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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.10.2021

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.1708 of 2020

and

WMP.Nos.1979 & 1981 of 2020

K.Kamaraj

Vs.

..Petitioner

1. The Government of Tamil Nadu
rep. by its Secretary,
Hindu Religious and Charitable
Endowment Department
Chennai - 600 009.
2. The Commissioner,
Hindu Religious and Charitable
Endowment Department,
Chennai - 600 034.
3. The Joint Commissioner
Hindu Religious and Charitable
Endowment Department - Sithar Kadu
Mayiladuthurai.
4. The Executive Officer III,
Arulmigu Pasupatheeswarar Temple,
Panthanallur,
Thiruvidaimarudur Taluk,
Thanjavur District.
5. The Inspector,
Hindu Religious and Charitable
Endowment Department
Thirupananthai Division,
Thiruvidaimarudur Taluk,
Thanjavur District.
6. The Hereditary Trustee,
Arulmigu Idumbeswarar Thirukovil
Srirangarajapuram,
Thiruvidaimarudur Taluk,
Thanjavur District.



7. Thiru.Ramachandran
Executive Officer (Retd)
P-87, Kambar Street,
Housing Unit, Annalagraharam
Kumbakonam, Thanjavur District.

..Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records of the second respondent dated 27.07.2017 made in proceedings Na.Ka.No.11183/2016-1/A1 and quash the same and consequently reinstate the petitioner in service without any break in service with all attendant service benefits.

For Petitioner :: Mrs.G.Thilakavathi,
Senior Counsel for
Mr.R.Gopinath

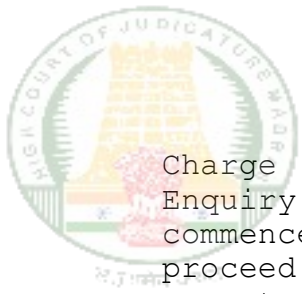
For Respondents :: Mr.V.P.R.Elamparithi
Government Advocate

ORDER

The writ petition has been filed for issuance of a Writ of Certiorarified Mandamus calling for the records of the second respondent dated 27.07.2017 made in proceedings Na.Ka.No.11183/2016-1/A1 and quash the same and consequently reinstate the petitioner in service without any break in service with all attendant service benefits.

2. The petitioner who was serving as an Executive Officer Grade III, HR & CE Department, was placed under suspension on 27.07.2017. The allegation against the petitioner is that he had failed to inform about the 6 missing idols belonging to the 5th and 6th respondents herein, though the petitioner had taken charge in the year 2013.

3. It is the case of the petitioner that one Rajagopal Venkataraman, a localite, sought permission from the petitioner to collect donations from the general public to perform welfare and religious activities for the upkeep of the 4th respondent temple. As the petitioner had refused permission he had developed personal animosity against the petitioner and filed a criminal complaint against the petitioner alleging theft of five idols belonging to the 5th respondent temple and one idol belonging to the 6th respondent temple, pursuant to which a FIR was registered on 26.07.2017. On the basis of the FIR registered, the petitioner was issued with a Charge Memo dated 27.07.2017 where in three charges were framed against the petitioner. The petitioner submitted his explanation to the



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Charge Memo on 12.10.2017. On receipt of the explanation, an Enquiry Officer was appointed and the enquiry proceedings commenced on 07.11.2017. Before the domestic enquiry could proceed further, the petitioner was unfairly and unjustly arrested on 29.11.2017 and remanded to judicial custody.

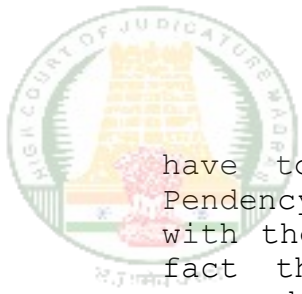
4. Learned Senior counsel for the petitioner submitted that the petitioner was later released on bail by the learned Additional Chief Judicial Magistrate, Kumbakonam by an order dated 27.02.2018 where certain conditions were imposed on the petitioner in Criminal M.P. No.219/2018 in Crime No.4 of 2017. Learned Senior counsel further submits that the continued suspension of the petitioner is cannot be justified. Learned Senior Counsel for the petitioner futher submits that purusant to the complaint, the petitioner was suspended on 27.07.2017 and he was also issued with a charge memo on the same day.

5. Learned senior counsel for the petitioner further submits that the enquiry proceedings have been initiated and the petitioner also participated in the enquiry. Though the enquiry proceedings have commenced and concluded on 21.05.2019, there has been no further progress and the petitioner is being kept under suspension. It is further submitted that criminal proceedings are pending in Crime No. 4 /17. Learned Senior counsel for the petitioner relied on the order dated 28.01.2020 passed by this Court in W.P. No. 991 of 2020 wherein under a similar circumstances, this Court interfered and granted relief to a Government Servant, who was under prolonged suspension. The learned Senior Counsel also referred to the judgments of the Honourable Supreme Court in [Ajay Kumar Choudhary V. Union of India] reported in [2015 (7) SCC 291] wherein the Supreme Court observed that there is no necessity to keep the Government Servant under suspension till the criminal proceedings are concluded.

6. Learned counsel for the respondents submitted that departmental proceedings could not be proceeded as the criminal proceedings are pending against the petitioner.

7. Heard learned senior counsel for the petitioner and the respondents.

8.The petitioner was placed under suspension on 27.07.2017. The petitioner was issued with charge memo on the same day. The petitioner has also given his explanation to the Charge Memo as early as on 12.10.2017. Neither the departmental nor criminal proceedings have progressed. In Criminal proceedings, the prosecution is required is prove the case beyond reasonable doubt where as in the disciplinary proceedings the respondents



have to give a finding based on preponderance probability. Pendency of criminal proceedings is not a bar for proceeding with the departmental disciplinary proceedings. Considering the fact that enquiry has already concluded in this case, the respondents are directed to complete the disciplinary proceedings one way or the other based on the enquiry report within a period of 6 months from the date of receipt of a copy of this order. Considering the fact that the petitioner has been placed under suspension for a considerable long period since 20.07.2017 and he was in the judicial custody for a few days, the respondents may consider revoking the order of suspension and in the light of decision of the Hon'ble Supreme Court in State of Tamil Nadu Vs. Promod Kumar IPS (2018) 17 SCC 689 pending further proceedings, the petitioner may be in a non sensitive posted in any other department when the petitioner will not get an opportunity to tamper with the evidence against him or resort to any corruption subject to availability of vacancy. The Writ Petition stands allowed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

adl

To

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+1cc to the Government Pleader, S.R.No.52182

W.P.No.1708 of 2020
and

WMP.Nos.1979 & 1981 of 2020

RSI (CO)
RGA (22/11/2021)