BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.10.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.10320 of 2021
and
W.M.P.(MD)No.7987 of 2021

T.Anitha ... Petitioner

Vs.

1.The Additional Chief Secretary
to Government,
Hindu Religious and Charitable
Endowments Department,
Secretariat, St.George Fort,
Chennai – 600 009.

2. The Secretary,
Tamil Nadu Tourism & Hindu Religious
and Charitable Endowments Department,
State of Tamil Nadu,
St. George Fort, Chennai – 600 009.

3. The Deputy Secretary,
Tamil Nadu Public Service Commission,
Chennai – 600 003.

4. The Principal Secretary / Commissioner,
Hindu Religious and Charitable Endowments Department,
119, Uthamar Gandhi Salai,
Thousand Lights West,
Nungambakkam,
Chennai – 600 034. ... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the impugned order of punishment passed by the 4th respondent under Se.Mu.Na.Ka.No.16728/2019-1/B1, dated 11.03.2020, which was confirmed by the Appellate Authority under impugned letter dated 16.10.2020 under Letter No.3198/TCT-C2/2020-2, on the file of the 3rd respondent and its consequential impugned Government Order under G.O(P).No.7 dated 07.01.2021, on the file of the 2nd respondent and to quash the same as illegal.

For Petitioner : Mr.K.R.Laxman

For Respondents: Mr.J.Ashok,
Additional Government Pleader.

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<u>O R D E R</u>

Heard the learned counsel on either side.

2.The writ petitioner joined the Hindu Religious and Charitable Endowments Department as Assistant Commissioner in the year 2011. The petitioner was posted as Executive Officer of Arulmighu Koodal Alagar temple, Madurai, on 01.12.2014. She went on maternity leave on

14.10.2017 and resumed her duty on 27.07.2018. She continued to be the Executive Officer of the said temple till 17.06.2019. While so, she was issued with charge memo dated 20.12.2019. The charge memo contained three articles of charge. In sum and substance, the department accused the petitioner that she was negligent in the discharge of her duties and that she had facilitated a temple staff by name R.Sabarinathan who was also discharging additional duty of Cashier to temporarily misappropriate the contributions made by the employees towards their EPF accounts. According to the charge memo, R.Sabarinathan who was in-charge of remitting the EPF contributions since 2013 had rotated the contribution funds. Since the petitioner had failed to oversee the same, she was also liable to be proceeded against.

3.The charge memo was issued under Rule 17(a) of Tamil Nadu Civil Services (D&A) Rules 1955. The petitioner offered her explanation dated 06.01.2020. After considering the same, the disciplinary authority vide Order dated 11.03.2020 held that the charges framed against her stood proved and imposed the punishment of stoppage of increment without cumulative effect for a period of two years. Aggrieved by the same, the petitioner filed an appeal before the Government. By the impugned G.O.(P)No.7 dated 07.01.2021, the appellate authority confirmed the decision of the disciplinary authority and dismissed the appeal. Challenging the same, this writ petition has been filed.

4.The learned counsel appearing for the writ petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to set aside the impugned orders and allow the writ petition as prayed for.

5.The respondents have filed a detailed counter affidavit. The learned Additional Government Pleader took me through its contents. According to the learned Additional Government Pleader, if the writ petitioner had been sufficiently vigilant, she could have found out the misappropriation committed by the temple staff. According to him, lack of supervision would also constitute an act of misconduct and amount to lack of devotion to duty. He drew my attention to Rule 20(3)(iv) of Tamil Nadu Government Servants' Conduct Rules 1973. He would further add that the procedure to be followed in cases of minor penalty proceedings as per Rule 17(a) of the Tamil Nadu Civil Services (D&A) Rules 1955 does not contemplate holding of any enquiry. In this case, the impugned order was not straightaway passed. The petitioner was given an opportunity to give representation. The writ petitioner availed the said opportunity. The explanation given by the petitioner was not found to be acceptable by the disciplinary authority. This was also duly confirmed by the appellate authority also. He submitted that the impugned order does not call for any interference and he pressed for dismissal of the writ petition.

6.I carefully considered the rival contentions and went through the materials on record.

7.The temple employees are also governed by The Employees' Provident Funds and Miscellaneous Provisions Act, 1952. The contribution made by the employees as well as the employers will have to be credited to their respective

Provident Fund accounts every month. In the institution in question, it has been the practice to issue self payee cheque to the employee concerned who would go to the bank and encash the same and then go to the EPF office and credit the amount in cash. This practice has been going on since 2004 onwards. The writ petitioner probably did not want to upset the existing system and allowed it to continue.

8.The first charge reads that the writ petitioner failed to create net banking arrangements in the matter of remittance of PF contribution. No material has been placed before me that the writ petitioner was given any such instruction and that she did not comply with the same. If the instruction of the superior officer is not obeyed by the subordinate officer, then it would certainly amount to misconduct. But in this case, no such instruction was given to the writ petitioner.

9.More than anything else, it was the petitioner who had found out the criminal act committed by the concerned temple staff. The petitioner had informed the Joint

Commissioner, Madurai, vide communication dated 26.01.2019. This was taken up by the higher authorities. After getting their clearance, the petitioner lodged a criminal complaint before Thideer Nagar police station leading to registration of Crime No.94 of 2019. A copy of the said First Information Report has been placed before me. It is submitted by the learned counsel appearing for the petitioner that after the registration of the said First Information Report, R.Sabarinathan was arrested. Later, an enquiry was conducted and he was also removed from service. The entire misappropriated amount was also duly recovered from him. The institution has not suffered any loss on this account.

