



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 19.02.2020

DELIVERED ON : 03.11.2020

WEB COPY

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P (MD) No.20357 of 2014

and

M.P. (MD) .No.1 of 2014

N.Ramakrishnan

... Petitioner

Vs.

1.The Commissioner / HR & CE,
Administration Department,
Nungambakkam,
Chennai - 600 034.

2.The Joint Commissioner / Executive Officer,
Arulmigu Ramanathaswamy Temple,
Rameshwaram (P.O.),
Ramanathapuram District.

3.The Board of Trustees,
Arulmighu Ramanathaswamy Temple,
Rameshwaram (P.O.),
Ramanathapuram District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the dismissal order dated 08.06.2010 issued by the third respondent in its proceedings in Se.Mu.Na.Ka.No.61/2010/A2 as well as the consequential orders issued by the 2nd respondent in his ROC.No.640/2014/B4, dated 17.10.2014 and quash the same and to further direct the respondents to reinstate the petitioner with effect from 08.06.2010 with all service and monetary benefits.

For Petitioner : Mr.A.Thirumurthy,
M/s.Victory Associates

For 1st respondent : Mr.V.R.Shanmuganathan,
Special Government Pleader

For 2nd respondent : Mr.S.Ramesh

For 3rd respondent : No appearance

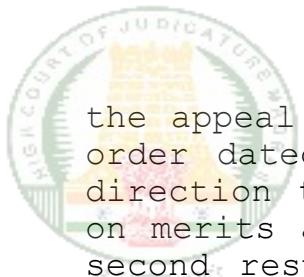


ORDER

This writ petition has been filed by the petitioner challenging the order passed by the third respondent dismissing him from service and the order passed by the 2nd respondent returning the appeal memorandum and for a direction to the respondents to reinstate him in service with effect from 08.06.2010 with all service and monetary benefits.

2. The learned counsel appearing for the petitioner submitted that the petitioner was appointed as Thirumalaikatti in Arulmighu Ramanathaswamy Temple at Rameshwaram in the year 1980 and promoted as Junior Assistant in the year 1983 and he had been working as Assistant Beishkar from 18.06.2000. While so, the 2nd respondent, on surprise inspection, found irregularities in the maintenance of accounts from the year 1999 onwards and short remittance of the sale proceeds of tickets, photos and holy water bottles into the temple account. Hence, the 2nd respondent issued a charge memo. Though explanation was called from various persons, the petitioner alone was suspended by order dated 10.10.2002. Aggrieved by the said order, the petitioner had preferred an appeal before the first respondent. Holding that the 2nd respondent cannot act as complainant, prosecutor as well as Judge, the first respondent, by order dated 18.12.2009, set aside the suspension order and remitted the matter to the file of the third respondent for conducting a detailed enquiry after affording sufficient opportunity to the petitioner. Thereafter, the third respondent directed the petitioner to attend enquiry on 28.05.2010. On 22.05.2010, the petitioner sent a representation requesting the third respondent to furnish relevant documents and to grant further time. But, the third respondent, without furnishing relevant documents, only adjourned the enquiry to 08.06.2010. On 04.06.2010, the petitioner again sent a representation to the third respondent seeking to furnish the relevant documents. As the third respondent did not furnish relevant documents even thereafter, the petitioner could not appear before the third respondent on 08.06.2010. The third respondent, by an *ex parte* order dated 08.06.2010, dismissed the petitioner from service holding that the petitioner himself admitted his guilt and that a sum of Rs.3,74,675/- has already been recovered from his Provident Fund Account and that a sum of Rs.1,29,186.75 has to be paid by the petitioner forthwith.

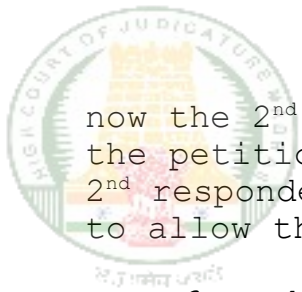
3. He would further submit that challenging the impugned order dismissing him from service, on 01.10.2010 the petitioner has preferred an appeal before the second respondent under Section 56(2) of the Hindu Religious and Charitable Endowment Act. As the appeal has been pending without any progress, the petitioner has filed a writ petition in W.P.(MD).No.12460 of 2014 before this Court seeking a direction to the second respondent herein to dispose of



the appeal filed by the petitioner dated 01.10.2010. This Court, by order dated 02.09.2014, disposed of the said writ petition with a direction to the second respondent herein to dispose of the appeal on merits and as per law within a period of three months. But, the second respondent, by order dated 17.10.2014, returned the appeal memorandum dated 01.10.2010 questioning maintainability. As the second respondent returned the appeal papers after four years, the petitioner could not approach the first respondent seeking appeal remedy. Challenging the above orders, this writ petition has been filed.

