



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.11.2019

CORAM:

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THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P (MD) No.17662 of 2017

and

W.M.P.No.14217 of 2017

R.Raja

... Petitioner

Vs.

1.The Commissioner
Hindu Religious and Charitable
Endowments Department,
Uthamar Gandhi Salai,
Chennai - 34.

2.The Joint commissioner,
Hindu Religious and Charitable
Endowments Department,
Madurai.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issue of writ of certiorarified mandamus calling for the records pertaining to the impugned order issued by the first respondent in Se.Mu.Na.Ka.No.9447/2016/L2 dated 16.08.2017 and quash the same as unconstitutional and consequently direct the respondents to reinstate the petitioner with all attendant benefits.

For Petitioner : Mr.Veerakathiravan,
Senior Counsel for
M/s.Veera Associates

For Respondents : Mr.V.R.Shanmuganathan
Special Govt. Pleader

O R D E R

This Writ Petition has been filed seeking for writ of certiorarified mandamus calling for the records pertaining to the impugned order issued by the first respondent in Se.Mu.Na.Ka.No.9447/2016/L2 dated 16.08.2017 and quash the same as unconstitutional and consequently direct the respondents to reinstate the petitioner with all attendant benefits.



2. The brief case of the petitioner is as follows -

2 (a) The petitioner was appointed as Executive Officer, Grade-IV through Tamil Nadu Public Service Commission in the year 1996. Initially, he was posted at Kalyana Sundereswarar Thirukkivil, Avaniapuram, Madurai. He was transferred periodically and lastly he was promoted as Executive Officer, Grade III in the year 2012 and posted at Moongilinaikamatchi Temple at Devadanampatti, Theni District. While the petitioner was working as Executive Officer, Grade-II at Devadanampatti, he was given additional charges of five temples in the capacity of Executive Officer, Grade-IV. The petitioner, by the proceedings of the second respondent dated 11.12.2016 was placed under suspension and charge memo on the same day was issued to the petitioner containing 20 charges. The petitioner gave his explanation denying all the charges. One Ilayaraja, Asst. Commissioner, HR&CE Department was appointed as Enquiry Officer to conduct the domestic enquiry.

2(a) The enquiry officer, after the enquiry gave a report holding that charges 1, 3, 5, 7, 8, 9, 10, 13, 18 and 19 are proved and the charges 2, 4, 6, 11, 12, 14, 15, 16, 17 and 20 are not proved. The first respondent, by the proceedings dated 27.03.2017 deviating from the report of the Enquiry Officer's findings, petitioner not guilty by giving reason, called for further explanation from the petitioner. The petitioner gave his explanation dated 05.05.2017. The first respondent, without considering the said explanation, by the proceedings dated 16.08.2017 dismissed the petitioner from service. When the major portion of the charges levelled against the petitioner were not proved, the disciplinary authority differed with the enquiry officer and without following the rules of departmental proceedings, dismissed the petitioner from service.

An appeal lies to the Government against the impugned order of the first respondent. The petitioner is a cancer patient and has undergone major surgery and his life span is limited. Therefore, the petitioner has filed the present writ petition and the writ petition is maintainable even though there is an alternative remedy of appeal.

2(c) The learned Senior Counsel for the petitioner contended that -

(i) Before the enquiry officer, no witness was examined. The documents marked in the enquiry were not proved by examining the authors of those documents and as per law.

(ii) The enquiry officer simply relying on the documents, held that certain charges levelled against the petitioner were proved. The said finding is without any acceptable evidence and the findings are based on hearsay evidence.



(iii) The enquiry officer is subordinate to respondents and being a subordinate enquiry officer has given a finding that some of the charges are proved against the petitioner.

(iv) The disciplinary authority, without following the mandatory procedure of departmental proceedings, passed the order of dismissal which is violative of principles of natural justice and the said order is illegal.

