

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.10.2016

CORAM

THE HONOURABLE MR. JUSTICE R.SUBBIAH

Writ Petition Nos.36291 & 38536 of 2015
and
M.P.Nos.1 of 2015 (in both the W.Ps.)

K.Chandirasekaran ... Petitioner in
both the W.Ps.

vs.

1.The Commissioner,
Hindu Religious & Charitable
Endowment Department,
Nungambakkam,
Chennai-600 034

2.The Joint Commissioner,
Hindu Religious and Charitable
Endowment Department,
Nungambakkam,
Chennai-600 034

... Respondents
in both the W.P.s

Prayer in W.P.No.36291 of 2015: Writ petition has been filed under Article 226 of the Constitution of India, praying for a Writ of certiorarified mandamus to call for the records relating to the impugned proceedings issued by the 1st respondent in Se.Mu.Na.Ka.No.28811/2015/B3, dated 12.10.2015 and to quash the same and consequently direct the respondents to restore the petitioner to the post of Junior Assistant with all consequential and other attendant benefits.

Prayer in W.P.No.38536 of 2015: Writ petition has been filed under Article 226 of the Constitution of India, praying for a Writ of certiorarified mandamus to call for the records relating to the impugned proceedings issued by the 1st respondent in Se.Mu.Na.Ka.No.28811/2015/B3, dated 13.10.2015 and the subsequent proceedings issued by the first respondent in Na.Ka.No.28811/2015/Be dated 02.11.2015 and to quash the same and consequently direct the respondent to allow the petitioner to continue in service in the office of Joint Commissioner, Hindu Religious and Charitable Endowment Department, Nungambakkam, Chennai-600 034.

For Petitioner :Mr.G.Sankaran,
in both the writ petitions.

For Respondents :Mr.M.Maharaja,
Spl. Govt. Pleader
H.R. & C.E.
in both the writ petitions.

COMMON ORDER

Writ petition in W.P.No.36291 of 2015 has been filed challenging the impugned proceedings of the first respondent in Se.Mu.Na.Ka.No.28811/2015/B3, dated 12.10.2015 and consequently to direct the respondents to restore the petitioner to the post of Junior Assistant with all consequential and other attendant benefits.

2. Writ petition in W.P.No.38536 of 2016 has been filed challenging the impugned proceedings of the first respondent in Se.Mu.Na.Ka.No.28811/2015/B3, dated 13.10.2015 and the subsequent proceedings of the first respondent in Na.Ka.No.28811/2015/Be dated 02.11.2015 and consequently, to direct the respondents to allow the petitioner to continue in service in the office of Joint Commissioner, Hindu Religious and Charitable Endowment Department, Nungambakkam, Chennai-600 034.

3. The case of the petitioner as could be seen in the affidavits filed in support of both the writ petitions, in brief, is as follows:-

(a) The petitioner was initially appointed as Record Clerk in the office of Joint Commissioner, HR & CE Department, Chennai, on 25.10.2006. Thereafter, he was promoted to the post of Junior Assistant on 23.6.2014 and continued to work as such. As a Junior Assistant, he was working in the office of the second respondent and his work was confined within the office.

(b) While so, on 1.6.2015, he went to Arulmighu Srinivasa Perumal Thirukoil at Purasaiwalkam along with his wife for the purpose of arranging a naming ceremony for the child of his sister-in-law. Accordingly, he met the temple Archagar one Santhana Bhattacharyar and fixed the naming ceremony on 3.6.2015. At that time, he has also met the hereditary trustee Natarajan and made formal enquiries and informed him that he visited the temple for the purpose of fixing naming of ceremony of his sister-in-law's child.

