

(2019) 03 J&K CK 0129

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 304 Of 2014, IA 01 Of 2014

Bashir Ahmad Ahangar

APPELLANT

Vs

State Of Jammu & Kashmir Home Department

RESPONDENT

Date of Decision : 19-03-2019

Acts Referred:

Citation : (2019) 03 J&K CK 0129

Hon'ble Judges : Gita Mittal, CJ

Bench : Single Bench

Advocate : Shahnaz Ratanpuri, B.A.Dar

Final Decision : Disposed Off

Judgement

1. With the consent of learned counsel for the parties, the writ petition is taken up for consideration.
2. Through the present writ petition, the petitioner has assailed consecutive orders passed by the respondents on 27.11.2013, 06.12.2013 and 02.01.2014.
3. Some admitted facts are necessary for adjudication of this matter; that the petitioner was employee of the Jammu & Kashmir Police Department as Driver. In the year 2003, the petitioner was posted with one Abdul Khaliq Reshi, Zonal President of J&K Peoples Democratic Party.
4. According to the petitioner, son of Abdul Khaliq Reshi, Zonal President of the J&K Peoples Democratic Party on 07.01.2007, took the official vehicle being a gypsy bearing No.JK02N-9607 behind the back of the petitioner and caused an accident. In this accident, a minor boy was injured and a case being FIR No.05/07 was registered against the son of the said Abdul Khaliq Reshi at P/S City Jammu.
5. The petitioner relies upon the written certificate given by Abdul Khaliq Reshi to the effect that the petitioner had no role in the accident in question. It was further certified that the petitioner was not in any way responsible for the

accident which had occurred on 07.01.2007.

6. So far as the injured minor child was concerned , a motor accident claim was filed before the Motor Accident Claims Tribunal which was numbered as File No.812/Claim by the father of the injured child namely Ashok Kumar against Wazid Ahmad Reshi son of Abdul Khaliq Reshi (as respondent no.1) as well as against the official respondents.

7. In this claim petition, it was alleged by the counsel for the petitioner that on the 7th of January, 2007, the child came to be injured by the official gypsy

being driven rashly and negligently by the driver Wazid Ahmad Reshi son of Abdul Khaliq Reshi.

8. The motor accident claim was not contested by the driver of the vehicle that is Wazid Ahmad Reshi, who was set ex-parte. The Director General of Police, Central Stores, (who stood impleaded as respondent no.2 in the claim petition) and the Government of Jammu & Kashmir (impleaded as respondent no.3 in the claim petition) took the stand that though the offending vehicle was in the charge of Bashir Ahmad, however, at the time of accident the said vehicle was not being driven by him but by the son of Abdul Khaliq Reshi, who was protectee to whom the vehicle in question stood allotted.

9. On consideration of the stand of learned counsel for the parties and evidence on record, the Motor Accident Claims Tribunal inter-alia awarded sum of Rs.1,70,000/- (including interim compensation already granted) with interest @ 7.5% per annum, in favour of the injured child.

10. Thereafter, the respondent no.1 passed the impugned order bearing No. 500 of 2013 dated 27.11.2013 whereby half of the amount of compensation awarded by the Motor Accident Claims Tribunal, Jammu, was directed to be recovered from the salary of the petitioner. In compliance of the impugned order dated 27.11.2013, the office of the respondent no.2 issued a communication No.PHQ/Acctt/MACT/13/11104 dated 06.12.2013 directing Senior Superintendent of Police, Security, Kashmir, Srinagar, (the respondent no.3 before this court) to recover half of the awarded amount from the petitioner.

The Respondent no. 3 in turn directed respondent no.4 vide letter No.Sec/K/GB/14/51-54 dated 02.01.2014 to make the necessary deduction from the salary of the petitioner.

The petitioner has stated that he learned of this order when he found that Rs.10,000/- stood deducted from his salary and when he enquired for the reason for this deduction, he was served with the aforesaid orders.

11. Aggrieved by the orders dated 27.11.2013, 06.12.2013, the petitioner has assailed the same before this court by way of the instant petition praying for setting aside the said orders of the respondents.

