

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.03.2020

CORAM :

THE HON'BLE MR.A.P.SAHI, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.A.No.47 of 2020

T.Gajendran ... Appellant

vs.

1.The Secretary,
Tourism, Culture and Religious
Endowment Department,
Secretariat, Fort St. George,
Chennai - 600 009.

2.The Commissioner,
Hindu Religious and Charitable
Endowments Department,
Nugambakkam High Road,
Chennai - 600 034.

... Respondents

Appeal filed under Clause 15 of the Letters Patent against the order dated 04.11.2019 passed by the learned Single Judge in W.P.No.24802 of 2019.

WP No.24802 of 2019

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records on the file of the 1st respondent in G.O.2D No.11, dated 07.12.2017 and quash the same as illegal, incompetent and unconstitutional.

For Appellant

: Mr.V.Raghavachari

For Respondents

: Ms.Radhika

Government Advocate
for respondent No.1

: Mr.Karthikeyan

Spl. G.P. (HR & CE)
for respondent No.2

JUDGMENT

(Delivered by *The Hon'ble Chief Justice*)

Heard learned counsel for the appellant, who comes up questioning the correctness of the impugned judgment dated 04.11.2019, whereby the learned Single Judge has declined to exercise his discretion for quashing of the order of suspension dated 07.12.2017, whereby the appellant, who was the then Joint Commissioner of the Hindu Religious and Charitable Endowment Department, came to be suspended due to an FIR being lodged relating to an idol theft.

2. The appellant was admittedly taken into custody and has been bailed out. Learned counsel for the appellant contends that the incident is reportedly of the year 2013, whereas according to the own records of the respondents, the appellant took charge as the Joint Commissioner only in the year 2015. The question of even *prima facie* involvement of the appellant does not even therefore remotely exist, and merely because the FIR was lodged in the year 2017 and his name came to be mentioned without there being any indication of any act or omission on the part of the appellant, there was no offence for which the appellant deserves to be tried or being put behind the bar.

3. In the said background, the suspension came to be challenged contending that even the learned Single Judge who granted bail has taken note of this issue and upon consideration thereof has come to the conclusion that the allegation levelled against the appellant by the investigating agency is worthless. He, therefore, contended that the order of suspension deserves to be quashed and the appellant deserves to be continued in regular service as this prolonged suspension is unjustified.

4. The learned Single Judge, after having considered the submissions, including the judgment in the case of *Ajay Kumar Choudhary v. Union of India*, reported in (2015) 7 SCC 291, came to the conclusion that in view of the relevant rules, the question of suspension is clearly dependent on the fact of the appellant having been taken into custody and on being charged for a criminal offence.

5. Shri V.Raghavachari, learned counsel, on instructions, states that till date no final report has been submitted and the investigation still continues to be pending. In this circumstance, more than two and half years have passed by and the Government cannot be permitted to prolong the suspension

merely because the investigating agency is unable to conclude the investigation. He submits that because of the prolonged suspension, the appellant is being severely affected and any prolonged suspension on such a ground is not justified in the background that there was not even an iota of evidence or semblance of involvement of the appellant as on the date of occurrence, which is of the year 2013.

6. We have considered the submissions raised by learned counsel for the State.

7. On the basis that the FIR records that the idol theft occurred in 2013, whereas the appellant was appointed as Joint Commissioner in 2015, the learned counsel contended that the suspension order is liable to be quashed. He also relied upon the bail order in this regard. However, the information set out in the FIR and the *prima facie* conclusions in the bail order do not constitute a valid basis to interfere with an order of suspension when the service rules provide for suspension in such circumstances.

8. The learned Single Judge has relied on certain decisions and thereafter arrived at the conclusion that the writ petition does not deserve to be entertained. We may add further at this stage that if the final report has not yet been submitted, the Government would be well advised to call upon the investigating agency to get it concluded at the earliest. Apart from this, the learned Single Judge, in our opinion, has rightly observed that the appellant can approach the Government to review the order of suspension.

9. In the background aforesaid, we are, therefore, not inclined to interfere with the impugned order, leaving it open to the appellant to approach the Government for re-visiting of the order of suspension in the light of the contentions raised above, preferably within two months from today. The appellant may approach the Government along with the certified copy of this order within ten days from today.

The appeal is disposed of with the said observations. No costs. Consequently, C.M.P.No.579 of 2020 is closed.

Sd/-

Assistant Registrar -ADI (MDU)

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Sub Assistant Registrar

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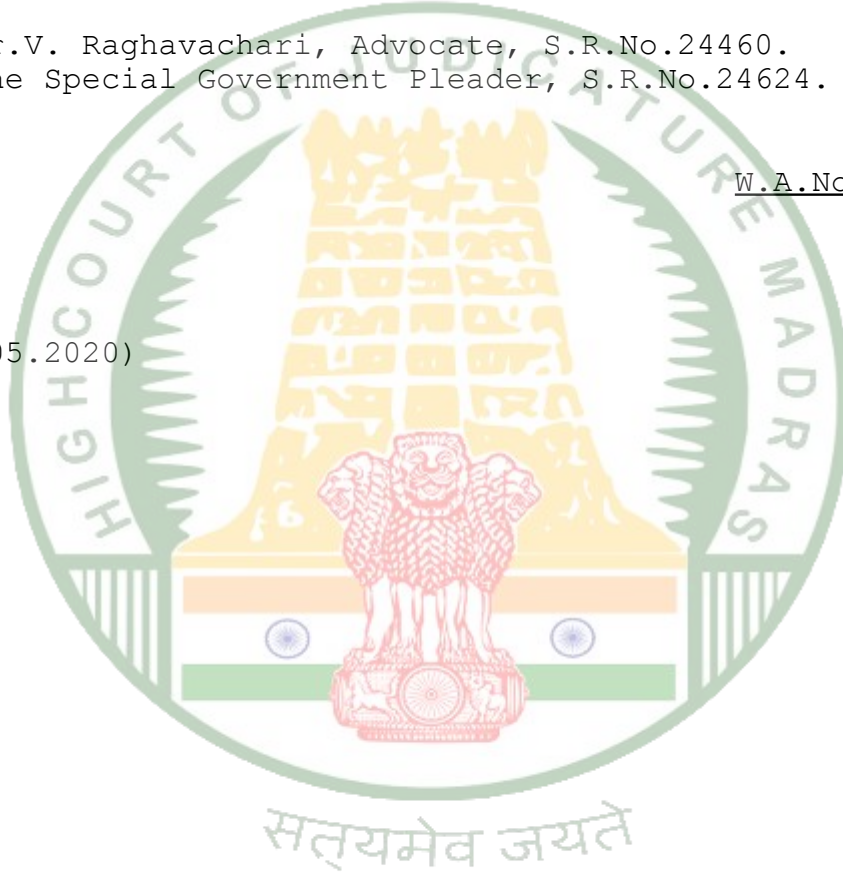
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+1cc to Mr.V. Raghavachari, Advocate, S.R.No.24460.
+1cc to the Special Government Pleader, S.R.No.24624.

W.A.No.47 of 2020

JP (CO)

VSI-2 (27.05.2020)



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