

HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.24398 OF 2017

ORDER :

The case of the petitioner is that he was working as Junior Assistant in the 1st respondent temple and that the 3rd respondent- Assistant Commissioner, Endowments Department, Eluru, issued notice dated 23.11.2016 calling for explanation from the petitioner on certain points, for which the petitioner also submitted explanation. Thereafter, the 1st respondent issued Memo dated 21.12.2016 keeping the petitioner under suspension and also asked the petitioner to submit reply by alleging seven allegations for which the petitioner filed reply. Meanwhile, on 22.10.2016 a criminal case in FIR No.527/2016 is also registered against the petitioner on the file of the Eluru II Town P.S., by the 1st respondent. It is also stated that as on today no charge sheet was issued in terms of the A.P.Civil Service (CC&A), Rules, 1963 and no Enquiry Officer was appointed and no permission for extension of time was obtained before completion of six months from the 2nd respondent for continuation of suspension period. It is also stated that as per proviso to Rule 6(1) of the Office Holders and Servants Punishment Rules, 1987, (*for short 'the Rules, 1987'*) the enquiry should be completed within a period of six months from the date of suspension. If enquiry is not completed within six months, and if no permission is taken from the competent authority for extending the period of suspension, the petitioner is deemed to be reinstated into service as the suspension cannot have force of law after a period of six months as the date of suspension of the petitioner is 21.12.2016. Aggrieved by the action of the respondents in not

reinstating the petitioner into service in terms of the aforesaid Rule 6(1) of the Rules, present writ petition is filed.

The 1st respondent filed counter stating that petitioner was issued notice dated 23.11.2016 to return the gold articles within 24 hours and as the petitioner has not handedover those gold articles, a memo dated 21.12.2016 was issued keeping the petitioner under suspension by framing seven charges and asking the petitioner to submit explanation. Thereafter, petitioner submitted explanation on 29.12.2016. As six months period is elapsed the Executive Officer submitted letter to the Commissioner, Endowments Department on 17.07.2017 requesting for extension of suspension period and the same is pending. It is also stated that the Assistant Commissioner has appointed Enquiry Officer on 17.07.2017 and the enquiry will be completed after issuing notices and following the due process of law. It is also stated that since the charges against the petitioner involves misappropriation of gold and silver articles, continuation of suspension period of the petitioner is required. It is also stated that the subsistence allowance will be paid to the petitioner.

Heard learned counsel for the petitioner and learned Standing Counsel for the 1st respondent.

Admittedly, the petitioner was suspended on 21.12.2016 and even as per the counter, the 1st respondent submitted application to the Commissioner on 17.07.2017 i.e. for review, after expiry of six months suspension period, seeking extension of suspension

period of the petitioner. The suspension period of six months elapsed by 20.06.2017. If there are any serious charges against the petitioner, the 1st respondent would have taken steps to obtain permission for extension of suspension period before expiry of six months period. But, the 1st respondent conveniently made application on 17.07.2017. The Division Bench of this Court in **Ch.Sri Lakshmi v. Executive Officer, Sri Durga Malleswara Swamy Varla Devasthanam, Vijayawada and another**¹ revoked the order of suspension and restored the employee to duty by interpreting Rule 6(1) of the Rules stating that where the investigation has not been completed and the action proposed to be taken in regard to an employee has not been completed within a period of six months from the date of suspension the fact shall be reported to the Government, the Commissioner, the Regional Joint Commissioner, Deputy Commissioner or the Assistant Commissioner, as the case may be, for orders and that the period of suspension shall not, however, exceed six months without the previous orders of the Government in case the suspension is ordered by the Commissioner or Additional Commissioner and of the Commissioner in other cases.

In view of the above, the impugned order of suspension cannot be in operation without obtaining orders from the Commissioner. Accordingly, the writ petition is disposed of directing the 1st respondent to reinstate the petitioner into service. Since the petitioner has already submitted explanation and it is also stated that Enquiry Officer is appointed, the 1st respondent is directed to complete the disciplinary proceedings against the

¹ 2002(4) ALT 553 (D.B)

petitioner, within a period of three months from the date of receipt of a copy of this order. Meanwhile, if Commissioner passes any order on the application of the 1st respondent, the same shall be given effect to. The 1st respondent is also directed to pay subsistence allowance to the petitioner as per Rules.

Accordingly the writ petition is disposed of. No order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending in the writ petition, shall stand closed.

09.08.2017
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A.RAJASHEKER REDDY, J