(c) While so, on the next day, he came to know that the hereditary trustee Natarajan expired. The fact remains, he was 84 years old and he was a heart patient and had suffered from

heart attack in the previous occasions. In this regard, a false news was spread out as if the said Natarajan died out of humiliation since on the previous day, the petitioner compelled him to submit the budget to the department as per the orders, to the Joint Commissioner immediately. However, the fact remains, he went to the temple for fixing the date for the naming ceremony of the new born child. Thereafter, the naming ceremony was also conducted as per the schedule. Since the said Natarajan was suffering from some ailments, his demise cannot be given any colour or meaning as if it was due to the pressure exerted by the petitioner to submit the budget to the department.

(d) While so, a charge memo dated 11.6.2015 was issued by the second respondent on four counts mainly on the premises that the petitioner threatened the said Natarajan for non-submitting the budget of the temple, based on which, he wrote the accounts upto 8.30 p.m. and went back to home and on the next day morning he died at about 8.00 a.m. For the said charges, the petitioner submitted a detailed explanation on 23.7.2015 refuting the same. Notwithstanding the same, an enquiry officer was appointed and enquiry was conducted without providing any reasonable opportunity to the petitioner. Enquiry report was submitted on 19.8.2015 and the petitioner was called to offer his further explanation. Accordingly, the petitioner submitted his further explanation on 14.9.2015.

(e) Thereafter, the first respondent issued the impugned proceedings dated 12.10.2015, imposing the punishment of reduction in rank by reverting him to the lower post of Record Clerk for a period of five years with lesser scale of pay. Further, it has been ordered that the petitioner would not be paid with increment for five years and after five years, his pay would be fixed in the scale of pay, now presently being received by him in the post of Junior Assistant. Challenging the same, the petitioner filed the writ petition in W.P.No.36291 of 2015. Thereafter, the petitioner was issued with another order by the first respondent dated 13.10.2015, transferring him to the office of Cuddalore in the post of Record Clerk on re-instatement into service by revoking the order of suspension. Hence, challenging the said order, the petitioner has filed the writ petition in W.P.No.38536 of 2015.

4. The main submission of the learned counsel appearing for the petitioner is that the charge memo was issued only on the news item appeared in the Tamil newspaper. In the said charge memo, one S.Santhana Bhattachariyar, the Archagar, J.Sekar, the Electrician, one M.Govindan, the Watchman working in the said Temple and one D.Bala Subramanian, the regular worshipper of the temple were cited as witnesses, but, none of them was examined in the enquiry proceedings and the petitioner was also not given sufficient opportunity to examine witnesses

on his side. In this regard, learned counsel appearing for the petitioner has also relied upon the judgment of the Hon'ble Supreme Court reported in (1999) 8 Supreme Court Cases 582 - Hardwari Lal v. State of U.P. and others, wherein it has been stated that when there was no proper enquiry held by the authorities, on that ground alone, the order of dismissal is liable to be quashed. For the same proposition, the learned counsel has also relied upon the judgment of the Division Bench of this Court dated 12.12.2006 made in W.P.No.22574 of 2001 (B.Padmaiah v. The Union of India and others), wherein, in para 21, it has been held as follows:-

" 21. As rightly pointed out by the learned counsel for the petitioner, even in the enquiry the Enquiry Officer proceeded with a point whether the constable B.Padmaiah demanded money from Ravichandran, Supervisor of Rajeshwari Contractors for supervising the grass loading in OTA area. In such circumstances, as rightly pointed out by the learned counsel for the petitioner in the light of the decision of the Supreme Court in Hardwari Lal's case (cited supra), non-examination of the material witness, viz., Ravichandran has prejudiced the petitioner. We are also satisfied that the infirmities pointed out would undoubtedly amount to violation of principles of natural justice. Therefore, the impugned orders are liable to be set aside. The failure to examine the complainant whose complaint is the basis for the disciplinary action against the petitioner and the failure to provide an opportunity to the petitioner to test the veracity of the complaint made against him has resulted in the deprivation of right of the petitioner amounting to gross violation of principles of natural justice and thereby, making the entire disciplinary proceedings vitiated. In view of the specific statement of P.W.4 Dan Ram, who conducted the body search of the petitioner that no money was found in his pocket and he took canteen coupons from his pocket, the contrary conclusion arrived at by the Enquiry Officer and accepted by the disciplinary authority cannot be sustained. We are also satisfied that the failure to provide defence assistance to the petitioner is a violation of the provisions of Rule 34 of CISF Rules, besides the violation of the principles of natural justice. All these material and relevant aspects have not been properly considered by the appellate and revisional authorities. "

Thus, he sought to quash the impugned proceedings of the first respondent.

