

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

Reserved on : 08.09.2017
Pronounced on : 09.01.2018

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THE HONOURABLE MR.JUSTICE S.S.SUNDAR

W.P.(MD) Nos.6071 and 6072 of 2017
and
W.M.P.(MD) Nos.4786, 4787, 6684 and 6685 of 2017
and
Cont.P.(MD) Nos.964 and 965 of 2017

W.P.(MD) No.6071 of 2017

Boominathan

... Petitioner

Vs.

1.The Gandhigram Institute of Rural Health &
Family Welfare Trust,
Represented by its Chairman,
Soundaram Nagar,
Gandhigram Post,
Dindigul District.

2.The Director,
The Gandhigram Institute of Rural Health &
Family Welfare Trust,
Soundaram Nagar,
Gandhigram Post,
Dindigul District 624 302.

3.S.Seethalakshmi
Director,
The Gandhigram Institute of Rural Health &
Family Welfare Trust,
Soundaram Nagar,
Gandhigram Post,
Dindigul District - 624 302.

... Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order passed by the second respondent in his proceedings in No.1155, dated 31.03.2017 and to quash the same and consequently directing the respondents to regularize the services of the petitioner with all monetary benefits.



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For Petitioner : Mr.C.Jeganathan
for M/s.Veera Associates

For Respondents : Mr.R.Vijayakumar

W.P.(MD) No.6072 of 2017

K.Rajaperumal

... Petitioner

Vs.

1.The Gandhigram Institute of Rural Health &
Family Welfare Trust,
Represented by its Chairman,
Soundaram Nagar,
Gandhigram Post,
Dindigul District - 624 302.

2.The Director,
The Gandhigram Institute of Rural Health &
Family Welfare Trust,
Soundaram Nagar,
Gandhigram Post,
Dindigul District - 624 302.

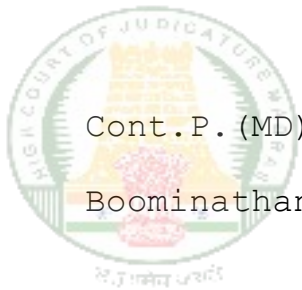
3.S.Seethalakshmi,
Director,
The Gandhigram Institute of Rural Health &
Family Welfare Trust,
Soundaram Nagar,
Gandhigram Post,
Dindigul District - 624 302.

... Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order passed by the second respondent in his proceedings in No.1154 dated 31.03.2017 and quash the same and consequently directing the respondents to regularize the services of the petitioner with all monetary benefits.

For Petitioner : Mr.C.Jeganathan
for M/s.Veera Associates

For Respondents : Mr.R.Vijayakumar



Cont.P.(MD) No.964 of 2017

Boominathan

... Petitioner

Vs.

S.Seethalakshmi

Director,

The Gandhigram Institute of Rural Health &

Family Welfare Trust,

Soundaram Nagar,

Gandhigram Post,

Dindigul District - 624 302.

... Contemnor

PRAYER: Contempt Petition filed under Section 11 of Contempt of Courts Act, praying to punish the respondent herein for her willful disobedience of the orders passed on 06.04.2017 in W.M.P.(MD) No.4787 of 2017 in W.P.(MD) No.6071 of 2017 on the file of this Court under the Contempt of Courts Act.

Prayer in WMP(MD) . 4787/ 2017 :

Writ Miscellaneous Petition is filed under Article 226 of Constitution of India, praying this Hon'ble Court to grant an order of interim stay of all further proceedings pursuant to the order issued by the 2nd respondent in his proceedings in No.1155 dated 31.03.2017 pending disposal of the above writ petition.

Prayer in WP(MD) . 6071/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of Certiorarified Mandamus calling for the records pertaining to the impugned order passed by the 2nd respondent in his proceedings in No.1155 dated 31.03.2017 and quash the same and consequently directing the respondents to regularize the services of the petitioner with all monetary benefits.

For Petitioner : Mr.C.Jeganathan
for M/s.Veera Associates

For Respondent : Mr.R.Vijayakumar

Cont.P.(MD) No.965 of 2017

K.Rajaperumal

... Petitioner

Vs.

S.Seethalakshmi

Director,

The Gandhigram Institute of Rural Health &

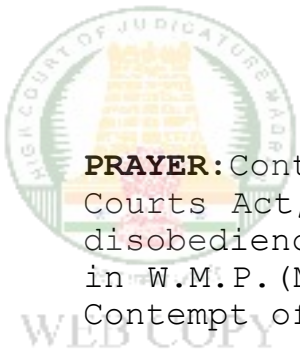
Family Welfare Trust,

Soundaram Nagar,

<https://hcservices.ecourts.gov.in/hcservices/>
Gandhigram Post,

Dindigul District - 624 302.