4. The learned counsel appearing for the petitioner would further submit that no separate charge memo has been issued by the third respondent and no explanation has been called for from the petitioner by the third respondent before imposing punishment. Though in the suspension order dated 10.10.2002 the alleged loss has been mentioned as Rs.2,26,848/-, in the proceedings of the second respondent dated 30.06.2007, it has been mentioned as Rs.3,74,675.75 and in the order of dismissal from service, it has been mentioned as Rs.5,03,861.75. The break up details have not been furnished by the respondents. He would next submit that the petitioner was not furnished with any copies of records to sustain his case. On the other hand, he was forcibly made to sign in blank papers, as if he agreed to recover the amount from his Provident Fund account even before initiation enquiry. Though the defendants recovered totally Rs.4,24,675/-, they have stated that Rs.3,74,675/- alone had been recovered from the petitioner and thus, the recovery of Rs.50,000/- was not brought into account. Further, no audit inspection has been conducted in conformity with the inspection. The then Joint Commissioner, who conducted inspection and suspended the petitioner, was not permitted to retire from service on attaining the age of superannuation on 31.05.2003 on the allegation of irregularities and misappropriation of temple funds. Since the petitioner refused to act to the whims of fancies of the Joint Commissioner, he was victimized.

5. The learned counsel for the petitioner further submitted that as the third respondent passed an *ex parte* dismissal order, the petitioner preferred appeal before the 2nd respondent under Section 56(2) of the Act and hence, the said appeal is maintainable before the 2nd respondent, but the 2nd respondent has returned the papers after about four years, that too after issuance of an order by this Court to dispose of the appeal. Further, the petitioner has obtained an order dated 03.11.2011 made in W.P.(MD).No.855 of 2011 for payment of entire monetary benefits during the period of suspension ie., from 10.10.2002 to 18.12.2009, but as against that order, the 2nd respondent has filed an appeal in W.A.(MD).No.634 of 2014. In the ground of the said appeal, the 2nd respondent himself has admitted that the appeal preferred by the petitioner against the order of termination of service under Section 56(2) of the Act is maintainable before the 2nd respondent. Having taken such a plea,



now the 2nd respondent ought not to have returned the appeal filed by the petitioner questioning maintainability. Hence, the order of the 2nd respondent dated 17.10.2014 has to be set aside. Thus, he prayed to allow this writ petition and to grant the relief.

6. The learned counsel appearing for the 2nd respondent submitted that based on the order passed by the first respondent, the third respondent issued notice of enquiry calling upon the petitioner to attend for enquiry on 28.05.2010 and thereafter, on 08.06.2010. But, the petitioner did not turn up by simply circulating letters with flimsy reason and thus, he neglected enquiry. Though the petitioner was furnished with the relevant documents, he has purposefully stated in his letters that he has not been furnished with relevant documents. Further, he was also permitted to see the relevant documents in the Office, but without even appearing in the Office, he has made false allegation as if he has not been given an opportunity to see the relevant documents. Considering the non cooperation of the petitioner, despite sufficient opportunities, the third respondent has passed the impugned order terminating him from service. The petitioner himself admitted his guilt and immediately paid Rs.50,000/- to the temple. He would further submit that aggrieved by the impugned order, the petitioner ought to have preferred an appeal before the regular Joint Commissioner at Sivagangai and the appeal presented before the 2nd respondent is not maintainable and hence, the same was returned to the petitioner. There is no merit in this writ petition. Thus, he prayed to dismiss this writ petition.

7. Heard the learned counsel appearing for both sides and perused the records carefully.

8. The main grounds on which the petitioner wanted to set aside the impugned order of the disciplinary authority are:

(a) There is a discrimination in fixing liability and imposing punishment.

(b) There is a violation of principles of natural justice by not furnishing the documents relied by the disciplinary authority.

(c) The petitioner has been punished by the disciplinary authority without even having the particulars about the exact amount alleged to have been misappropriated/caused loss to the Temple.

(d) The order of the disciplinary authority is a non speaking order.

(e) The belated return of appeal on the ground of maintainability caused prejudice to the petitioner.

