

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

WP.No.20724 of 2017

ORDER :

Heard the counsel for petitioner, the learned Government Pleader for Endowments for respondent nos.1 and 3; and Smt. K. Lalitha, learned Standing Counsel for 2nd respondent.

2. The petitioner has filed the Writ Petition assailing the order dt.09.06.2017 passed by the 1st respondent directing removal of the petitioner as Archaka of the 2nd respondent-temple, and the consequential order dt.14.06.2017 passed by the Assistant Commissioner-cum-Executive Officer of the 2nd respondent-temple.

3. The admitted facts are that the petitioner was unauthorisedly absent from 12.05.2016 to 22.05.2016 and was in police / judicial custody from 23.05.2016 till 30.05.2016, since he was arrested in Crime No.145 of 2016 registered under Section 336 I.P.C. (women missing), filed by the mother of a missing woman on 13.05.2016.

4. Initially, five charges were framed against the petitioner vide proceedings dt.22.05.2016, and subsequently two additional charges were framed against him on 30.05.2016. They are as follows :

“1. Without giving prior information to the temple authorities and Chef Archaka absent from duty is treated as negligence shown in duties.

2. In the temple not performing archaka duty behaving according to your will.

3. *From 12.05.2016 to 22.05.2016 (11 days) without giving any prior information absent from duty will be treated as negligence of duty.*

4. *In the past also warned you orally and in writing vide this office memo No.A2/75/2009 dt.07.01.2016, no changes took place in your behaviour is the negligence in your duty performance.*

5. *Vide this office R.C.No.A2/220/2016 dt.23.04.2016 awarding punishment of stoppage of one increment with cumulative effect, no changes took place in your style.*

Additional charges :

1. *In archaka profession against you in the Pedakakani Police Station vide Cr.No.145/2016 dt.13.5.2016 U/s 336 IPC regd. the woman missing case and remanded to Guntur sub-jail on 23.5.2016 till issue of this notice and you were in remand is against the Endowments Act 30/87.*

2. *You are in respected archaka profession facing such woman missing case is the remark to the profession itself and against the Endowments Act, 30/87.”*

5. The petitioner herein admittedly gave explanation to the charges to the Assistant Commissioner of Endowments, Guntur of the 2nd respondent-Temple.

6. Thereafter, the petitioner did not lead any evidence in the enquiry and thereupon an enquiry report was submitted by the enquiry officer / Assistant Commissioner holding the petitioner guilty of all the charges framed.

7. On the basis of the enquiry report, the Executive Officer of the 2nd respondent-temple recommended to the 1st respondent by proceedings dt.04.04.2017 that the petitioner be removed from service

as archaka permanently. The 1st respondent considered the same and passed the impugned order on 09.06.2017 under proviso to Section 37 of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 and directed the Executive Officer of the 2nd respondent-temple to remove the petitioner from service.

8. Consequently, the Executive Officer passed orders on 14.06.2017 terminating the services of the petitioner.

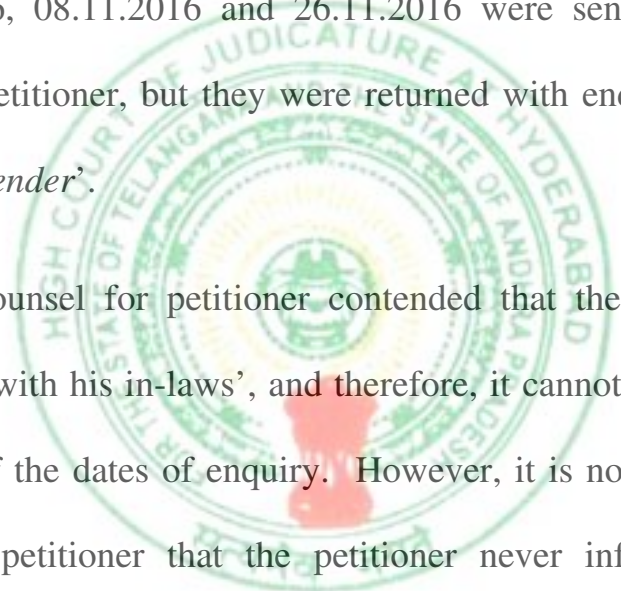
9. In this Writ Petition, the petitioner raised the following contentions :

(a) Firstly, that the charges are vague by specifically referring to charge nos.1 and 2 referred to above.