... Contemnor



PRAYER: Contempt Petition filed under Section 11 of Contempt of Courts Act, praying to punish the respondent herein for her willful disobedience of the orders passed by this Court on 06.04.2017 made in W.M.P. (MD) No.4786 of 2017 in W.P. (MD) No.6072 of 2017 under the Contempt of Courts Act.

Prayer in WMP(MD) . 4786/ 2017 :

Writ Miscellaneous Petition is filed under Article 226 of the Constitution of India, praying this Hon'ble Court to grant an order of INTERIM STAY of all further proceedings pursuant to the order issued by the 2nd respondent in her proceeding in No.1154 dated 31.3.2017 pending disposal of the above writ petition.

Prayer in WP(MD) . 6072/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order passed by the 2nd respondent in his proceedings in No.1154 dated 31.3.2017 and quash the same and consequently directing the respondents to regularize the services of the petitioner with all monetary benefits.

For Petitioner : Mr.C.Jeganathan
for M/s.Veera Associates

For Respondent : Mr.R.Vijayakumar

COMMON ORDER

The above writ petitions are filed for issuing a Writ of Certiorarified Mandamus to quash the order passed by the second respondent dated 31.03.2017 and to direct the respondents to regularize the services of the petitioner with all monetary benefits.

2.The case of the petitioner as per the affidavits filed by the petitioner in support of the writ petitions are as follows:

2.1.The petitioner in W.P. (MD) No.6071 of 2017 was appointed as a Steward on contract basis on 17.05.2007 in the first respondent institute and his services were made permanent with effect from 10.08.2008 as Steward cum Clerk and his services were regularised subsequent to his completion of probation period. Similarly, the petitioner in W.P. (MD) No.6072 of 2017 was appointed as a Health Educational Officer and he was promoted as a Teaching Assistant in Diploma in Health Education Department. On 29.08.2008 he was promoted as a Health Educational Instructor. The petitioners have stated that they have been discharging their duties for all these years, without any adverse remarks.



2.2. The third respondent was appointed as a Director in-charge of the first respondent on 10.07.2015 by the first respondent. The petitioners states that they are the members of Staff Welfare Association of Gandhigram Institute of Rural Health and Family Welfare Trust and further states that the appointment of third respondent as Director in-charge of the respondent institute was challenged by way of filing Writ Petition in W.P.(MD) No.14822 of 2016. It is further stated that during the pendency of the said writ petition, the first respondent has amended the rules so as to appoint the third respondent as a Director of the institute. Hence, it is stated that the second Writ Petition was also filed by the Staff Association challenging the appointment of third respondent as a Director of the institute in W.P.(MD) No.12758 of 2016. It is stated that the second respondent in order to wreck vengeance against the petitioners, who are the President and member of the Staff Association, has started harassing the petitioners and ill-treating them during the course of their work. The second respondent issued a charge memo against the petitioner in W.P.(MD) No.6072 of 2017 alleging that there was a quarrel between the petitioner and one Sankarapandian and it is stated that the second respondent without furnishing the important documents passed final order on 04.01.2016 by imposing penalty of stoppage of increment for two years without cumulative effect. Similarly, it is stated that as against the petitioner in W.P.(MD) No.6071 of 2017, the second respondent has issued orders of transfer transferring the petitioner from one place to another for four times within a period of six months. It is further stated that the second respondent issued a charge memo to the petitioner in W.P.(MD) No.6071 of 2017, on the ground that some employees have assembled in his quarters and that despite a legal notice on 11.08.2016 through his counsel, the second respondent started harassing the members of Staff Association by way of issuing charge memos. It is further stated that the second respondent has issued a charge memo on 22.08.2016 and the petitioner in W.P.(MD) No.6071 of 2017 challenged the same before this Court in W.P.(MD) No.16465 of 2016 and continuing in service by virtue an order of stay granted by this Court. Though it is admitted by the petitioners that the writ petition filed by the Staff Association in W.P.(MD) No.14822 of 2015 and W.P.(MD) No.12758 of 2016, challenging the appointment of third respondent as Director in-charge and Director of the institution respectively were dismissed by this Court on 21.02.2017, it is stated that W.A.(MD) Nos.307 and 308 of 2017 were filed and are pending.

