



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.12.2021
CORAM

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P(MD) No.7257 of 2020
& WMP(MD)Nos.6694 to 6696 of 2020

R.Patchaiappan

... Petitioner

Vs.

1.The Additional Chief Secretary,
Tourism, Culture and Religious Endowment Department,
St. George's Fort,
Chennai

2.The Principal Secretary cum Commissioner,
Hindu Religious Endowment Board,
Mahatma Gandhi Road,
Nungambakkam,
Chennai-600 034

3.T.Anitha,
W/o.V.Vijay Shankar,
No.21B, Shanmugar House,
Sriram Nagar Main Road,
Uthangudi,
Madurai -625 107

... Respondents

R3 impleaded as per the order of this Court
dated 01.12.2021 in WMP(MD)No.9155/2020 in WP(MD)No.7257 of 2020)

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for records relating to the paragraph no.3 of the impugned suspension order dated 11.07.2019 in G.O.(D)No.91, Tourism, Culture and Religious Endowments(RE 2-2) Department passed by the first respondent and the consequential impugned order dated 14.11.2019 in Letter no.10492/RE 2-2/2019-6 passed by the first respondent and quash the same and consequently, direct the first respondent to pass orders fixing the place of the petitioner's headquarters during the period of suspension at Madurai and direct him to pay the subsistence allowance from the date of the suspension of the petitioner.



For Petitioner : Mr.J.Barathan, Advocate

For Respondents : Mr.S.Shaji Bino, Spl.GP for RR1&2

Mr.K.R.Laxman for R3

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ORDER

Heard Mr.J.Barathan, learned counsel appearing for the petitioner and Mr.S.Shaji Bino, Special Government Pleader appearing for the respondents 1 & 2 and Mr. K.R.Laxman, learned counsel appearing for the newly impleaded third respondent.

2.This Writ Petition has been filed, questioning paragraph no.3 in the order of suspension passed by the first respondent in G.O.(D)No.91, Tourism, Culture and Religious Endowments(RE 2-2) Department dated 11.07.2019 and the consequential impugned order dated 14.11.2019 in Letter no.10492/RE 2-2/2019-6 passed by the first respondent, quash the same and consequently, direct the first respondent to pass orders fixing the place of the petitioner's headquarters during the period of suspension at Madurai and also direct him to pay the subsistence allowance from the date of the suspension of the petitioner.

3.Today, when the matter is taken up for hearing, the learned counsel for the petitioner submitted that the petitioner has been paid with subsistence allowance and therefore, he is instructed to withdraw the Writ Petition. He has made an endorsement in the petition as follows:

' 'Since, the respondents are paying the subsistence allowance to the petitioner, this Writ Petition is hereby withdrawn without prejudice to his contentions.' '

4. Recording the submission of the learned counsel for the petitioner and also the endorsement made, this Writ Petition is dismissed as withdrawn.

5.Mr.K.R.Laxman, learned counsel for the newly impleaded third respondent made a mention before this Court that this Writ Petitioner has challenged paragraph no.3 of the impugned order of suspension passed by the first respondent directing him to stay at Nagapattinam instead of Madurai, while this petitioner was placed under suspension.

6.This Court, while entertaining this Writ Petition, passed the following order:

' '4.The petitioner continues to be under suspension. Though the petitioner's headquarters has been changed from Madurai to Nagapattinam, he continues to stay in Madurai. According to the



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petitioner, the shifting of headquarter to Nagapattinam was contrary to the Rule 54B(4) of the Fundamental Rules which reads as under:-

''...4.The headquarters of a Government servant under suspension is his last place of duty. A Government servant under suspension may change his headquarters provided the competent authority who has placed him under suspension is satisfied that such a course will not put Government to any extra expenditure like grant of travelling allowance.''

5.The learned Special Government Pleader appearing for the respondents submits that the petitioner was involved in sexual harassment of woman employee/officer of the second respondent and it is under these circumstances, the petitioner's headquarters has been changed from Madurai to Nagapattinam. His presence in Madurai will be intimidating to the said officer. He further submits that the transfer of the headquarters of the petitioner is in tune with the provisions of the Protection of Women from Sexual Harassment at Work Place (Prevention, Prohibition and Redressal) Act, 2013.

6.He also submits that this Writ Petition is liable to be dismissed as it is not open for the petitioner to challenge the suspension order for the second time. It is further submitted that since the petitioner has not complied with the direction of the respondent, the petitioner is not entitled to the subsistence allowance as the petitioner has not reported in Nagapattinam headquarters and is staying in Madurai. He further submits that only if the petitioner had reported in the Nagapattinam headquarters, the question of payment of subsistence allowance will be released.

7.I have considered the arguments advanced by the learned counsel for the petitioner and the learned Special Government Pleader appearing for the respondents. The respondents have not paid the subsistence allowance to the petitioner. They have also not made any official accommodation for the petitioner in Nagapattinam.

8.Considering the fact, the country is reeling under the Covid-19 pandemic and considering the fact that the petitioner cannot get an alternate accommodation himself at this point of time, I am inclined to direct the respondents to pay the arrears



period of two weeks from the date of receipt of a copy of this order.''

7.The petitioner is also getting the subsistence allowance pursuant to the interim order of this Court. However, he did not comply with the orders impugned in this Writ Petition and he is still staying at Madurai only.