In reply, Smt. K. Lalitha, learned Standing Counsel for 2nd respondent, stated that the duration of absence unauthorisedly of the petitioner, though not mentioned in charge no.1, is mentioned in charge no.3; and that charge nos.1 and 3 are in effect the same; that as far as charge no.2 is concerned, wherein it is alleged that the petitioner has been discharging his duties as per his whim and wish, the said charge is admittedly vague, and to such a vague charge it is difficult to submit any explanation. So, charge no.2 is held vague and charge nos.1 and 3 are held validly framed.

(b) The next contention of the counsel for petitioner is that he did not receive the charge-memo as it was served on his father who is living in the same house as he is living.

Since admittedly the petitioner submitted explanation to the charge-memo as well as additional charge-memo it is irrelevant whether the petitioner received the charge-memo in person or it was served on his father since he was aware of the charge. This contention also cannot be accepted.

(c) Thirdly, the counsel for petitioner contended that no notice of the enquiry was served on him by the enquiry officer. However, in the counter-affidavit filed by the 2nd respondent it is stated that notices dt.25.10.2016, 08.11.2016 and 26.11.2016 were sent by registered post to the petitioner, but they were returned with endorsement '*left, returned to sender*'.


The counsel for petitioner contended that the petitioner had gone to live with his in-laws', and therefore, it cannot be said that he had notice of the dates of enquiry. However, it is not denied by the counsel for petitioner that the petitioner never informed the 2nd respondent as to his place of residence. If he left his usual place of residence and went to stay with his in-laws whose address he did not disclose to the 2nd respondent, he cannot be allowed to take advantage of his own wrong and contend that he did not receive enquiry notices.

(d) The further contention of the counsel for petitioner that no documentary evidence was let in, in the enquiry.

Having regard to the charges framed against the petitioner relating to his unauthorized absence without prior permission from

12.05.2016 to 22.05.2016 or his subsequent absence from 23.05.2016 are concerned, these are admitted facts.

Burden is on the petitioner to lead evidence to show that he had obtained prior permission to take leave. Since the petitioner did not participate in the enquiry and did not adduce any evidence, one cannot find fault with the enquiry officer in holding that the petitioner was unauthorisedly absent not only for the period 12.05.2016 to 22.05.2016, but also from the period 23.05.2016 to 30.05.2016.

10. It is the admitted case of petitioner that for the period 12.05.2016 till 22.05.2016, he had gone on a pilgrimage with his wife and another lady and it is not his case that he had applied for sanction of leave for his journey or obtained any permission from the competent authority to take leave. It is also not in dispute that petitioner was in custody of the police from 23.05.2016 to 30.05.2016 when he was released on bail in connection with Crime No.145 of 2016 filed by the mother of the lady against the petitioner alleging that the petitioner eloped with the lady who accompanied him on his travel between 12.05.2016 and 22.05.2016.

11. However, it is not in dispute that no charge-sheet is filed in the said criminal case till date. Therefore, though involvement in the criminal case could be a ground to suspend the petitioner, the same cannot be a ground to remove the petitioner from service.

12. Therefore, the finding of the 1st respondent that on account of involvement of the petitioner in the criminal case he should be removed from service, is clearly not warranted and his perverse.

13. In this view of the matter, the impugned orders passed by respondent nos.1 and 2 removing the petitioner from service are set aside; and the matter is remitted back to the 1st respondent to consider the quantum of punishment to be imposed on the petitioner for his unauthorized absence for the period 12.05.2016 to 30.05.2016 since the petitioner does not have valid defence for his absence during this period.

14. The 1st respondent shall therefore consider this issue and communicate his decision to the petitioner within period of (08) weeks from the date of receipt of a copy of the order.

15. Accordingly, the Writ Petition is allowed as above to the limited extent. No order as to costs.

16. As a sequel, miscellaneous petitions pending if any in this Writ Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 06-07-2017

Ndr/*