

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.12.2020

CORAM

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

W.P.No.35647 of 2004

V.Gnansundaram

... Petitioner

Vs.

- 1.The Special Commissioner & Commissioner,
Hindu Religious and Charitable Endowments
Admn. Dept., Chennai - 600034.
 - 2.The Joint Commissioner, H.R.&C.E., Admn. Dept.,
Madurai.
 - 3.The Joint Commissioner/Executive Officer,
Arulmighu Meenakshi Sundareswarar Temple,
Madurai - 625001.
- ... Respondents

PRAYER : Writ petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records in R.P.No.43/2001 D2 dated 07.11.2003 on the file of the first respondent herein viz., The Special Commissioner, Hindu Religious and Charitable Endowments Admn. Dept., Chennai - 600034, and quash the same insofar as it is against the petitioner concerned with a consequential direction directing the respondents to pay the back wages from the date of suspension to till the date of reinstatement.

For Petitioner : Mr.V.Prakash (Senior Counsel)
for Mr.K.Sudalaikannu

For Respondents : No appearance [R1 & R2]
Mr.M.Selvam
for Mr.B.Sivakumar [R3]

ORDER

This Writ Petition has been filed challenging the order of the first respondent in R.P.No.43/2001 D2 dated 07.11.2003 and quash the same insofar as it is against the petitioner

with a consequential direction, directing the respondents to pay the back wages from the date of suspension to till the date of reinstatement.

2. The case of the petitioner is that he was initially appointed to the post of Plumber in the third respondent-Temple in the year 1977 and thereafter, he was promoted to the post of Electrician. He had also possessed a Diploma in Electrical Engineering. On the basis of his experience as Electrician and on the basis of his diploma qualification, he was eligible for promotion to the post of Junior Engineer in the third respondent-Temple and the then Trust Board of the third respondent-Temple had also sent a proposal to the first respondent for the same and the same was pending. Thereafter, the then Executive Officer of the third respondent-Temple issued a charge memo dated 21.07.1999 against the petitioner and he was suspended on the same day itself. Further, he was directed to give his explanation and after his explanation, an enquiry was conducted. Without furnishing the enquiry report to the petitioner, the order of dismissal from service was passed by the Trust Board. Challenging the above said orders, he filed writ petitions in W.P.Nos.2374 and 2475 of 2000 before this Court and the writ petition, challenging the order of dismissal, was allowed by setting aside the order of dismissal and further, directed the third respondent-Temple, to furnish the enquiry report to the petitioner and after getting his explanation, to pass final order on merits and in accordance with law. As far as the other writ petition with regard to suspension order passed by the Executive Officer was concerned, the same was ratified by the Trust Board and the said writ petition was dismissed by this Court. Based on the order passed by this Court, the third respondent initiated a fresh enquiry and accordingly, the enquiry dated 17.10.2000 and notice of enquiry, calling for the petitioner to attend the enquiry on 24.10.2000 were sent to the petitioner and the said notice was received by the petitioner only on 25.10.2000. But the Trust Board on 24.10.2000 itself passed a Resolution to dismiss the petitioner from service by its Resolution No.38 dated 24.10.2000, without giving any opportunity and without referring to any of the documents already on the file of the third respondent-Temple and passed a final order dismissing the petitioner from service of the third respondent-Temple. Aggrieved over the above said order, the petitioner filed Statutory Appeal under Section 56(2) of the Tamil Nadu Hindu Religious and Charitable Endowments Act 22 of 1959 before the second respondent and the second respondent without considering the materials on record and also without noticing the fact that the petitioner was not given opportunity to participate in the enquiry and put forth his defence, dismissed the appeal. Challenging the order of the second respondent, the petitioner filed Statutory Revision before the first respondent in R.P.No.43 of 2001. The first respondent, upon considering the charges framed against the petitioner,

the explanation submitted by him and the findings of the Enquiry Officer observed that the charges framed against the petitioner were not proved and allowed the Revision Petition on 07.11.2003, by setting aside the order of dismissal passed by the third respondent-Temple. However, the period of absence from the date of his removal till the date of his joining shall be treated as leave to which he will be eligible and if the petitioner had no leave to his credit to that extent, the remaining period shall be treated as leave on loss of pay. But insofar as the order related to back wages was concerned, the petitioner was aggrieved and it was found that he had not committed any irregularity and he cannot be punished.