5. On the other hand, learned Special Government Pleader, by filing a detailed counter affidavit, submitted that a news article appears to be published in Dinakaran Tamil Daily dated 8.6.2015 stating that the hereditary trustee of Arulmigu Srinivasa Perumal Temple, Vellalar Street, Purasaiwalkam, Chennai, had expired on 2.6.2015 due to the threat and harassment given by the Record Clerk working in the office of the Joint Commissioner, HR & CE Department, Chennai, the petitioner herein. Based on the said news article, the second respondent had directed the Inspector, Circle 3, HR & CE Department to enquire into the facts and to submit a detailed report. Accordingly, the Inspector made local enquiry and obtained statements from one S.Santhana Bhattachariyar, the Archagar, J.Sekar, the Electrician and one M.Govindan, the Watchman working in the said Temple and one D.Bala Subramanian, the regular worshipper of the temple. According to the statements given by the said witnesses, it has been inferred that the petitioner had met the deceased Natarajan on 1.6.2015 and threatened him stating that if he failed to submit the budget and accounts immediately, the Joint Commissioner would initiate appropriate disciplinary action against him. Further, the petitioner used to demand money frequently from the said Natarajan by threatening him. Due to the threat exerted by the petitioner, the said Natarajan was forced to work upto 8.30 p.m., which led to massive heart attack. Hence, the second respondent initiated disciplinary proceedings against the petitioner by framing four definite charges and also placed him under interim suspension pending enquiry into grave charges in the interest of public. The petitioner submitted his explanation and being not satisfied with the same, the first respondent appointed an enquiry officer to enquire into the charges framed. The enquiry officer conducted due enquiry by affording reasonable opportunity to the petitioner and submitted his report. Based on the report of the enquiry officer and upon perusing the other relevant records, the first respondent passed the impugned orders. However, learned Special Government Pleader has admitted that during the course of enquiry, the witnesses mentioned in the charge memo, were not examined by the enquiry officer.

6. Keeping the submissions made on either side, I have carefully gone through the entire materials available on record.

7. In my considered opinion, since it is admitted that during the course of enquiry, the witnesses mentioned in the charge memo were not examined, the impugned punishments are liable to be set aside on the sole ground that the enquiry was not conducted in accordance with the principles of natural justice. Therefore, without going into the submissions made by

on either side, this Court is of the opinion, it would be appropriate to set aside the impugned orders of the first respondent and remit the matters back for fresh enquiry.

8. Accordingly, the impugned orders of the first respondent dated 12.10.2015, 13.10.2015 and 2.11.2015 are set aside and both the writ petitions are allowed. The matters are remitted back to the first respondent for fresh enquiry. The first respondent is directed to re-instate the petitioner into his original position immediately. Further, the first respondent is directed to examine all the witnesses referred to in the charge sheet by affording an opportunity of cross examination to the petitioner and permit the petitioner to examine the witnesses on his side, if any, and thereafter, pass appropriate orders, on merits and in accordance with law. The said exercise shall be carried out within a period of six weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

1.The Commissioner,
Hindu Religious & Charitable
Endowment Department,
Nungambakkam,
Chennai-600 034

2.The Joint Commissioner,
Hindu Religious and Charitable
Endowment Department,
Nungambakkam,
Chennai-600 034.

+1cc to Mr.G.Sankaran, Advocate Sr.57222
+1cc to the Government Pleader Sr.57340

W.P.Nos.36291
and 38536 of 2015

nr[co]
srg 24/10/2016