

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 14.10.2019

DELIVERED ON : 31.10.2019

CORAM:

THE HON'BLE MR.JUSTICE M.SATHYANARAYANAN
AND
THE HON'BLE MR.JUSTICE N.SESHASAYEE

W.A.NO.3349 OF 2019

Thirunavukkarasu Thambiran

.. Appellant

Vs.

1. The Commissioner,
Tamil Nadu Hindu Religious and Charitable
Endowments Department,
Nungambakkam High Road, Chennai.

2. The Joint Commissioner,
H.R & C.E. Department,
Mayiladuthurai, Nagapattinam District.

3. Adheenakartha,
Dharmapura Adheenam,
Hereditary Trustee of Sri Velur Devasthanam and
Arulmigu Vaithiyanadha Swamy Thirukoil
at Vaitheeswaran Kovil, Dharumapuram Madam,
Mayiladuthurai.

.. Respondents

Prayer:

Writ Appeals filed under Clause 15 of the Letters Patent
against the order dated 22.03.2019 made in W.P.No.26490 of 2018.

W.P.No.26490 of 2018:-

Writ Petition filed under Article 226 of the Consitution of
India, to issue a Writ of Mandamus, directing the respondents
1 and 2 to direct the disciplinary proceedings initiated against
the petitioner.

For Appellant : Mr.S.Doraiswamy

For Respondents: Mr.M.Maharaja,
Special Government Pleader for R1 & R2

JUDGMENT

M.SATHYANARAYANAN, J.

The petitioner, who is appointed as "Kattalai Visaranai" by the third respondent, faced disciplinary proceedings and he filed W.P.No.26490 of 2018, praying for issuance of a Writ of Mandamus directing the respondents 1 and 2 to direct the third respondent to drop all the disciplinary proceedings initiated against him. The writ petition came to be dismissed, vide impugned order dated 22.03.2019 and aggrieved by the dismissal of the writ petition, the writ petitioner has filed this writ appeal.

2. The appellant/writ petitioner, in the affidavit filed in support of the writ petition, would state that he was appointed as "Thambiran" in the "Dharmapuram Athinam" and on 19.06.1998, he was appointed as "Kattalai Visaranai" as per Section 55 of the Tamil Nadu Hindu Religious and Charitable Endowment Act, 1959 [in short "HR&CE Act"] and was posted at Arulmigu Vithiyanathaswamy Thirukoil, Vaitheeswaran Koil to administer the temple as a head of the above institution. The petitioner would further state that duties and responsibilities of "Kattalai Visaranai" is governed by the Scheme framed by the Supreme Court of India in Civil Appeal No.272 of 1963 and paid fixed Scale of Pay of Rs.1,445/- and the said post is governed by the HR&CE Act and Rules framed thereunder.

3. The petitioner would further state that he was transferred from Arulmigu Vaithiyanathaswamy Thirukovil to Arulmigu Thiagarajaswamy Thirukovil at Thirukuvalai, without any authority, for which he submitted a representation to the second respondent and since no action was taken, he filed a writ petition in W.P.No.23002 of 2014 and same is pending. The petitioner was issued with a Show Cause Notice by the third respondent dated 07.12.2017, calling for his explanation on certain alleged charges and he took a stand that neither under HR&CE Act nor Rules framed thereunder, the third respondent has no authority to proceed against him. In the meanwhile, an Enquiry Officer, namely Thiru V.Rajasekaran was appointed and with regard to the said appointment, the petitioner has also received a notice dated 14.09.2018.

4. In sum and substance, it is the stand of the petitioner that in terms of HR&CE Act and Rules framed thereunder, the third respondent lacks authority and jurisdiction to cause enquiry and therefore, the further proceedings are illegal and in this regard, he has also submitted a representation dated 15.09.2018 to the first respondent and since he did not receive any reply/response, has filed this writ petition.

