.P.No.145/1998 the Tribunal has awarded Rs.2,05,275/- by order dated 02.01.2004. As against the order in M.C.O.P.No.145/1998, the 3rd respondent has filed an appeal before this Hon ble Court and for filing the above appeal the 3rd respondent has deposited a sum of Rs.25,000/- as pre-condition to file the appeal. The above said loss was caused to the government due to the negligence of duty on the part of the petitioner and therefore the said amount was ordered to be recovered from the pay of the delinquent government servant namely the petitioner herein.

6. The respondents further stated that the petitioner was given an opportunity to represent his case and therefore it is not correct to state that the petitioner was not heard before passing the impugned order. Hence, this respondent has not violated the principles of natural justice while passing the impugned order of recovery. The impugned order dated 27.02.2009 was passed after following the procedure under rule 17 (a) of Tamil Nadu Civil Services (Disputes and Appeal) Rules 1955. Since the government has incurred loss due to the negligent driving of the petitioner. It has to be recovered from the salary of the petitioner as per G.O.Ms.No.393 Home (FR IV) Department dated 13.01.1988.

7. I have heard the arguments of Mr.M.Saravanan, learned counsel appearing for the petitioner and Mr.K.Guru, learned Additional Government Pleader appearing for the respondents.

8. It is seen from the records that on 3.4.97 while the petitioner was working as the driver in the Forest Department, he hit against the two wheeler of D.Mohammed Bashir by the Department Jeep and in the result two persons were injured. The injured person filed two separate claim petition and separate awards were passed. In order to satisfy the award, the Department has deposited a sum of Rs.84,542/-. The Government has incurred loss of the above said amount due to the negligence of the petitioner and therefore the said amount was directed to be

recovered from the salary of the petitioner commencing from the month of May 2009.

9. The petitioner being a government servant and he was a driver at the relevant time of accident, he can't be faulted with for the said accident. The accident was taken place when the petitioner was on duty and it was an inevitable one and for that the petitioner can't be faulted with. Based on the said principles, the petitioner was drive beyond his control, accident might have been happened and for that petitioner can't be penalized. The Department can't attribute any negligence against the petitioner merely because he was a driver at the time of accident. It is for the government to pay the amount awarded by the Motor Accident Claims Tribunal to the injured. The payment of the said amount by the government cannot be recovered from the petitioner.

10. It is further seen from the records that for the said accident, the petitioner was already penalized by reverting back the petitioner from the post of Driver to the post Office Assistant. The order of recovery is a double jeopardy on the petitioner and therefore the order of recovery is illegal and unsustainable in law. Further, a perusal of impugned order discloses that the 3rd respondent has not at all considered the explanation submitted by the petitioner. The finding of the 3rd respondent in the impugned order clearly shows his malafide intention and his arbitrary exercise in penalizing the petitioner. Hence, I hold that the impugned order of recovery is arbitrary and illegal and the same is set aside.

11. In the result:

(a) this writ petition is allowed, by setting aside the impugned order made in Se.Mu.Aa.No. 879/1999/M dated 27.02.2009, of the 3rd respondent.

(b) the respondents are hereby directed to repay the amounts, if any already recovered from the petitioner's salary. No costs. Consequently, connected miscellaneous petitions are closed.