(v) The enquiry officer held that 10 charges levelled against the petitioner were not proved. The disciplinary authority differed with the finding of the enquiry officer only with regard to 8 charges which were found by the enquiry officer as not proved.

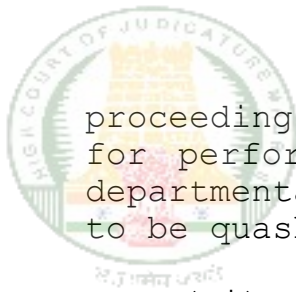
(vi) The disciplinary authority, without giving proper opportunity to the petitioner, imposed punishment as though all the charges were proved, without taking into consideration that 2 charges which were held by the enquiry officer as not proved and dropped by the disciplinary authority.

(vii) The disciplinary authority did not give any notice to the petitioner for deferring with the findings of the enquiry officer that charges were not proved and did not give any opportunity to the petitioner to give his explanation.

(viii) The charges 10, 13, 20 were levelled against the petitioner on the basis, that petitioner, without following G.O.Ms.No.255 Tamil Development and Religious Endowment and Information (RE 4-2) Department dated 28.06.2010 made appointment and thus charges were made as though the petitioner disobeyed the Government Order. The said Government Order was quashed by this Court by order dated 05.07.2012 in W.P.No.1890 of 2011 which was confirmed by the Division Bench of this Court in W.A.No.491 of 2013 dated 22.01.2015.

(ix) The charges 1, 2, 3, 4, 5, 6, 7 and 9 relate to service conditions of one Pandian who was working as Accountant in a notified temple. The petitioner paid monetary benefits to said Pandian as per the orders of the Appellate Authority. The enquiry officer as well as the disciplinary authority failed to take into account that petitioner was the Presenting Officer in the departmental proceedings and the final verdict of the disciplinary authority is to drop the charges. So, when the charges were dropped by the disciplinary authority/appointing authority, the same cannot be attributed that an order of charge memo by making it as a misconduct.

(x) The Presenting Officer of the departmental proceedings is only quasi judicial officer representing the Government and the



proceedings against the petitioner including framing of the charges for performing his statutory duties as Presenting Officer in the departmental proceedings and payment of monetary benefits are liable to be quashed.

(xi) As far as charge Nos.11 & 12 are concerned, one Vijayalakshmi who was incharge of selling archana tickets did not remit the amount. She admitted her guilt and deposited the amount into the account of the temple.

(xii) As far as charge Nos.15 to 19 are concerned, they relate to collection of rent for the marriage hall and refund of the amount when bookings were cancelled. The petitioner has acted as per the procedure for collection and refund of amounts when bookings were cancelled. The petitioner has paid electricity charges for the religious functions conducted in the marriage hall and such payment is valid and the petitioner has not committed any misconduct.

(xiii) The Menswear Company booked the marriage hall for many days but cancelled the booking after utilising the marriage hall for 4½ days. The petitioner has collected the eligible amount and remitted the same to the temple account. The respondent, without any basis, on assumption found the petitioner guilty of said charge.

(xiv) Charge No.14 is payment of advance/loan to the employee. It is the usual practice to grant advance/loan to the employees in the case of emergency and employees repay the same to the temple. In the present case, one employee requested for advance/loan amount to meet the emergent medical expenses of his daughter who was admitted in hospital for delivery and whose life was in danger. Hence, on humanitarian ground, the loan was granted to the said employee and the same was repaid by the employee/borrower. Hence, the said financial assistance to the employee cannot be termed as misconduct.

(xv) Charge No.8 is concerned, they are trivial in nature without any misconduct. The first respondent has issued Circular dated 02.02.2017 wherein it has been instructed that for trivial points, not to frame charges under Rule 17 (b). Contrary to the said instruction, charges were levelled against the petitioner.

(xvi) There is no loss to the temple and there is no charge of misappropriation against by the petitioner.

3. The learned Senior Counsel appearing for the petitioner, in support of his contention, relied on the following judgments and prayed for allowing the writ petition.