9. A perusal of the order dated 18.12.2009 passed by the Commissioner, HR & CE, Chennai, shows that on 08.10.2002, the Joint Commissioner/Executive Officer had conducted an inspection and found irregularities in maintaining proper accounts for the sale of tickets, photos and holy water bottles that were sold inside the temple premises from 1999 onwards and thereby, the petitioner and



others were alleged to have been caused loss to the temple/misappropriated a sum of Rs.2,26,848/-. The petitioner and others were issued with show cause notices. However, on 10.10.2002 the petitioner alone was suspended. Subsequently, in the proceedings of the joint Commissioner / Executive Officer, dated 30.06.2007, the amount alleged to have been misappropriated by the petitioner was enhanced from Rs.2,26,848/- to 3,74,675/-. The said amount was also recovered from the petitioner on 17.10.2002 and 31.10.2002. The Commissioner, finally, set aside the suspension order holding that the Joint Commissioner/Executive Officer cannot act as complainant, prosecutor as well as Judge and hence, remitted the matter to the file of the disciplinary authority / Board of Trustees of the Temple for holding enquiry after affording sufficient opportunity to the petitioner.

10. The recovery of alleged loss amount from the Provident Fund of the petitioner immediately after suspension of the petitioner and even before the commencement of enquiry clearly shows that the complainant/the then Joint Commissioner has fixed the petitioner and thereby, forcibly recovered amount from the petitioner. Further, the alleged loss could not have been happened without the collusion of the other employees. Though the petitioner and 10 other persons were issued with show cause notice, the petitioner alone was suspended by the Joint Commissioner/Executive Officer pending enquiry and thereby he has been discriminated. More over, it is not in dispute that the then Joint Commissioner, who conducted inspection and initiated disciplinary proceedings against the petitioner, was not permitted to retire on attaining the age of superannuation on 31.05.2003 on the allegation misappropriation of Temple funds. When that be so, the submission of the petitioner that since he refused to act to the whims and fancies of the then Join Commissioner, he was victimized, has force.

11. It is seen that by way of representation dated 22.05.2010, the petitioner has requested the third respondent to furnish the documents relied by them to defend his case. By proceedings dated 31.05.2010, the third respondent informed the petitioner that though he was permitted to peruse the documents on 24.05.2010 and 25.05.2010, he did not appear for perusal of documents and for enquiry on 28.05.2010, and directed the petitioner to appear for enquiry on 08.06.2010. On 04.06.2010 the petitioner has again sent a representation to the third respondent stating that though he appeared in the Office for perusal of documents, he was not permitted to see the relevant documents and to note down the relevant portion and that on furnishing three documents mentioned in the representation, he would appear for enquiry on 08.06.2010. Though the respondents denied the above submission of the petitioner and stated that they have furnished relevant documents, the respondents have not produced any piece of papers to show that they have furnished the documents relied by them to the petitioner. When



permitted to see the relevant documents and to note down the relevant portion, the third respondent could have been considered the same and granted further time. But, the third respondent, without considering the said representation and without giving an opportunity to the petitioner, has passed the ex parte order dismissing the petitioner from service. Hence, this Court has no hesitation to hold that the third respondent has passed the impugned order in violation of the principles of natural justice and on this ground alone, the impugned order is liable to be set aside.

12. In the suspension order dated 10.10.2002, the alleged loss has been mentioned as Rs.2,26,848/-, but in the charge memo, it has been increased to Rs.3,74,675/- and further, in the impugned order of dismissal dated 08.06.2010, the alleged loss has been stated as Rs.5,03,861.75/-. The respondents have not furnished any break up details. It shows that the respondents did not have any particulars or exact details about loss and that is the reason why they did not furnish the documents relied by them to the petitioner. Further, it is the case of the respondents that the alleged loss/misappropriation has been happened during the period 1999 to 2002. If it is so, the audit reports could have been disclosed the above factum in the year 1999 itself. But, it is not known as to whether they verified the same or not. Even assuming that it was there in the audit reports, as rightly stated by the petitioner, the alleged loss amount could not have been increased at every stage. Thus, it further fortify the submission of the petitioner that there is no exact details of loss/misappropriation amount at the hands of the respondents.

13. The order of dismissal from service has been passed by the disciplinary authority merely stating that by remission of Rs.3,74,675/-, the delinquent himself admitted his guilt and that the oral and documentary evidences prove that the petitioner has committed misappropriation. Admittedly, as stated earlier, the above sum has been recovered from the Provident Fund of the petitioner even before initiation of disciplinary proceeding. The recovery even before initiation of disciplinary proceeding clearly shows that it was made only on compulsion. Even assuming that the petitioner on his own volition remitted the amount, it cannot be a sole ground for dismissal from service. Further, the disciplinary authority, without any discussion or without assigning any reason, has dismissed the petitioner from service merely stating that the oral and documentary evidence proves that the petitioner has committed misappropriation, which cannot be legally sustained. It is needless to say that reasoning is the soul of the order. The order which does not contain any reason for conclusion can be termed to be a non speaking order.

