

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.10.2021

Coram

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

W.A.No.1553 of 2021
and
CMP No.9788 of 2021

V.Chinnasubramanian ... Appellant /Petitioner

vs.

1.State of Tamil Nadu, rep. by
Its Secretary to Government,
Tamil Development Religious
Endowment and Information Department,
Secretariat, Chennai - 9.
Now Secretary to Government,
Tourism, Culture & Religious
Endowment Department,
Secretariat, Chennai - 9.

2.The Commissioner
Hindu Religious & Chartiable
Endowment,
Administration Department,
Chennai - 34.

... Respondents/Respondents

Prayer: Writ appeal is filed under clause 15 of the Letter Patent against the order of the learned single Judge dated 25.09.2020 made in W.P.No.11292 of 2013.

Prayer in WP.No.11292 of 2013:

Writ Petition filed under Article 226 of the Constitution of India praying to this Court to issue a writ of certiorarified Mandamus calling for the records pertaining to the order passed by the 1st respondent in G.O.(D)No.36 Tamil Development Religious Endowments and Information Department dated 15.02.2013 and quash the same and direct the Respondents to settle all the terminal benefits and confer all the consequential benefits to the petitioner.

For Appellant : Mr.Vediappan

For Respondents: Mr.K.Tippu Sultan
Government Advocate

O R D E R

(Judgement of the Court was made by S.VAIDYANATHAN, J.)

Instant writ appeal is directed against the order dated 25.09.2020 made in W.P.No.11292 of 2013.

2. According to the appellant, he joined the services of the respondents as Grade III Executive Officer through Tamil Nadu Public Service Commission (TNPSC) in 1973 and thereafter, he was promoted as Executive Officer Grade II. While the appellant was working as Grade II Executive Officer, he was posted at Uthamar Koil, Pitchandavar Koil Village, Trichy District, which was under the control of the second respondent herein. The appellant was placed under suspension on 30.12.1994 alleging that he has misappropriated the fund of the Temple to the tune of Rs.1,75,000/-, which resulted in the issuance of charge memo dated 06.01.1995. A case in Crime No.26/95 was also registered against the appellant for the alleged offences under Section 406 and 420 of IPC.

3. The appellant had preferred O.A.No.2031 of 1997, challenging the charge memo dated 06.01.1995 and there was no stay granted by the Tribunal. Thereafter, by an order dated 28.09.2001, the Tribunal held that the departmental proceedings cannot proceed till the disposal of the criminal case and that the suspension can be revoked by posting the petitioner in a non-sensitive post. According to the appellant, he was reinstated in service in September 2004. It is further stated that the appellant questioned the FIR in Crime No.26/1995 in CrI.OP.No.7724/2007, which was allowed by the Madurai Bench of Madras High Court. Thereafter a request was made by the appellant to the department to pass final orders in the departmental proceedings. As the appellant was to retire on 31.05.2008, he was allowed to go without prejudice to the departmental proceedings. Final orders have been passed vide G.O.Ms.No.36 dated 15.02.2013 imposing the punishment of reduction in the pension at Rs.450/- per month for two years and also ordered recovery to the tune of Rs.1,58,281.50 from the Death cum Retirement Gratuity and the said order was served on the appellant on 20.02.2013.

4. Aggrieved by the order, the writ petition has been preferred contending that once the FIR has been quashed, the authority has no jurisdiction to pass the impugned punishment

and that he was allowed to retire, of course, without prejudice to his rights and that there was a delay of 18 years in passing the impugned order without taking into consideration the closure of the criminal case, which reveals non-application of mind. Hence the learned single Judge ought to have interfered with the punishment imposed on the appellant. Unfortunately the learned Single Judge has dismissed the writ petition, which resulted in the present appeal.

