

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.03.2019

CORAM

THE HONOURABLE Mr. JUSTICE S.M.SUBRAMANIAM

W.P.No. 26490 of 2018
and
W.M.P.No. 30819 of 2018

Thirunavukkarasu Thambiran ..petitioner
Kattalai Visaranai,
Arulmighu Vaithiyanadha Swamy Thirukoil
Nagapattinam District.

Vs

1. The Commissioner,
Tamil Nadu Hindu Religious Charitable Endowments
Department, Nungambakkam High Road,
Chennai.
2. The Joint Commissioner,
H.R. & C.E., Department,
Mayiladuthurai,
Nagapattinam District
3. Adheenakartha,
Dharumapura Adheenam,
Hereditary Trustee of Sri Velur Devasthanam and
Arulmighu Vaithiyanadha Swamy Thirukoil
at Vaitheeswaran Kovil,
Dharumapuram Madam,
Mayiladuthurai.

..Respondents

PRAYER: Writ Petition filed under Article 226 of the
Constitution of India, to issue a Writ of Mandamus, directing
the respondents 1 and 2 to direct the 3rd respondent to drop all
the disciplinary proceedings initiated against the petitioner.

For Petitioner : M/s.S.Doraisamy

For Respondents : Mr.M.Maharaja
Special Government Pleader
(HR & CE)
for R1 & R2
Mr.S.Sounthar
for R3

O R D E R

The relief sought for in the present writ petition is to direct the respondents 1 and 2 to drop all the disciplinary proceedings initiated against the petitioner.

2. The relief as such sought for in the present writ petition is absolutely misconceived, as the writ petitioner has not challenged any order initiating the disciplinary proceedings. Contrarily, a direction is sought for to direct the respondents to drop the disciplinary proceedings.

3. The learned counsel for the writ petitioner states that the initiation of disciplinary proceedings itself is contrary to the HR&CE Act. It is further stated that the charges are false and fraudulent and the writ petitioner is innocent of the allegations set out in the memorandum of charges. This apart, it is stated that the writ petitioner is not liable to participate in the process of enquiry, as the Act and Rules do not provide any such provision for initiation of disciplinary proceedings against the writ petitioner, who is working as Thirunavukkarasu Thambiran, under the provisions of the Act.

4. It is contended by the learned counsel for the 1st respondent that the disciplinary proceedings are initiated against the writ petitioner and he is not entitled for any statutory protection under the provisions of the Act. This apart, a retired District Judge is appointed as enquiry Officer to conduct an enquiry into the affairs of the 3rd respondent as well as the writ petitioner. In the event of any final orders is passed, affecting the rights of the writ petitioner, then alone the writ petitioner can approach the competent authority for the purpose of redressing his grievances.

5. No writ can be entertained against the show cause notice in a routine manner. A writ against a show cause shall be entertained, if the same has been issued by an incompetent authority having no jurisdiction or an allegation of malafides are raised or in the same is in violation of the statutory rules in force. Even in case of raising allegation of mala fides, the authorities against whom such an allegation is raised, to be impleaded as a party respondent in the writ proceedings in his personal capacity. In the absence of any of these legal grounds, no writ proceedings can be entertained in respect of the show cause notice issued under the statute. Judicial review against the show cause notice is certainly limited.

6. Intermittent intervention in quasi judicial functions are not preferable in all circumstances. Only on exceptional circumstances, the High Court can interfere during the pendency

of the proceedings initiated under any statute. The Provident Fund Act is a welfare legislation. After all, the respondent organization is initiating proceedings only for the interest of the employees of the organisations. It is the duty/mandatory on the part of the respondents to ensure that the dues in respect of Provident Fund are collected from the management and the same is disbursed to the employees concerned. During the process, it is for them to issue show cause notice to the organizations concerned and on receipt of any such notice, it is equally mandatory on the part of the Management to submit their explanation/objections and defend their case in accordance with law and by availing opportunities to be provided by the competent authorities under the provisions of the Act.