(i) 1995 (6) SCC 749 [Union of India and Another

<https://hcservices.ecourts.gov.in/hcservices/>]



18. A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.

22. The aforesaid has, therefore, to be avoided and I have no doubt that a High Court would be within its jurisdiction to modify the punishment/penalty by moulding the relief, which power it undoubtedly has, in view of long line of decisions of this Court, to which reference is not deemed necessary, as the position is well settled in law. It may, however, be stated that this power of moulding relief in cases of the present nature can be invoked by a High Court only when the punishment/penalty awarded shocks the judicial conscience.

(ii) 2009 (1) MLJ 1071 [V.R.Palanisamy v. Director of Collegiate Education, Chennai and others]

31. Alternative remedy of departmental-appeal is not a bar for maintainability of a writ petition, where the order is in utter violation of rules of natural justice. The rule of exclusion of Writ Jurisdiction due to availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case, in spite of the availability of an alternative remedy, the writ Court may still exercise discretionary jurisdiction of judicial review

32. No doubt, when alternative remedy is available, the writ petitioner should be required to pursue his remedy before appropriate forum. The availability of other remedies or the pendency of other proceedings is no bar to the High Court issuing writs, passing orders, or giving directions under Article 226 of the Constitution, and it is for the High Court to consider in each case the necessity or desirability of interference notwithstanding the availability or existence of other remedies or proceedings.

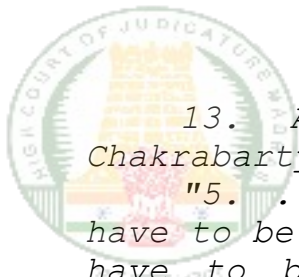


(iii) 2009 (3) CTC 388 [V.Arulkumar v. Housing and Urban Development Corporation Limited and another]

21. It is not in dispute that the Disciplinary Authority is entitled to differ from the view of the Inquiry Officer. The principles of natural justice start at the time when the original charges are framed against the delinquent officer, for which the delinquent officer has submitted his explanation, and the said concept continues at the time of conducting inquiry by the Inquiry Officer, in which witnesses are examined. After appreciation of evidence, when the Inquiry Officer finds the delinquent officer not liable in respect of charges 1, 2, 4 and 5 and finds that he is liable only in respect of charge No.3, it is clear that in respect of those charges, in which the delinquent officer was exonerated, there was no sufficient proof or evidence to implicate him. Now, if the Disciplinary Authority wants to differ in respect of the charges, which were exonerated by the Inquiry Officer, giving of further notice to the delinquent officer asking him to submit further explanation in respect of those charges in which he was exonerated is certainly the continuation of the principles of natural justice and it is not merely a second opportunity. There is no doubt in our mind that, in such circumstances, conferring of an opportunity to the delinquent officer is not only in compliance of the principles of natural justice, but the same is a mandatory requirement, failing which it would mean that without giving opportunity, the Disciplinary Authority would impose punishment in respect of charges, regarding which, after full-fledged inquiry and appreciation of evidence, the Inquiry Officer found on fact that charges 1, 2, 4 and 5 stood not proved.

22. In such circumstances, in our considered opinion, it can never be said that conferring of an opportunity is only a matter of convenience and not of legal necessity, under the guise that non giving of such opportunity has not caused any prejudice to the delinquent officer. Non conferring of such opportunity certainly causes great prejudice to the delinquent officer, since he loses a very vital opportunity to explain to the Disciplinary Authority not only about the correctness of the finding arrived at by the Inquiry Officer exonerating him, but also explain to the Disciplinary Authority various grounds against the charges levelled against him. In such view of the matter, it is not possible to accept the view of the learned Single Judge that no prejudice has been caused to the delinquent officer and therefore, non giving of an opportunity by the Disciplinary Authority, while differing from the finding of the Inquiry Officer, does not vitiate the disciplinary proceedings.

