



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.04.2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.(MD) No.7006 of 2022

Dr.R.Mohan

... Petitioner

-vs-

1.The Government of Tamil Nadu,
Rep., by its Principal Secretary,
Health and Family Welfare Department,
St. George Fort, Chennai-600 009.

2.The Director,
Directorate of Indian Medicines and Homeopathy,
Arumbakkam, Chennai-600 106.

3.The District Siddha Medical Officer,
District Siddha Hospital cum Office,
Pudukkottai.

4.Dr.Saravanan

... Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus to direct the first respondent to initiate departmental action against the fourth respondent through the second and third respondents, considering the representation given by the petitioner on 25.08.2021, within a time frame as stipulated by this Court.

For Petitioner : Mr.S.Alagarsamy

For Respondents : Mr.N.Satheesh Kumar
Additional Government Pleader

O R D E R

The relief sought for in the writ petition is to direct the 1st respondent to initiate departmental action against the 4th respondent.
<https://hcservices.ecourts.gov.in/hcservices/>

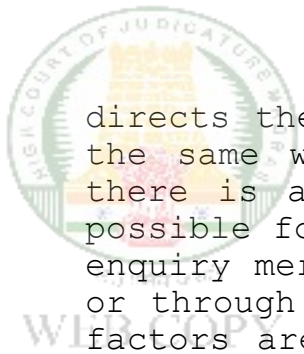


respondent through the 2nd and 3rd respondents considering the representation given by the petitioner on 25.08.2021.

2. The said representation sent by the writ petitioner reveals that he was dis-reputed by impersonating the petitioner as if he was participating in a social meeting. Therefore, the petitioner formed an opinion that the 4th respondent is responsible for such incident and disciplinary actions are to be initiated against the 4th respondent.

3. If any misconduct or offence has been committed by public servants, the aggrieved person is entitled to approach the competent authority by registering a complaint. But merely sending a representation in a casual manner and immediately filing a writ petition before the High Court for a direction to consider the representation would not be appropriate. High Court cannot conduct a roving enquiry in respect of such allegations of misconduct or offence in a writ proceedings under Article 226 of the Constitution of India. If at all a direction is issued to consider the representation, such directions are also abused or misused by the petitioners or used as a tool to threaten the public servants. Indirect way of causing hindrance to the performance of public duties or any attempt to threaten the public official in a different manner, at no circumstances, be encouraged by the High Court. No doubt, if any public official exceeded his powers or exercised excess power or committed an act of misconduct or offence, a proper complaint before the competent authority is to be filed, who in turn is bound to conduct an enquiry in the manner known to law. Contrarily merely sending a representation through registered post in a casual manner and immediately filing a writ petition, seeking a direction to dispose of the representation would do no service to the cause of justice.

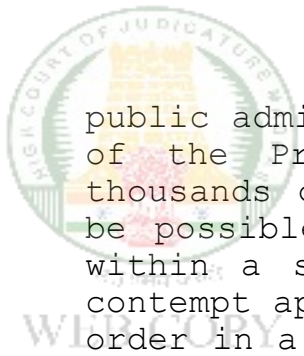
4. Let us now consider whether the Principal Secretary to the Government of Tamil Nadu can immediately conduct any investigation or enquiry in respect of such representation sent by the citizen without registering a proper complaint before the appropriate authority concerned. The Secretary to Government no doubt is the highest authority in the Government. However, in respect of all those representations, the Secretary to Government may not be in a position to conduct an enquiry or otherwise. If at all the High Court directed the Principal Secretary to Government to consider the representation, no doubt, the same would cause inconvenience to the Secretary, as there is no finding of the original authority in respect of those allegations. If the complaint is filed before the appropriate authority and if thereafter an appeal is filed before the Secretary to Government along with the findings of the proper authority then alone the Secretary to Government would be in a position to deal with the issues in an appropriate manner. Contrarily, merely based on the representation sent directly to the



directs the Secretary to Government to consider the representation, the same would also do no service to the cause of justice. But there is a possibility of miscarriage of justice. It may not be possible for the Secretary to Government to conduct investigation or enquiry merely based on the representation or conducting an enquiry or through collecting evidences or otherwise. All these mitigating factors are necessary for entertaining a writ petition to consider the representation.

5. The petitioner admittedly is a State pensioner and was holding the post of Medical Officer in Medical Department. The learned counsel for the petitioner contended that the petitioner is a retired Medical Officer and no action can be taken against him. However, the said contention is incorrect.

