

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

WEDNESDAY, THE 16TH DAY OF SEPTEMBER 2015/25TH BHADRA, 1937

W.P.(C).No.4250 of 2010 (E)

PETITIONER(S):

A.N. VINODKUMAR, 37 YEARS, S/O. A. NARAYANA RAO,
MAIMA APARTMENTS, P.O. MADHUR,
KASARAGOD DISTRICT.,
SECURITY GUARD, M.S.M.V.TEMPLE.

BY ADVS.SRI.T.SETHUMADHAVAN [SENIOR ADVOCATE]
SRI.PUSHPARAJAN KODOTH
SRI.K.JAYESH MOHANKUMAR
SMT.VANDANA MENON
SMT.ANJU P.NAIR

RESPONDENT(S):-

1. THE MALABAR DEVASWOM BOARD,
REPRESENTED BY THE SECRETARY,HOUSEFED COMPLEX,
ERANHIPPALAM, KOZHIKODE.
2. THE COMMISSIONER,
MALABAR DEVASWOM BOARD, HOUSEFED COMPLEX,
ERANHIPPALAM, KOZHIKODE.
3. EXECUTIVE OFFICER,
SREE MADANANTHESHWARI VINAYAKATEMPLE, P.O.MADHUR,
KASARAGOD DISTRICT.

R1 & R2 BY STANDING COUNSEL SRI.K.MOHANAKANNAN.
R3 BY ADV. SRI.MAHESH V RAMAKRISHNAN
R1,2 BY ADV. SRI.N.MANOJ KUMAR,SC,MALABAR DEVASWOM BOARD.
R1,R2 BY ADV. SRI.K.R.SUNIL, SC, MALABAR DEVASWOM BOARD.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
16-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:-

APPENDIX

PETITIONER'S EXHIBITS:-

- EXT.P1 TRUE COPY OF THE SHOW CAUSE NOTICE DATED 26.11.2009
ISSUED BY THE 3RD RESPONDENT.
- EXT.P2 TRUE COPY OF THE REPLY FILED BY THE PETITIONER ON
01.12.2009 OF THE SHOW CAUSE NOTICE ISSUED BY R3.
- EXT.P3 TRUE COPY OF THE NOTICE ISSUED BY THE
3RD RESPONDENT DATED 03.12.2009.
- EXT.P4 TRUE COPY OF THE SHOW CAUSE NOTICE DATED 22.12.2009
ISSUED BY THE 3RD RESPONDENT.
- EXT.P5 TRUE COPY OF THE EXPLANATION DATED 31.12.2009
SUBMITTED BY THE PETITIONER TO THE 3RD RESPONDENT.
- EXT.P6 TRUE COPY OF THE ORDER DATED 25.01.2010 ISSUED
BY THE 3RD RESPONDENT.

RESPONDENT'S EXHIBITS:-

- EXT.R3(a) TRUE COPY OF THE DEPOSITION OF THE PETITIONER
RECORDED BY THE 1ST RESPONDENT ON 5.12.2009.
- EXT.R3(b) TRUE COPY OF THE SCHEME OF THE MADHUR SREE
MADHANANTHESWARA VINAYAKA TEMPLE, MADHUR.
- EXT.R3(c) TRUE COPY OF THE RELEVANT PORTION OF THE NEWS
PAPER REPORT ON THE ROBBERY IN MADHUR TEMPLE.
- EXT.R3(d) TRUE COPY OF THE ORDER OF THE EXECUTIVE OFFICER,
MADHUR TEMPLE DT.30.1.2003.
- EXT.R3(e) TRUE COPY OF THE ORDER OF THE EXECUTIVE OFFICER,
MADHUR TEMPLE DATED 19.1.2007.

vkul/-

[true copy]

K. Vinod Chandran, J

W.P.(C).No.4250 of 2010-E

Dated this the 16th day of September, 2015

JUDGMENT

The petitioner, a Security Guard in the 3rd respondent-temple, is aggrieved with the punishment imposed on him on the basis of the enquiry initiated as per Exhibit P1. The allegation in Exhibit P1 is with respect to the presence of a stranger, said to be a close friend of the petitioner, inside the temple after 9.00 p.m. and the fact of the petitioner having indulged in drinking bouts during duty hours. The Executive Officer of the 3rd respondent is said to have conducted an enquiry and imposed a punishment of withholding of one increment for six months by Exhibit P6.

2. The learned counsel for the petitioner has two contentions against Exhibit P6 - (i) that the Executive Officer does not have jurisdiction to impose the punishment of withholding of increment, and (ii) the enquiry was carried out behind the back of the petitioner and in total violation of the principles of natural justice.

3. As to the first ground, of lack of jurisdiction, it is admitted that the Executive Officer has power to terminate an employee and in such circumstance, there is no reason why the Executive Officer, on a consideration of the gravity of the offence, cannot impose a lower punishment of withholding of increment, as has been done in the present case. On such reasoning, the first ground is negated.

4. As to the second ground, it is to be noticed that, in the enquiry proceedings evidenced at Exhibit P4 some third parties are seen to have been examined and statements recorded. However, the petitioner was not afforded an opportunity to cross-examine them; nor was the petitioner even supplied with such statements. On the basis of such statements recorded, behind the back of the petitioner, and the explanation received from the petitioner, a show cause notice was issued at Exhibit P2, which, eventually, culminated in the punishment at Exhibit P6. For the sole reason of violation of principles of natural justice, the order of punishment at Exhibit P6 has to go. Exhibit P4 show cause notice is also not proper, since the findings

entered therein, on the basis of the statements recorded behind the back of the petitioner, cannot be sustained. Consequently, Exhibits P4 and P6 are quashed. If at all, at this distance of time, the 3rd respondent is advised to so proceed, the 3rd respondent would have to proceed from the stage of Exhibit P1. It is made clear that if at all enquiry is proceeded with and again it culminates in the finding of guilt, then necessarily the punishment shall not be enhanced from that imposed now.

The writ petition is allowed, with the observations as above. Parties are left to suffer their respective costs.

Sd/-
K.Vinod Chandran
Judge.

vku/-

[true copy]