

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRA

TUESDAY, THE 7TH DAY OF JULY 2015/16TH ASHADHA, 1937

WP(C).No.30223 of 2004 (W)

PETITIONER :

P.T.GOPINATHAN, S/O. RAMA WARRIER,
AGED 45, "RAMALAYAM" HOUSE, P.O. PAYYANNUR,
(NEAR SRI.SUBRAHMANYA SWAMI TEMPLE), KANNUR DIST.

BY ADV. SRI.M.G.ASOKAN

RESPONDENTS :

1. THE COMMISSIONER,
HR & CE DEPARTMENT, CIVIL STATION, KOZHIKODE.
2. DEPUTY COMMISSIONER,
HR & CE DEPARTMENT, CIVIL STATION, KOZHIKODE.
3. THE BOARD OF TRUSTEES,
SREE PAYYANNUR SUBRAHMANYA SWAMI TEMPLE,
P.O. PAYYANNUR, KANNUR DISTRICT.
4. THE EXECUTIVE OFFICER,
SREE PAYYANNUR SUBRAHMANYA SWAMI TEMPLE,
P.O. PAYYANNUR, KANNUR DISTRICT.

R4 BY ADV. SRI.M.SASINDRAN

R1 & 2 BY ADV. SRI.K.MOHANAKANNAN, SC, MALABAR DEVASWOM

R1-2 BY ADV. SRI.N.MANOJ KUMAR, SC, MALABAR DEVASWOM

R1, R2 BY ADV. SRI.V.KRISHNA MENON, 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
07-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:-

- | | | |
|--------|---|--|
| EXT.P1 | : | COPY OF THE ORDER ISSUED BY THE 4TH RESPONDENT TO THE PETITIONER DTD. 24.9.2000. |
| EXT.P2 | : | COPY OF THE MEMO OF CHARGES ISSUED BY THE 4TH RESPONDENT TO THE PETITIONER DTD.27.1.2001. |
| EXT.P3 | : | COPY OF THE REPLY STATEMENT SUBMITTED BY THE PETITIONER DTD.10.2.2001. |
| EXT.P4 | : | COPY OF THE ORDER PASSED BY THE EXECUTIVE OFFICER DTD.31.5.2001. |
| EXT.P5 | : | COPY OF THE LETTER DTD.24.10.2001 ISSUED BY THE EXECUTIVE OFFICER TO THE PETITIONER AND ENCLOSING THE DECISION OF THE BOARD OF TRUSTEES. |
| EXT.P6 | : | COPY OF THE ORDER PASSED BY THE 2ND RESPONDENT IN A.P.13/2001 DTD.16.12.2002. |
| EXT.P7 | : | COPY OF THE ORDER PASSED BY THE 1ST RESPONDENT IN A.P.1/2003 DTD.10.8.2004. |

RESPONDENTS' EXHIBITS : NIL.

True copy

P.A to Judge

ANIL K.NARENDRA, J.

W.P.(C)No.30223 of 2004

Dated this the 7th day of July, 2015

JUDGMENT

The petitioner, who was working as a Store Keeper in Sree Payyannur Subrahmanya Swami Temple, Payyannur has approached this Court in this writ petition seeking a writ of certiorari to quash Ext.P2 memo of charges issued by the 4th respondent dated 27.1.2001 and also Ext.P7 order passed by the 1st respondent dated 10.8.2004 and seeking a writ of mandamus commanding the 3rd respondent to reinstate him in service with effect from 25.9.2000.

2. Going by the averments in the writ petition, the petitioner, while working as Store Keeper in Sree Payyannur Subrahmanya Swami Temple, was placed under suspension by Ext.P1 order dated 24.9.2000 on the ground of misappropriation of temple funds, along with one Jayarajan, who was working as the Office Clerk and also one C.K.Narayanan, who was working as the Executive Officer. The charge made against the petitioner was that with the active connivance of the other 2 employees the petitioner committed misappropriation of temple funds by fraudulently entering exaggerated quantities of oil and rice, which were in daily use of the temple. Ext.P1 order of suspension was followed by Ext.P2 memo of

charges, which contains three charges against the petitioner. The gist of all three charges was that, the petitioner had assisted the Office Clerk and the then Executive Officer to commit misappropriation of the temple funds.

