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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 11th February, 2022

+ **C.R.P. 14/2022 & CM APPLs. 7589/2022, 7590/2022**

G. VEERABAHU Petitioner

Through: Mr. Kuldip Babbar, Advocate.
versus

UNION OF INDIA AND ORS & ANR. Respondents

Through: Ms. Nidhi Raman, Advocate for R-1
& 6.

Ms. Roopali Kapoor, Govt. Pleader
for R-1 & 6 (M,-9999761604)

Mr. Amitesh Kumar, Ms. Binisa
Mohanty & Ms. Priti Kumari,
Advocates for R-2.

Mr. Aditya Verma, Advocate for R-7.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.(Oral)

1. This hearing has been done through video conferencing.
2. A suit was filed by the Plaintiff/Petitioner (*hereinafter "Plaintiff"*) bearing *Civil Suit No.511/2020* titled *G. Veerbahu v. Union of India* before the *Id. ADJ-01, South District, Saket, New Delhi* (*hereinafter "Trial Court"*). In the suit the Plaintiff sought damages and other reliefs on the ground of vicarious and strict liability against the Respondents/Defendants (*hereinafter "Defendants"*) who are arrayed as Defendant Nos.1 to 10. A perusal of the memo of parties shows that the Union of India through the Ministry of Education is the Defendant No.1. The National Institute of Educational Planning and Administration ("*NIEPA*") is Defendant No.2 and



the Indian Institute of Management, Tiruchirappalli (IIMT) is the Defendant No.7. Defendant Nos.3, 4, 5, 6, 8 & 10 are individual senior officials of the said organizations and the Ministry. The reliefs prayed for in the suit is as under:

“a. Pass a decree for Vindictory, Aggravatory, Direct, Consequential, Incidental, Punitive, Pecuniary And Non-Pecuniary Losses, Damages and Compensation including legal & incidental expenses incurred for bringing legal action against the defendants; amounting to Rs.45,20,000/-; AND

b. Pass a decree for Pendente lite interest @ 18% per annum compounded annually from the date of filing of the suit till the date of payment of the decretal amount for the acts of torts committed by the defendants/tortfeasors against the plaintiff/injured party;

On account of the defendants/tortfeasors ulterior, intentional, concerted, collusive, motives and conduct including acts of omission and commission, machinations, stratagems and unfair conduct in favour of plaintiff/injured party and against the defendant/tortfeasors on account of and arising out of their individual as well as joint, absolute, vicarious and strict liabilities attributable to defendants/tortfeasors giving rise to injury and harm to plaintiff/injured party and including civil wrongs caused to him.

b. Pass a decree for the recovery of legal notice charges of Rs.15,500/- in favour of the plaintiff/injured and against the defendant.

c. Allow the cost of the suit along-with the pleader fees in favour of the plaintiff and against the defendant for drafting, filing and pursuing this suit and including the Court-Fee affixed on this plaint;



d. pass any other order or further order which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case. ”

3. Before this Court, the Plaintiff assails the impugned order dated 8th February, 2021 passed by the Trial Court by which the summons have been issue only to the organizations and the Ministry, namely Defendants No. 1,2,7 and 9 and not to the officials including the Vice Chancellor, Director *et cetera*, namely Defendant No. 3, 4, 5, 6, 8 & 10. It is the submission of Mr. Babbar, Id. Counsel appearing for the Plaintiff, that since this is a suit for damages, the summons ought to have been issued against all the officials against whom the cause of action arises. The Plaintiff being the *dominus litus* has the free will to implead all such Defendants against whom he has a cause of action. The non-issuance of summons against the said Defendants would be unjust *qua* the Plaintiff as he is entitled to seek damages against the officials as well.

4. Ms. Nidhi Raman, Id. counsel appearing for the Respondent Nos.1 & 6, submits that there is no cause of action disclosed against them. Mr. Mishra, Id. counsel appearing for the Defendant No.2-NIEPA submits that the officials have unnecessarily been impleaded, as recorded in the impugned order itself. He further relies upon the statement of Counsel for the Plaintiff before the Trial Court to the effect that all the defendants apart from Defendant No.1,2,7 and 9 are proforma Defendants. In any case the Trial Court has taken the correct view that the summons cannot be issued against the other officials as they cannot be held responsible personally for acts done in official capacity.

5. Mr. Verma, Id. counsel appearing for the Respondent No.7-IIMT, also



supports the said submission and further submits that the Plaintiff has unnecessarily embarked on this suit to harass the officials arrayed as defendants in the suit.

6. Heard the learned counsels for the parties and perused the impugned order as also the plaint. The grievance of the Plaintiff is that he had suffered loss/damage and other incidental expenses including loss of reputation etc., due to the actions of the Defendants. The case is a tortious action against these organizations. Allegations are that the officials have borne a grudge against the Plaintiff which coloured their actions against the Plaintiff, hence, they are liable to pay damages.

