



W.P(MD)No.21921 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.11.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.21921 of 2022

and

W.M.P.(MD)Nos.16071 & 20626 of 2022

Arulmigu Gopalakrishnaswamy Etc Temples,
Rep. by its Managing Trustee,
Mrs.Meena D.Bhattacharya,
Krishnapuram, Kadayanallur,
Tenkasi District.

... Petitioner

Vs.

1.The Joint Commissioner,
Hindu Religious and Charitable Endowment Dept.,
Tuticorin.

2.S.Kalivanan

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records of the impugned order passed by the 1st respondent in his proceedings of the 1st respondent in A.P.No.2 of 2022 dated 24.08.2022 and quash the same.

For Petitioner : Mr.RM.Arun Swaminathan

For R1 : Mr.J.Ashok
Additional Government Pleader

For R2 : Mr.S.Ramsundar Vijayaraj



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ORDER

Heard the learned counsel appearing for the petitioner, learned Additional Government Pleader appearing for R1 and the learned counsel appearing for R2.

2. The second respondent was employed in the writ petitioner Institution. He was suspended and later, dismissed from service. Challenging the dismissal order, the second respondent moved the Joint Commissioner of HR & CE Department, Tuticorin by filing an appeal. The appellate authority by the impugned order set aside the order of suspension as well as termination and directed reinstatement of the second respondent herein. Questioning the order passed by the first respondent, this writ petition has been filed. The writ petition was admitted and interim stay was granted on 16.09.2022. To vacate the same, the second respondent has filed WMP(MD)No.20626 of 2022.

3. The learned counsel appearing for the petitioner contended that the impugned order has been passed even without hearing the writ petitioner. It is seen that appeal was originally filed before the Joint Commissioner of HR & CE Department, Tirunelveli. Then, there was a bifurcation of jurisdiction and the appeal was transferred to the first respondent. The first respondent had



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rightly issued summon to the petitioner herein. The petitioner was instructed to appear for enquiry on 29.06.2022 at 3.00 p.m. After receiving the said communication, the petitioner sent reply in the following terms:-

Dear Sir,

Enquiry regarding appeal No.2/2022/A2/dated 20.06.2022

S.Kalaivanan

With reference to your above letter dated 21.06.2022 I have to advise that I will be unable to attend the enquiry as I have to attend Court of Commissioner, Tribunal Disciplinary Proceedings at Tirunelveli on 29.06.2022, on the basis of my complaint to the DVAC Tamil Nadu in respect of frauds, misappropriation of funds etc., committed by a number of Eos of HR & CE Department. We presume that you must be definitely aware of the proceedings being held at Tirunelveli since 17.06.2022 as many of your department officials are involved in various irregularities of serious criminal nature.

4. I cannot approve the tone and tenor of the petitioner's response. Be that as it may, the proceedings were not disposed of on the said date. It was adjourned and it was taken up on 24.08.2022. The petitioner could have enquired with the office of the first respondent and ascertained the next hearing date. The first respondent also could have intimated the petitioner about the next hearing date. Neither the petitioner nor the first respondent resorted to such course of action.



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5. I am satisfied that in a case of this nature, the employer ought to have been heard. Therefore, in this view of the matter, I am inclined to set aside the impugned order and remand it to the file of the first respondent for fresh consideration. Since the petitioner is at fault, the reinstatement of the second respondent shall not be disturbed during the pendency of the appeal and the rights of the parties will abide by the outcome of the appeal following this remand.

6. The petitioner's counsel, on instructions, stated that the reinstatement of the second respondent will not be disturbed and the petitioner would rather await outcome of the appeal.

7. Recording the said undertaking, the order impugned in the writ petition is set aside. The matter is remitted to the file of the first respondent to pass orders afresh on merits and in accordance with law. I make it clear that I have not gone into the merits of the matter. All the contentions of the respective parties are left open. The first respondent is directed to dispose of the appeal within a period of twelve weeks from the date of receipt of a copy of this order. The parties will appear before the first respondent on 22.12.2022 at 03.00 p.m.



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8. The Writ Petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

24.11.2022

Index : Yes / No
Internet : Yes/ No
rmi

To

The Joint Commissioner,
Hindu Religious and Charitable Endowment Dept.,
Tuticorin.



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G.R.SWAMINATHAN, J.

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