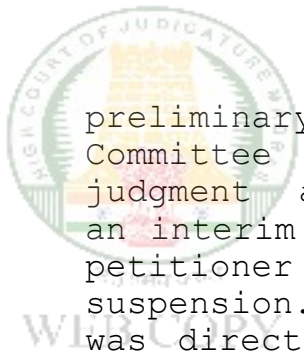
8.Mr.S.Shaji Bino, learned Special Government Pleader submits that pursuant to the order of this Court dated 03.07.2020, the respondents are paying subsistence allowance to the petitioner.

9.The learned counsel for the petitioner submits that now the subsistence allowance is also enhanced to 75% and the petitioner is now receiving subsistence allowance @ 75%. The order of suspension was passed on 11.07.2019. From 2021, i.e. for the past two years and three months, there is not even a single allegation against the petitioner. He would further submit that now the respondents are paying subsistence allowance @ 75% per month.

10.The learned Special Government Pleader further submits that a charge memo has also been issued to the petitioner, enquiry officer has also been appointed. However, by referring to the present Covid -19 situation, the petitioner has not appeared for the enquiry. Since, the respondents have raised certain objections on withdrawing this Writ Petition, the learned counsel for the petitioner sought permission of this Court to raise his contentions since the petitioner has challenged this Writ Petition only on the ground of Rule 54 B(4) of the Tamilnadu Fundamental Rules. The Rule clearly provides that the suspended employee is supposed to stay in the headquarters and this petitioner at the time of suspension, was posted as Joint Commissioner at Madurai and therefore, the headquarters is only at Madurai. However, against the Fundamental Rules, the petitioner was directed to be present at Nagapattinam without providing any alternative arrangement for him at Nagapattinam and therefore, he filed the present Writ Petition. However, since the petitioner is now paid with subsistence allowance, as per the instructions of the petitioner, the learned counsel for the petitioner has made the above endorsement and withdrawn the Writ Petition.

11.This Court paid its anxious consideration to the rival submissions made and perused the materials placed on record.

12. The petitioner was placed under suspension with certain serious allegations that on 29.06.2019, when the petitioner and the defacto-complainant discharged their duties at Sathuragiri Hills, Saptur, Madurai District, the petitioner used his mobile phone and Pen Camera for recording the bathing taken by the defacto-complainant and one Prema who was a typist and NMR employee in the Service Revenue Department Office, Madurai. Based on this allegation, a



preliminary enquiry was ordered through the Internal Complaints Committee constituted as per the guidelines issued by the Visaka judgment and the Internal Complaints Committee has also submitted an interim report that there is *prima facie* material as against the petitioner and accordingly, the petitioner was placed under suspension. Since allegations are serious in nature, the petitioner was directed to stay at Nagapattinam in stead of Madurai. The conditions of service cannot be treated equally at all circumstances and this Court cannot fault with the said condition imposed by the respondents. Considering the nature of allegations made against the petitioner, the authority thought it appropriate to direct the petitioner to stay at Nagapattinam in order to avoid any further Compliation between the petitioner and the third respondent. The petitioner has also filed this Writ Petition only on this ground that the condition no.4 is as against Rule 54-B(4) of Tamil Nadu Fundamental Rules and the petitioner has also obtained interim an order on 03.07.2020, for payment of subsistence allowance. Rule 12 of the Sexual Harassment of Women at Workplace(Prevention, Prohibition and Redressal) Act, 2013, enables the Department to place the delinquent in any place other than the place where he has been originally posted. This Fundamental Rule is a General Rule whereas, the Sexual Harassment of Women at Workplace(Prevention, Prohibition and Redressal) Act, 2013 being the Special Act, will prevail over the General Rule. Further, Rule 54-B(4) of the Fundamental Rules is extracted as under:

"54-B(4). The headquarters of a Government servant under suspension is his last place or duty. A Government servant under suspension may change is headquarters provided the competent authority who has placed him under suspension is satisfied that such a course will not put Government to any extra expenditure like grant of travelling allowance."

As per the proviso to the Rule, the competent authority is entitled to change the headquarters, if he is so satisfied and therefore, this petitioner is not having any merit in this Writ Petition.

13.When, this Writ Petition was taken up for hearing on 29.11.2021, this Court directed the learned Special Government Pleader to ascertain the stage of the enquiry contemplated against the petitioner and directed to be listed this case on 01.12.2021 under the caption "'for orders'". However, even before the matter is taken up for hearing, a mention was made in the morning and based on the endorsement made by the learned counsel for the petitioner, this Writ Petition was allowed to be dismissed as withdrawn. However, now this matter is taken up again at the instance of the third respondent earlier order is recalled and in the light of the above discussion, this Writ Petition is dismissed on merits, with a further direction to the second respondent to ensure that the enquiry contemplated



against the petitioner to be concluded within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

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Sd/-

Assistant Registrar(CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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:

1.The Additional Chief Secretary,
Tourism, Culture and Religious Endowment Department,
St. George's Fort,
Chennai

2.The Principal Secretary cum Commissioner,
Hindu Religious Endowment Board,
Mahatma Gandhi Road,
Nungambakkam,
Chennai-600 034

+1 CC to M/s.T.R.JEYAPALAM, Advocate (SR-36918[F] dated 02/12/2021)

+1 CC to M/s.K.R.LAXMAN, Advocate (SR-37117[F] dated 02/12/2021)

+1 CC to M/s.SPL GP (SR-36990[F] dated 02/12/2021)

W.P(MD)No.7257 of 2020

Date:01.12.2021

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