

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.3470 of 2021

and

WMP.No.3972 of 2021

R.Muthuswamy

... Petitioner

-vs-

1.Government of Tamil Nadu

Rep. By Principal Secretary of Commissioner
Hindu Religious Charitable Endowment Department
Fort St. George, Madras-9.

2. The Commissioner

Hindu Religious and Charitable Endowment Department
119, Uthamar Gandhi Salai, Nungambakkam High Road,
Chennai-600 076

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for records in connection with the impugned order viz. Na.Ka.No.31658/2020/L1 dated 05.11.2020 issued by the second respondent rejecting the application of the petitioner for voluntary retirement and quash the same holding that the petitioner has retired from service already on 31.10.2020 and direct the respondents 1 and 2 to settle all his retirement benefits.

For Petitioner: Mr.V.Prakash, Senior Counsel
For Mr.K.Krishnamoorthy

For Respondents: Mr.Karthikeyan (HR & CE)
Spl. Govt. Pleader

O R D E R

The petitioner has come forward with the present writ petition, seeking to quash the impugned order viz., Na.Ka.No.31658/2020/L1 dated 05.11.2020, issued by the second respondent, rejecting the application of the petitioner for voluntary retirement, holding that the petitioner has already

retired from service on 31.10.2020 and direct the respondents 1 and 2 to settle all retirement benefits.

2. The case of the petitioner is that he joined the services of the second respondent as Executive Officer Grade-III on 16.10.2000 and was subsequently, promoted as 'Executive Officer Grade-I with effect from 19.06.2016. He, after completing 20 years of service, had submitted an application for Voluntary Retirement from service on 03.08.2020, in addition to forwarding it through mail on the very same date as well as despatching it by post.

3. According to the Respondents, the application of the petitioner was received on 17.08.2020 and thereafter, on 08.09.2020, there was a communication to the petitioner, stating that he has been placed under suspension for various irregularities committed by him, during his tenure as Executive Officer Grade-I and he was also paid subsistence allowance.

4. The receipt of the communication of the petitioner by email dated 03.08.2020 for voluntary retirement, has not been refuted by the respondents and the application for voluntary retirement, which was sent by the petitioner through post on 03.08.2020 and received by the Respondents on 17.08.2020, is an extra copy of the communication. It is seen that the communication of the respondents that VRS would be considered was duly signed on 04.08.2020. In terms of Rule 56 (3)(f) of the Tamil Nadu Fundamental Rules, the Appointing Authority should take a decision on the application submitted by an employee for VRS within three months from the date of receipt of such application. For the sake of clarity, Rule 56 (3)(f) is extracted hereunder:

“(f) The appointing authority shall issue orders before the date of expiry of notice either accepting the voluntary retirement or not. Otherwise, the Government servant shall be deemed to have been retired voluntary from service at the end of period of notice:

Provided that where a Government servant under suspension or against whom disciplinary or criminal action is pending, seeks to retire voluntarily, specific orders of the appointing authority for such voluntary retirement is necessary. The appointing authority may with-hold the permission

sought for by the Government servant, if any of the conditions specified in clause (e) are not satisfied."

5. In this case, the respondents should have either accepted or rejected the application for VRS on or before 04.11.2020 and to the contrary, though the rejection order is dated 05.11.2020, it was signed only on 12.11.2020 and the same would not have been communicated to the petitioner before 12.11.2020. Merely because the letter has been drafted, approved at the office level on 05.11.2020 cannot be a ground to state that there was a rejection within a period of three months as contemplated under the Rules.

6. According to the Respondents, the petitioner involved in serious misconduct and caused loss to the Temple to the extent of approximately Rs.1,39,25,607/- (Rupees One Crore Thirty Nine Lakhs Twenty Five Thousand Six Hundred and Seven only), for which the petitioner was placed under suspension. When serious financial irregularities are said to have been committed by the petitioner, the respondents ought not to have waited till the eleventh hour to issue an order giving raise to litigation. For the sake of argument if it is taken that the respondents received the communication only on 17.08.2020, a decision could have been taken for rejection of his application immediately within time, in view of the fact that the charges framed against the petitioner are very serious in nature.

7. A circumspection of the entire facts reveal that undoubtedly, there is no rejection order passed by the respondents within a period of three months. Even though the Respondents drew the attention of this Court to the reply letter of the Commissioner dated 20.08.2020, there is not even a whisper about this letter in the impugned order dated 05.11.2020, which creates doubts in the minds of this Court that the reply letter dated 20.08.2020 has been issued for the purpose of this case. Moreover, it has been stated therein that the request of the petitioner would be duly considered, within the stipulated time and even on the said date, namely, 20.08.2020, the petitioner was facing serious charges. It is equally important to note that merely because the petitioner's VRS application is accepted, does not mean that the Respondents are restrained to initiate any action against the petitioner and it is always open to the Respondents to initiate action in accordance with law against the petitioner in terms of the relevant rules applicable to them.

