BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.03.2018

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD) No.2069 of 2015
and
M.P.(MD) Nos.1 and 2 of 2015

P.S.Senthilkumar ...Petitioner

Vs.

1.Joint Commissioner / Executive Officer,
Kanyakumari District Temple,
Suchindram,
Kanyakumari District.

2.The Commissioner,
Hindu Religious & Charitable
Endowment Department,
Nungambakkam,
Chennai - 34. ... Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the Impugned order dated 14.10.2014 in Na.Ka.No.4424/E1/2012 and dated 22.1.2015 signed on 29.1.2015 in Se.Mu.Na.Ka.NO.4424/20/2012/E1 passed by the first respondent herein and quash the same as arbitrary, illegal and without jurisdiction consequently directing the first respondent to pay the amount already deducted from the petitioner.

For Petitioner : Mr.P.Baskaran
For R1 : Mr.K.Sathiya Singh
For R2 : Mr.J.Gunaseelan Muthaiah
Additional Government Pleader

ORDER

An audit was conducted in respect of accounts maintained by the Kanyakumari District temple and certain irregularities have been pointed out in the said audit report. It was observed in the said audit report that the writ petitioner was responsible for the loss of Rs.3,57,090/-. If short - fall or irregularities are shown in the audit report, action must be taken under Section 90 of Tamil Nadu Hindu Religious & Charitable Endowments Act, 1959 for rectifying the discrepancies disclosed in the audit. An order of surcharge also will have to be passed against the person or other persons who are responsible for the discrepancies.

2.In this case, it is seen from the proceedings dated 14.10.2014 issued by the first respondent, a departmental meeting was conducted on 12.09.2004 in the office of the Commissioner, Hindu Religious & Charitable Endowment Department at Chennai. During the said meeting, the Commissioner, Hindu Religious & Charitable Endowment Department, Chennai had impressed upon the need to collect the said surcharge amount. The Commissioner, Hindu Religious & Charitable Endowment Department, Chennai also passed an oral order to the effect that if the writ petitioner did not pay the surcharge amount, he should be dismissed from service. Thereafter, the writ petitioner was given notice on 04.12.2014.

3.In fact even in the proceedings dated 14.10.2014, a direction has been issued to the writ petitioner to remit the said sum of Rs.3,57,090/- to the credit of the temple account. The petitioner wanted copies of certain relied upon documents to be furnished. This was construed as an attempt to drag on the proceedings and by order dated 29.01.2015, the petitioner was called upon to pay the said amount and in the event of failure to do so, it was directed that a sum of Rs.5,000/- was to be deducted from the petitioner's salary. This order is assailed in this writ petition.

4.It is no doubt true that certain discrepancies have been shown in the audit report. Therefore, the surcharge proceedings will have to be necessarily initiated. But, the first respondent must follow the procedure set out under Section 90 (2) of Tamil Nadu Hindu Religious & Charitable Endowments Act, 1959.

5.In the present case, without following the statutory procedure, the Commissioner, Hindu Religious & Charitable Endowment Department, Chennai, passed an order directing the writ petitioner to pay the surcharge amount. If he failed to do so, he should be dismissed from service. When the Commissioner, Hindu Religious & Charitable Endowment Department, Chennai has himself orally directed, the Joint Commissioner, the first respondent herein is bound to comply with the same. In the very nature of things, an order passed under Section 90 (2) of Tamil Nadu Hindu Religious & Charitable Endowments Act, 1959, is quasi judicial in nature.

6.A quasi judicial authority has to act independently and the impugned proceedings of the first respondent suffer from the vice of pre-determination. Besides, they have not given any opportunity to the writ petitioner to explain his position. Therefore, the proceedings are violative of the principles of natural justice.

For all these reasons, the proceedings impugned in this writ petition stand quashed and the matter is remitted to the file of the first respondent to proceed afresh in accordance with law. Accordingly, the Writ Petition stands allowed. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd
Assistant Registrar (CS I)

/TRUE COPY/

Sub Assistant Registrar(CS-II)

To

The Commissioner,
Hindu Religious & Charitable
Endowment Department,
Nungambakkam,
Chennai - 34.

1CC TO MR. P. BASKARAN, ADVOCATE SR 57466
1CC TO MR. K. SATHIYA SINGH, ADVOCATE SR 57469
1CC TO THE SPECIAL GOVERNMENT PLEADER, SR 57940

W.P.(MD) No.2069 of 2015
23.03.2018

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JM/RP/SAR 2/07.08.2018/3P/5C