



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.04.2018

CORAM:

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THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.P.(MD)No.8871 of 2018

Sudalaikannu

...Petitioner

Vs.

- 1) The Principal Secretary to Government,
Municipal Administration and Water Supply Department,
Secretariat, Chennai.
- 2) The Commissioner,
Tirunelveli City Municipal Corporation,
Tirunelveli.
- 3) The Director,
Vigilance and Anti Corruption,
Chennai.
- 4) L.K.Baskar,
Assistant Executive Engineer,
I/c Assistant Commissioner,
Tirunelveli Ward Office,
Tirunelveli Corporation.
- 5) C.Bhaskaran,
Junior Engineer,
Tirunelveli ward office,
Tirunelveli Corporation.
- 6) G.Ilangovan,
Junior Engineer (Planning),
Main Office,
Tirunelveli Corporation.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the 1st respondent to pass final orders on the proposal forwarded by the 2nd respondent vide letter Roc.No.C1/11040/2008 dated 22.10.2013 within the period that may be stipulated by this Court.

<https://hcservices.ecourts.gov.in/hcservices/>
For Petitioner
For RR 1 & 3

: Mr.R.Gandhi
: Mr.D.Muruganantham,
Government Advocate.



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For R2 : Mr.Aayiram K.Selvakumar,
Additional Government Pleader.
For R5 : Mr.Mohammed Imran
Amicus Curie : Mr.M.Ajmal Khan,
Senior Counsel

O R D E R

The prayer sought for in this Writ Petition is to issue a Writ of Mandamus, directing the 1st respondent to pass final orders on the proposal forwarded by the 2nd respondent vide letter Roc.No.C1/11040/2008 dated 22.10.2013 within the period that may be stipulated by this Court.

2. I have heard Mr.R.Gandhi, learned counsel appearing for the petitioner, Mr.D.Muruganantham, learned Government Advocate appearing for 1st and 3rd respondents, Mr.Aayiram K.Selvakumar, learned Additional Government Pleader appearing for second respondent and Mr.Mohammed Imran, learned counsel appearing for the fifth respondent.

3. The petitioner claimed to be the former Municipal Councilor of the second respondent Municipality. Learned counsel for the petitioner submitted that, on the basis of the complaint given by him, disciplinary proceedings were initiated against the respondents 4 to 6, where, on completion of the enquiry, reports and connected documents even though were forwarded by the second respondent to the first respondent as early as on 22.10.2013, for all these years, the first respondent has not passed final orders on the said disciplinary action against the respondents 4 to 6. Therefore, with the aforesaid prayer, the petitioner has moved this writ petition.

4. Mr.R.Gandhi, learned counsel appearing for the petitioner would submit that the petitioner is a social worker and on that capacity, he has filed this Writ Petition.

5. When this Court has raised a preliminary objection, with regard to the locus of the petitioner, as, it is not the service dispute of the petitioner and if at all any disciplinary proceedings to be completed or concluded, even though the same has been instigated by the petitioner by making the complaint against the respondents 4 to 6, the same shall be the matter between the employee and the employer (i.e.,) the official respondents herein and the private respondents herein.

6. With regard to the said preliminary issue of locus as raised by this Court, the learned counsel appearing for the petitioner would submit that, if the person is aggrieved because of the delayed action or inaction of the respondent, especially the official respondents in concluding the disciplinary proceedings made against

the private respondents and he can maintain this writ petition.

7. In this regard, in order to assist this Court, learned senior counsel has been requested by this Court as to know the legal position on the issue raised herein to state whether a third party can set the law in action by invoking Article 226 of the Constitution of India, that too, as service dispute without having any connection with any of the service disputes pertaining to the said third party.

8. The learned senior counsel, in response would submit that, the law is well settled in this regard as a third party cannot stand in the way in between the employee and the employer in matters of service disputes, especially in the context of disciplinary proceedings.

9. In this regard, the learned senior counsel would rely upon the judgement of the Hon'ble Apex Court made in the case **Rajnit Prasad vs., Union of India and others** reported in (2000) 9 SCC 313. The learned senior counsel has relied upon paragraphs 8, 9 and 10 and the same which reads as under:

"8. It is, no doubt, true that the scope of "locus standi" has been widened by this Court through its various decisions and, that too, in the field of Public Interest Litigation where it has been said that Public Interest Litigation can be initiated not only by filing petitions in the High Court or in this Court in a regular manner but also by means of letters and telegrams addressed to the Court. (See : People's Union for Democratic Rights v. Union of India , Bandhua Mukti Morcha v. Union of India , State of Himachal Pradesh v. A Parent of a Student of Medical College, Shimla and Bangalore Medical Trust v. B.S. Muddappa .

