



W.P.(MD).No.17328 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.08.2022

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.(MD).No.17328 of 2022

S.Sophia

... Petitioner

Vs.

1.The Director of Medical and Rural Health Service (ESI),
O/o. the Director of Medical and Rural Health Service (ESI),
Tenampet,
Chennai – 6.

2.The Chairperson,
O/o. Regional Administrative Medical Officer / E.S.I.,
Internal Complaint Committee,
(Sexual Harassment of Women at Workplace),
Vinayaga Street,
K.K.Nagar,
Madurai – 625 020.

3.G.Kishore Kumar

...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the respondent No. 1 to complete the disciplinary proceedings in Ref.No.26325/ESI/SC/1/2021 dated 30.12.2021 under Rules 17(b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules, issued against the respondent No.3 in light of the findings of Vishaka Committee Enquiry Report passed by the respondent No.2 dated 08.07.2021 by following due process of law within the time stipulated by this Court.



W.P.(MD).No.17328 of 2022

For Petitioner : Mr.I.Pinaygash
For R-1 and R-2 : Mr.A.Sivanupandian,
Government Advocate.

ORDER

By consent of both the parties, this Writ Petition is taken up for final disposal.

2. The petitioner herein seeks for a direction to the official respondents to conclude the departmental proceedings initiated against the third respondent herein. Apparently, the petitioner seems to have a grudge against the third respondent herein.

3. In identical circumstances, this Court had dealt with the issue as to the rights of the third parties to seek for departmental action against a Government employee, wherein, it has been held that the decision to initiate such departmental proceedings lies within the scope and authority of the concerned disciplinary authority and it is not for the third parties to seek to invoke Article 226 of the Constitution of India for the purpose of directing the authorities to initiate/conclude such action. Relying upon a few of such decisions, a learned Single Judge of this Court, in the case of *Sudalaikannu Vs. The Principal*



W.P.(MD).No.17328 of 2022

Secretary to Government, Municipal Administration and Water Supply

Department, Secretariat, Chennai and others, passed in W.P.(MD).No.8871 of

2018, dated 26.04.2018, has upheld this ratio in the following manner:

" 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



WEB COPY



W.P.(MD).No.17328 of 2022

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.

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



WEB COPY



W.P.(MD).No.17328 of 2022

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 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:-*



WEB COPY

“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.”

.....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 cease 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



W.P.(MD).No.17328 of 2022

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.” ”

4. The facts involved in the aforesaid decision would be applicable to the facts of the present case also. Though the petitioner herein claims to be an employee in the same Corporation, where the third respondent is employed, she may not have a legal right to seek for departmental action against the third respondent herein and at the most, she can redress her grievances before the concerned authority. However, seeking for a direction from this Court to initiate/conclude such departmental proceedings against the third respondent is impermissible in view of the law laid down in the aforesaid decisions. As such, I do not find any merits in the prayer sought for in the present Writ Petition.

5. Accordingly, this Writ Petition stands dismissed. There shall be no order as to costs.

03.08.2022

Index : Yes / No
Internet : Yes/ No
Lm/btr



W.P.(MD).No.17328 of 2022

To

WEB COPY

1. The Director of Medical and Rural Health Service (ESI),
O/o. the Director of Medical and Rural Health Service (ESI),
Tenampet,
Chennai – 6.

2. The Chairperson,
O/o. Regional Administrative Medical Officer / E.S.I.,
Internal Complaint Committee,
(Sexual Harassment of Women at Workplace),
Vinayaga Street,
K.K.Nagar,
Madurai – 625 020.



WEB COPY



W.P.(MD).No.17328 of 2022

M.S.RAMESH, J.

Lm/btr

W.P.(MD).No.17328 of 2022

03.08.2022