

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No. 31060 OF 2017

ORDER:

This writ petition is filed seeking writ of mandamus declaring the action of the 4th respondent in issuing impugned Charge Memo vide proceedings R.C.No.A1/R1091/2017, dated 07.05.2017 as illegal and arbitrary and consequently to set aside the same.

2. It is the case of the petitioner that he has been working in the category of Personal Assistant to Executive Officer in the 3rd respondent Temple. While so, he has been transferred to the 4th respondent Temple in the month of June, 2016, pursuant to which he joined duties on 29.06.2016 and taken charge on 07.07.2016 in CRO, Reception, Administration, Tonsuring, Security and Sanitization Department and discharged functions as Assistant Executive Officer. While things stood thus, the impugned charge memo dated 07.05.2017 was issued to the petitioner alleging that he has misappropriated human hair stock in godown and caused loss to the 4th respondent temple. It is the case of the petitioner that he never discharged duties relating to tonsuring department or custody of human hair for the period from 30.10.2016 to 16.11.2016, as such, the issuance of charge memo itself is illegal. That the petitioner is now due for promotion to the post of Assistant Commissioner of

Endowments, in order to deprive him the opportunity of promotion, the impugned charge memo has been issued in order to favour one MKTNV Prasad, who is junior to the petitioner. Aggrieved by the same, present writ petition is filed.

3. Counter affidavit is filed by the 4th respondent denying the allegations in the affidavit filed in support of the writ petition stating that the petitioner was allotted work orders on 02.07.2016 to 01.09.2017, wherein he was allotted duties of Keshakhandashala and other places. Thereafter from 01.09.2017, he was given establishment C-Section and trust board, and allotted keshakhandanashala to one Sri M.K.T.N.V. Prasad. That collection of human hair comes under the control of C-Section, which has to take care of the amounts paid, arrears if any, relating to the collection of the human hair. While so, the petitioner has issued orders dated in Rc.No.C1/1691/2016, dated 29.10.2016, wherein he has allowed the leaseholder to take away the human hair collected from 01.08.2016 to 29.10.2016. Thereafter, again a notice was issued to keshakhandanasala section in Rc.No.C1/1691/2016, dated 17.11.2016, wherein he has directed the licence holder to deposit the human hair collected in the joint custody of the temple and the licence holder from 17.11.2016, but he has not ordered to deposit the human hair collected from 29.10.2016 to 16.11.2016, by

colluding with the licence holder, thus caused loss to the 4th respondent temple. It is stated that to the show-cause notice dated 07.05.2017 issued to the petitioner by framing ten charges, petitioner filed explanation on 22.05.2017 and that the 3rd respondent has to appoint an enquiry officer after giving opportunity to the petitioner for taking further action.

4. Heard Sri G.V.Shivaji, learned counsel for the petitioner and Smt.K.Lalitha, learned Standing Counsel for 4th respondent.

5. Learned counsel for the petitioner, apart from reiterating the averments in the affidavit filed in support of the writ petition, submits that impugned charge memo has been issued without properly verifying the records. He further submits that the authority who has issued the impugned proceedings has not applied his mind. He submits that by virtue of impugned charge memo, the petitioner is being deprived of getting promotion as Assistant Commissioner of Endowments and that the 4th respondent has acted *malafidely* in order to favour one Sri M.K.T.N.V.Prasad.

6. On the other hand, learned Standing Counsel submits that the petitioner has colluded with the licence holder and misappropriated human hair and caused loss to the institution, as such, he was issued charge memo dated 07.05.2017 by framing 10 charges. She also submits that the petitioner was in-charge of C-section at the relevant

period when he was allowed the licence holder to collect the hair from 29.10.2016 to 16.11.2016, as such, the 4th respondent has rightly issued the impugned charge memo.