(iv) 2011 (14) SCC 379 [Anil Gilurker v. Bilaspur Raipur Kshetriya Gramin Bank and another]



13. As has been held by this Court in *Surath Chandra Chakrabarty v. State of West Bengal* (supra):

"5.The grounds on which it is proposed to take action have to be reduced to the form of a definite charge or charges which have to be communicated to the person charged together with a statement of the allegations on which each charge is based and any other circumstance which it is proposed to be taken into consideration in passing orders has also to be stated. This rule embodies a principle which is one of the basic contents of a reasonable or adequate opportunity for defending oneself. If a person is not told clearly and definitely what the allegations are on which the charges preferred against him are founded he cannot possibly, by projecting his own imagination, discover all the facts and circumstances that may be in the contemplation of the authorities to be established against him....."

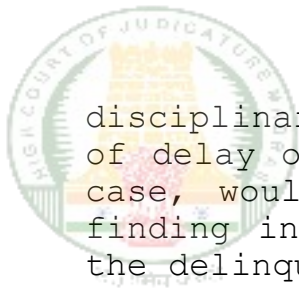
14. This position of law has been reiterated in the recent case of *Union of India & Ors. v. Gyan Chand Chattar* (supra) and in Para 35 of the judgment as reported in the SCC, this Court has observed that the law can be summarized that an enquiry is to be conducted against any person giving strict adherence to the statutory provisions and principles of natural justice and the charges should be specific, definite and giving details of the incident which formed the basis of charges and no enquiry can be sustained on vague charges.

(v) 2012 (1) CWC 14 [N.Vanitha v. The Personal Assistant to the Collector and others]

6. The power of this Court to interfere with the quantum of punishment is rather limited. However, when the punishment is totally disproportionate to the charges levelled making to the conscious of the Court then certainly this Court will interfere and grant appropriate relief. It is not as if the petitioner was involved in any corruption charges. There is no indication about the past conduct of the petitioner and averment made by the petitioner in her affidavit that she has put in 33 years of blemish service has not been denied and disputed in the counter affidavit. Added further the petitioner's husband is no more and she has to take care of her family without job. When the circumstances are so difficult where it is impossible for an employee to perform his or her duty then the same will have to be mitigating factor in imposing the punishment.

(vi) 2012 (6) CTC 69 [Tamil Nadu Housing Board v.R.Chakrapani]

5. The law on this subject is well settled. The delay in initiation of disciplinary proceedings will certainly prejudice the case of the delinquent employee to defend the enquiry proceedings effectively, as by that time he may not have the records to defend the case. Therefore only, the employer is expected to initiate the



disciplinary proceedings within a reasonable period and in the event of delay of 23 years, muchless without any explanation, as in this case, would certainly vitiate the entire enquiry proceedings. The finding in this regard by the learned Judge accepting the case of the delinquent employee requires no interference.

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6. As far as the procedure adopted by the enquiry officer in putting questions and eliciting answers from the delinquent employee is concerned, we may again refer to the judgment of the Apex Court in *State of Uttaranchal and others v. Kharak Singh*, (2008) 8 SCC 236, where the Court laid down the following principles:-

"11. From the above decisions, the following principles would emerge:

i) The enquiries must be conducted bona fide and care must be taken to see that the enquiries do not become empty formalities.

ii) If an officer is a witness to any of the incidents which is the subject matter of the enquiry or if the enquiry was initiated on a report of an officer, then in all fairness he should not be the Enquiry Officer. If the said position becomes known after the appointment of the Enquiry Officer, during the enquiry, steps should be taken to see that the task of holding an enquiry is assigned to some other officer.

iii) In an enquiry, the employer/department should take steps first to lead evidence against the workman/delinquent charged, give an opportunity to him to cross-examine the witnesses of the employer. Only thereafter, the workman/delinquent be asked whether he wants to lead any evidence and asked to give any explanation about the evidence led against him.

iv) On receipt of the enquiry report, before proceeding further, it is incumbent on the part of the disciplinary/punishing authority to supply a copy of the enquiry report and all connected materials relied on by the enquiry officer to enable him to offer his views, if any."

