BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **03.10.2019**
CORAM:
THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.(MD)No.12413 of 2019
and
W.M.P(MD)Nos.9264 & 9265 of 2019

A.K.Akilandeswar ... Petitioner

Vs.

1.The Secretary to Government of Tamilnadu,
Tourism, Culture and Religious Endowments Department,
Secretariat, St. Fort George,
Chennai-600 009.

2.The Commissioner,
Hindu Religious and Charitable Endowments Department,
119, Uthamar Gandhi Salai,
Thousand Lights West, Nungambakkam,
Chennai-600 034.

3.The Joint Commissioner,
Hindu Religious and Charitable Endowments Department,
Thanjavur.

4.The Joint Commissioner,
Hindu Religious and Charitable Endowments Department,
Sivagangai.

5.The Assistant Commissioner,
Hindu Religious and Charitable Endowments Department,
Paramakudi,
Ramanathapuram District.

6.The Principal Accountant General,
(Accounts and Entitlements) Tamil Nadu,
361, Anna Salai,
Chennai-600 018. ... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records relating to the impugned proceedings issued by the third respondent herein in Se.Mu.Na.Ka.No.1041/2015/A2, dated 17.05.2016 and G.O(Ms) No.53, Tourism, Culture and Religious Endowments (A.Ni.2-1)

Department, dated 24.04.2019 issued by the first respondent herein and quash the same.

For Petitioner : Mr.J.Anandakumar
for Mr.S.Manikandan

For R1 to R5 : Mr.VR.Shanmuganathan,
Special Government Pleader

ORDER

This writ petition is filed challenging the order of the third respondent in Se.Mu.Na.Ka.No.1041/2015/A2, dated 17.05.2016 and G.O. (Ms)No.53, Tourism, Culture and Religious Endowments (A.Ni.2-1) Department, dated 24.04.2019, issued by the first respondent.

2. The petitioner while working as an Executive Officer, was issued with a charge memo dated 21.11.2014, containing six charges. All the charges are relating to the loss caused to the Temple, by spending more money and double the expenses. The petitioner submitted his explanation. Not being satisfied with the explanation submitted by the petitioner, domestic enquiry was ordered. The Enquiry Officer has submitted his report, holding that the charges 1 and 2 were proved and 3 to 6 were not proved. The first two charges are relating to spending more amount than the estimated amount, alone were proved. The second respondent, who is the Disciplinary Authority, accepted the report of the Enquiry Officer and on 13.01.2016, imposed a punishment of censure as per Rule 8 of Tamil Nadu Civil Service (Discipline and Appeal) Rules, on the ground that the petitioner has not maintained the accounts properly. While the Disciplinary Proceedings initiated by the second respondent were pending, the third respondent initiated surcharge proceedings on 28.10.2015, for the very same set of charges leveled against the petitioner. While initiating the surcharge proceedings, the third respondent did not follow the mandatory procedure. Without there being any audit report and without giving any opportunity to the petitioner, the third respondent initiated surcharge proceedings.

3. The learned counsel appearing for the petitioner contended that the third respondent without properly considering the explanation submitted by the petitioner, the report of the Enquiry Officer and the punishment imposed on the petitioner has held that the petitioner caused loss of Rs.19,62,136/- to the temple and ordered recovery by the impugned order, dated 17.05.2016. Aggrieved against the said order, the petitioner filed an appeal before the first respondent. The first respondent, without considering the various grounds raised by the petitioner and without giving any reason, confirmed the order of the third respondent. Therefore, the petitioner has come out with the present writ petition challenging the orders of the respondents 1 & 3.

4. The learned Special Government Pleader appearing for the respondents 1 to 5 contended that the petitioner caused loss to the temple by spending more amount than the allotted amount. The accounts were not properly maintained by the petitioner and no proper vouchers were produced by the petitioner to substantiate the claim of spending those amounts. The respondents have power to initiate disciplinary as well as surcharge proceedings. In the surcharge proceedings, it is proved that the petitioner caused loss to the temple. Based on the materials on record, the third respondent, after issuing notice passed the impugned order of surcharge proceedings and the same was confirmed by the first respondent. The orders of the respondents 3 & 1 are valid and legal and prayed for dismissal of the writ petition.

5. Heard the learned counsel appearing for the petitioner and the learned Special Government Pleader appearing for the respondents 1 to 5 and perused the materials available on record.

6. Section 90(1) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, is extracted hereunder:-

> "90. Rectification of defects disclosed in audit and order of surcharge against trustee, etc., (1) [The Commissioner, Joint Commissioner, Deputy Commissioner or Assistant Commissioner], as the case may be, shall send a copy of every audit report relating to the accounts of a religious institution to the trustee thereof, and it shall be the duty of such trustee to remedy any defects or irregularities pointed out by the auditor and report the same to [the Commissioner, Joint Commissioner, Deputy Commissioner or Assistant Commissioner], as the case may be."

7. From the materials on record, it is seen that the petitioner was exonerated in respect of the very same set of charges, except two charges and for the said two charges, censure was imposed by the second respondent. In view of the fact that without there being any audit report and without giving any opportunity to the petitioner, the third respondent initiated surcharge proceedings, which is invalid and illegal. The first respondent by non-speaking order, confirmed the order of the third respondent. Reading of the charges levelled against the petitioner in the disciplinary proceedings as well as in the surcharge proceedings, it is seen that both the charges are one and the same. The Enquiry Officer in the Domestic Enquiry, exonerated the petitioner in respect of the charges 3 to 6 and held that the charges 1 and 2 were proved. Based on the said report only, punishment of censure was imposed on the petitioner by the second respondent. The learned counsel appearing for the petitioner contended that the first respondent called for the report from the second respondent, the second respondent sent the report and the same was not considered by the first respondent and by non-

speaking order, confirmed the order of the third respondent. Further, the third respondent has not followed the procedure contemplated in the HR & CE Act for initiating surcharge proceedings. It is true that the first respondent who is the appellate authority, while confirming the order of the third respondent, need not give any elaborate reason. But, the appellate authority must consider the objection raised and give some reason, for confirming the order of the original authority. In the present case, without properly discussing the order of the third respondent, the first respondent has passed the order.

8. Considering the above facts, the impugned orders passed by the third respondent in Se.Mu.Na.Ka.No.1041/2015/A2, dated 17.05.2016 and G.O.(Ms)No.53, Tourism, Culture and Religious Endowments (A.Ni.2-1) Department, dated 24.04.2019 are quashed and the writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

9. At this juncture, the learned counsel appearing for the petitioner submitted that the petitioner retired from service on 30.04.2019 on attaining the age of superannuation and is entitled for all the terminal benefits.

10. In view of the above said submission, the respondents are directed to pay the eligible terminal benefits to the petitioner within a period of eight weeks from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar (CS-II)

/ True Copy /

Sub Assistant Registrar(CS-II)

To

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Paramakudi,
Ramanathapuram District.

+1 CC to M/s.GP (SR-91367[F] dated 04/10/2019)

W.P.(MD)No.12413 of 2019
03.10.2019

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ES/SAR 2/15.11.2019/5P/7C