

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.01.2015

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.13652 of 2007 (T)

O.A.No.3676 of 2003

S.Senthooran

... Petitioner

Vs.

1.The Commissioner,
Hindu Religious & Charitable
Endowment Department (Admin.),
Chennai - 34.

2.The Secretary to Government,
Tamil Development, Culture and
Religious Endowment Department,
Fort St. George, Chennai - 9.

... Respondents

PRAYER: Writ Petition came to be numbered by transfer of O.A.No.3676 of 2003 on the file of the Tamil Nadu Administrative Tribunal seeking to call for the records of the respondents in connection with the impugned orders Proc.Na.Ka.No.64977/99/L3, dated 03.08.2000 and G.O. (D) No.198, Tamil Development, Culture and Religious Endowment Department, dated 12.11.2002 and quash the same.

For Petitioner :Mr.K.Venkataramani, SC
for Mr.M.Muthappan

For Respondents :Mr.S.Kandaswamy, Spl.GP (HR & CE)

ORDER

The petitioner filed O.A.No.3676 of 2003 before the Tamil Nadu Administrative Tribunal seeking to quash the impugned orders passed by the respondents on the ground that the appellate authority, while considering the correctness of the penalty imposed by the original authority, has violated the condition mentioned under Rule 23(1)(a)(b)(c) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. On abolition of the tribunal, the same was transferred to the file of this Court and renumbered as W.P.No.13652 of 2007.

2. Learned Senior counsel appearing for the petitioner submitted that the second respondent / Secretary to Government, Tamil

Nadu Development, Culture and Religious Endowment Department, Chennai, without even looking into the explanation offered by the petitioner, passed a non-speaking order giving his seal of approval to the original order passed by the first respondent / the Commissioner, Hindu Religious and Charitable Endowment Department (Admin.), Chennai, imposing a punishment of stoppage of increment for a period of three years with cumulative effect. Learned Senior counsel further argued that the petitioner has not entered into any private negotiation with any individuals or private persons to lease out the temple property for lesser income. That apart, subject matter of the property, for which the petitioner was charge sheeted, is situated opposite to the temple and the same was not yielding any income, but, at the same time, it has been misused by the Villagers for the reasons best known to them. Therefore, the petitioner, in order to safeguard the property of the temple and also to exert regular income, attended the Union meeting on the request of the Panchayat Union Commissioner and other elected representatives and in the said meeting, one of the agendas was to take over the temple land on lease by the Panchayat Union for weekly shandy at Rs.3,000/- per month for three years with an increase of 10% every year. To that effect, a resolution was also passed and in the said resolution, the petitioner was requested to sign, but, that does not mean that he has entered into any private negotiation to lease out the property with profit motive and for personal gain. By narrating so, it is further contended by the learned Senior counsel that the intention of the petitioner was very clear to safeguard the temple land and also to increase the income of the temple, hence, no motive can be attributed in respect of a proposal to lease out the property in favour of the local body and not to any private individual. Therefore, the entire allegation that the petitioner has failed to discharge his duties in proper manner cannot be accepted.

3. Learned Senior counsel further argued that the Enquiry Officer also found that the charges levelled against the petitioner as proved without there-being any proper and sufficient evidence to prove the allegation of leasing out the temple property to some private individuals. Therefore, impugned orders passed by the respondents imposing a punishment of stoppage of increment for a period of three years with cumulative effect imposed by the first respondent, as confirmed by the second respondent, would definitely affect his pensionary benefits, as the petitioner has also retired from service in the year 2007 itself. The appellate authority, while passing the order, has not even considered the grievance of the petitioner and passed a non-speaking order, by merely confirming the order passed by the first respondent, which is in total violation of the Rule 23(1)(a)(b)(c) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. Therefore, learned Senior counsel pleaded for setting aside the impugned orders passed by the respondents.