4. The first respondent filed counter affidavit and denied the various allegations made by the petitioner. After narrating the appointment, his transfer, promotion, suspension order and initiation of disciplinary proceedings under Rule 17 (b) of Tamil Nadu Civil Services (Disciplinary and Appeal) Rules, the respondents have made various averments on merits justifying the order of dismissal of the petitioner.

4(a) The learned Special Government Pleader appearing for the respondents contended that the enquiry officer conducted the enquiry after giving sufficient opportunity to the petitioner. The enquiry officer gave a report holding that 10 charges out of 20 levelled against the petitioner were proved and other charges were not proved. The disciplinary authority deviated from the report of the



enquiry officer in respect of 8 charges found not proved and issued notice dated 27.03.2017 giving reason for such deviation. The petitioner submitted his explanation to the said notice and also for the report of the enquiry officer.

4(b) The first respondent, after considering the charge memo, explanation of the petitioner, report of the enquiry officer, further explanation of the petitioner, connected records and that 18 charges are grave in nature, imposed punishment of dismissal of the petitioner from service by the impugned order dated 16.08.2017. The said order is valid and legal.

4(c) In the memo of charges itself, it has been mentioned that no witness will be examined and has given list of documents relied on by the respondents. In the departmental proceedings, there is no necessity to examine the witnesses to mark and prove the documents. The witnesses on the side of the petitioner were examined by the enquiry officer. The respondents denied allegation that the enquiry officer committed a grave error in marking the documents without examining the witnesses. Similarly, the allegation that enquiry officer being subordinate to the respondents has given a finding holding that the charges levelled against the petitioner were proved is not correct. The fact that enquiry officer found not guilty of 10 charges out of 20 charges levelled against the petitioner goes to show that enquiry officer has given finding after conducting the enquiry in a fair and proper manner.

4(d) Out of 20 charges, 18 charges of grave in nature have been proved. Therefore, the order of dismissal is proper inspite of 2 charges were not proved.

4(e) The Fit person of the temple has passed a resolution permitting the petitioner to appoint persons after obtaining permission from the Commissioner, HR&CE Department. The petitioner, without obtaining permission from the Commissioner, HR&CE Department, appointed persons contrary to the instruction of the Fit person of the temple. As per Rule 14 of the Tamil Nadu Hindu Religious Institutions (Officer and Servant) Service Rules, the Trustee or Trustees shall not alter the schedule of Establishment without obtaining prior permission from the Commissioner. The petitioner, without obtaining permission from the Commissioner, altered the schedule of establishment.

4(f) The petitioner failed to supervise the work of one Pandian, Accountant of Arulmighu Malaimel Vaidiya Swamy Temple, Vadakarai for the forgery committed by the said Pandian. He was suspended from service and he filed appeal against the said order. The petitioner filed counter in favour of the said Pandian. In view of the same, Joint Commissioner, set aside the order of suspension. The said order was later set aside by the Commissioner. The



Commission to the said Pandian in one lumpsum while arrears has to be paid in three instalments in three financial years. The petitioner paid the said amounts without deducting electricity charges and pooja expenses paid by the other employees.

4(g) The petitioner failed to supervise the work of one Vijayalakshmi who was incharge of selling archanai tickets. Due to the said dereliction of his official duty, the said Vijayalakshmi did not deposit the said amounts collected by selling the archanai tickets. The petitioner did not know the misappropriation of said Vijayalakshmi till the charge memo was issued to him.

4(h) The petitioner did not collect the rent in respect of marriage hall and also electricity charges when it was let out to third parties and caused financial loss.

4(i) The petitioner, as an Executive Officer must deposit the amount in the first account jointly operated by the Trustee and Executive Officer. Instead of that, the petitioner deposited in the second account operated in the name of Executive Officer, in violation of rules.

