IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.04.2018

CORAM:

THE HON'BLE DR.JUSTICE S.VIMALA

Writ Petition Nos.35492 & 36388 of 2003
& WPMP Nos.44176 & 44177 of 2003

T.Balamurugan ... Petitioner in both Writ Petitions

..Vs..

1. The Commissioner,
Hindu Religious Charitable Endowment Dept.,
119 Uttama Gandhi Salai, Nungambakkam,
Chennai 600 034
2. Mr. Perumalsamy,
The Asst. Commissioner / Executive Officer,
Arulmighu Subramanyasamy Thirukoil,
Thiruparankundram, Madurai - 5
3. A.Rajendran, Arulmighu Subramaniyasamy
Thirukoil, Thiruparankundram,
Madurai - 5 ... Respondents in both W.Ps.

Prayer in W.P.No.35492 of 2003:- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorari to call for the records of the second respondent, dated 19.11.2003, made in Na.Ka.No.939/02/A1, and to quash the same.

Prayer in W.P.No.36388 of 2003:- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorarified Mandamus to call for the records of the respondents made in Office Order No.15/2003, dated 19.06.2003, quash the same and consequently to direct the respondents to permit the petitioner to continue as a driver by the second respondent temple.

For Petitioner in both W.Ps. : Mrs. G.Thilagavathi,
Sr. Counsel,
for, Mr. R.Gopinath
For Respondents in both W.Ps. : Mr. M.Maharaja, Spl.G.P.,

C O M M O N O R D E R

The second respondent in the writ petition, namely, the Assistant Commissioner / Executive Officer of Arulmighu Subramaniya Swamy Thirukoil, Thiruparankundram, issued a show cause notice to the writ petitioner, on 19.11.2003, asking the petitioner to show cause as to why recovery of Rs.1,29,375/- should not be made from the writ petitioner, which represents the cost difference in the value of diesel and also to show cause, why criminal proceedings should not be initiated against the petitioner for the alleged misappropriation to the value of the diesel. Challenging this show cause notice and seeking to quash the same, Writ Petition No.35492 of 2003 has been filed.

2. By proceedings, dated 19.06.2003, the petitioner was directed to hand over the charge of post of the Driver to one Rajendran and the petitioner was directed to discharge the duties of the said Rajendran. Challenging the said order, Writ Petition No.36388 of 2003 has been filed.

3. The main contention raised in Writ Petition No.36388 of 2003 is that Rajendran was doing the job of an Attender and the driver cannot be transferred to the place of an Attender, which may amount to demotion and not tloransfer.

4. When these two writ petitions were taken up together for enquiry, it is represented that the petitioner herein has been posted as Driver and therefore, the grievance regarding the nature of order of transfer did not exist and therefore, the W.P.No.36388 of 2003 has become infructuous.

5. Recording the submission made that the petitioner has been again re-posted in the post of the Driver, W.P.No.36388 of 2003 is closed.

6. Construing that the Tata sumo vehicle ought to provide 12 Kms mileage per liter, but the driver has furnished the records showing the mileage as 8 Kms per liter, the difference in mileage has been calculated in terms of value of diesel, which was alleged to be Rs.1,29,375/-.

7. The learned counsel appearing for the writ petitioner has filed an additional affidavit in which it is stated that the Tata Sumo vehicle has been sold and presently, Mahindra Bolero vehicle is utilized in the temple from the year 2011 onwards and that the procedure in the maintenance of the vehicle has been changed under which the temple administration itself directly fills the fuel and therefore, the discrepancy in the utilization of fuel and mileage of the vehicle does not arise.

8. The contention that the discrepancy in the utilization of fuel and mileage of vehicle does not arise may hold good for the future and it cannot hold good for what has already happened during the year 2003. However, this issue is not raised by the learned Special Government Pleader appearing for the respondents.

9. A perusal of the records would go to show that the memo has been issued based upon the Test Report dated 29.09.2003. Objections have been filed to this test report contending that the output of the vehicle would depend upon whether the vehicle was tested with the use of Air Conditioner or without the use of Air Conditioner. It is specifically stated that the VIPs were travelling in the vehicle, the vehicle was driven with the use of the Air Conditioner and therefore, the Test Report would not make out any mistake on the part of the driver.

10. It is also contended that the log books and other records submitted by the driver was counter-signed by the then Executive Officer and therefore, after checking the details furnished by the driver and when there was no objection raised, the presumption is that the records are correct and therefore, the memo is baseless.

11. Considering the objections raised for the test report, based on which the memo has been issued and also considering the fact that the memo has been issued in the year 2003, in respect of which any enquiry would be futile at this stage, the memo is ordered to be closed.

12. With this observation, W.P.No.35492 of 2003 is also closed. No costs. Consequently, the connected WPMPs are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

srk
To
1. The Commissioner,
Hindu Religious Charitable Endowment Dept.,
119 Uttama Gandhi Salai, Nungambakkam,
Chennai 600 034
2. The Asst. Commissioner / Executive Officer,
Arulmighu Subramanyasamy Thirukoil,
Thiruparankundram, Madurai - 5

+1cc to Mr.A.Gopinath, Advocate SR.No.25756
+1cc to Government Pleader SR.No.26438
GMI(CO)
sm:25.4.2018

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& WPMP Nos.44176 & 44177 of 2003