

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Coram

Dated: 10.01.2017

The Honourable Mr. JUSTICE M.SATHYANARAYANAN

Writ Petition No.753 of 2017

and W.M.P.Nos.784 and 785 of 2017

S.Devaraj

... Petitioner

-Vs-

1. The Principal Secretary to Government,
Tourism, Culture and Endowments Department,
Fort St.George,
Chennai -9.
2. The Commissioner,
Hindu Religious Charitable
Endowment Adminsitration Department,
Nungambakkam,
Chennai - 34.
3. The Assistant Commissioner,
Hindu Religious Charitable Endowment
Administration Department,
Virudhunagar.

... Respondents

Writ Petition has been filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records of the 1st respondent in Government (Pa) No.18 dated 2.2.2016 and also the proceedings of the 2nd respondent in Se.Mu.Na.Ka.No.45333/2013 / B2 dated 22.04.2015 and quash the proceedings and thereby direct the respondents to restore all the benefits to the petitioner.

For Petitioner :Mr.N.Suresh

For Respondents :Mr.M.Maharaja, Special Govt.Pleader
for H.R.& C.E.

O R D E R

By consent, the writ petition is taken up for final disposal.

2. The petitioner would aver that while he was working as Inspector (Court cases), he was issued with a charge memo dated 12.08.2013 by the 3rd respondent with the following allegations.

"a) That while I was working as Inspector (court cases) at Virudunagar on 9.8.2013, allegedly inspite of oral order on 8.8.2013 directing me to be present for the temple Car festival in Arulmigu Nachiyar (Andal Temple) in Srivalliputhur, I was not present inspite of the assignment of special duty for the temple car festival.

b) That although the petitioner was directed to come for the special duty in Arulmigu Nachiyar (Andal Temple) in Srivalliputhur from 8.8.2013 for the Temple Car festival on 9.8.2013, without taking prior permission and in violation of the fundamental rules a casual leave application was kept by the petitioner without informing any one in violation of office procedures.

c) That although the petitioner was directed to come for the special duty in Arulmigu Nachiyar (Andal Temple) in Srivalliputhur from 8.8.2013 for the Temple Car festival on 9.8.2013 and in which Hon'ble Ministers for HR & CE and Hon'ble Minister for News and Special Scheme Execution department and other members of the Legislative Assembly and the District Collector, Virudunagar had to participate and in which the petitioner had disregarded the duty without attending the special duty and thereby incurred bad name for the department.

d) That although the petitioner was directed to come for the special duty in Arulmigu Nachiyar (Andal Temple) in Srivalliputhur from 8.8.2013 for the Temple Car festival on 9.8.2013, the petitioner had left the head quarters from 8.8.2013 to 11.8.2013 without taking prior permission totally in violation of the office procedures.

e) That the petitioner had not submitted for inspection the Suit Registers to the Assistant Commissioner inspite of the order of the Assistant Commissioner in Na.Ka.No.2045/2008 /B1 dated 21.03.2013.

f) That the petitioner was directed by the Assistant Commissioner's Office Na.Ka.839/2013 to be present in the District

Collector's office on all Mondays for participating in the Public Grievance Day. The petitioner within an intention not to participate in the above said meetings, had disregarded the orders of the Assistant Commissioner and thereby without taking permission, on 8.4.2013, 12.4.2013, 13.5.2013, 27.5.2013 and 10.6.2013 informed by telephone on all above Mondays as casual leave and thereby gave difficulties in the public grievance day meetings and hence, the petitioner had incurred bad name to the department.

g) The petitioner on 8.4.2013, 10.4.2013 and 12.4.2013 did not attend the office under the pretext of depositing evidence on 9.4.2013 in the court case in Principal Sub Judge's Court at Virudhachalam in respect of Arulmigu Balasubramanian Temple, Virudhachalam Taluk, Cuddalore District in O.S.85/2010 and in O.S.86/2010 after having been appointed as Inspector, court Cases, Virudunagar and hence, in the attendance register, it was marked as absent. The petitioner had not submitted any explanation for non-attending the office on all the above days. The petitioner in order to screen the mistake committed by him for not attending the office on 8.4.2013, 9.4.2013 and on 10.4.2013 had asked the advocate to send a letter on 25.4.2013 that he was present on those days for discussion and preparing affidavits in respect of the case, which is in violation of the office procedure.

