

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.06.2019

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P.No.17325 of 2019

&

WMP.No.16846 of 2019

V.Vetriselvan

.. Petitioner

Vs.

The Principal Secretary to
Government of Tamil Nadu cum Commissioner,
Hindu Religious & Charitable Endowments Department,
Nungambakkam,
Chennai-34

.. Respondent

Petition filed under Article 226 of The Constitution of India praying for issuance of a Writ of Certiorari to call for the records of the respondent herein in SMNK No.49133/2011/L1 dated 21.05.2019 and quash the same.

For Petitioner .. Mr.V.Vijay Shankar

For Respondent .. Mr.M.Maharaja, Spl G.P

ORDER

This writ petition has been filed seeking for issuance of a Writ of Certiorari to call for the records of the respondent herein in SMNK No.49133/2011/L1 dated 21.05.2019 and quash the same.

2. The petitioner was originally appointed as Executive Officer, Grade III in HR & CE Department on 11.10.1991. He was promoted as Executive Officer, Grade II on 12.10.2001 and was further promoted as Executive Officer, Grade I on 23.11.2009. On his promotion as Executive Officer Grade I, he was posted to Arulmigu Avinashi Lingeshwarar Temple, Avinashi, in order to complete the renovation work of the temple for performing Kumbabishegam on 11.10.2010 and Kumbabishegam was also performed on 12.12.2010. While so, he was issued with a charge memo on 26.08.2011 containing 25 articles of charges levelled against him pertaining to the renovation work of Arulmigu Masaniamman Temple culminating in the performance of Kumbabishegam.

Thereafter, an enquiry was conducted. In fact subsequently, on 27.05.2013, another 8 articles of charges came to be charged against the petitioner. After completion of enquiry, report was submitted holding the charges proved against him. The petitioner was also given an opportunity to offer his explanation on enquiry report and he has submitted his explanation to the Inquiry Officer's report on 31.01.2015. Thereafter, finally the disciplinary authority/respondent has passed an order of punishment of reduction of rank with cumulative effect. Challenging the same, the present writ petition has been filed.

3. Mr.V.Vijay Shankar, the learned counsel for the petitioner would submit that there is an inordinate delay in conducting and completing enquiry and further inter alia contended that the procedure for conducting a major penalty proceedings has not been followed at all and the order of punishment has also been passed without application of mind.

4. This Court is unable to countenance the arguments advanced by the learned counsel for the petitioner for the simple reason that the impugned order of penalty itself has directed the petitioner to file an appeal within two months. While so, this Court is unable to appreciate as to how the petitioner has chosen to approach this Court directly without exhausting statutory remedy of appeal available to him. Although, the learned counsel for the petitioner attempted to argue that the principles of natural justice were not followed and there was a delay in completion of enquiry, yet this Court is of the view that even such objections can be raised before the appellate authority. The appellate authority is vested with the power to deal with every objection right from the framing of charge, conduct of enquiry and the manner in which the punishment was imposed by the disciplinary authority etc. It is therefore, preposterous that the petitioner has chosen to bypass such effective remedy of appeal available to him and chosen to approach this Court's invoking the extraordinary jurisdiction of this Court under Article 226 of Constitution of India.

5. This Court has time and again held and re-enforced that once effective appellate remedy is available under a statute, the same has to be exhausted before knocking the doors of this Court invoking its Constitutional jurisdiction. In this case, as many as 25 charges have been framed against the petitioner and the appellate authority would be in a better position to appreciate the objections raised on behalf of the petitioner even on factual controversies. It is needless to hold that this Court exercises only a judicial review under Article 226 of the Constitution of India and the factual dispute cannot be the

subject matter of such review. Therefore, it is all the more reasons that the appellate authority exercised his mind to the objections on facts, procedure adopted, punishment imposed on the petitioner and judicial review can be undertaken after such application of mind by the appellate authority.

6. For the aforesaid reasons, this Court is of the view that the writ petition is not maintainable on the ground of availability of appeal remedy and hence, the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

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To

The Principal Secretary to
Government of Tamil Nadu cum Commissioner,
Hindu Religious & Charitable Endowments Department,
Nungambakkam,
Chennai-34

+1 cc to M/s.V.Vijay Shankar, Advocate, S.R.No.51341

+1 cc to the Government Pleader, S.R.No.51894

Note to Registry:

Registry is directed to return the original impugned order to the petitioner.

सत्यमेव जयते

W.P.No.17325 of 2019

PP(CO)
SSM(05/07/2019)

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