BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 04.03.2020
CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P(MD)No.16747 of 2012
and
M.P(MD)No.1 of 2012
and
M.P(MD)No.1 of 2013

K.Vasudevan ... Petitioner

vs.

1.The Joint Commissioner,
A/M.Swaminatha Swamy Thirukoil,
Swamimalai, Kumbakonam Taluk,
Thanjavur District.

2.The Deputy Commissioner/Executive Officer,
A/M.Swaminatha Swamy Thirukoil,
Swamimalai, Kumbakonam Taluk,
Thanjavur District. ... Respondents

PRAYER:- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order of suspension-cum-impugned charge memo in ref.Se.Mu.Na.Ka.No.1334/2012/A1, dated 05.11.2012 issued by the first and second respondents respectively and quash the same as illegal and regularize the period of suspension with all monetary benefits.

For Petitioner : Mr.S.Vinayak
For Respondents : Mr.S.Anwar Sameem
for Mr.T.Antony Arul Raj

ORDER

This Writ Petition has been filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order of suspension-cum-impugned charge memo in ref.Se.Mu.Na.Ka.No.1334/2012/A1, dated 05.11.2012 issued by the first and second respondents respectively and quash the same as illegal and regularize the period of suspension with all monetary benefits.

2. The learned counsel appearing for the petitioner would submit that the petitioner was originally appointed as a Clerk in the second respondent Temple on 18.10.1980. He was promoted as Revenue Clerk on 10.10.1989 and subsequently, he was promoted as Manager on 13.09.2007 and he was following the conditions of service as per Hindu Religious & Endowment Act. He retired from service in the year 2013. During 1984, as per the proceedings of the first respondent, the second respondent had allotted a vacant site measuring 3 cents in Rs.No.105/2 at Muzhayur, Vallalar Koil, Sozhanmaligai Village, Kumbakonam Taluk. Similarly, 21 persons were allotted lands for constructing the house. The proceeding was issued on 01.10.1984 with agreement for site rent. In the same proceeding, the second respondent directed the Revenue Inspector to measure, ear mark and hand over the site allotted to the petitioner by the second respondent.

3. Accordingly, the Revenue Inspector measured 3 cents of land in the said survey number, ear marked and handed over to the petitioner. He had put up a construction and periodically remitting the ground rent to the respondent and fair rent was also fixed in the year 2004. On 05.11.2012 he was suspended by the first respondent stating that he has constructed a house by encroaching R.S.No.106/9 belonging to the temple instead of 105/2. Apart from the said allegations, there are various other charges levelled against him as if he has not performed his duties and obligations which amounted to misconduct. The petitioner has given an explanation on 26.11.2012 denying the various charges including the main charge of encroachment of temple land. He was suspended from service on 05.11.2012. In the meantime, the petitioner has filed a Civil Suit in O.S.No.557 of 2012 before the Principal District Munsif Court, Kumbakonam seeking for the relief of permanent injunction restraining the second respondent or any one claiming under them from in any manner interfering with his lawful possession or causing demolition of his dwelling house. The second respondent has informed to the first respondent that one V.G.Ponnusamy is an encroacher and against whom action was initiated and the same is pending on appeal.

4. The petitioner is the one of the tenants of the temple land and he has put up a temporary construction in the site measured, ear marked and handed over to the petitioner by the Revenue Inspector and he has not encroached any other land as he was paid the property tax to the competent authorities in RS.No.105/2002 and the same was not considered by the authorities concerned. Placing the petitioner under suspension and issuing charge-memo is without any jurisdiction and totally abuse of process of law and non-application of mind and he prayed for issuance of the writ of certiorarified mandamus calling for the records relating to the impugned order of suspension-cum-impugned charge memo in ref.Se.Mu.Na.Ka.No.1334/2012/A1, dated 05.11.2012 issued by the first and second respondents respectively and quash the same as

illegal and regularize the period of suspension with all monetary benefits. He further submitted that he has already retired from service and prayed for allowing the writ petition.

5. The learned counsel appearing for the respondent/temple would submit that the petitioner has already been relieved from service by order dated 30.09.2013 without prejudice to the Disciplinary Proceedings pending and on the same day he has been allowed to retire from service. He further submitted that there was no board available and only the Thakkar is available. The Thakkar has to initiate appropriate proceedings.

6. As the case is pending from 2012 onward and the petitioner also retired from service, it will be appropriate to put an end to this dispute by directing the Temple Authorities to appoint an Enquiry Officer and conducted a fresh Disciplinary Proceedings against him and pass orders on merits and in accordance with law after providing reasonable opportunity to the parties concerned, within a period of six months from the date of receipt of a copy of this order and the parties are directed to co-operate with the authorities for enquiry and if necessary, the documents are to be provided and the same also to be provided to the parties concerned.

7. In view of the above observation, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (records)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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+1 CC to Mr.T.ANTONY ARUL RAJ, Advocate (SR-10197[F] dated 05/03/2020)
+1 CC to Mr.S.VINAYAK, Advocate (SR-10249[F] dated 05/03/2020)

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