12. In response to the notice issued to them, respondents have filed objections

alleging therein that it was the petitioner who handed over the keys of the vehicle to the son of Abdul Khali Reshi. They have further submitted that at the time of accident, the vehicle was in the charge of the petitioner and, therefore, the respondents were not liable to pay any compensation to the injured victim.

13. Mr. B. A .Dar, learned Sr. Additional Advocate General, who has appeared on behalf of respondents contended before this court that the vehicle was in the charge of the petitioner; that he has not discharged his duty properly and was responsible for the said accident. Mr.Dar states that the driver in charge of the vehicle ought not to have handed over the keys of the official vehicle to an unauthorized person and this act of the petitioner manifests itself that the petitioner was negligent in discharging his duties. Mr. Dar, has further submitted that the respondents were justified in effecting the recovery of the half of the awarded amount from the petitioner by the impugned orders.

14. When the matter was being heard on 13.03.2019, Mr. S. N. Ratinpuri, had submitted that orders dated 27.11.2013, and 06.12.2013 were illegal inter-alia for the reason that these were passed without following principles of natural justice.

15. Per contra, it was contended by Mr. Dar, learned Sr. Additional Advocate General, that notice to show cause was issued to petitioner before passing these orders.

16. I had observed that in the reply filed by respondents there was not even slightest reference of any such notice before proceeding against the petitioner and passing the impugned orders. One more opportunity was given to respondents vide order dated 13th March,2019 to produce the record. It was made clear to respondents that in case the record is not submitted on the next date, in that eventuality, respondents would be held to pay heavy costs and it would have to be held that no show cause notice was issued to the petitioner.

17. It is necessary to note that when the matter was heard on 15th March, 2019 Mr. Dar, submitted before this court, that one file from the SSP Security, Kashmir, was received, however, there was no show cause notice on the file. It was also submitted that since the Driver was posted at Kargil, and the record relating to the present case may be at Kargil. It was contended that the notice to show cause would also be available on the records of the respondents at Kargil.

18 Today, Mr. Dar has fairly informed this court that though the record has been received from Kargil but it does not contain any notice to show cause against the petitioner.

19. Mr. Shahnaz Ratinpuri, learned counsel for the petitioner, has also contended that the respondents have violated the principles of natural justice as there was no material on record to support the plea taken in the counter affidavit that petitioner was negligent in discharge of his duties in any manner as is implicit in order dated 27th November, 2013.The order dated 27.11.2013 was premised on

the supposition that the petitioner had culpability in the son of the protectee taking away the vehicle that caused the accident. The petitioner was entitled to an opportunity to contest this premise and to establish his defense of innocence. There is not an iota of material on record to support the submissions made in the counter affidavit to effect that the petitioner had handed over the keys of the official vehicle to unauthorized person. There is no material on record even to show that the petitioner was present at the spot when the vehicle was taken away. For this reason, the order directing recovery of half of the awarded amount from the salary of the petitioner was punitive and worked as a grave injustice to the petitioner. The same is not sustainable under law and has to be set aside being in violation of the principles of natural justice.

20. The impugned orders, therefore, directing recovery of 50% of the awarded amount from the petitioner was not only unjustified but patently illegal in as much as recovery had been made without issuing any notice to show cause and without giving opportunity to the petitioner to contest against the proposed action.

21. As a result the consequential orders dated 27.11.2013, 06.12.2013 and 02.01.2014 are not sustainable and are accordingly quashed.

22. In view of the above, the respondents are directed to forthwith effect the payment of amount to the petitioner which has been deducted from his salary pursuant to the order dated 27.11.2013. Further, the petitioner will be entitled to 10% interest on the amount which was deducted from his salary from the date of recovery till such amount is paid to the petitioner.

23. In terms of the clear order passed by this court on 13.03.2019, petitioner would also be entitled to the receipt of the amount of heavy costs to be imposed upon the respondents.

24. As a result the consequential orders dated 27.11.2013, 06.12.2013 and 02.01.2014 are not sustainable and are accordingly quashed.

25. In view of the above, this writ petition is disposed of with a direction to respondents to pay costs to the tune of Rs.15,000/- to the petitioner within one month from the date of receipt of this order.

26. Disposed of.