14. The Hon'ble Supreme Court in the decision in **East Coast Railway and another vs. Mahadev Appa Rao and others**, reported in

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



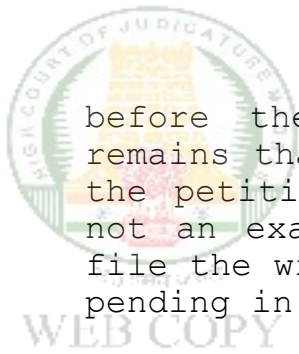
(2010) 7 SCC 678, has held in paragraph No.23 as follows:

"23.Arbitrariness in the making of an order by an authority can manifest itself in different forms. Non application of mind by the authority making the order is only one of them. Every order passed by a Public authority must disclose due and proper application of mind by the person making the order. This may be evident from the order itself or the record contemporaneously maintained. Application of mind is best demonstrated by disclosure of mind by the authority making the order. And disclosure is best done by recording reasons that led the authority to pass the order in question. Absence of reasons either in the order passed by the authority or in the record contemporaneously maintained, is clearly suggestive of the order being arbitrary hence legally unsustainable."

15. In a decision in **N.S.Jayaraman & Sons Vs. the Government of India**, reported in **2010 (2) CWC 485**, a learned Single Judge of this Court has held that reasoning is the heartbeat of every conclusion and without any reasoning, the conclusion becomes defunct and that the rationale behind is that the affected party can know why the decision has gone against him and that one of the salutary requirements of natural justice is spelling out reasons for the order made.

16. In this case, the disciplinary authority has not assigned any reason for its conclusion and therefore, this Court has no hesitation to hold that the order of the disciplinary authority is nothing but a non speaking order.

17. It is seen from the record that as against the order of the disciplinary authority, the petitioner had preferred an appeal on 10.10.2010 before the Joint Commissioner under Section 56 (2) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. As it has not been disposed by the appellate authority even after about three years from the date of filing, the petitioner has filed a writ petition in W.P.(MD).No.12460 of 2014 before this Court. A learned Single Judge of this Court, by order dated 02.09.2014, directed the first respondent to dispose of the appeal preferred by the petitioner within a period of three months from the date of receipt of copy of the order. While so, on 17.10.2014 the second respondent returned the original appeal papers presented on 01.10.2010 raising the issue of maintainability. The second respondent could have been raised the ground of maintainability, when the appeal papers were presented by the petitioner. Having failed to do so and having wasted about four years time of the petitioner, the 2nd respondent has returned the papers. Though now it is stated by the respondents that the appeal ought to have been preferred by the petitioner



before the regular Joint Commissioner at Sivagangai, the fact remains that due to the fault on the part of the second respondent, the petitioner suffered mental agony for these long years. It is not an exaggeration to say that if at all the petitioner did not file the writ petition, the appeal papers would have been still kept pending in cold storage by the 2nd respondent.

18. In view of the discussions made earlier with regard to the merits of the order passed by the disciplinary authority, now it would not be appropriate for this Court to direct the petitioner to approach the appellate authority and to exhaust the appeal remedy. Hence, this Court is inclined to set aside the impugned order passed by the disciplinary authority. When the order of the disciplinary authority itself is liable to be set aside, this Court is of the view that the order returning the appeal papers questioning maintainability need not be discussed and considered as it goes out automatically.

19. In the result, this writ petition is allowed and the impugned order dated 08.06.2010 passed by the disciplinary authority is set aside. It is stated that the petitioner has attained the age of superannuation during the pendency of the writ petition. Hence, this Court is inclined to direct the respondents to reinstate the petitioner notionally with effect from the date of his suspension and to provide all the service and monetary benefits. The respondents are further directed to refund the amount recovered from the petitioner in accordance with law. The above said exercises shall be completed within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

gcg

To

1.The Commissioner / HR & CE,
Administration Department,
Nungambakkam,
Chennai - 600 034.



2.The Joint Commissioner / Executive Officer,
Arulmigu Ramanathaswamy Temple,
Rameshwaram (P.O.),
Ramanathapuram District.

3.The Board of Trustees,
Arulmighu Ramanathaswamy Temple,
Rameshwaram (P.O.),
Ramanathapuram District.

+1 CC to M/s.V.RAGHAVACHARI, Advocate (SR-20934[F] dated 03/11/2020

+1 CC to M/s.S.RAMESH, Advocate (SR-20966[F] dated 03/11/2020)

order made in
W.P (MD) No.20357 of 2014

03.11.2020

SS (CO)
NR (08/12/2020) 9P : 6C