10.The petitioner's counsel drew my attention to the decision reported in ***(1979) 2 SCC 286 (Union of India and Others V. J.Ahmed)***. The Hon'ble Supreme Court in the aforesaid decision held that only if there is an ill-motive, it would amount to misconduct and a single act of omission or error of judgment would ordinarily not constitute misconduct unless it results in serious or atrocious consequences. The act of negligence would amount to misconduct only if the employee concerned can be attributed with some ill-motive. In this case, such an ill-motive is absent. On the other hand, it was the petitioner who discovered the fraud which was going on for several years. As already pointed out, it is not as if the petitioner introduced the system of issuing the self-payee cheque to R.Sabarinathan. Even from the charge memo itself, one can note that R.Sabarinathan was acting as cashier and remitting EPF contribution from 2013 onwards. Such a system has been in vogue from the year 2004 onwards. The petitioner joined the institution only on 01.12.2014.

11.The learned counsel appearing for the petitioner brings to my attention yet another fact. The petitioner was on maternity leave from 14.10.2017 to 27.07.2018. During this period, one Marimuthu was the Executive Officer of the temple. He also issued similar self-payee cheques to R.Sabarinathan. It has been enclosed in the typed set of papers. Marimuthu did not find out the fraud. Yet the department did not proceed against the said Marimuthu. Having rightly not taken any action against Marimuthu, the department could not have selectively targeted the petitioner alone. In this regard, the learned counsel appearing for the petitioner relied on the decision reported in ***(1997) 10 SCC 779 (M.Raghavelu v. Government of Andhra Pradesh and Another)***. The Hon'ble Supreme Court in the aforesaid decision held that when one person is acquitted, co-delinquents are also entitled to acquittal. Acquitting one and punishing the other amounts to discrimination. In ***Man Singh vs. State of Haryana and Others ((2008) 8 MLJ 518 (SC))*** , the Hon'ble Supreme Court held as follows:

> *"18. In view of the factual backdrop and the above-stated statement of HC Vijay Pal, we are of the opinion that the respondents cannot be permitted to resort to selective treatment to the appellant and HC Vijay Pal, who was involved in criminal case besides departmental proceedings. HC Vijay Pal has been exonerated by the appellate authority mainly on the ground of his acquittal in the criminal case, whereas in departmental proceedings he has been found guilty by the disciplinary authority and was awarded punishment for serious misconduct committed by him as police personnel.*
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> *19. We may reiterate the settled position of law for the benefit of the administrative authorities that any act of the repository of power*

whether legislative or administrative or quasi-judicial is open to challenge if it is so arbitrary or unreasonable that no fair minded authority could ever have made it. The concept of equality as enshrined in Article 14 of the Constitution of India embraces the entire realm of State action. It would extend to an individual as well not only when he is discriminated against in the matter of exercise of right, but also in the matter of imposing liability upon him. Equal is to be treated equally even in the matter of executive or administrative action. As a matter of fact, the doctrine of equality is now turned as a synonym of fairness in the concept of justice and stands as the most accepted methodology of a governmental action. The administrative action is to be just on the test of 'fair play' and reasonableness. We have, therefore, examined the case of the appellant in the light of the established doctrine of equality and fair play. The principle is the same, namely, that there should be no discrimination between the appellant and HC Vijay Pal as regards the criteria of punishment of similar nature in departmental proceedings. The appellant and HC Vijay Pal were both similarly situated, in fact, HC Vijay Pal was the real culprit who, besides departmental proceedings, was an accused in the excise case filed against him by the Excise Staff of Andhra

Pradesh for violating the Excise Prohibition Orders operating in the State. The appellate authority exonerated HC Vijay Pal mainly on the ground of his acquittal by the criminal court in the Excise case and after exoneration, he has been promoted to the higher post, whereas the appeal and the revision filed by the appellant against the order of punishment have been rejected on technical ground that he has not exercised proper and effective control over HC Vijay Pal at the time of commission of the Excise offence by him in the State of Andhra Pradesh. The order of the disciplinary authority would reveal that for the last about three decades the appellant has served the Police Department of Haryana in different capacity with unblemished record of service."

12.Though the punishment imposed on the petitioner is termed as minor penalty, it does have a very serious and adverse consequence on her career. The charge memo was issued on 20.12.2019. From the date of issuance of charge memo till the final order is passed and probably for two more years, the petitioner's promotional prospects would stand stalled. That being the case in the very nature of things, the matter calls for an enquiry. Passing a summary order of this nature constitutes a clear violation of principles of natural justice.

13.The order of the appellate authority is also not satisfactory. The disciplinary authority had punished the petitioner after holding the charges are proved. The petitioner has raised a host of contentions. None of them have been considered. In a cryptic and laconic manner, the appellate authority confirmed the order of the disciplinary authority. The orders impugned in the writ petition are quashed. This writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

20.10.2022

Index : Yes / No
Internet : Yes/ No

PMU/SKM

Issue order on 03.01.2023.

To:

1. The Additional Chief Secretary to Government,
   Hindu Religious and Charitable Endowments Department,
   Secretariat, St.George Fort, Chennai – 600 009.

2. The Secretary, Tamil Nadu Tourism & Hindu Religious and Charitable Endowments Department, State of Tamil Nadu, St. George Fort, Chennai – 600 009.

3. The Deputy Secretary, Tamil Nadu Public Service Commission, Chennai – 600 003.

4. The Principal Secretary / Commissioner, Hindu Religious and Charitable Endowments Department, 119, Uthamar Gandhi Salai, Thousand Lights West, Nungambakkam, Chennai – 600 034.

G.R.SWAMINATHAN,J.

PMU/SKM

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