

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.11.2019

CORAM

THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.P.No.31893 of 2019 and
W.M.P.Nos.32144 & 32145 of 2019

P.Aroulalane

... Petitioner

Vs.

The Executive Officer(Temples),
Sri Dharbaranyeswaraswamy Devasthanam,
Sri Saneeswara Baghawan Temple,
Tirunallar Post - 609 607
Karaikal, Puducherry UT.

... Respondent

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of impugned Suspension Order issued in File No.2/Ni.A(KO)/Sri.tha.su.the./Melalar/2018-19/677 dated 08.10.2018, quash the same as illegal and directing the respondents to reinstate into service with immediate effect.

For Petitioner : Mr.S.Alagarsamy

For Respondent : Mr.A.V.Ramalingam,
Additional Government Pleader
(Puducherry)

O R D E R

By consent, this writ petition is taken up for final disposal at the admission stage itself.

2.The case of the petitioner is that the petitioner was appointed in the respondent office in the year 2006 as Helper and thereafter promoted as Collection Clerk (Vasool Clerk). In the year 2018, he collected an amount from one, Pavithra and credited in his wife's account and after came to know the illegality committed, on the ground he received the amount from one, Pavithra and the same was credited into his wife's account, for which he was placed under suspension. Challenging the suspension order, the petitioner has filed this writ petition.

3.The learned counsel appearing for the petitioner submits that the the said Pavithra voluntarily transferred the amount in favour of the petitioner's wife's account for

performing pooja in Alangudi Temple and thereafter again the amount was deposited into the same Pavithra's account. Therefore there is no illegality committed by the petitioner.

4. Heard both sides.

5. The impugned order, dated 08.10.2018 is one of suspension pending contemplation of the charges. The petitioner is working as Collection Clerk in the respondent Department.

6. The reason found in the order is that the amount given by one, Pavithra for performing pooja was credited into the petitioner's wife's account.

7. This Court is unable to go into the merits of the allegations made by the petitioner. So long as the power of suspension is available with the respondent and it has been exercised by the competent authority, the Court cannot go behind the order of suspension.

8. The Supreme Court in its decision reported in 1990 (3) SCC 60 (Director General and Inspector General of Police, Andhra Pradesh, Hyderabad and others Vs. K. Ratnagiri) has held in paragraph 7 as follows:

"7....The Rule 13(1) empowers the authority to keep the respondent under suspension pending investigation or enquiry into the criminal charges where such suspension is necessary in the public interest. When the first information report is issued, the investigation commences and indeed it has commenced when the respondent was kept under suspension. The order of suspension cannot, therefore, be said to be beyond the scope of Rule 13 (1) merely because it has used the word 'prosecution' instead of investigation into the charges against the respondent. A wrong wording in the order does not take away the power if it is otherwise available. The Tribunal seems to have ignored this well accepted principle."

Further, it was observed in paragraph 3 as follows:

"3....The government may review the case and make further or other order but the order of suspension will continue to operate till it is rescinded by an appropriate authority."

9. Once again, the Supreme Court vide its decision reported in 1994 (2) SCC 617 (State of Haryana Vs. Hari Ram Yadav and others) held in paragraph 10 as follows:

"10....The law is well settled that in cases where the exercise of statutory power is subject to the fulfilment of a condition then the recital about the said condition

having been fulfilled in the order raises a presumption about the fulfilment of the said condition, and the burden is on the person who challenges the validity of the order to show that the said condition was not fulfilled. In a case, where the order does not contain a recital about the condition being fulfilled, the burden to prove that the condition was fulfilled would be on the authority passing the order if the validity of the order is challenged on the ground that the condition is not fulfilled...."

Further, in paragraph 11 of the judgment, it was observed as follows:

"11....There is no averment in the said petition challenging the validity of the impugned order of suspension on the ground that the Governor of Haryana was not satisfied that it was either necessary or desirable to place Respondent 1 under suspension. In the absence of any such averment it must be held that the impugned order was passed after fulfilling the requirement of Rule 3(1) of the Rules in view of the presumption as to the regularity of official acts which would be applicable and the absence of a recital in the order about the Governor being satisfied that it was either necessary or desirable to place respondent 1 under suspension is of no consequence...."

10. In the light of the above, the writ petition filed by the petitioner is misconceived and deserves to be dismissed. Accordingly, the writ petition shall stand dismissed.

11. However, it is open to the petitioner to seek a review of the order of suspension by making a representation before the competent authorities and if such a representation is made, it is needless to state that the authorities will consider the said representation and pass orders on the same in accordance with law. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

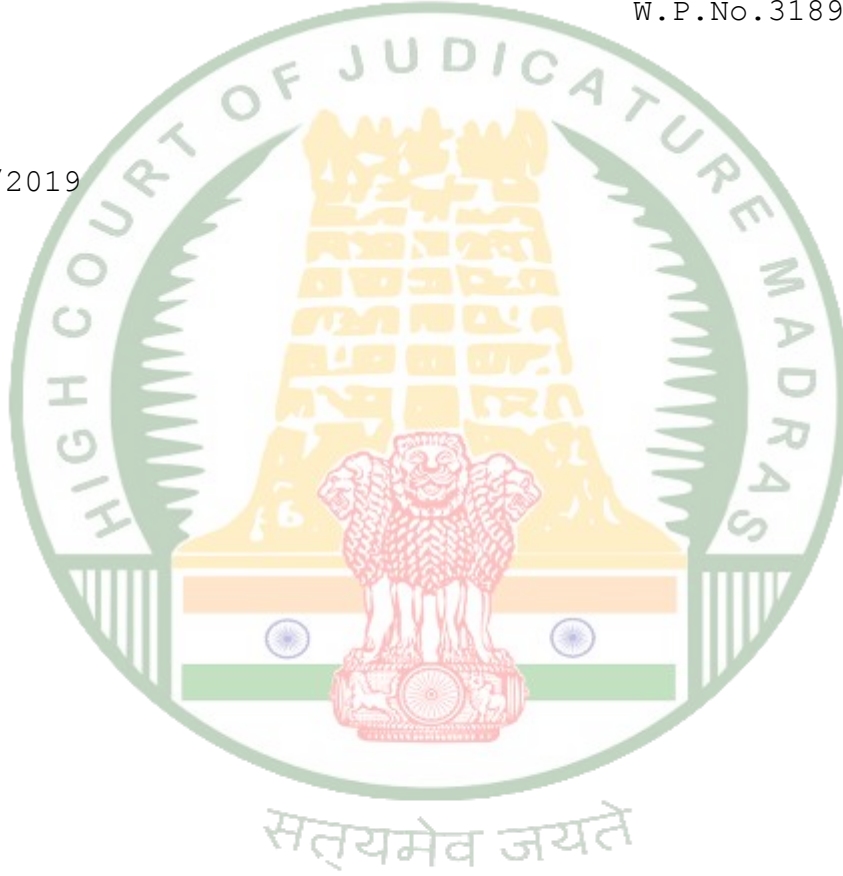
To

The Executive Officer(Temples),
Sri Dharbaranyeswaraswamy Devasthanam,
Sri Saneeswara Baghawan Temple,
Tirunallar Post - 609 607
Karaikal, Puducherry UT.

+lcc to Mr.S.Alagarsamy, Advocate Sr.94163
+lcc to the Public Prosecutor for Puducherry, Sr.94211

W.P.No.31893 of 2019

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