6. Rule 8 of the Tamil Nadu Pension Rules, 1978 (for brevity "the Rules") enumerates "pension subject to future goods conduct". Under Rule 8(1)(a) of the said Rules, "future good conduct shall be an implied condition of every grant of pension and its continuance under the rules". Under Rule 9, the Government is empowered to withhold or withdraw the pension on certain circumstances as narrated under the Rules. Therefore, the pensioners are also amenable for action for their misconducts or otherwise under the Rules. Thus, the pensioners are also expected to maintain good conduct and they cannot exceed their limits by violating the provisions of the Rules. The petitioner, who was holding the responsible position as Medical Officer is expected to approach the proper authority, if at all he is aggrieved. However, directly sending a representation through registered post in a causal manner and immediately filing a writ petition to consider the representation with a threatening tone can never be tolerated, nor be encouraged by the High Court. It is a growing trend that such writ petitions under Article 226 of the Constitution are filed frequently on legal advice and the Courts are expected to be cautious by adopting a balanced approach taking into consideration the hindrance and inconvenience likely to be caused to the public servants in such circumstances. Therefore, it is not as if the High Court can routinely issue a direction to consider the representation and in such circumstances, the public authorities would not be in a position to perform their public duties in an uninterrupted manner. Therefore, the procedure for registering a complaint or otherwise with reference to the misconduct or excess exercise of power by the public authorities is to be followed in all circumstances. The authorities competent on receipt of any such complaint, is expected to conduct an enquiry, find out the *prima facie* case and thereafter, initiate all appropriate actions in the manner known to law. Equally, the litigants are also expected to pursue the matter in accordance with law and by following the procedures. Simply sending a representation through registered post and filing a writ petition seeking a direction to the Secretary to Government to consider the representation would undoubtedly result in inconvenience to the



public administration. Considering the responsibility and work load of the Principal Secretary to the Government, if hundreds or thousands of representations are sent in such a manner, it may not be possible for the Department officials to verify and pass order within a short span of eight or twelve weeks. Then immediately contempt applications are filed. The authorities are forced to pass order in a hurried manner and they result in miscarriage of justice or the same would cause prejudice to the interest of the litigants. The litigants even in such circumstances may not get their grievances redressed. Contrarily, it becomes an empty formality wherein the facts are not properly adjudicated or considered. In some cases, the litigants are able to work out their remedy by abusing the orders of direction issued by the Courts to consider the representation in a corruptive manner. All these allegations cannot be brushed aside. The reality is to be considered in a practical manner. High Court cannot close its eyes in respect of such happenings and any such orders or consideration must be in consonance with the social implications. Thus, exercise of restraint in issuing a direction to consider the representation is certainly required and at all circumstances, as pointed out by the Hon'ble Supreme Court, issues are to be decided and appropriate remedy is to be granted to the parties, who all are approaching the High court under Article 226 of the Constitution of India.

7. The petitioner in the present case is a literate person and was holding a responsible position as District Siddha Medical Officer. Therefore, the conduct of the petitioner by sending a representation through registered post to the Principal Secretary to the Government and filing a writ petition immediately seeking a direction to consider the representation deserves no merit consideration. The petitioner has to approach the proper authority along with all material evidences and to seek for an enquiry or otherwise in the manner known to law and such authority has to look into the issues and take an appropriate decision. Thereafter, if the petitioner is aggrieved, then he has to approach the Head of the Department. The Service Rules also contemplates the same. Even under general law, the grievances are to be redressed in the manner known to law means an aggrieved person should approach the authority and thereafter the higher authority. For all these reasons, this Court is not inclined to entertain the writ petition. However, the petitioner is at liberty to approach the competent authority, if at all his grievances are to be redressed in the manner known to law.

8. In view of the fact that the present writ petition is filed without establishing any right for grant of relief, this Court is inclined to reject the writ petition.



9. Accordingly, this Writ Petition stands dismissed with the cost amount of Rs.1/- (Rupees One only), which is to be paid to the Government through the Government Treasury within a period of two weeks from the date of receipt of a copy of this order.

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Sd/-

Assistant Registrar (CS III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

abr

To

1.The Principal Secretary to Government,
Government of Tamil Nadu,
Health and Family Welfare Department,
St. George Fort, Chennai-600 009.

2.The Director,
Directorate of Indian Medicines and Homeopathy,
Arumbakkam, Chennai-600 106.

3.The District Siddha Medical Officer,
District Siddha Hospital cum Office,
Pudukkottai.

4 The Government Treasury, Chennai.

+1 CC to M/s.SPL.GP. (SR-19185[F] dated 18/04/2022)

+1. C.C. to Mr.S.ALAGARSAMY, Advocate SR.No.19310.

W.P.(MD) No.7006 of 2022

13.04.2022

MK/16.05.2022/5P/7C