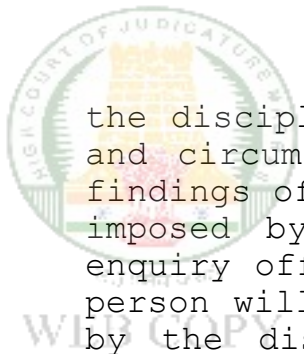
4(j) The amount sanctioned as advance/loan for medical expenses of the employee is in violation of rules as the petitioner failed to obtain permission from the competent authority.

4(k) The petitioner failed to act as prudent Executive Officer as he is in custody of monies and properties of Idols. The petitioner committed various misconducts and the same had been proved in the domestic enquiry properly conducted and the first respondent, after appreciating all the records had passed the impugned order by giving valid reasons.

4(l). The learned Special Government Pleader further contended that the petitioner is not entitled to canvass the merits of the case in writ petition. The scope of interference by this Court in Article 226 of Constitution of India is limited and evidence cannot be re-appreciated.

5. Heard the learned Senior Counsel appearing for the petitioner as well as the Special Government Pleader appearing for the respondents and perused the materials available on record.

6. The petitioner is challenging the order of dismissal passed by the first respondent on the ground that the findings of the enquiry officer is erroneous. The learned Special Government Pleader appearing for the respondents contended that the findings of the enquiry officer as well as the reasons given by the first respondent cannot be re-appreciated by this Court in the writ proceedings. Generally, this Court will not interfere with the findings of the enquiry officer as well as the punishment imposed by



the disciplinary authority but in certain cases, based on the facts and circumstances of the case, this Court can interfere with the findings of the enquiry officer as well as the quantum of punishment imposed by the disciplinary authority when the findings of the enquiry officer is perverse, without any evidence and no reasonable person will come to the said findings. When the punishment imposed by the disciplinary authority is disproportionate to the proven charges, this Court has power to interfere with the said findings as well as the punishment. The judgments relied on by the learned counsel for the petitioner in this regard are applicable to the facts of the present case.

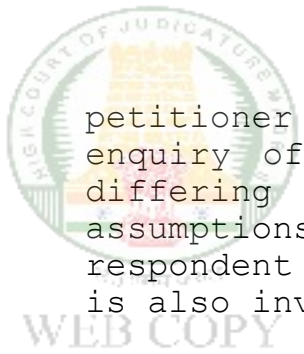
7. Charges 1 to 9 are interlinked. These charges relates to failure on the part of the petitioner to properly verify the documents produced by one Pandian, Accountant to the temple. According to the first respondent, the said Pandian forged the signature of Hereditary Trustee Tmt.Ram Manohari Rajaram and Thakkar R.Raja (Fit Person) and obtained lease hold right in favour of one M.K.Pitchaimani and Smt.P.Malarvizhi and the petitioner, without properly verifying the signatures and without signing the resolution, granted the lease. The respondents did not examine witness to prove that the signatures of Hereditary Trustees as well as Thakkar (Fit person) were forged one. When the respondents did not examine any person acquainted with the signatures of those persons, erred in holding the charges of forgery and failure on the petitioner, to verify the signatures. The charges levelled against the petitioner for the incident that occurred in the year 2005, 2012 and 2014, the charge memo is dated 11.02.2016. The respondents have not explained for the delay in issuing the charge memo.

8. In the order of this Court dated 22.04.2014 made in W.P.No.1930 of 2005, it has been held that due to delay in concluding disciplinary proceedings, the entire proceedings is invalid and the entire proceedings are liable to be quashed. The relevant portion of the above said order is extracted hereunder -

16. In my considered view, the legal principles laid down in the decisions cited supra are squarely applicable to the facts of the present case, wherein also, there is enormous delay in concluding the proceedings. Such delay and laches vitiate the entire proceedings and the entire proceedings are hence liable to be quashed and stand quashed.

9. The judgments cited by the learned Senior Counsel for the petitioner, extracted supra, on the question of delay in initiating disciplinary proceedings are squarely applicable to the facts of the present case.