3. The learned counsel appearing for the petitioner would submit that there was no fault on the part of the petitioner since the first respondent had set aside the order of the third respondent, allowing the Revision Petition and directed to reinstate the petitioner from the date of his joining duty. He should have ordered with the back wages when the first respondent clearly observed that the charges leveled against the petitioner were not proved and no evidence of misappropriation, vouchers and payments were made by way of cheques after the approval of the Electrical Engineer and Executive Officer of the Temple. He should have granted the full benefits.

4. The learned counsel appearing for the third respondent would submit that during the pendency of the writ petition, the petitioner filed a verified petition dated 20.12.2005 in R.P.No.43/2001/DL seeking for orders for backwages from 21.07.1999 to 24.10.2000, the period of suspension and the same was disposed of by the first respondent vide his order dated 01.03.2006, which was challenged by the petitioner in W.P.No.27867 of 2006. Further, during the pendency of the writ petition, the petitioner prayed for promotion and in consideration of his promotion, he had given a letter of undertaking to withdraw the writ petition and the same was dismissed as withdrawn on 18.09.2008 by this Court. Accepting the same, he was promoted and subsequently, retired from service on attaining superannuation on 31.03.2015. Therefore, the relief sought for in this writ petition has become infructuous and the petitioner is not entitled for any relief since he has already received his benefits.

5. Heard both sides and perused the materials placed on record.

6. Admittedly, the petitioner was appointed as Plumber in the third respondent-Temple and thereafter, on the basis of his experience and qualification, he was promoted to the post of Electrician. Subsequently, he was served with a charge memo and was removed from service after the enquiry. Without

of dismissal was passed. Further, the petitioner challenged the final order of dismissal on the non-supply of the enquiry report and this Court set aside the order of dismissal and allowed the writ petition with a direction to the third respondent to conduct a fresh enquiry for giving the opportunity to the petitioner. However, the notice was sent to the petitioner for the same for attending the enquiry on 24.10.2000 but the petitioner received the notice only on 25.10.2000 and again without hearing the petitioner, the order of dismissal from service was passed by the Trust Board. Challenging the same, the petitioner filed Statutory Appeal before the second respondent and the same was dismissed. Challenging the same, he filed Statutory Revision before the first respondent and the same was allowed and the order of dismissal was set aside with a direction to reinstate the petitioner in service. It is the submission of the learned counsel for the third respondent in his counter affidavit that the petitioner also filed a writ petition in W.P.No.27867 of 2006 challenging the order of the first respondent and to direct him to pay back wages from the date of suspension viz., 21.07.1999 till the date of dismissal viz., 24.10.2000. However, he withdrew the said petition by furnishing a letter of undertaking, praying for promotion. Subsequently, he was promoted and retired from service after receiving all his benefits.

7. In view of the above facts and circumstances of this case, it is clear that the first respondent in his order had clearly observed and stated that there was no misappropriation of funds and there was no fault on part of the petitioner. Further, the counter affidavit filed by the third respondent was signed on 27.09.2017 itself but the same is produced before this Court only on 09.04.2019. The writ petition was filed in the year 2004 and though, the charges leveled against the petitioner were disapproved by the first respondent, the same is pending till now. The respondents cannot take advantage of the letter given by the petitioner after 8 years and claim that the petitioner has given up his rights, as the first respondent had given a clear finding that no charges were proved against the petitioner and he did not abscond from his duty. The third respondent has not challenged the order passed by the first respondent. The order of the first respondent attained finality. Therefore, this Court is not accepting the contention of the third respondent. Accordingly, the benefits of backwages from the date of suspension till the date of reinstatement, to the petitioner, should be extended and the same is extended. The respondent is directed to pay the backwages of the petitioner from the date of suspension of his service till his reinstatement in service.

8. With the above directions, this Writ Petition stands allowed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

- 1.The Special Commissioner & Commissioner,
Hindu Religious and Charitable Endowments
Admn. Dept., Chennai - 600034.
 - 2.The Joint Commissioner, H.R.&C.E., Admn. Dept.,
Madurai.
 - 3.The Joint Commissioner/Executive Officer,
Arulmighu Meenakshi Sundareswarar Temple,
Madurai - 625001.;
- + 1 CC.to Mr. K. Sudalaikannu, Advocate , Sr.No.41338

SP(CO)
SM/19/02/2021

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