7. In view of aforesaid rival contentions, it is to be seen that the petitioner originally belongs to 3rd respondent temple. He was transferred to the 4th respondent temple in the month of June, 2016 and joined duty on 29.06.2016. As per the proceedings of the 4th respondent dated 02.07.2016, petitioner was allotted work orders on 02.07.2016 to 01.09.2017, wherein he was allotted duties of C.R.O, Reception, Establishment, keshakhandashala and other places. As per the Office Order in Rc.No.A1/22/2016, dated 01.09.2016, petitioner was allotted work pertaining to establishment, C-section and Trust Board from 01.09.2017 and keshakhandanashala is allotted to one M.M.T.N.V Prasad along with other works.

8. While so, impugned charge memo vide proceedings in Rc.No.A1/R1091/2017, dated 07.05.2017 was issued to the petitioner alleging certain allegations. As per the counter averments, collection of hair comes under C-section and it has to take care of the amounts paid, arrears if any, relating to the collection of human hair. A perusal of the proceedings dated 01.09.2017 shows that the petitioner was assigned C-Section. Being in charge of C-section and the keshakhandanasala comes under C-section, he has issued

orders in Rc.No.C1/1691/2016, dated 29.10.2016 allowing the leaseholder to take away the human hair collected from 01.08.2016 to 29.10.2016. Subsequently, a note was issued to Keshakhandanashala section in Rc.No.C1/1691/2016, dated 17.11.2016 directing the license holder to deposit the human hair collected in the joint custody of the temple and the license holder from 17.11.2016, but he has not ordered to deposit the human hair collected from 29.10.2016 to 16.11.2016. The contention of the learned counsel for the petitioner that the petitioner is not in-charge of said keshakhandanashala during relevant period, cannot be accepted, as being in charge of C-section, he has issued the proceedings dated 29.10.2016 to Keshakhandanashala and also a note dated 17.11.2016 for depositing human hair only from 17.11.2016 in the joint custody of licence holder and temple but excluded the period from 29.10.2016 to 16.11.2016. Though specific allegations of misappropriation of funds are made against the petitioner in the counter, no reply is filed by the petitioner rebutting the said allegations.

9. It is next contended by the learned counsel for the petitioner that in order to favour one M.K.T.N.V.Prasad, who is junior to the petitioner, impugned charge memo was issued against the petitioner. Learned Standing Counsel for the 4th respondent temple submits that the said M.T.T.N.V.Prasad, who is also working as Assistant Executive Officer, though

junior to the petitioner, has promotion channel under rule of reservation as he belongs to schedule caste. It is to be seen that if the petitioner is not involved in misappropriation of funds of the 4th respondent temple, he ought to have been considered for promotion to the next category. As already observed supra, the petitioner, while working in C-section has misused his authority and caused loss to the institution by allowing the license holder to collect the human hair from 29.10.2016 to 16.11.2016. Therefore, it cannot be said that in order to deprive the petitioner of his promotion to the next category, the impugned charge memo has been issued to the petitioner.

9. Be that as it may, the petitioner has offered his explanation on 22.05.2017 to the charges framed against him in pursuant to impugned charge memo and the matter is pending for consideration before the competent authority. In the counter affidavit it is specifically averred that the petitioner is transferred to the 3rd respondent temple by proceedings dated 13.07.2017 and the 4th respondent requested the 3rd respondent to appoint an enquiry officer to enquire into the matter, after giving an opportunity to the petitioner for taking further action. Moreover, whether the petitioner has misappropriated the funds of the temple in collusion with the licence holder or not, are all disputed questions of facts, cannot be decided in this writ petition by

exercising extraordinary jurisdiction under Article 226 of the Constitution of India. Since the petitioner has already submitted explanation to the charges levelled against him, it is for the enquiry officer, to be appointed by the 3rd respondent, to decide the truth or otherwise of the allegations levelled against the petitioner. As such, question of setting aside the impugned charge memo against the petitioner does not arise.

Ordinarily, this Court will not interfere at the stage of charge memo, unless it is without jurisdiction and said aspect is not raised in the writ petition. It is for the disciplinary authority to take further decision after considering the explanation of the petitioner.

In view of above facts and circumstances, I do not see any merit in this writ petition and accordingly same is dismissed. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this writ petition shall stand dismissed.

A.RAJASHEKER REDDY, J

30-11-2017
kvs

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.31060 OF 2017



kvs