10. Even though the charges are interlinked, the enquiry officer held that the charge numbers 1, 3, 5, 7, 8 and 9 are proved. While so, the first respondent, as disciplinary authority differed



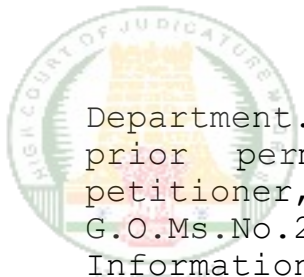
petitioner giving reasons for differing with the findings of the enquiry officer. The reasons given by the first respondent for differing with the findings of the enquiry officer are only on assumptions and surmises. The reasons given by the first respondent are not valid and consequential final order of dismissal is also invalid.

11. As far as charge Nos.4 & 5 are concerned, the allegation is that the petitioner, by creating fabricated documents had filed reply stating that M.K.Pitchaimani and Tmt.P.Malarvizhi had handed over possession of the temple to erstwhile Commissioner Thiru.Pulivaganan. To disprove the said allegation, the petitioner examined Thiru Pulivaganan who deposed that said M.K.Pitchaimani and Tmt.P.Malarvizhi handed over possession of the land to him and he made arrangements to measure the land. Both the enquiry officer as well as the first respondent, without appreciating the evidence of erstwhile Commissioner Thiru.Pulivaganan examined as defence witness and the documents filed, erroneously held that the said charges are proved.

12. **Charges 6, 7, 8 and 9 are interlinked.** The said charges relate to payment of subsistence allowance and arrears of Pay Commission to Pandian, Accountant of the temple. As per the provisions applicable to the service conditions of the employees of the temple as well as the provisions of payment of Subsistence Allowances Act, a suspended employee is entitled to Subsistence Allowance for suspension period. In the present case, the petitioner paid subsistence allowance to Pandian for the period of suspension as per the orders of the Joint Commissioner. Considering the legal position, the enquiry officer held that charge No.6 was not proved. Contrary to the provisions of Act and service conditions, the first respondent, on erroneous reasons held that this charge is proved.

13. **As far as charge Nos.7, 8 and 9 are concerned,** the petitioner has paid the arrears of pay commission in one lumpsum when the Commissioner has instructed to pay the arrears in three instalments in three financial years. The petitioner, contrary to the said instructions has paid the arrears in one lumpsum. Further, the petitioner has deposited the amounts in Account No.2 which is operated by the Executive Officer, instead of Account No.1 which is operated jointly by the Fit Person as well as the Executive Officer. These actions amounts to irregularity, especially when the salary of the employees were not paid and there is arrears of salary and amounts towards electricity charges were paid by the employees.

14. **Charge Nos.10, 13 and 20** relates to appointment made by the petitioner in the temples. According to the respondents, Fit Person passed resolution permitting the petitioner to appoint employees after obtaining permission from the Commissioner of HR&CE



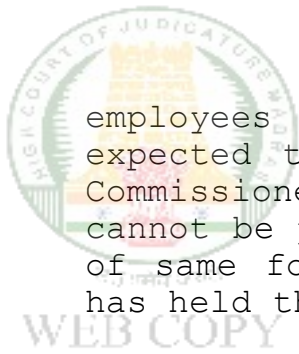
Department. The petitioner appointed persons without obtaining prior permission from the Commissioner. These act of the petitioner, according to the respondents, is in violation of G.O.Ms.No.255 Tamil Development and Religious Endowment and Information (RE 4-2) Department dated 28.06.2010. The said Government Order was quashed by this court vide order dated 05.07.2012 made in W.P.No.1890 of 2011 and confirmed by the Division Bench of this Court in W.A.No.491 of 2013 dated 22.01.2015..