4. Learned Special Government Pleader appearing for the respondents, by filing a detailed counter affidavit, submitted that while the petitioner was working as Executive Officer, Grade III, in Arulmigu Drowpathiamman temple, Mathanoor Village, Vellore District, from 13.08.1995 to 01.06.1998, he had leased out 45 cents out of 60 cents of the temple property by private negotiation to the Mathanoor Panchayat Union for running weekly santhai market for three years on an annual rent of Rs.3,000/- without obtaining any sanction from the competent authority under Section 34 of the Tamil Nadu Hindu Religious and Charitable Endowments Act (in short "Act") and Rules framed under the Religious Institutions (Lease of Immovable Property) Rules, 1963 (in short "Rules"). For the above said act, the petitioner was charge sheeted with six charges and the Enquiry Officer found him guilty in respect of first charge and part of a second charge, and in respect of charge Nos.3 to 6, he was not found guilty. The findings recorded by the enquiry officer with regard to the first charge and part of a second charge came to be accepted by the disciplinary authority. Thereafter, after careful consideration of the relevant records, along with the explanation of the petitioner, the petitioner was imposed with a punishment of stoppage of increment with cumulative effect for three years vide proceedings dated 03.08.2000. As against that, when appeal was preferred, the second respondent, after careful consideration of the appeal in consultation with the Tamil Nadu Public Service Commissioner, has confirmed the order of the first respondent, but, slightly modified the said order holding that the period of leave, if any taken by the petitioner during the punishment period, will count for period of stoppage of increment (including the leave if any taken by the petitioner) vide G.O.(D) No.198, TDC RE Department, dated 12.11.2002.

5. While answering the argument of the learned Senior counsel for the petitioner that the petitioner had leased out the property of the temple to the Panchayat Union to safeguard the properties, learned Special Government Pleader for the respondents submitted that since the property of the temple, before being leased out, should be authorised by the Commissioner under Section 34 of the Act, the above said argument of the learned Senior counsel cannot stand to any good reason. Further, the petitioner had permitted the Panchayat to utilize the temple property on the strength of its resolution, which is clear violation of the statutory rules, therefore, the contention of the petitioner that he had only signed the resolution on the request of the Panchayat Union Commissioner and other elected representatives, is totally far from acceptance, for yet another reason that the petitioner ought to have the knowledge of the fact that only the Commissioner is the competent authority under the Act for according sanction and approval of any lease stipulating an annual rental or contract amount of Rs.1,000/- or more under Rule 12(2) of the said Rules through public auction.

6. This Court finds some force in the above said argument of the learned Special Government Pleader for the respondents. Admittedly, the property belonging to the temple has been leased out without prior permission from the first respondent. Secondly, the petitioner, who was serving as Executive Officer, Grade III, in Arulmigu Drowpathiamman temple, Mathanoor Village, Vellore District, has also sent a letter to the Assistant Commissioner seeking for approval. Indisputably, the letter sent by the petitioner has also not been answered by the higher officer, therefore, the petitioner, in my view, ought not to have proceeded with further for leasing out the property of the temple. As per the Rules, the temple property has to be leased out either by public auction or by private negotiation only with a prior permission of the first respondent, which is not only mandatory but also condition precedent, since the first respondent is the competent authority to decide whether the property can be leased out on a private negotiation as per Rule 11 of the above said Rules. Besides, no permission has been obtained by the petitioner under Section 34 of the Act from the Commissioner for the said lease. Therefore, since the petitioner has violated such procedure to be followed before leasing out the temple property, he has suffered the departmental proceedings as stated supra.

7. Hence, for the aforesaid reasons, this Court is not able to find any merit in the writ petition and accordingly, the writ petition fails and the same is dismissed. No Costs.

Sd/-
Assistant Registrar
Dated:2.3.15

True Copy

Sub Assistant Registrar

To

1.The Commissioner,
Hindu Religious & Charitable
Endowment Department (Admin.), Chennai - 34.

2.The Secretary to Government,
Tamil Development, Culture and
Religious Endowment Department,
Fort St. George, Chennai - 9.

+1 cc to M/s.M.Muthappan, Advocate,SR.180

+1 cc to Government Pleader,SR.240.

rsi(co)
krd 6/3

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