



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 08.07.2019

CORAM

THE HON'BLE MR. JUSTICE V.PARTHIBAN

Writ Petition No.9575 of 2018

C.Murali

...Petitioner

Vs.

1.The Commissioner, HR & CE,
Uthamar Gandhi Salai,
Nungambakkam, Chennai - 600 006.

2.The Joint Commissioner/Executive Officer,
Arulmigu Subramania Swamy Thirukoil,
Thiruthani, Thiruvallur District.

3.The Board of Trustee/Fit Person,
Arulmigu Subramania Swamy Thirukoil,
Thiruthani, Thiruvallur District.

4.V.Jayashankar/Chairman,
Arulmigu Subramania Swamy Thirukoil,
Thiruthani, Thiruvallur District.

...Respondents

Writ Petition filed under Article 226 of Constitution of India, for issuance of writ of certiorarified mandamus calling for the records culminating in the order of termination passed by the second respondent under the impugned order dated 14.03.2018 made in Na.Ka.No.2231/2017/A2 and quash the same and restore the petitioner in service without any break in service with all other attendant service benefits and complete the Denovo enquiry as per the order of the first respondent dated 08.03.2018 made in Na.Ka.No.10565/2018.

For Petitioner : Mrs.G.Thilakavathy
for Mr.R.Gophinath

For Respondents : Mr.M.Maharaja, Spl.G.P.
Assisted by
Ms.H.Lucia Priyadarshini



ORDER

The writ petition is filed against the order of dismissal passed against the petitioner dated 14.03.2018, on the basis of disciplinary action initiated against him. The petitioner was proceeded against for certain acts of misconduct and an enquiry was conducted and on the basis of the proved charges in the enquiry, the disciplinary authority passed an order dismissing him from service. In fact, in the dismissal order it is indicated that the petitioner can file an appeal within 30 days to the Commissioner, HR & CE, the respondent herein, in case he is aggrieved by the dismissal order passed against him.

2.While so, the petitioner has chosen to approach this Court directly by invoking its extraordinary jurisdiction under Article 226 of the Constitution of India.

3.Shri.G.Thilakavathy, the learned counsel Senior counsel appearing for the petitioner would submit that the petitioner was constrained to approach this Court directly without exhausting the statutory appeal remedy in view of grave violation of principles of natural justice. Several instances were pointed out by the learned Senior counsel as to how the principles of natural justice have been given a go-by, while conducting departmental proceedings against the petitioner. According to the learned Senior counsel, availability of alternate remedy is not a bar for approaching this Court under Article 226 of Constitution of India.

4.This Court, ofcourse is in agreement with the submission made on behalf of the petitioner by the learned Senior counsel that availability of alternate statutory remedy is no bar for invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India. At the same time, when certain factual aspects are being raised in the writ petition, which constituted violations of the principles of natural justice, the appellate authority is the best person to apply his mind in regard to both the factual controversies as well as the procedure adopted in the departmental action. The appellate authority is vested with the power to deal with all objections that may be raised on behalf of the petitioner as projected in the writ petition and in that view of the matter, this Court need not apply its mind in the place of the Appellate Authority and deal with the writ petition directly, after the Disciplinary Authority has passed the order.



5.This Court has time and again held that when an effective alternate statutory remedy is available, the same has to be exhausted before knocking the doors of this Court under Article 226 of the Constitution of India. As a matter of Rule, in disciplinary matters, the appeal remedy has to be exhausted except in a rare and exceptional case, where appeal remedy appears to be not efficacious or useful.

6.In this case, the facts and averments as incorporated in the affidavit filed in support of the writ petition do not compel this Court to intervene in the matter and deal with the dismissal order directly when the appeal remedy is made available under the relevant statute. This Court does not find any exceptional features in this Writ Petition to entertain the same.

7.In the said circumstances, the writ petition is dismissed on the ground of availability of alternate remedy, as indicated in the impugned order. It is open to the petitioner to raise all objections as he deems fit before the Appellate Authority and the Appellate Authority shall consider the same and pass a reasoned order.

8.The petitioner is directed to pursue his appeal remedy before the respondent or any other competent authority and submit an appeal within a period of two weeks from the date of receipt of copy of this order. On such appeal being filed, the respondent/the appellate authority shall consider the same and pass orders on merits and in accordance with law within a period of three months thereafter.

9.With the above observations, the writ petition stands dismissed. No costs.

Sd/-
Assistant Registrar(Insp.Cell)

//True Copy//

Sub Assistant Registrar

To

1.The Commissioner, HR & CE,
Uthamar Gandhi Salai,
Nungambakkam, Chennai - 600 006.



2.The Joint Commissioner/Executive Officer,
Arulmigu Subramania Swamy Thirukoil,
Thiruthani, Thiruvallur District.

WEB COPY

+1cc to Special Government Pleader(HR & CE) SR.57658
+1cc to Mr.R.Gophinath, Advocate sr.57096

Writ Petition No.9575 of 2018

pa(co)
nr 27/08/2019