h) That petitioner had violated the circular and also the oral orders of the Assistant Commissioner that without taking permission on Saturdays and Sundays he should not leave the head quarters and thereby violated the orders of the superiors.

i) That by an order of the Joint Commissioner, Hindu Religious Department, Sivagangai in Na.Ka.865/2013 under B2 dated 21.3.2013 the petitioner was directed to be present for the special duty on 4.4.2013 and on 7.4.2013 in respect of the Thaiyamangalam Arulmigu Muthu Mariamman temple for Panguni Thiruvizha and thereby without taking prior permission and the petitioner was not

present for the special duty and hence the assistant commissioner issued a show cause notice and thereby had caused violated the orders of the higher officer.

3. The allegation is that inspite of oral order dated 8.8.2013 directing the petitioner to be present for the Temple Car festival in Arulmigu Nachiyar (Andal Temple), he was not present and his conduct in not presenting on the said occasion without taking prior permission is in violation of the relevant rules. A charge memo was issued on 12.08.2013 under 17(b) of the Tamil Nadu Government Subordinate Services (Discipline and Appeal) Rules. The petitioner has submitted his response and not satisfied with the same, the Assistant Commissioner, HR&CE was appointed as an Enquiry Officer and he submitted his report, for which, the petitioner has also submitted his further representation. The second respondent, as a Disciplinary Authority, vide order dated 22.04.2015 has imposed a punishment of stoppage of two increments with cumulative effect as and when it falls due. The petitioner, challenging the legality of the order, filed an appeal before the first respondent and vide order in G.O.(Pa)No.18 dated 2.2.2016, the appeal filed by the petitioner has been dismissed. Challenging the legality of the same, the present writ petition is filed.

4. Mr.N.Suresh, learned counsel for the petitioner has drawn the attention of this Court to the typed set of papers and would submit that the 2nd respondent/disciplinary authority has imposed the above said punishment by proceedings dated 22.04.2015 and as in-charge of the office of the 1st respondent, he has passed the order in the appeal confirming his own order which was passed in the capacity as the disciplinary authority and the same is per se in violation of principles of natural justice and on the sole ground, the impugned order warrants interference and hence, the petitioner prays for appropriate orders.

5. The Court heard the submission of the learned counsel for the petitioner and Mr.M.Maharaja, learned Government Pleader appearing for H.R. & C.E.

6. Admittedly, the 2nd respondent in his capacity as the Disciplinary Authority has passed the order of punishment vide proceedings dated 22.04.2015 and he was brought in charge of the office of the 1st respondent and while he was functioning in that capacity, he has confirmed his very own order dated 22.04.2015 which in the considered opinion of the Court, is in gross violation of principles of natural justice. Hence, on the sole ground, the impugned order warrants interference.

7. At this juncture, the learned Special Government Pleader

would submit that now some other official has been put in charge of the office of the 1st respondent and as such, there is no impediment on the part of the 1st respondent to consider the appeal submitted by the petitioner, once again, in accordance with law.

8. Learned counsel appearing for the petitioner also prays for an opportunity of personal hearing before the first respondent.

9. In the result, the writ petition is partly allowed and the impugned order dated 02.02.2016 passed by the first respondent is set aside. The matter is remanded back to the first respondent. The first respondent shall consider the appeal memorandum submitted by the petitioner on merits and in accordance with law, after affording opportunity of personal hearing to the petitioner, and shall pass orders within a period of six weeks from the date of receipt of a copy of this order and communicate the decision taken to the petitioner. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

To

1. The Principal Secretary to Government,
Tourism, Culture and Endowments Department,
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3. The Assistant Commissioner,
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Virudhunagar.

+1 cc to Mr.N.Suresh,advocate,sr.2375
+1 cc to Govt.Pleader,sr.2912.

vgi(co)
krd 31/1

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