



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.12.2016

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P. (MD) No.23752 of 2016

Arockiaraj

... Petitioner

Vs.

1.The Joint Director,
Health and Rural Welfare and Family Welfare,
Theni @ Periyakulam,
Theni District.

2.Jesudass

... Respondents

PRAYER: This Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the 1st Respondent to pass an order on the enquiry conducted by him vide his Proceedings Na.Ka.No.10840/Confident/2016 dated 01.11.2016 within the stipulated time as fixed by this Hon'ble Court.

For Petitioner

:Mr.D.Selvanayagam for
Mr.D.Banu Prasad

For 1st Respondent

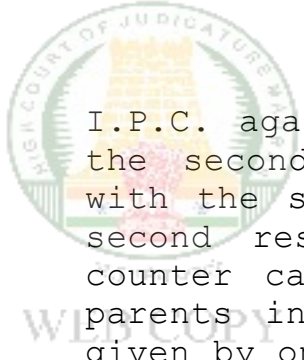
:Mr.A.K.Bhaskara Pandian
Special Government Pleader

O R D E R

The prayer in the writ petition is for a Writ of Mandamus, directing the 1st Respondent to pass an order on the enquiry conducted by him vide his Proceedings Na.Ka.No.10840/Confident/2016 dated 01.11.2016, within the stipulated time as fixed by this Court.

2.The case of the petitioner is that on 17.10.2015, when he was standing in front of his house, at the instigation of his wife, father-in-law and mother-in-law, the second respondent, who is maternal uncle of the petitioner's wife, along with others attacked the petitioner and his parents.

3.Thereafter, the petitioner was admitted in a hospital for treatment. On 18.10.2015, the petitioner lodged a complaint against the second respondent and four others, pursuant to which a case was registered in Crime No.396 of 2015 on the file of the Devaram Police Station under Sections 147, 294(b), 324 and 506(i)



I.P.C. against the second respondent and four others. Thereafter, the second respondent was arrested on 20.10.2015 in connection with the said Crime and he was remanded to judicial custody. The second respondent was confined at Central Prison, Madurai. A counter case was also registered against the petitioner and his parents in Crime No.397 of 2015, on the basis of the complaint given by one Arockiamary W/o.Mariaselvam.

4.Since the second respondent was under the judicial custody for more than a week, on the petition given by the petitioner for taking departmental action against the second respondent, enquiry was conducted by the first respondent and in this regard, the petitioner was asked to appear before the first respondent on 24.10.2016 and on the said date the petitioner could not appear due to unavoidable circumstances for enquiry and in this regard, he had given a detailed representation on 25.10.2016, explaining the reasons for non-appearance before the first respondent on 24.10.2016.

5.Thereafter, the petitioner seems to have sent another representation on 02.11.2016 to the first respondent to give one more opportunity to appear before him and explain his case, pursuant to which, the first respondent by communication dated 01.11.2016, asked the petitioner to appear for enquiry on 11.11.2016. On 11.11.2016, the petitioner appeared before the first respondent and had submitted before him that the second respondent was in judicial custody for more than a week, pursuant to the complaint given by the petitioner in a criminal case and therefore, based on which disciplinary action should be taken against him. In spite of these happenings no order departmentally has been passed by the first respondent. Therefore, the petitioner has come out with this writ petition, seeking direction by way of mandamus as prayed for.

6.Mr.D.Selvanayagam, the learned counsel appearing for the petitioner would contend that only pursuant to the occurrence taken place on 17.10.2015, where at the hands of the second respondent and his men, the petitioner and his other family members suffered injuries. Therefore, the case was filed by the concerned police and the same is being investigated. In this regard, though the respondent had been in judicial custody between 20.10.2015 and 28.10.2015, no departmental action in accordance with law had been taken against the second respondent.

7.Therefore, the grievance of the petitioner appears to be that the first respondent should have taken a stringent departmental action by suspending the second respondent as he had been in judicial custody for more than a week and without doing
<https://hcservices.scrips.gov.in/hcservices> the first respondent called the petitioner for enquiry on his petition and even after completing the enquiry on 11.11.2016, no order has so far been passed.



8. I have considered the case of the petitioner as well as the submissions made by the learned counsel appearing for the petitioner.

9. First of all, the petitioner is not a Government Servant and the grievance now he has echoed is not related to the service matter pertaining to the petitioner. Secondly, though a criminal case was filed against the second respondent at the instance of the petitioner, it is for the prosecution to take up the case to its logical conclusion under the Criminal Law. The petitioner is not an aggrieved party in so far as service dispute is concerned. The Law is well settled that in service jurisprudence only an aggrieved party can maintain a writ petition. Since it is not a public interest litigation and according to the petitioner, it is an adversary writ petition, unless the aggrievement on the part of the petitioner is shown, at least prima-facie, the jurisdiction of this Court, being extra-ordinary, under Article 226 of the Constitution of India, cannot be invoked.

10. In that view of the matter, this Court is not inclined to entertain the writ petition as the same deserves to be dismissed in limni at the admission stage. Accordingly, the Writ Petition is dismissed. No costs.

Sd/-
Assistant Registrar(co)

/True copy/

Sub Assistant Registrar

To

1. The Joint Director,
Health and Rural Welfare and Family Welfare,
Theni @ Periyakulam,
Theni District.

+1cc to Mr.P.BanuPrasad, Advocate SR.No.80056
+1cc to special Government Pleader SR.No.80011

sj
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W.P. (MD) No.23752 of 2016
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