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WA.[MD]No.1055 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.06.2021

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

AND

THE HONOURABLE MRS.JUSTICE S.ANANTHI

W.A.[MD]No.1055 of 2021

and

C.M.P.[MD]No.4740 of 2021

The Managing Trustee
Arulmigu Kottai Mariamman Thirukovil
West Car Street, Dindigul Town,
Dindigul District.

...Appellant

Vs.

1.The Joint Commissioner
Hindu Religious and Charitable Endowment Department,
Madurai.

2.V.S.Sathalingam

... Respondents

PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent, praying to set aside the order passed in W.P.(MD)No.1175/2019, dated 31.01.2019, on the file of this Court.

Prayer in WP(MD). 1175/ 2019 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the 2nd respondent in his proceedings Nil dated 07.07.2018 and quash the same as illegal and consequently to direct the 2nd respondent to pay subsistence allowance to the petitioner in the light of order passed on 06.03.2018 by the 1st respondent setting aside the dismissal from service.

For Appellant : Mr.G.Muruggan

For 1st Respondent : Mr.R.Baskaran
Standing Counsel for Government

For 2nd Respondent : Mr.V.P.Rajan

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



JUDGMENT

[Judgment of the Court was delivered by **T.S.SIVAGNANAM, J.**]

We have heard Mr.G.Muruggan, learned Counsel appearing for the appellant and Mr.R.Baskaran, learned Standing Counsel for Government appearing for the first respondent.

2. With the consent on either side, the writ appeal itself is taken up for final disposal.

3.This appeal filed by the Managing Trustee of the Arulmigu Kottai Mariamman Thirukovil, Dindigul, is directed against the order, dated 31.01.2019 passed in W.P.(MD)No.1175 of 2019.

4.The facts disclosed that the second respondent / writ petitioner was proceeded departmentally and an order of removal from service dated 14.05.2006, was passed against him. The second respondent challenges the said order by filing an appeal before the Joint Commissioner, Hindu Religious and Charitable Endowments Department, Madurai in A.P.No.01 of 2006. For 13 long years, the appeal was not taken up for disposal and ultimately, by order, dated 06.03.2018, the Joint Commissioner, allowed the appeal, set aside the order of removal and remanded the matter for fresh consideration. It is thereafter, the petitioner has made a request for payment of subsistence allowance. The legal position is that once an order of removal from service is set aside, it is deemed that the second respondent / writ petitioner is an employee and since he has not been allowed to work, the *status-quo* which was prevailing prior to the order of removal from service should continue i.e., he should continue to be placed under suspension till the matter is concluded in the denovo proceedings.

5. Furthermore, we note that the learned Single Bench has directed payment of subsistence allowance only from the date, on which, the Joint Commissioner, passed an order on 06.03.2018.

6.Mr.G.Muruggan, learned counsel appearing for the appellant submitted that the second respondent / writ petitioner should establish that he was not gainfully employed during the said period. This issue was never canvassed by the appellant at any earlier point of time. In any event, the appeal was kept pending for 13 long years, for no fault committed by the second respondent and therefore, we find that the order and direction issued by the learned Single Bench is perfectly justified and calls for no interference.

7.Accordingly, the writ appeal is dismissed and the order and direction issued by the learned Single Bench is directed to be



complied with by the appellant within a period of two weeks from the date of receipt of the copy of this Judgment. No costs. Consequently, connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar (AE)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

RM/rmi

Note In view of the present lock down
: owing to COVID-19 pandemic, a web
copy of the order may be utilized for
official purposes, but, ensuring that
the copy of the order that is
presented is the correct copy, shall
be the responsibility of the
advocate/litigant concerned.

To

The Joint Commissioner
Hindu Religious and Charitable Endowment Department,
Madurai.

JUDGMENT MADE IN
W.A. [MD]No.1055 of 2021
02.06.2021

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KM(15.06.2021) 3P 2C