7. A perusal of the impugned order shows that the counsel for the Plaintiff himself made a submission on 8th February, 2021 that the officials are proforma Defendants. The said order reads as under:

“Arguments on summoning heard. Let summons be issued to defendants nos.1, 2, 7 and 9.

In so far as, other defendants are concerned, the same are stated to be proforma defendants by counsel for the plaintiff.

I have gone through the plaint.

Plaintiff through the present suit has sought damages against the institutes. Defendants nos.3, 4, 5, 6, 8& 10 cannot be held responsible in their personal capacity to pay the damages and it is for the institutes to decide through whom they intend to enter the appearance. There is no relief sought against the said defendants. Accordingly, they are not being summoned.

Let summons be issued to defendant nos.1, 2, 7 and 9 on filing of PF through all modes.

Be listed for further proceedings on 27.05.2021.”



8. Mr. Babbar, Id. counsel submits that he did not make any statement before the Trial Court that the Defendants other than Defendant No.1,2,7 and 9 are proforma defendants and that the statement so recorded in the impugned order is erroneous.

9. Be that as it may, the case of the Plaintiff, who was an official in NIEPA, is that he was posted on probation of two years to Indian Institute of Management, Tiruchirappalli. He had submitted a technical resignation dated 1st August 2018, which was accepted and, thereafter, his lien was permitted to be continued. However, finally he has been terminated from services.

10. The case filed by the Plaintiff is one for damages, which he has filed against various organizations and office bearers in those organization. The officials of these organizations, who have been impleaded, may have acted in their official capacity, but at this stage it cannot be held that they have to be impleaded in their individual capacity, by directing them to face a legal action for damages, in respect of acts done in official capacity. In a suit of this nature, if the officials of the government are impleaded in personal capacity, the same would adversely affect the functioning and administration, inasmuch as these decisions are taken in an official capacity, there cannot be any personal liability attached to such actions.

11. The Rajasthan High Court in ***Baldev Singh v. Guddi Devi 2012 SCC Online Raj 3710*** has observed that merely by levelling personal allegations, public officials cannot be impleaded in personal capacity in a suit. The relevant portion of the judgment reads:

“7. In the present case also, purported and intended



action of removal of encroachment by the plaintiff by the defendant No. 1 Smt. Guddi could not be done in her personal capacity. Had she not been the Sarpanch of the Gram Panchayat at the relevant point of time, she could not have initiated any action for removal of alleged encroachment by the plaintiff. Therefore, merely by levelling personal allegations (sic) against her of malafides, it cannot be said that suit is (sic) not directed against her in her capacity as Sarpanch or as a member or officer of Panchayati Raj Institution, Since, drafting of plaint is in the domain of the plaintiff, by levelling personal allegations and not impleading the Panchayati Raj Institution itself as defendant, the plaintiff cannot escape operation of mandatory provisions of law. The protection given to the officers and elected representatives working in Panchayati Raj Institution would go off the board, if these kinds of suits impleading them in their personal capacity were allowed to be tried by courts of law without undergoing mandatory provisions of Section 109 of the Act. This practice cannot be encouraged." (emphasis supplied)

12. Accordingly, both in view the settled legal position as also due to the statement made by counsel for the Plaintiff that the said Defendants are proforma Defendants, the order of the Trial Court does not warrant any interference.

13. There is yet another aspect because of which the present petition is liable to be dismissed i.e., the impugned order was passed on 8th February, 2021 and almost a year later, the said order has been challenged. The suit has proceeded further in the meantime. Written statements are stated to have been filed by the Defendants. One of the Defendants i.e., Defendant No.7 is also stated to have filed an application under Order VII Rule 11 CPC. It is



submitted by the Id. Counsel for the Plaintiff that if the plaint is rejected qua the organizations, no one would be responsible for the actions, which have been committed against the Plaintiff.

14. Accordingly, it is clarified that the present order shall not affect the applications, which may have been moved by any of the parties under Order VII Rule 11 CPC. The decision on the said applications would be taken in accordance with law independently of the observations made in the impugned order dated 8th February, 2021 and the present order. Moreover, if at any stage, the Trial Court is of the opinion that any case of *mala fides* is made out *qua* any of the officials, at that stage, the Trial Court would be at liberty to issue summons to the said specific official. All officials dealing with the Plaintiff's file, cannot be made party in the suit in general.

15. The present petition, along with all pending applications, is disposed of in the above terms.

PRATHIBA M. SINGH
JUDGE

FEBRUARY 11, 2022/dk/sk
(corrected & released on 14th February, 2022)