9. But a mere busy-body who has no interest cannot invoke the jurisdiction of the Court. In respect of departmental proceedings which are initiated or sought to be initiated by the Government against its employees, a person who is not even remotely connected with those proceedings cannot challenge any aspect of the departmental proceedings or action by filing a Writ Petition in the High Court or in this Court. Disciplinary action against an employee is taken by the Government for various reasons principally for "misconduct" on the part of the employee. This action is taken after a "domestic" enquiry in which the employee is provided an opportunity of hearing as required by the constitutional mandate. It is essentially a matter between the employer and the employee, and a stranger, much less a practising advocate, cannot be said to have any interest in those



proceedings. Public interest of general importance is not involved in disciplinary proceedings. In fact, if such petitions are entertained at the instance of persons who are not connected with those proceedings, it would amount to an abuse of the process of Court.

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10. In view of the above, it is not open to the petitioner to challenge the Order of the High Court by which the departmental charge-sheet issued to Dr. U.N. Biswas was quashed. The permission to file the special leave petition is, therefore, refused."

10. The learned senior counsel would also rely upon the decision of the learned Judge of this Court in the matter of **K. Padma vs., Vigilance Cell, Madras and Others** reported in (2007) 3 MLJ 639, where the learned senior counsel relied upon the following passages:

" The grievance of the petitioner in this writ petition is that the District Munsif, Namakkal, while discharging his judicial function, committed irregularities, which made the petitioner to make a complaint to the first respondent, the Vigilance Cell, High Court, Madras. The Vigilance Cell sent recommendations on the same to the Principal District Judge, Namakkal to enquire into the complaint. Also, the proceeding before the Principal District Judge, Namakkal, dated 20.12.2004 which is the Enquiry Report, is filed in the typed set of papers.

2. The entire exercise by the petitioner is highly misconceived. When a complaint against a Judicial Officer is made, it can be enquired into under the Orders of the Hon ble Chief Justice. Any further proceedings on which action to be taken will be decided by him either through the Committees appointed by him or by the Full Court. The petitioner being the complainant has no further role to play in this matter. The Supreme Court, vide decision Rajnit Prasad v. Union of India AIR 2000 SC 3469 : 2000 (9) SCC 313 held that once a complaint is given against a judicial officer his role ends there. The relevant passage found in paragraphs 9 and 10 are as follows:

In respect of departmental proceedings which are initiated or sought to be initiated by the Government against its employees, a person who is not even remotely connected with those proceedings cannot challenge any aspect of the departmental proceedings or action by filing a writ petition in the High Court or in this Court. Disciplinary action against an employee is taken by the Government for various reasons principally for misconduct on the part of the employee. This action is taken after a domestic inquiry in which the employee is provided an opportunity of hearing as required by the constitutional mandate. It is essentially a matter



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between the employer and the employee, and a stranger, much less a practising advocate, cannot be said to have any interest in those proceedings. Public interest of general importance is not involved in disciplinary proceedings. In fact, if such petitions are entertained at the instance of persons who are not connected with those proceedings, it would amount to an abuse of the process of Court.

10. In view of the above, it is not open to the petitioner to challenge the order of the High Court by which the departmental charge-sheet issued to Dr. U.N. Biswas was quashed. The permission to file the special leave petition is, therefore, refused.

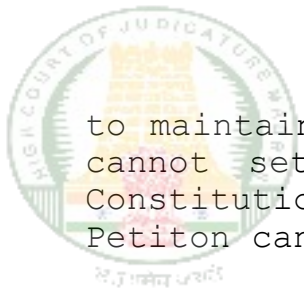
3. In the light of the above, the writ petition filed by the petitioner is misconceived and clearly not maintainable. Hence the writ petition is dismissed. No costs. Consequently, M.P. Nos. 1 and 2 of 2087 are closed."

11. The learned senior counsel also relied upon the recent decision of the learned Judge made in **V. Vijayalakshmi vs., State of Tamil Nadu represented by its Secretary and others** in W.P.(MD) No.939 of 2018 dated 17.01.2018, where the learned Judge has taken the decision that, the disciplinary action against the officials concerned lies entirely with the employer and it is not for the writ petitioner, who is a private person to ask for a Writ of Mandamus in this regard. The relevant portion of the judgment reads as under:-

"4. The specific complaint of the writ petitioner is that for a period of suspension, that is, from 04.08.2015 to 10.08.2017, even though her salary has been disbursed by the Government, it was not credited to her account and that the same was misappropriated. The writ petitioner, therefore lodged a representation in this regard, for taking appropriate action against the persons who allegedly misappropriated the salary payable to her. Since no action was taken, the present writ petition has been filed for directing the respondents 1 and 2 to take appropriate criminal and disciplinary action against the erring officials.