2.3. It is further stated that on hearing such information about the filing of writ appeals by the Association, the second respondent has issued the impugned order of suspension on flimsy ground of pendency of criminal case against the petitioners with false accusations. Stating that the order of suspension is not issued in public interest and mere pendency of a criminal case does not warrant issuance of suspension order, the petitioners have challenged the order of suspension in the writ petitions.



"6.As rightly pointed out by the learned counsel for the petitioner, mere involvement in a criminal case by a public servant, cannot be a ground at all for placing him under suspension. It is for the the authority to analyse various facts and materials available so as to assess independently as to whether the continuation of public servant on duty without an order of suspension shall be to the detriment of the interest of public or not. If only, the authority comes to such a conclusion that an order of suspension is necessary in the pubic interest, then the authority can pass such an order of suspension. A plain reading of the order under challenge in this writ petition would go to show that there was no such conclusion arrived at by the authority. Even in the counter, it is not the case of the first respondent that the impugned order came to be passed in the interest of public. It is to be seen that even in cases where the public interest is involved, in a routine fashion, such an order of suspension should not be passed, because the provision gives a clear indication that such suspension should be necessary. In this case, nothing of that sort is found at all."

5.At the time of admitting the writ petitions, this Court has granted an order of interim stay of all further proceedings pursuant to the impugned order of suspension passed by the second respondent. Despite an order of stay has been granted by this Court in both the writ petitions, the petitioners were not allowed to be in service by reinstating them. It is stated further that the petitioners have issued contempt notice and even then the order of this Court was not obeyed. Alleging that the conduct of the third respondent is contumacious, contempt petitions in Cont.P.(MD) Nos.964 and 965 of 2017 were filed by the petitioners in the writ petitions. After filing of contempt petitions the respondents 1 and 2 herein, filed a petition to vacate the stay granted by this Court on 06.04.2017.

6.In the affidavits filed in support of the petition to vacate the interim stay granted by this Court, the first respondent inter alia contended as follows:

6.1.The writ petitions filed by the Association in W.P.(MD) No.14822 of 2015 and W.P.(MD) No.12758 of 2016 were dismissed by order dated 21.02.2017 rejecting all the contentions raised by the Association and upholding the appointment of third respondent as Director of the Institute. Insofar as the petitioner in W.P.(MD) No.6072 of 2017 is concerned, the first respondent submitted that the petitioner found guilty of misbehavior and disobedience to his higher officers and that an enquiry was conducted. It is further stated that based on the enquiry report a minor penalty of stoppage of increment for two years without cumulative effect was imposed. It is also stated that as against the punishment, the petitioners filed an appeal which was also dismissed finding that the order of disciplinary authority does not call for any interference.

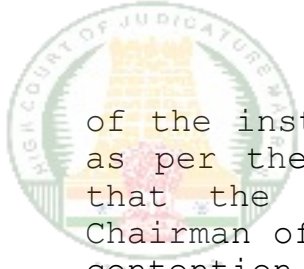


6.2.The first respondent relied upon the final order passed by this Court in W.P.(MD) No.14822 of 2015 and W.P.(MD) No.12758 of 2016 wherein, this Court painfully observed that the noble organization like the first respondent has been pulled out to Court by the Staff Association infuriated by the appointment of the third respondent as the Director of the institute.

6.3.The first respondent further pointed out that an attempt was made by the petitioners in these writ petitions in the writ appeals and the Hon'ble Division Bench of this Court made it clear that the disciplinary action initiated against the office bearers of the Staff Association is not the subject matter of the writ petition and that it is for the individual concerned to suitably defend themselves in the departmental proceedings. The first respondent further elaborated the incident that occurred on 30.11.2016 at 10.00 a.m., during the office hours. It is pointed out that the petitioners and other employees under the leadership of the petitioners sat in front of the Director's chamber and gheraoing the Director in-charge from entering into her office at 10.00 a.m. Further, the crowd including the petitioners insulted and disturbed the Director in-charge by uttering abusive words. Describing the act as not a minor incident but a serious misconduct, the respondents 1 and 2 contended that the conduct of the employees was intended to grossly undermine the authority of the Director and renders her position vulnerable. By the conduct of the third respondent, it is stated that the third respondent was made to look like a laughing stock in front of other employees. Since the incident was calculated to harm the reputation of the third respondent and consequently that of the institute, the same will affect the moral of the institute and other members of the institute. It is further stated that only on account of such rude and high handed activities the third respondent / The Director in-charge of the institute lodged a complaint to the Ambathurai Police Station leading to the registration of the case in Crime No.301 of 2016. Since charge sheet was laid before the Judicial Magistrate No.III for the criminal offences under Sections 147, 341, 294(b) and 353 I.P.C. and the petitioners are accused Nos.1 and 2 in the charge sheet, the first respondent stated that the order of suspension was passed under sub Rule (1) of Rule 10 of Gandhigram Institute of Rural Health and Family Welfare Trust Employees (Discipline and Appeal) Rule, 2003.