8. Even though the counter affidavit filed on behalf of the first respondent does not contain any signature, it has been stated across the Bar that the concerned Officer is on leave and therefore, the draft counter has been produced. As there is a serious loss said to have been caused by the petitioner, it is open to the respondents to initiate action against the petitioner in accordance with law.

9. The petitioner in this case is said to have misappropriated several Crores of Rupees of Temple unless and such misappropriation is not at all possible in the absence of helping aid extended by his Superior Officers, who may be hand in glove with the petitioner for looting the Temple properties. This Court is unable to digest the manner in which the Respondents performed their official duties in this case and it is not known as to why they waited till the eleventh hour to pass an order. From their attitude, it can be easily inferred that they want to make the Petitioner escape from the clutches of law by throwing sand on everyone's eye in the garb of passing some order, knowing full well that such an order will not stand in the eye of law and will easily be interfered with by this Court.

10. According to mythology, God has created this world and dictated a man's destiny. May be, at the time of creation, God would have forgotten to remember that People will start looting His own temple Properties in Kaliyuga, which, according to me, has become advantageous to the Petitioner and his Superior Officers. As far as litigants are concerned, this Court is a Temple of justice, but, unfortunately, this Court is not in a position to render justice to the Temple, on account of the flaws committed by the Respondents herein.

11. In view of what is stated herein-above, this Court, with a heavy heart, is inclined to allow this Writ Petition, filed by a miscreant. Accordingly, the Writ Petition is allowed and the impugned order dated 05.11.2020, issued by the second respondent is set aside. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

arr/ar
To

1.The Principal Secretary,
Hindu Religious Charitable Endowment Department,
Government of Tamil Nadu, Fort St. George,
Chennai-600 009.

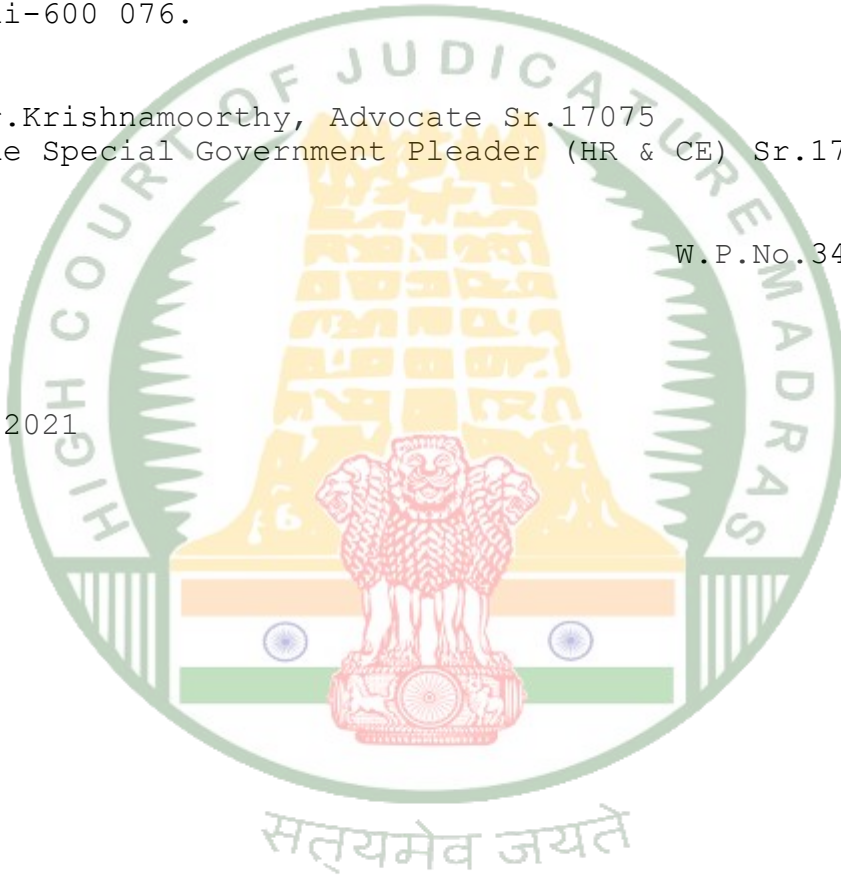
2.The Commissioner,
Hindu Religious and Charitable Endowment Department,
119, Uthamar Gandhi Salai, Nungambakkam High Road,
Chennai-600 076.

+1cc to Mr.Krishnamoorthy, Advocate Sr.17075

+1cc to the Special Government Pleader (HR & CE) Sr.17156

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srg 15/06/2021



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