5. The third respondent has filed a counter affidavit in the writ petition and took a stand that Dharmapuram Atheenam is a Mutt and the head of the institution is called "Adheena Karthar" or "Guru Maha Sannidhanam" or "Pandarasannadhi" and the Head of the Mutt is having exclusive right to initiate a layman into a religious order and induct him as a holy congregation as a "Thambiran". The relationship between the Head of the Mutt and Thambiran is nothing but a relationship between religious interceptor and that of his disciple. The petitioner was initiated into the religious order by the Head of the Mutt by following various rituals and procedures in accordance with custom and usage of Dharmapuram Adheenam and thus the petitioner became the member of holy religious congregation of Dharmapuram Adheenam, called as "Thambiran".

6. It is further averred by the third respondent that the petitioner was appointed as "Kattalai Visaranai" as per Section 55 of the HR&CE Act and his status is that of an Agent and he is responsible to trustee for his acts and deeds and he is not the employee of the Devasthanam within the meaning of Section 55 of the HR&CE Act and the petitioner was appointed as "Kattalai Visaranai" as per the Scheme governing the administration and as such, the writ petition is not maintainable. The third respondent, on the factual aspects, would state that the petitioner was issued with a Show Cause Notice calling upon him to submit his explanation to the alleged charges, for which he has also submitted his response and enquiry was also ordered and in the light of the stand taken in the counter affidavit, the third respondent took a stand that the respondents 1 and 2 are not having any right to give a direction to the third respondent and hence, prays for dismissal of the writ petition.

7. The learned Single Judge, after considering the materials and rival submissions, found that a retired District Judge has already been appointed and he is in the process of conducting enquiry and it is open to the writ petitioner to participate in the enquiry proceedings and prove his innocence or otherwise and it was also brought to the knowledge of the learned Judge that the Enquiry Officer has concluded the enquiry proceedings and submitted the Enquiry Report, which was also communicated to the writ petitioner and he has submitted his explanation/objection and therefore, the learned Judge found that interference is not warranted and accordingly, dismissed the writ petition, vide impugned order dated 22.03.2019. The writ petitioner, aggrieved by the dismissal of the writ petition, has filed this writ appeal.

8. Mr.S.Doraiswamy, learned counsel appearing for the appellant/writ petitioner would submit that under Section 56 of the HR&CE Act and Rules framed thereunder, the third respondent

lacks authority and jurisdiction to initiate disciplinary proceedings against the appellant/writ petitioner and the writ petitioner was neither appointed as an office holder in Dharmapuram Adheenam or it's servant and his duty is to merely engage himself in imparting religious instructions and rendering spiritual service and he cannot act as a full fledged administrator of the temple and it is for the official respondents to do so and the said legal aspect has been completely overlooked by the learned Judge and prays for interference.

9. Mr.M.Maharaja, learned Special Government Pleader appearing for the respondents 1 and 2 would submit that for all official purposes, the third respondent is not only a religious but also an administrative authority and even HR&CE Department is having limited power to interfere as to the functioning and affairs of the Mutt and as such, they would not be in a position to interfere with the disciplinary proceedings initiated by the third respondent against the appellant/writ petitioner.

10. This Court has considered the rival submissions and also perused the materials placed before it.

11. A perusal and consideration of the materials would disclose that the third respondent is a religious as well as administrative authority and the duties and responsibilities of "Kattalai Visaranai" is governed by the Scheme framed by the Hon'ble Supreme Court of India in Civil Appeal No.272 of 1963. The third respondent also took a stand that appellant/writ petitioner was appointed as "Thambiran" and was initiated into religious order by the Head of the Mutt by following various rituals and procedures and was appointed as "Kattalai Visaranai" and the said position is purely that of an agent and Section 55 of the HR&CE Act has no application at all. The third respondent having noted certain irregularities in the functioning of the Mutt, has initiated disciplinary proceedings and the appellant/petitioner was afforded with all reasonable opportunities and as such, he cannot make any complaint as to the lack of jurisdiction on the part of the third respondent.

12. As rightly pointed out by the learned Special Government Pleader appearing for the respondents 1 and 2, the HR&CE Department is having very limited role to play in the management of the Mutt and as regards the stand taken by the third respondent that the petitioner was appointed as "Kattalai Visaranai" and the said status is purely that of an agent and having noted certain delinquencies, he was visited with disciplinary proceedings.

