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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.09.2021

CORAM

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

W.A.NO.2455 OF OF 2021
AND
CMP.NO.15760 OF 2021

The Joint Commissioner/Executive Officer,
Arulmighu Meenakshi Sundareswarar Temple,
Madurai - 625001

...Appellant

Vs.

1.V.Gnansundaram

...1st Respondent / Writ Petitioner

2.The Special Commissioner & Commissioner,
Hindu Religious and Charitable
Endowments Admn.Dept.,
Chennai - 600034.

3.The Joint Commissioner,
H.R.&C.E., Admn.Dept.,
Madurai.

...Respondents 2 & 3 / Respondents 1 & 2

PRAYER:- Writ appeals are filed under clause 15 of the Letter Patent to set aside the judgement dated 15.12.2020 in W.P.No.35467 of 2004 on the file of this honourable court.

Prayer in W.P.No.35467 of 2004 : Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorarified Mandamus to call for the records in R.P.No.43 of 2001, D2 dated 07.11.2003 on the file of the first respondent herein viz. The Special Commissioner, HR & CE Admn. Dept., Chennai-600034 and quash the same insofar as it is against the petitioner concerned with a consequential direction directing the respondents to pay the back wages from the date of suspension to till the date of reinstatement.

For Appellant

: Mr.V.R.Shanmuganathan
Senior Counsel for
Mr.S.Yashwanth



For Respondents : Mr.V.Prakash
Senior Counsel for R1
Mr.K.V.Sajeev Kumar
Government Counsel for R2 & R3

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J U D G M E N T

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

Instant writ appeal is directed against the order dated 15.12.2020 made in W.P.No.35467 of 2004.

2. The writ appeal has been filed challenging the proceedings dated 07.11.2003 whereby the first respondent/second respondent herein denied the backwages from the date of suspension till the date of reinstatement and the same was allowed by this Court. The learned counsel for the appellant submitted that the employee was involved in a serious misconduct for which he was placed under suspension on 21.07.1999 and after following due process of law i.e., after conducting the enquiry he was dismissed from service on 25.10.2000. Aggrieved by the dismissal order a revision was filed which was allowed by the authorities concerned, but however, backwages from the date of suspension namely 21.07.1999 till the actual date of reinstatement dated 04.12.2003 was deprived.

3. According to the appellant, the employee was placed under suspension and after conducting departmental enquiry, he was dismissed from service originally on 22.12.1999. The order was interfered with and the matter was remanded and fresh orders have been passed by the authorities and the dismissal order came into force with effect from 25.10.2000. The learned counsel for the appellant stated that the employee has approached this Court by filing W.P.Nos.2374 and 2375 of 2000 questioning the jurisdiction of the authority to place the writ petitioner under suspension and also the consequential punishment. This Court came to the conclusion that in terms of Section 56 (1) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, trustees alone got the power to suspend the employees and that the order passed by the authority was one without jurisdiction. As the employee is said to have involved in a serious offence and that the ratification for conversion as an approval of the Executive Officer was declined by the Court, the suspension order, though not interfered with, the punishment order was set aside and the matter was remanded to the authorities to give fresh opportunity to the writ petitioner to submit an explanation and W.P.No.5375 of 2000 was dismissed. He further submitted that on remand, the authorities interfered with the order of punishment and passed the following order.



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10) On proper consideration of the facts and circumstances of the case as detailed above, it is viewed that the punishment of dismissal from service awarded to the petitioner is not commensurate with the charges levelled, which have also not been absolutely proved beyond doubt. I am therefore of the view that the impugned order passed by the Joint Commissioner and the order of dismissal passed by the Chairman, Board of Trustees of Arulmigu Meenakshi Sunderaswarar Temple, Madurai on 25.10.2000 are liable to be set aside and are accordingly set aside. The Petitioner will be entitled to reinstate from the date of his joining duty. The period of absence from the date of his removal till the date of his joining shall be treated as leave to which he will be eligible. If the petitioner has no leave to his credit, to vast extent, the remaining period shall be treated as leave on loss of pay. In fine, the Revision Petition filed U/S.211 of the Act be and is hereby allowed.

