



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.01.2017

CORAM :

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Writ Petition (MD) No.2973 of 2015

WEB COPY

K.Anbu Thanabal

... Petitioner

Vs.

1.The Union of India,
Rep by its Secretary to Government,
Ministry of Home Affairs,
New Delhi.

2.The Director General,
Central Industrial Security Force,
CGO Complex, Lodhi Road,
New Delhi.

3.The Inspector General,
Central Industrial Security Force,
Western Sector, Mumbai.

4.S.K.Mohan Ka,
Senior Commandant,
RCFL, Chembur, Mumbai

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus to direct the 4th respondent to pay a sum of Rs.5 00 000/- towards the compensation for the abortion of baby and other incidental expenses and mental agony to the petitioners wife due to the indifferent careless and negligent act of the 4th respondent.

For Petitioner	: Mr.A.S.Mujibur Rahman
For 1 ST Respondent	: Mr.R.Murugappan,CGSC
For Respondents 2&3	: No Appearance
For 4 th Respondent	: No appearance

ORDER

The petitioner seeks for mandamus directing the fourth respondent to pay a sum of Rs.5 lakhs towards compensation for the abortion of baby and other incidental expenses and mental agony caused to the petitioner's wife.

2.Heard the learned counsel for the petitioner and the learned Central Government Standing Counsel for the first respondent.



3. The petitioner is a Constable in the Central Industrial Security Force. It appears that he was transferred from Mumbai to Chattisgarh by an order dated 30.07.2014 and however, he was not relieved till 03.09.2014 from Mumbai.

4. It is stated that the petitioner's wife was pregnant at that time with six months pregnancy and therefore, he made two representations on 25.08.2014 and 03.09.2014 requesting to retain him at Mumbai itself by considering the above state of affairs. It is further stated that the said representations were not considered and no orders were passed. However, the petitioner was directed to deposit the medical card on 05.09.2014 and consequently, the petitioner has also surrendered the said card. According to the petitioner, once the card is surrendered, he cannot take treatment for his wife at Mumbai. It is further contended that the petitioner along with his wife, travelled to his native place at Tuticorin on 06.09.2014 by train and reached Tuticorin on 08.09.2014. It is the case of the petitioner that due to such long journey for two days, the petitioner's wife developed pain in her stomach which had resulted in abortion. Therefore, the petitioner seeks for compensation as stated supra.

5. On the other hand, it is contended in the counter affidavit filed by the fourth respondent that the petitioner could have stayed at Mumbai itself even after transfer for a permissible time which he failed to utilise.

6. Though the learned counsel appearing for the petitioner has vehemently contended that the petitioner is entitled for compensation in view of the negligence on the part of the respondents, has however, fairly conceded that the factual aspects involved in this matter seeking for compensation from the respondents have to be gone into and decided only by letting in evidence, which in turn has to be done only by the competent Civil Court. He would further contend that the petitioner has already made representation on 01.12.2014 seeking permission to file such suit before the second respondent and the said representation has not been considered so far.

7. This Court while exercising the jurisdiction under Article 226 of the Constitution of India, cannot go into the disputed question of facts that too while considering the relief seeking for compensation. Needless to say that the parties have to agitate the matter only before the competent Civil Court. As the petitioner is required to get permission for filing such civil suit and the said representation is also pending before the second respondent, I only direct the second respondent to consider the representation of the petitioner dated 01.12.2014 and pass orders on its own merits and in accordance with law, without loss of further time, however, within a period of six weeks from the date of receipt of a copy of this order.



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8. With the above direction, the writ petition is disposed of. No costs.

Sd/-

Assistant Registrar (Crl. side)

/True copy/

Sub Assistant Registrar/

To

1. Secretary to Government,
The Union of India,
Ministry of Home Affairs,
New Delhi.
2. The Director General,
Central Industrial Security Force,
CGO Complex, Lodhi Road,
New Delhi.
3. The Inspector General,
Central Industrial Security Force,
Western Sector, Mumbai.

+1Cc to Mr.R.MURUGAPPAN, Advocate, SR. NO. 140
+1cc to Mr.MD.IBRAHIM ALI, Advocate, Sr.No.179

sms

JS/ksm/25.01.2017/3p-6c

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