3. To Ext.P2 memo of charges the petitioner submitted Ext.P3 reply denying all the charges levelled against him. Thereafter, an enquiry was conducted by the Executive Officer, who found the petitioner guilty of all the charges levelled against him and passed Ext.P4 order dated 31.5.2001 by which the petitioner was imposed with the punishment of dismissal from service, with effect from 25.9.2000.

4. Aggrieved by Ext.P4 order passed by the Disciplinary Authority, the petitioner filed an appeal before the Board of Trustees as contemplated under the settled scheme of the temple. The said appeal was considered by the Board of Trustees on 7.10.2001 and by resolution No.4 taken in the Board meeting held on 7.10.2001 the Board of Trustees concurred with the findings in Ext.P4 order and thereby dismissed the appeal. The decision of the Board of trustees on the appeal filed by the petitioner was communicated to him by Ext.P5 letter dated 24.10.2001.

5. Against Ext.P5, the petitioner filed an appeal before the second respondent under Section 49(2) Hindu Religious and Charitable

Endowments Resolution Act, 1951. The second respondent dismissed A.P.No.13 of 2001 by Ext.P6 order dated 16.12.2002 confirming the findings in Exts.P4 and P5.

6. The decision taken by the second respondent in Ext.P6 was under challenge in an appeal filed before the Commissioner, Hindu Religious and Charitable Endowments (Administration) Department, Kozhikode, under Section 49(3) of the aforesaid Act. The first respondent by Ext.P7 order dated 10.8.2004 dismissed A.P.No.1 of 2003, confirming the finding of the second respondent in Ext.P6.

7. It is aggrieved by the punishment imposed based on the orders passed by the Disciplinary/Appellate Authorities, the petitioner has approached this Court in this Writ Petition seeking various reliefs.

8. A counter affidavit has been filed on behalf of the first respondent justifying the stand taken in Ext.P7 and contending that, if the petitioner is aggrieved by Ext.P7, the remedy available to him is under Section 92 of the Act before the Government. The first respondent has also stated in paragraph 5 of the counter affidavit that, the petitioner himself has remitted ₹16,000/- on 15.5.2000 to the Devaswom account towards the value of the articles found short in stock. If the petitioner is innocent of all the charges, there is no necessity for remittance of such an

amount. The first respondent has also contended that, the repayment of the misappropriated amount does not absolve the petitioner from the liability in a disciplinary proceedings initiated by the Executive Officer.

9. I heard the arguments of the learned counsel for the petitioner, the learned Government Pleader appearing for respondents 1 and 2, learned counsel for the 3rd respondent and also the learned counsel for the 4th respondent.

10. The learned counsel for the petitioner would contend that the charges leveled against the petitioner in Ext.P2 memo of charges were absolutely vague, which had prejudiced his right to defend the disciplinary proceedings. The learned counsel would also contend that, in the absence of any reliable materials to connect the petitioner with the alleged misconduct and also to prove his role in the transactions in question, he is entitled for exoneration from all the charges levelled against him. Further, in the absence of any reliable materials a major penalty like the dismissal from service imposed cannot be sustained.

11. Per contra the learned counsel for the 3rd respondent and the learned counsel for the 4th respondent would contend that, there is absolutely no irregularity in the disciplinary proceedings initiated against the petitioner and the finding of the Enquiry Officer as well as the order

passed by the Disciplinary Authority, which are now confirmed concurrently by the appellate authorities warrant no interference at the hands of this Court, in exercise of the discretionary jurisdiction under Article 226 of the Constitution of India.