13. A perusal of the records would disclose that fair and reasonable opportunity was also conferred to the writ petitioner/appellant and the appellant/writ petitioner did not participate in the disciplinary proceedings and the Enquiry Officer, who is a retired District and Sessions Judge, had concluded that the charges framed against the petitioner have been proved and therefore, further proceedings may take place and reach a logical conclusion.

14. It is also a well settled position of law that in service jurisprudence, scope and interference in respect of disciplinary proceedings is very limited and further, the disciplinary proceedings is yet to reach finality.

15. The petitioner has also submitted an explanation / objection to the Enquiry Report and taking into consideration of the same, the competent authority has to pass final orders after going through the explanation.

16. This Court, on an independent appraisal of the entire materials placed, is of the considered view that there is no error apparent or infirmity in the reasons assigned by the learned Judge in the impugned order dismissing the writ petition.

17. In the result, this Writ Appeal is dismissed, confirming the order dated 22.03.2019 made in W.P.No.26490 of 2018. No costs.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

Jvm

To

1. The Commissioner,
Tamil Nadu Hindu Religious and Charitable
Endowments Department,
Nungambakkam High Road,
Chennai.
2. The Joint Commissioner,
H.R & C.E. Department,
Mayiladuthurai,
Nagapattinam District.

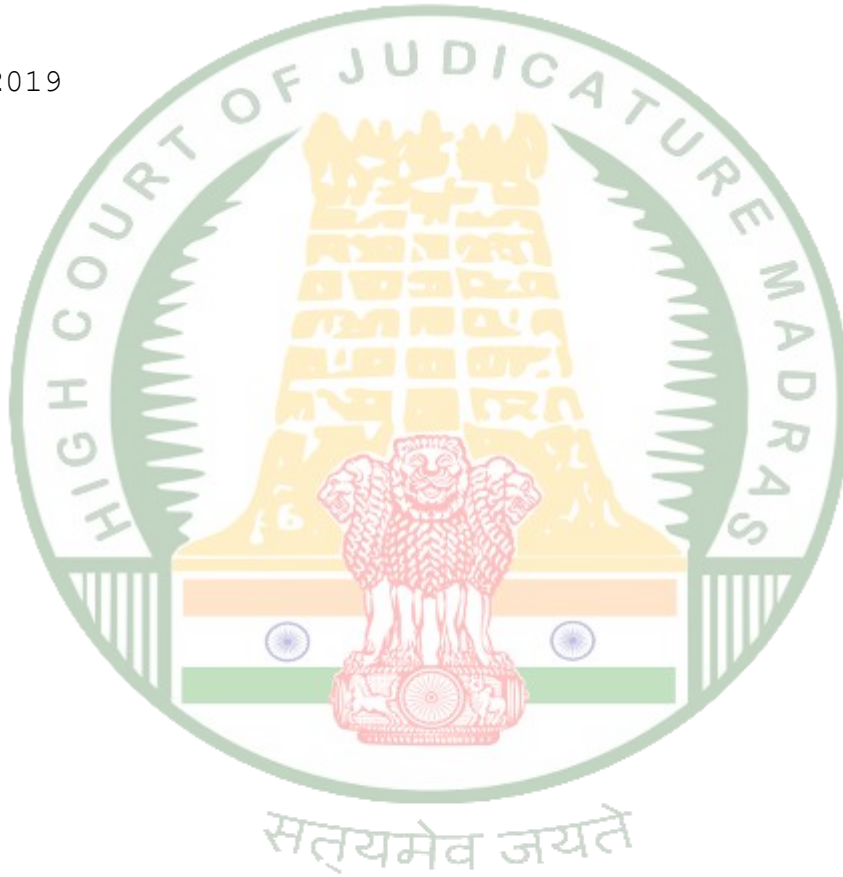
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at Vaitheeswaran Kovil,
Dharumapuram Madam,
Mayiladuthurai.

+1cc to Mr.S.Doraiswamy, Advocate, S.R.No.90348

+1cc to Mr.S.Sounther, Advocate, S.R.No.90063

W.A.No.3349 of 2019

NRL(CO)
CS/12/12/2019



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