



W.P.No.1551 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.12.2023

CORAM

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.No.1551 of 2020

P.K.Shanmugam
S/o.Late Kannan

... Petitioner

Vs.

1. The Additional Chief Secretary
The Government of Tamil Nadu
Education Department
Government of Tamil Nadu
Chennai-600 009.
2. The Director of School Education
DPI, College Road
Nungambakkam, Chennai.
3. The Chief Educational officer
District Collectorate
Sathuvacherry
Vellore-9.
4. The District Educational Officer
District Education Office
Vaniyambadi
Thiruppathur District.



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5. Arun Kumar
Senior Asst. Headmaster
Government Higher Secondary School
Vadacherry
Vellore District - 635 754.

... Respondents

Prayer:

Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents 1 to 4 to consider the petitioner's representation dated 04.01.2019 requesting to initiate department proceedings against the 5th respondent and dispose it within the specific time frame.

For Petitioner	:	Mr.K.Karunakaran
For Respondents	:	Mr.T.Chezhiayan Additional Government Pleader for R1 to R4 R5 - No appearance

ORDER

This writ petition has been filed seeking for a Mandamus directing the respondents 1 to 4 to consider the petitioner's representation dated 04.01.2019 requesting to initiate departmental proceedings against the 5th respondent.



2. On 05.12.2023, this Court made the following proceedings:

'The petitioner is a third party on whose complaint, a criminal action has been initiated against the 5th respondent, who was working as Senior Assistant Headmaster in the Government Higher Secondary School, Vadacherry, Vellore (now Thiruppathur).

2. A criminal case registered against the 5th respondent had culminated into a Special Sessions Case No.32 of 2011 on the file of the Principal Sessions Judge, Vellore, after the charge sheet was filed. At the conclusion of the trial of the said case, the 5th respondent got acquitted. Challenging the conviction, the petitioner, who is the de facto complainant has filed an appeal in C.A.No.221 of 2013 and the said appeal was allowed and the 5th respondent was found guilty and imposed with the punishment.

3. The 5th respondent has challenged the same by way of filing the S.L.P. before the Hon'ble Supreme Court and got an order of suspension of sentence. Now, the petitioner, who is the de facto complainant in the proceedings had filed this writ petition to initiate disciplinary proceedings against the 5th respondent by the 3rd respondent.

4. Since the Hon'ble Supreme Court has stayed the conviction of the 5th respondent, the 3rd respondent cannot be directed even before the disposal of the S.L.P to initiate any action against the 5th respondent. Further being the appointing authority of the 5th respondent, it is at the discretion of the 3rd respondent either to initiate such action or notification or not, for the reasons best known



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to him.

5. The petitioner, who is a third party has filed this writ petition seeking a direction against the 3rd respondent Government authorities even though he has not been aggrieved due to the decision of an employer, the 5th respondent herein. However, the learned counsel for the petitioner has not offered his comment in this regard.

Hence, the matter is ordered to be listed on 15.12.2023 under the caption "for orders".'

3. The matter has been repeatedly adjourned for the purpose of giving an opportunity to the learned counsel for the petitioner to make submission but he did not come forward to argue the matter instead sought for adjournment.

4. As observed already, it is the discretion of the Government to take whatever action it wishes to take against an employee. Since the privity of the contract of employer and employee subsists only between the fifth respondent and third respondent, the petitioner, who is a third party cannot seek direction against the respondents to act in a particular manner.



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5. Insofar as the petitioner is concerned, he has initiated criminal action against the fifth respondent on certain allegation of commission of offence by the fifth respondent. In this regard, the criminal action has already been taken and proceedings has also been initiated. Merely because the petitioner wishes to precipitate the matter further, no direction can be issued against the third respondent. However, it is open to the third respondent to verify the stage of the criminal case, which is said to be pending before the Hon'ble Supreme Court and take necessary decision.

6. Accordingly, this Writ Petition is dismissed. There shall be no order as to costs.

15.12.2023

Index : Yes/No
Internet : Yes/No
Speaking/Non-speaking

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R.N.MANJULA, J.

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