7.With regard to the specific grounds raised in the writ petitions, it is stated in the counter affidavit that the charges against the petitioners attract Sections 147, 341, 294(b) and 353 I.P.C. The order of suspension issued on the basis of the First Information Report and charge sheet after investigation by the police is appropriate as it is required in public interest.

8.It is further submitted by the respondents 1 and 2 that the second respondent is wholly responsible for the smooth functioning



of the institute and it is her duty to initiate disciplinary action as per the service rules of the institute. It is further stated that the order of suspension was issued after consulting the Chairman of the institute, namely, the first respondent herein. The contention of the petitioners that the order of suspension was issued with mala fide motive and to harass the petitioners is specifically denied and it is reported that the petitioners were suspended only in public interest particularly when the institute has undertaken several activities and has to serve the public as a Central Training Institute in the field of Health, Family Welfare and Rural Health apart from conducting health programs.

9. It is not in dispute that the power is available to the second respondent to suspend an employee under Sub Rule (1) of Rule 10 of Gandhigram Institute of Rural Health and Family Welfare Trust Employees (Discipline and Appeal) Rule, 2003 which is extracted as below:

"1. The appointing authority or any authority to which it is subordinate or the disciplinary authority of any other authority empowered in this behalf by the Board of Trustees by General or special order, may place an employee under suspension.

a) Where a disciplinary proceedings against him is contemplated or is pending.

(or)

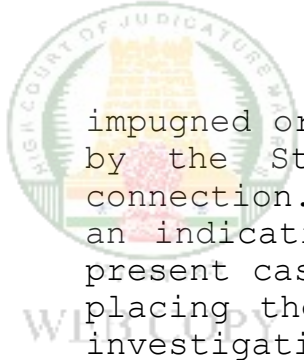
b) Where in the opinion of the authority aforesaid, he has engaged himself in activities prejudicial to the interest of the security of the State.

c) Where a case against him in respect of any criminal offence is under investigation, inquiry or trial.

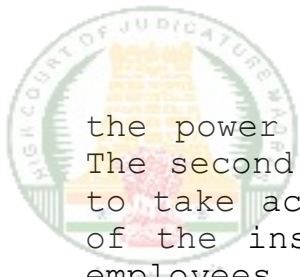
d) Where an employee is alleged to have committed acts of gross negligence, insubordination and disobedience."

10. Though the power is available to the second respondent to suspend an employee when a case against him in respect of any offence is under investigation, enquiry or trial, it is not mandatory in all cases to place an employer under suspension, merely because the charge sheet has been filed pursuant to the complaint lodged by the second respondent.

11. It is pertinent to mention that the criminal complaint was lodged by the second respondent. Based on the complaint the charge sheet was laid and by relying upon the relevant rule, the petitioners were suspended for the only reason that a criminal case against the petitioners is under investigation. Thus, the second respondent is the de-facto complainant and acted as a disciplinary authority while placing the petitioners under suspension by the impugned orders. It is not out of context to mention the filing of the writ petitions by the Association challenging the appointment of the third respondent as the Director in-charge or as the Director of the institute. Though the criminal complaint was lodged immediately after the incident alleged to have taken place on 30.11.2016, the