15. Once the order in W.P.No1890 of 2011 and judgment in W.A.No.491 of 2013 dated 22.01.2015 were brought to the notice of the respondents, the finding of the first respondent holding that the petitioner had committed misconduct by appointing the persons in the temple in contravention of the provisions of the Act as the petitioner had made appointment without obtaining permission from the Commissioner is erroneous. Once the fit person passes resolution for appointment of persons in the temple, no prior permission is required from the Commissioner. The respondents have not produced any material to show that the petitioner was benefited personally by appointing such persons. The appointment made by the petitioner cannot be termed as misconduct and at the best, it would be only an irregularity.

17. As far as charges 15 to 19 are concerned, the respondents have not let in any evidence to prove these charges. The enquiry officer himself has held that the charges 15, 16 and 17 are not proved. Without there being any evidence, the first respondent held that these charges were proved.

18. As far as charges 11 & 12 are concerned, one Vijayalakshmi was incharge of selling of archanai tickets. She had admitted that she was responsible for not remitting the amount collected by selling archanai tickets and admitted her guilt. She also deposited the amounts in the temple account. The Enquiry Officer held that these charges against the petitioner are not proved. The first respondent, as disciplinary authority, even after confession of said Vijayalakshmi held that the petitioner had committed misconduct and charges are proved. There is no misappropriation of funds on sale of archanai tickets. The petitioner failed to supervise the work done by said Vijayalakshmi and failed to verify whether she has deposited the amount collected in the Bank account of the temple. The petitioner has failed to discharge his official duty properly.

19. **Charge No.14** is that, without obtaining prior permission from the Commissioner, the petitioner paid a sum of Rs.25,000/- and Rs.10,000/- as advance to one M.Vellaichamy who worked as day watchman in the temple, for the medical expenses for the delivery of his daughter without obtaining permission from the Commissioner. From the charges levelled against the petitioner itself, it is seen that the said Vellaichamy's daughter was admitted in the hospital for delivery of child. When money is urgently required by the



employees towards medical expenses, the petitioner cannot be expected to pay advance only after obtaining permission from the Commissioner. This charge is a frivolous charge. The petitioner cannot be punished for paying advance to an employee who is in need of same for urgent medical expenses. The enquiry officer himself has held that this charge is not proved.

20. I have considered the charge memo, petitioner's explanation to the charge memo, the report of the Enquiry Officer and impugned order of the first respondent in detail, as both the learned Senior Counsel appearing for the petitioner as well as the learned Special Government Pleader appearing for the respondents have elaborately argued on these aspects referring to same mentioned in the typed set of papers.

21. From the discussions above, I hold that the petitioner is guilty of irregularity in respect of charge Nos.7, 8, 9, 10 & 11. The petitioner has not committed any misconduct of any charge levelled against him. The petitioner was aged 54 years in the year 2017, i.e when he filed this writ petition and now he is aged 56 years. Further, the contentions of the learned Senior Counsel appearing for the petitioner that the petitioner is a cancer patient who has undergone surgery and his life span is limited, are not denied by the respondents. The petitioner has rendered 27 years of unblemished service.

22. Considering all the above facts and that the petitioner has committed irregularities and there is no misappropriation of funds, it will be in the interest of justice, the impugned order of dismissal is liable to be set aside and it is hereby set aside. However, the petitioner is imposed with punishment of stoppage of increment for a period of two years with cumulative effect for his irregularities.

23. In the result, this writ petition is partly allowed. No costs. Consequently, connected Miscellaneous Petitions is closed.

Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar(CS)



To

1.The Commissioner,
Hindu Religious and Charitable
Endowments Department,
Uthamar Gandhi Salai,
Chennai - 34.

2.The Joint commissioner,
Hindu Religious and Charitable
Endowments Department,
Madurai.

+1 CC to M/s.VEERA ASSOCIATES, Advocate (SR-101739[F] 27/11/2019)

+1 CC to M/s.Special Government Pleader (SR-101947[F] 27/11/2019)

Order in
W.P (MD) No.17662 of 2017
26.11.2019

rgr
SDS/RSK/SAR-1/02.01.2020/15P-5C