



W.P(MD)No.1175 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.12.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.1175 of 2019

and

W.M.P(MD)No.16718 of 2022

V.S.Saathalingum

... Petitioner

Vs

1.TheJoint Commissioner
(Quasi Judicial Authority)
Hindu Religious and Charitable
Endowment Department,
Madurai.

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

... Respondents

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



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For Petitioner : Mr.Y.Prakash

For Respondents : Mr.J.Ashok
Additional Government Pleader for R.1

Mr.R.Suresh Kumar for R.2

ORDER

Heard the learned counsel on either side.

2.The basic facts are not in dispute. The writ petitioner was employed in the second respondent temple. He was issued with show cause notice dated 08.09.2005 in respect of his unauthorized absence for a period from 11.08.2005 to 25.09.2005 and other charges. The petitioner offered his explanation. However, he was dismissed from service vide order dated 14.05.2006. Challenging the same, the petitioner filed A.P.No.1 of 2006 before the Joint Commissioner, Hindu Religious and Charitable Endowment Department, Madurai. The appellate authority vide order dated 06.03.2018 set aside the order of dismissal and remanded the matter to the file of the original authority for passing fresh orders.

3. Thereafter, the petitioner submitted a representation seeking payment of subsistence allowance for the intervening period. His request was rejected. Questioning the same, the present writ petition has been filed. During the



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pendency of the writ petition, the Management has passed fresh dismissal order on 19.05.2019 and the petitioner has been dismissed from service. Questioning the same, the petitioner filed A.P.No.3 of 2019 before the appellate authority and the same is still pending.

4. When the matter was taken up for hearing, a learned Single Judge passed an interim order on 31.01.2019 directing the Management to pay subsistence allowance for a period from 06.03.2018 till the conclusion of the enquiry proceedings. The said order has been complied with. But before the compliance, the Management filed W.A(MD)No.1055 of 2021. The Hon'ble Division Bench vide order dated 02.06.2021 dismissed the writ appeal. The question that arises for consideration is whether the petitioner is entitled to subsistence allowance for a period from 14.05.2006 to 06.03.2018.

5. The learned counsel appearing for the 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 order and grant relief as prayed for.

6. The second respondent filed counter affidavit and the learned counsel took me through its contents. The counsel contended that the appellate authority while setting aside the order of dismissal and remanding the matter



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did not give any direction for payment of subsistence allowance for the intervening period. He would point out that it is not as if the order of dismissal passed by the Management was set aside. The appellate authority chose to remand the matter. Subsequent to the remand, a fresh order of dismissal was passed on 19.05.2019. This, according to the learned counsel for the petitioner will relate back and therefore, the petitioner is not entitled to payment of any subsistence allowance. He pressed for dismissal of writ petition.

7. I carefully considered the rival contentions and went through the materials on record. In my view, the question raised in the present writ petition has already been answered by the Hon'ble Division Bench in its order dated 02.06.2021 in W.A(MD)No.1055 of 2021. Paragraph 4 of the said order reads that 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 prevailed before the order of removal from service should continue. In other words, the petitioner should be considered as having been under suspension till the matter is concluded in the *de novo* proceedings. The period from 14.05.2006 to 06.03.2018 should also be considered as a period of suspension. The petitioner was admittedly under suspension till 14.05.2006 and on the said date he was dismissed from service. The dismissal order was set aside on 06.03.2018. It



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means that the petitioner continued to be under suspension. The order of dismissal passed afresh after *de novo* enquiry will not relate back. It will come into effect only with effect from 19.05.2019. When this Court come to the conclusion that the employee-employer relationship did not get snapped and the petitioner was under suspension, it is the duty of the Management to pay subsistence allowance to the employee. The order impugned in this writ petition is set aside. The second respondent is directed to pay subsistence allowance to the petitioner for the period from 14.05.2006 to 06.03.2018. This amount should be paid to the petitioner within a period of eight weeks from the date of receipt of a copy of this order. This writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

01.12.2022

Index : Yes / No
Internet : Yes/ No
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To

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(Quasi Judicial Authority)
Hindu Religious and Charitable
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G.R.SWAMINATHAN, J.

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