impugned order of suspension was passed after the appeals were filed by the Staff Welfare Association. There appears to be some connection. The chronology of the events in the present case gives an indication that it is likely that the second respondent in the present case had some reason for excising her discretionary power in placing the petitioners under suspension on the ground of pending investigation of criminal offences on the complaint lodged by the second respondent. It is to be noted that the second respondent has not taken any departmental action as against the petitioners immediately after the incident on 30.11.2016. It is not known as to why and how the second respondent lodged a criminal complaint and proceeded instead of taking disciplinary action against all the employees. If the second respondent was not chosen to initiate the departmental action pursuant to the alleged incident dated 30.11.2016, this Court does not justify the order of suspension against two individuals pursuant to the complaint that was lodged against 17 employees of the institute. The order of suspension appears to be intentional as something has happened to embarrass the second respondent by filing the writ appeals as against the orders passed in the writ petitions. In both the cases the petitioners and the second respondent are involved. It is to be noted that the petitioners have raised their objections with regard to the appointment of the third respondent as the Director of the institute and the second respondent has initiated actions against the individuals on different grounds. Hence, there is an element of bias in this case which is mainly focused by the learned Senior Counsel appearing for the petitioners. It is not brought to this Court any disciplinary proceedings against any of the petitioner or other employees involved in the incident occurred on 30.11.2016. In such circumstances, the decision to suspend the petitioners on account of pendency of criminal complaint against them at the instance of the second respondent appears to be tainted with male fide both on fact and legal. The incident on 30.11.2016 appears to be a protest raised by the employees against the third respondent and it is seen that the writ petition in W.P.(MD) No.14822 of 2015 and W.P.(MD) No.12758 of 2016 are pending then. The second respondent who is the de-facto complainant has subsequently passed the impugned order of suspension and has therefore acted, may be due to the circumstances as a Judge in her own case. The impugned proceedings therefore suffers on account of existence of an element of bias which renders the order vulnerable. It is not demonstrated before this Court that the order of suspension is purely in the public interest, as the criminal case is on the basis of some protest or agitation inside the work place of the de-facto complainant and the accused employees. It is also relevant to point out that the criminal case which is pending is likely to cause embarrassment to the second respondent as well as the petitioners and other workers who are accused in the criminal case. It is not stated by the second respondent that the charge sheet was taken on file on the date when the order of suspension was passed. In such circumstances, this Court is not in a position to ascertain that the criminal complaint was taken cognizance by the Court so as to invoke



the power under the rules cited while issuing the impugned order. The second respondent, of course, is the authority who is duty bound to take action as she is responsible for the smooth administration of the institute. Filing a criminal complaint against 17 of the employees and suspending some of them on the ground of pendency of criminal case which is related to the same complaint given by the second respondent, is not in the best interest of the institution. Hence, the explanation in the counter that the impugned order of suspension was in the interest of maintenance of peace and discipline in the campus of the institute and it is to uphold the dignity and repudiation of the office cannot be accepted. It is nothing but the individual perception of the second respondent which is not conducive for a smooth administration.

12. For all the above reasons, this Court is unable to sustain the order of impugned suspension. As a result, the writ petitions are allowed and the impugned order of suspension is set aside. No costs. Consequently, the connected Writ Miscellaneous Petitions are closed.

13. This Court has granted interim order of stay for a period of four weeks originally by order dated 06.04.2017. Though the stay was properly communicated to the respondents, the petitioners were not reinstated. It was, therefore, contempt petitions were filed. After taking notice for the respondents the learned counsel for the respondents took time stating that he has filed a petition to vacate the interim stay and submitted that the affidavit filed in support of the petition to vacate the interim order is to be treated as a counter in the main writ petition. It was, therefore, the contempt petition was directed to be posted along with the petition for vacate stay. In the contempt petitions no counter affidavit has been filed by the respondents. This attitude of the respondents is also a matter to be noticed and the second respondent in the writ petitions has personal motive or reasons. Since the petition to vacate the interim order is taken up, the contempt petitions also taken along with the Writ Petitions. The writ petitions are allowed and the respondents are directed to reinstate the petitioner in both the Writ Petitions forthwith. Though the main Writ Petitions itself are allowed in favour of the petitioners, this Court taking lenient view does not find any willful disobedience of the order passed by this Court as this Court has granted only an order of stay and the respondents have promptly filed petition to vacate stay with a fond hope of vacating the interim order. Hence, the contempt petitions are closed.

Sd/-

Assistant Registrar (Crl.Side)

/True Copy/

Sub Assistant Registrar



1.The Chairman,
The Gandhigram Institute of Rural Health &
Family Welfare Trust,
Soundaram Nagar, Gandhigram Post,
Dindigul District.

2.The Director,
The Gandhigram Institute of Rural Health &
Family Welfare Trust,
Soundaram Nagar, Gandhigram Post,
Dindigul District 624 302.

+2cc to M/S.VEERA ASSOCIATES, Advocate SR.No.41086 & 41273.
+3cc to M/S.V.VIJAY SHANKAR, Advocate SR.No.41053.

Order made in
W.P.(MD) Nos.6071 and 6072 of 2017
and
Cont.P.(MD) Nos.964 and 965 of 2017
09.01.2018

srm
SDS/SKN:RSK/SAR 3/10.01.2018/12P/8C