12. I have considered the rival submissions made at the Bar.

13. It is based on Ext.P2 memo of charges, disciplinary proceedings were initiated against the petitioner, who was then working as a Store Keeper in Sree Payyannur Subramanya Temple. The documents, based on which the memo of charges was issued, were also referred to in Ext.P2 memo of charges, which include the statements given by the Temple employees, the owner of new T.P.Stores, the stock register maintained in the Temple and also the stock register of the Store. On receipt of Ext.P2, the petitioner submitted Ext.P3 reply denying all the charges leveled against him. To Ext.P3 reply the petitioner has absolutely no case that, any of the charges in Ext.P2 memo of charges are vague and therefore he is denied a reasonable opportunity to defend properly the disciplinary proceedings initiated against him.

14. After considering the reply submitted by the petitioner, the disciplinary authority appointed an Enquiry Officer, who conducted an enquiry and submitted a report, pursuant to which the petitioner was

issued with Ext.P4 order of disciplinary authority, by which he was dismissed from service with effect from 25.9.2000, the date on which he was placed under suspension by Ext.P1 order. Though the petitioner filed appeal before the Board of Trustees as well as the 1st and 2nd respondents, all those appeals ended in dismissal by Exts.P5, P6 and P7 orders. All the three appellate authorities have concurrently found that the punishment of dismissal from service imposed on the petitioner is perfectly legal and is supported by the findings of the Enquiry Officer.

15. A reading of Ext.P6 order passed by the 2nd respondent would show that, it was on a detailed consideration of the contentions raised by the petitioner, the 2nd respondent came to the conclusion that no interference in the punishment imposed is warranted. In Ext.P6 the 2nd respondent has also noticed the fact that, the petitioner has remitted a sum of ₹.16,000/- on 16.3.2000 on the Devaswom Fund, towards shortage of stock detected in the stock register. It was in such circumstances, the second respondent came to the conclusion that, the petitioner was actively involved in the misappropriation of the temple fund along with the other two persons involved in the very same incident.

16. The findings of fact in Ext.P4 order passed by the disciplinary authority, which have been concurrently upheld in Exts.P5, P6 and P7

orders passed by the appellate authorities, cannot be interfered with by this Court, in exercise of the discretionary jurisdiction under Article 226 of the Constitution of India, unless it is shown that the reasoning of the appellate authorities are either perverse or patently illegal. In the absence of any materials for arriving at such a conclusion, the finding of the appellate authorities does not warrant any interference.

17. The learned counsel for the petitioner, relying on judgment in **Anant R.Kulkarni Vs. Y.P.Education Society and others [(2013) 6 SCC 515]** would contend that, the charges leveled against the petitioner in Ext.P2 memo of charges are absolutely vague and therefore the entire disciplinary proceedings initiated against him are non est in law and are liable to be set aside. In the aforesaid judgment the Apex Court held that, when the charges leveled against the delinquent is not specific, definite and clear, the enquiry would be vitiated. But, in the aforesaid judgment the Apex Court observed that, what is required to be examined is whether the delinquent knew the nature of accusation. The charges should be specific, definite and giving details of the incident which formed the basis of charges and no enquiry can be sustained on vague charges.

18. In the case on hand, as evident from Ext.P2, the disciplinary authority has proceeded on the basis of a set of facts stated in Ext.P2

memo of charges, supported by the documents referred to therein, which includes statement of the Temple employees and also the relevant registers including the stock register. Further, in Ext.P3 reply filed by the petitioner to Ext.P2 memo of charges, he has absolutely no case that the charges leveled against him are either vague or that he is not in a position to defend the disciplinary proceedings properly. In such circumstances, the principles laid down in the judgment of the Apex Court in **Anant R.Kulkarni's case (supra)** will not come to the rescue of the petitioner.

19. I find absolutely no ground to interfere with the concurrent finding of the disciplinary authority in Ext.P4 and that of the appellate authorities in Exts.P5, P6 and P7 orders.

In the result, the Writ Petition fails and the same is dismissed.

No order as to costs.

ANIL K.NARENDRAN, JUDGE

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