

CWP-11126-2020

Date of Decision :31.07.2020

Ved Parkash

....Petitioner

Versus

State of Haryana and others

....Respondents

Coram : Hon'ble Mr. Justice B.S. Walia

Present: Mr. Parveen Chauhan, Advocate for the petitioner.

B.S. Walia, J. (VC)

1. Case is being taken up for hearing through Video Conferencing due to the outbreak of Covid-19 pandemic.

2. Prayer in the petition under Articles 226/227 of the Constitution of India, is for the issuance of a writ of Mandamus, directing respondent Nos.2 to 5 to take timely action on the basis of final enquiry report (Annexure P-3) dated 23.12.2019 submitted by the SDO (C), Gannaur, District Sonapat, as also for speedy investigation in FIR No.41, dated 23.09.2019 under Sections 406, 409, 420, 467, 468, 471 and 506 read with Section 120-B IPC registered at Police Station HSIDC Barhi, District Sonapat.

3. Notice of motion to respondent Nos.1 to 5 only.

4. Ms.Palika Monga, DAG, Haryana, accepts notice on behalf of respondent Nos.1 to 5 and states that the writ petition is misconceived in the absence of demand for justice and in action in respect thereto which is a sine-qua-non for the issuance of a writ of mandamus. Reference is made to the decision of 'Surya College of Education versus Chaudhary Devi Lal University, Sirsa and another' 2013(4) SCT 393. Relevant extract of the

same is re-produced as under:-

“10. In view of the above, the only question of law that falls for consideration of this court is, whether it is sine qua non for the petitioner to put his/her demand for justice before the concerned authority, before approaching this court, seeking a writ of mandamus.

11. Learned counsel for the petitioner has failed to point out any averment in this regard or any document to the effect that before approaching this court by way of instant petition, any right of the petitioner has been infringed and thereafter, the petitioner approached the respondent authorities, raising its grievance by making necessary representation, demanding the consideration of the rights of the petitioner and seeking redressal of its grievance. Learned counsel for the petitioner also could not point out any difficulty, which might have been faced by the petitioner, while not approaching the respondent authorities by making the appropriate representation.

12. In view of what has been observed above, this court feels no hesitation to conclude that the necessary requirement of law has not been fulfilled by the petitioner, before approaching this court. Before seeking a writ of mandamus, the petitioner was under legal obligation to show infringement or denial of any of its rights and thereafter, moving necessary representation to the concerned authority pointing out the infringement or denial of its rights, besides seeking redressal of its grievance, followed by inaction on the part of respondent authorities. Since the petitioner has failed to satisfy the above said requirements of law, the instant petition is not maintainable in the present form.

13. The view taken by this court finds support from the judgement of the Hon'ble Supreme Court in Amrit Lal Berry, K.N. Kapur and others v. Collector of Central Excise Central Revenue and others, 1975(4) SCC 714. The relevant observations made by the Hon'ble Supreme Court read as under:- " In the petition of K.N. Kapur and others, we do not even find an assertion that any representation was made against any violation of a petitioner's right. Hence, the rule recognised by this Court in Kamini Kumar Das v. State of West Bengal, AIR 1972 Supreme Court 2060 at p.2065 that a demand for justice and its refusal must precede the filing of a

petition asking for direction or Writ of Mandamus, would also operate against the petitioners."

14. Respectfully following the law laid down by the Hon'ble Supreme Court in the case of Amrit Lal Berry, K.N. Kapur and others case (supra), it is unhesitatingly held that the present petition is misconceived and is not maintainable in the present form, at this stage. I say so because the learned counsel for the petitioner has failed in laying down the basic foundation of the case in view of the law noticed hereinabove. 15. However, lest this order is misunderstood, it is made clear that the petitioner shall be at liberty to approach the respondent authorities by moving the necessary representation raising its demand for justice and seeking redressal of its grievance. Further, it goes without saying that if the petitioner approaches the respondent authorities by way of an appropriate representation or justice demand notice, the competent authority shall consider the claim of the petitioner, dispassionately and expeditiously, passing an appropriate order, in accordance with law."

5. Faced with the aforementioned position, learned counsel for the petitioner prays for liberty to submit a representation and for directions being issued to the concerned respondents to take a decision on the same, in accordance with law.

6. In the light of the position as noted above, the writ petition is disposed of by granting liberty to the petitioner to submit a representation to the respondents in respect of the grievances, which are the subject-matter of the writ petition. In case, any such representation is received, the same be considered and decided by the competent authority, in accordance with law, as expeditiously as possible.

7. Writ petition ***disposed of*** with the aforementioned directions.

(B.S. Walia)
Judge

July 31, 2020