7. In view of the fact, that the present writ petition is filed for a direction to drop the disciplinary proceedings and the retired District Judge was already appointed in the process of conducting an enquiry, it is left open to the writ petitioner to participate in the process of enquiry and establish his innocence or otherwise. The learned counsel for the 3rd respondent states that the enquiry Officer had already completed the enquiry and submitted his final report. Based on the final report, the competent authority has initiate further actions in accordance with law/provisions of the Act and Rules.

8. This being the factum of the case, no further adjudication needs to be entertained in respect of the relief sought for in the present writ petition. It is further stated that the enquiry report had already been communicated to the writ petitioner and the writ petitioner also had submitted his objection/explanation on to the enquiry report and the competent authority has to pass final orders in the proceedings and the same will be issued at the earliest possible. Hence, no further adjudication is required in this writ petition.

9. Accordingly, the writ petition stand dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

ssb/kmm

To

1. The Commissioner,
Tamil Nadu Hindu Religious Charitable Endowments
Department, Nungambakkam High Road,
Chennai.
2. The Joint Commissioner,
H.R. & C.E., Department,
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3. Adheenakartha,
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Hereditary Trustee of Sri Velur Devasthanam and
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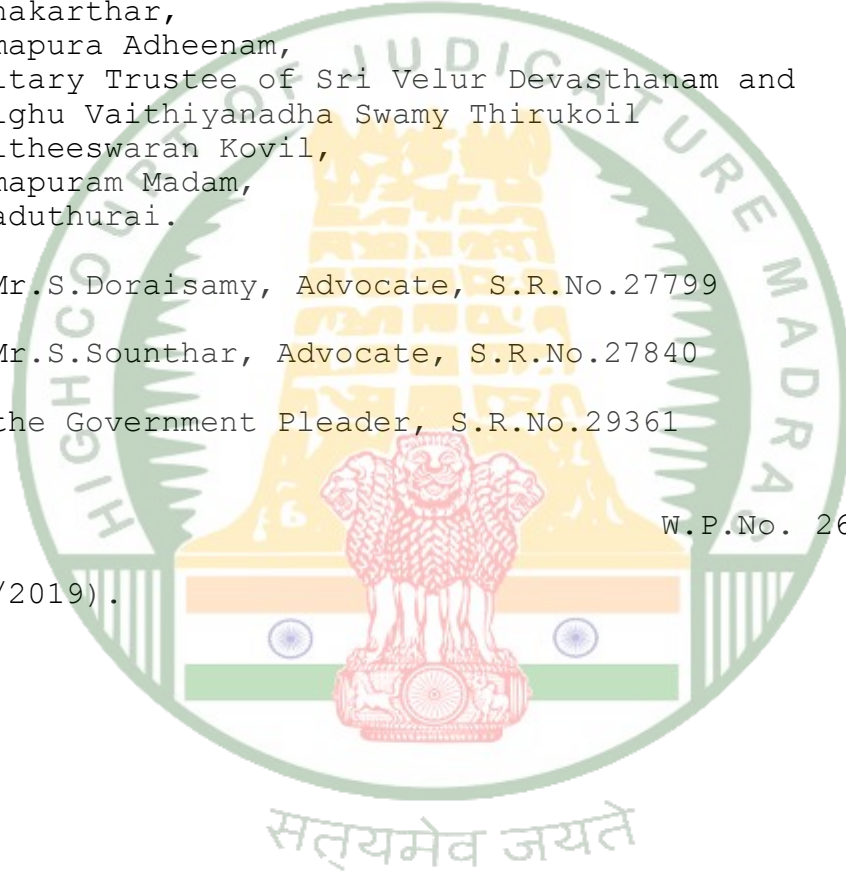
+1 cc to Mr.S.Doraisamy, Advocate, S.R.No.27799

+1 cc to Mr.S.Sounthar, Advocate, S.R.No.27840

+1 cc to the Government Pleader, S.R.No.29361

W.P.No. 26490 of 2018

NRL(CO)
SSM(21/05/2019).



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