



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **09.09.2019**

CORAM:

THE HONOURABLE **MR.JUSTICE M.SUNDAR**

W.P. (MD)No.19459 of 2019

A.Ramesh

... Petitioner

/Vs./

1.The District Collector,
Thanjavur District, Thanjavur.

2.The Block Development Officer,
Noon Meal Organization, Thanjavur.

3.C.Chandran,
Noon Meal Organizer,
S/o.Chinnaiyan,
Mathur West Village,
Thanjavur Taluk and District,
(Ayyampettai Police Station Limit)

... Respondents

PRAYER:- Writ Petition - filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the respondents 1 and 2 to take action on the petitioner's representation dated 05.07.2019 within the stipulating time.

For Petitioner : Mr.P.Vignesh

For R-1 & R-2 : Mr.K.Mu.Muthu

Additional Government Pleader

ORDER

Mr.P.Vignesh, learned counsel on record for writ petitioner is before this Court.

2. Respondents 1 and 2 are official respondents and Respondent No.3 is a private respondent.

3. From the case file placed before this Court and the submissions made by learned counsel for writ petitioner, it comes to light that there is a legal dispute between writ petitioner and the third respondent.

4. Short facts shorn of unnecessary details in this regard are that third respondent issued a notice through counsel dated 16.07.2018 demanding a sum of Rupees 18.83 lakhs from the writ



petitioner towards what according to the third respondent, is salary, commission and other perquisites.

5. It is writ petitioner's case that he is not liable to pay commission and other perquisites and it is writ petitioner's specific case that the third respondent was working as Manager in the writ petitioner's business activity.

6. Be that as it may, it is the further case of the writ petitioner that the third respondent has filed a criminal complaint against the writ petitioner vide C.C.No.28 of 2019 on the file of Judicial Magistrate Court (Fast Track Level), *inter alia* under Section 138 of Negotiable Instruments Act, 1881 and that the same is pending.

7. It is the specific case of the writ petitioner that the third respondent has suppressed the factual position that he is a Government Servant as he cannot be employed in private business parallely.

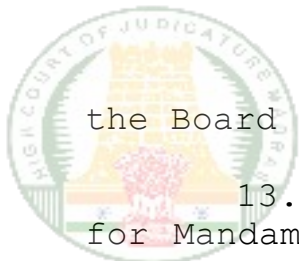
8. It is in the aforesaid backdrop that writ petitioner has sent a representation dated 05.07.2019 to respondents 1 and 2 *inter alia* complaining that the third respondent has deposed in the criminal case that he has been working in a private sector and that he has been working for 10% commission. This according to the writ petitioner is clearly a violation of Government Service Rules and writ petitioner has sought action.

9. Instant writ petition has been filed seeking a Mandamus qua aforesaid representation dated 05.07.2019.

10. The question as to what is the legal right of the writ petitioner to seek mandamus falls for consideration.

11. Learned State Counsel who has accepted notice on behalf of respondents 1 and 2 pointed out that it is purely a private dispute between third respondent and the writ petitioner.

12. In this backdrop, learned counsel for writ petitioner submits that in the aforesaid criminal complaint, writ petitioner has taken out a petition *inter alia* under Section 91 of 'The Code of Criminal Procedure, 1973' (hereinafter referred to as 'Cr.Pc' for the sake of brevity) seeking documents to be summoned to demonstrate conclusively that the third respondent is a Government Servant. As the writ petitioner does not have any legal right qua aforesaid representation dated 05.07.2019, it is open to the writ petitioner to pursue the petition under Section 91 Cr.P.C., and the learned Judicial Magistrate concerned shall consider the same on its own merits and in accordance with law as expeditiously as



the Board of his Court would permit.

13. Writ petitioner has not demonstrated any legal right for Mandamus, qua representation dated 05.07.2019. However, if a Government Servant has deposed in a Court of law that he was working in private sector for commission while still in service, it is matter which needs to be looked into. Therefore, it is made clear that it is open to respondents 1 and 2 to put the third respondent on notice, call for an explanation and thereafter proceed in accordance with law or in other words adequate opportunity has to be given to the third respondent, while action is initiated in this regard.

14. Instant Writ Petition is disposed of with the aforesaid observation.

15. To be noted, as no order adverse to the rights of third respondent has been passed and as adequate safeguard has been made qua third respondent, main Writ Petition is being disposed of with consent of writ petitioner's counsel and State counsel at the admission stage.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

Sub Assistant Registrar (CS)

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To

1.The District Collector,
Thanjavur District, Thanjavur.

2.The Block Development Officer,
Noon Meal Organization, Thanjavur.

+1 CC to M/s.S.JAYACHANDRAN, Advocate (SR-85852[F] dated 09/09/2019)

+1 CC to M/s.GP (SR-86115[F] dated 10/09/2019)

Order made in
W.P.(MD)No.19459 of 2019

Dated:
09.09.2019

__KM/ (24.09.2019) 3P 5C