4. The Appellant stated that the employee/writ petitioner was initially suspended and thereafter dismissed from service. Consequent to the interference with the dismissal order, the entire benefits have been extended to the employee, including the terminal benefits and that the employee would not be entitled to backwages for the period mentioned supra as the order of the authority is based on analysis of evidence.

5. Per contra the first respondent would submit that the Writ petitioner/first respondent was appointed as a Plumber in the Temple and based on the qualification, he was promoted as an Electrician and he would further submit that during the pendency of the Writ Petition, he has attained the age of superannuation. He would further submit that a charge memo was issued after placing the Writ Petitioner under suspension and dismissal order was passed after due enquiry. The writ petitioner has earlier approached this Court and the order of punishment was interfered with and not the suspension, and after conducting an enquiry, once again, he was dismissed from service with effect from 25.10.2000.

6. A reading of the order of the authority would make it very clear that there was no misappropriation of funds and that there was no fault on the first respondent/Writ Petitioner. The learned Single Judge has observed as follows:-

7. In view of the above facts and circumstances of this case, it is clear that the first respondent in his order had clearly observed and stated that there was no misappropriation of funds and there was no fault on part of the petitioner. Further, the counter affidavit



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filed by the third respondent was signed on 27.09.2017 itself but the same is produced before this Court only on 09.04.2019. The Writ Petition was filed in the year 2004 and though, the charges levelled against the petitioner were disapproved by the first respondent, the same is pending till now. The respondents cannot take advantage of the letter given by the petitioner after 8 years and claim that the petitioner has given up his rights, as the first respondent had given a clear finding that no charges were proved against the petitioner and he did not abscond from his duty. The third respondent has not challenged the order passed by the first respondent. The order of the first respondent attained finality. Therefore, this court is not accepting the contention of the third respondent. Accordingly, the benefits of backwages from the date of suspension till the date of reinstatement, to the petitioner, should be extended and the same is extended. The respondent is directed to pay the backwages of the petitioner from the date of suspension of his service till his reinstatement in service.

7. He further contended that the order of the learned Single Judge is perfectly correct and need not be interfered with.

8. In reply, the appellant would submit that the employee has given a representation on 21.05.2008 that he will not claim backwages and the writ petition No.27867 of 2006 seeking to quash the proceedings dated 01.03.2006 and for the consequential direction to pay backwages from the date of suspension namely 21.07.1999 to 24.10.2000 was withdrawn on 18.09.2008. When that being the case, having given an undertaking, the employee is not entitled for the relief of backwages for the period in question.

9. In response to the above the first respondent/writ petitioner would submit that even though the very same plea was taken by the appellant herein before the learned Single Judge, this communication was not produced to him and that apart, the employee has been driven from pillar to post and he had to file contempt petition to get the order of promotion due to him. Hence no mercy shall be shown to the appellant and the writ petition was rightly allowed by the learned single Judge.

10. Heard both parties.

11. It is not in dispute that the employee was a Plumber and placed under suspension on 21.07.1999 for various charges he was initially dismissed from service on 22.12.1999 and this order was set aside by this Court in W.P.2374 and 2375 of 2000 but however, the suspension order was retained as such.



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6. Insofar as W.P.No.2375 of 2000 is concerned, it is admitted that under section 56 (1) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. It is the trustees alone who have got the power to control and suspend the employees of the temple are therefore, there is force in the learned counsel for the petitioner that the order is one passed without authority. Counsel for the temple Mr.P.Gopalan submitted that the suspension order passed on 21.07.1999 was approved immediately in the meeting convened by the trustees of the temple on 02.08.1999. The decision states that the petitioner has been involved in serious offences against the properties of the temple and therefore, in the interests of administration, the suspension of the petitioner by the Executive Office has been ratified.