5. The learned Government Advocate would submit that the criminal case has been closed on technical reasons and that the departmental proceedings could not be proceeded, only on the basis of the order of the Tribunal wherein the proceedings are directed to be kept in abeyance and after the disposal of the criminal case, in the departmental proceedings, punishment was effected. Since the appellant was due to retire by that time, he was allowed to retire, without prejudice to the respondent to proceed under the pension rules. He would further submit that the petitioner/appellant was trying to project that another staff is responsible for the incident in question and it is incorrect to state that the appellant has been made as the scape goat.

6. The averment of the appellant that the accountant of the Temple is alone responsible was not believed by the Enquiry officer, who came to the conclusion that the duty allotted to the Executive Officer is to deposit the income from the temple into Bank, maintain Bank's account and expenditure accounts, maintain the expenditure vouchers, etc., The next averment that Clerk is responsible for forged entries, was not accepted. Without any deposit into the bank, forged entries have been made, as if amounts were deposited into bank. The Enquiry officer came to the conclusion that the charges have been proved against the appellant in the departmental enquiry. The learned Single Judge held that quashment of FIR and the delay in passing the orders, cannot be cited for interference with the order. It is further pointed out that the learned single Judge held that criminal case and departmental proceedings can go simultaneously, but, however after the order of the criminal case, departmental proceedings have been concluded.

7. In the present case on hand, it is clearly established that there is a misappropriation committed by the appellant, which requires serious punishment, but however disciplinary authority has restricted the punishment of stoppage of pension at Rs.450/- per month for a period of two years, as he has already attained the age of superannuation.

8. Aggrieved by the order of the Disciplinary Authority, the Appellant/Writ Petitioner filed a Writ Petition in W.P.No.11292

of 2013. The learned single Judge also relied upon an Apex Court's judgment to hold that unless otherwise the punishment is shockingly disproportionate, in the conscience of this Court, this Court cannot normally interfere with the punishment of the officer.

9. It is to be noted that even though the punishment has been imposed, definitely it is not a major punishment imposed on the appellant and the order of the learned Single Judge is perfectly valid. It is seen that there is a categorical evidence that the appellant is responsible for misappropriation of Rs.1.58 lakhs and therefore, the authority apart from imposing punishment is directed to recover the amount from the appellant. This Court makes it very clear that in the light of the recent judgment of the Hon'ble Supreme Court, we cannot interfere with the punishment and if terminal benefits, gratuity are not settled, it is open to the respondents to recover that amount from the gratuity and the remaining amount can be paid (Steel Authority of India Ltd., vs. Raghbendra Singh and Others (MANU/SCOR/46090/2020) and Chairman-cum-Managing Director, Mahanadi Coalfields Limited vs. Rabindranath Choubey, reported in AIR 2020 SC 2978 . This Court also makes it very clear that the recovery ordered from the pension for a period of two years is not interfered with. The learned single Judge, has rightly held that the concept of double jeopardy in no way, stands attracted to the case on hand. Recovery is for the misappropriation committed by the appellant and the punishment is for the act of misappropriating the temple amounts.

10. In view of the above Apex Court decision, this Court cannot go into the proportionality of punishment unless it shocks its conscience. In D.Latha vs. The Director General of Police, New Delhi and Others, reported in MANU/TN/7362/2021, we had interfered with the punishment imposed on the employee therein, who was on continuous leave after the period of authorized absence and the punishment imposed was found to be shockingly disproportionate and that yardstick cannot be applied here.

11. The Writ Appeal fails and stands dismissed. No costs. Consequently, connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

dpq

To

1.State of Tamil Nadu, rep. by
Its Secretary to Government,
Tamil Development Religious
Endowment and Information Department,
Secretariat, Chennai - 9.
Now Secretary to Government,
Tourism, Culture & Religious
Endowment Department,
Secretariat, Chennai - 9.

2.The Commissioner
Hindu Religious & Charitable
Endowment,
Administration Department,
Chennai - 34.

+1cc to M/s.C.S.Associates, Advocate, S.R.No.51883
+1cc to the Government Pleader, S.R.No.52342

W.A.No.1553 of 2021

GPL(CO)
CB(01/02/2022)