5. This Court is of the view that the decision to take disciplinary action against the officials concerned, lies entirely with the employer and it is not for the writ petitioner to ask for issuance of Writ of Mandamus in this regard. The writ petitioner has no locus standi in the matter."

12. By relying upon these decisions, the learned senior counsel has submitted that, the petitioner certainly does not have any locus



to maintain this writ petition as service dispute and therefore, he cannot set the law in motion by invoking Article 226 of the Constitution of India, on the service side and therefore, this Writ Petition can be rejected.

13. I have considered the said submissions made by the learned counsel as well as the submissions made by the learned senior counsel who has been requested to assist this Court as Amicus and also perused the judgments relied upon by the learned Senior Counsel.

14. As it is rightly pointed out by the learned Amicus, the law in this regard is well settled, as a third party, not connected with any service dispute cannot maintain the Writ Petition, invoking Article 226 of the Constitution of India, on the service side seeking a Writ of Mandamus to take action against any employee or officials.

15. The theory of personal injury can very well be pressed into the service in this case.

16. Admittedly, the petitioner is a third party and though he has claimed to be the social worker, he cannot claim any personal injury of the case of the alleged delayed action of disciplinary proceedings against the official respondent against the private respondent.

17. Once the third party ceases to be the person, without any personal injury, he cannot maintain the Writ Petition as an adversary Writ Petition.

18. If the petitioner files any adversary writ petition on the service side, because he is a third party, the next question would be naturally raised is that, whether he can file such petitions by way of Public Interest Litigations (PIL).

19. In this regard, it is also brought to the notice of this Court that, the very same petitioner already approached this Court by filing a PIL, where the Division Bench of this Court in W.P.(MD). No.6734 of 2007 in **Sudalaikannu Vs., the Secretary, Municipal Administration and Water Supply Department and others** dated 23.12.2008 made the following observations which can usefully be pressed into service herein.

" It is seen that the petitioner belongs to a particular political party and he also functioned as a Councilor of the Municipal Corporation. Further, the petition has been filed on frivolous reasons after knowing fully well that action is being taken against respondents-4 to 7. It has been repeatedly held by the Hon'ble Supreme Court as well as by this Court that vexatious applications in the guise of public interest litigations should not be entertained. Since the present petition



is one of such kind, we hold that the petitioner has no locus standi to file it and the same is liable to be dismissed."

20. Since the very same petitioner has been branded as the frivolous litigant by the judicial pronouncement of the Division Bench Judgment cited supra, with regard to the genuineness of the litigant's nature, attached with the nature of this Court, one cannot have any doubt that, the petitioner certainly has not approached this Court for any good intention and he might have approached this Court with any other private intention (i.e.,) the reason why the petitioner knowing well that he cannot file the writ petition against the official respondent herein, for the alleged inaction on their part on the private respondents herein by way of service dispute, has filed this Writ Petition.

21. If such kind of frivolous litigations are entertained by this Court, that too, in exercising the extraordinary original jurisdiction of this Court under Article 226 of the Constitution of India, this Court is afraid that, there will be pouring of such frivolous litigations by unscrupulous persons every day and that will open the flood gate to so many unscrupulous persons to abuse the process of law, to settle their personal score in the guise of service dispute. Therefore, this Court has no hesitation to hold that this petitioner does not have any locus to maintain this writ petition for more than one reason, as he has already been considered to be a frivolous litigant by the Division Bench of this Court.

22. For all these reasons, this Writ Petition is liable to be dismissed as not maintainable because the petitioner does not have locus standi to maintain this writ petition, accordingly, it is dismissed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar

To

- 1) The Principal Secretary to Government,
Municipal Administration and Water Supply Department,
Secretariat, Chennai.
- 2) The Commissioner,
Tirunelveli City Municipal Corporation,
Tirunelveli.



3) The Director,
Vigilance and Anti Corruption,
Chennai.

+ 1 CC TO Mr.R.GANDHI, ADVOCATE IN SR No. 63990
+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 64238
+ 1 CC TO M/s.AJMAL ASSOCIATES, IN SR No. 63954

STS

TE/SV-MMS/SAR-1 : 21/06/2018 : 8P/7C

Order in
W.P. (MD) No. 8871 of 2018
26.04.2018