7. In as much as this ratification was done immediately without any delay and that the temple authorities have taken into account the nature if the allegations for the purpose of placing the petitioner under suspension, the ratification has to be treated as an approval of the action taken by the Executive officer. Hence I am not inclined to interfere with the order of suspension in as much as the petitioner is given a fresh opportunity to submit his explanation and as the order or punishment has been given opportunity to submit his explanation. In the above circumstances, writ petition No.5375 of 2000 is dismissed.

8. Petitioner is entitled to the subsistence allowance as provided for under the Rules till final order is passed against him.

12. On remand, after enquiry, once again a dismissal order dated 25.10.2000 was passed. In revision, the department allowed the claim of the writ petitioner/first respondent herein but however deprived the back wages from the date of suspension 21.07.1999 till the date of reinstatement namely 04.12.2003. The contention of the appellant that the order of suspension was not set aside and that the writ petitioner is not entitled to any allowance much less the one claimed by him in the present Writ Petition cannot be accepted. Once the order is set aside, the employee will be put back to the original place as if there is no order of suspension. This Court has held that charges have not been established based on the orders passed by the Revision Authority dated 07.11.2003.

13. The next submission of the learned counsel for the appellant is that the employee has not actually worked and hence he will not be entitled to back wages based on the principle of



"No Work No Pay". This contention does not hold good for the reason that once the order of dismissal is held to be bad and more so the charges have not been established and that the employee, having been placed under suspension, he has to be paid the entire backwages due to him. If there was any punishment imposed other than the dismissal or discharge or removal and he was reinstated in service, then it is for the authorities to decide as to how the period of suspension will have to be treated. In this case even though the charges have not been proved, the authority ought not to have come to the conclusion that the entire backwages for the period of suspension till the date of dismissal have got to be deprived, which cannot be accepted by this Court and rightly, the learned Single Judge has interfered with the order impugned in the writ petition. With regard to the undertaking letter dated 21.05.2008, submitted by the writ petitioner, it has been stated by the respondent/ Writ Petitioner that the said undertaking letter was not brought to the attention of the learned Single Judge while hearing W.P.No.27867 of 2006, which was subsequently dismissed as withdrawn. Thus, there is a categorical evidence that the writ petition in which, such undertaking was alleged to be given, and therefore, the issue in that writ petition no longer subsists. However, this Court makes it very clear that the employee is not entitled to allowance from 21.07.1999 to 24.10.2000 and not thereafter. It is argued on the side of the Respondent that the letter was given on the presumption that he would be granted promotion, but, no promotion was given to him.

14. In response, Mr. Shanmuganathan, learned Senior Counsel appearing for the appellant submitted that the employee has been given all benefits, including promotion with effect from 15.09.2006. In view of the undertaking given by the employee, the backwages for the period from 21.07.1999 to 24.10.2000 alone need not be paid and for the rest of the period, the employee will be entitled to all the monetary benefits that has been deprived to him. If any promotional benefits have not been granted to the employee as contended by the respondent/Writ Petitioner, it is open to him to claim the same in accordance with law.

15. In view of the above submission, the entire monetary benefits, except for the period in question mentioned supra has got to be extended within a period of three months from the date of receipt of a copy of this judgment, failing which, it will carry interest at the rate of 6% per annum from the date of the Writ Petition. If any provident fund amount is payable to the employee, as the backwages have been ordered only now, the same will have to be remitted within 30 days, failing which, the EPFO is entitled to demand the rate of interest as prescribed.



16. With the above observation the writ appeal is ordered to the extent indicated above. No costs. Consequently connected miscellaneous petition is also closed.

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Sd/-
Assistant Registrar (CS-VII)

// True Copy //

Sub Assistant Registrar

dpq

To

1.The Special Commissioner & Commissioner,
Hindu Religious and Charitable
Endowments Admn.Dept.,
Chennai - 600034.

2.The Joint Commissioner,
H.R.&C.E., Admn.Dept.,
Madurai.

+1cc to Mr.K.Sudalaikumar, Advocate SR.No.49836

+1cc to the Government Pleader SR.No.50479

W.A.No.2455 of of 2021
and CMP.No.15760 of 2021

SVI (CO)
RVM(21/12/2021)