



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 21.04.2022

DELIVERED ON : 17.06.2022

CORAM:

THE HONOURABLE **MRS. JUSTICE S. SRIMATHY**

W.P. (MD) No. 7912 of 2016

W.M.P. (MD) .No. 6506 of 2016

WEB COPY

K.Kathiresan

...Petitioner

/Vs./

1.The State of Tamil Nadu,
Through its Secretary to Government,
Hindu Religious and Charitable Endowments Department,
Chennai.

2.The Commissioner,
Hindu Religious and Charitable Endowments Department,
Chennai.

3.The Joint Commissioner,
Hindu Religious and Charitable Endowments Department,
Madurai.

4.The Joint Commissioner/Executive Officer,
Arulmighu Dandayuthapanisamy Thirukovil,
Palani.

5.K.Rajamanickam,
The Joint Commissioner/Executive Officer,
Arulmighu Dandayuthapanisamy Thirukovil,
Palani.

...Respondents

PRAYER:- Writ Petition - filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, to call for the records relating to G.O.Ms.(Pa).No.20, Tourism, Culture and Religious Endowments (H.R. & C.E 2-1) Department, dated 04.02.2016, issued by the first respondent confirming the proceedings of the second respondent in Se.Mu.Na.Ka.No.45433/2013/L1 dated 03.09.2014 and quash the same.

For Petitioner
For Respondents

: Mr.J.Anand Kumar
: Mr.P.T.Thiraviam
Government Advocate (Civil Side)
for RR1 to 3
Mr.J.S.Murali for RR4 to 5

ORDER

This Writ Petition has been filed to quash the impugned order dated 04.02.2016 issued by the first respondent confirming the

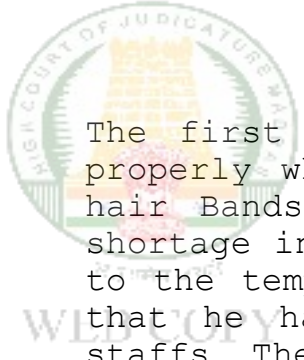


order passed by the second respondent dated 03.09.2014.

2. The brief facts of the case are that the petitioner joined service in the respondent Department on 18.09.1991 and now, he is working as Executive Officer of Arulmighu Subramaniasamy Thirukoil, Kumaravayalur, Trichy District. The petitioner joined service in the third respondent Temple on 27.07.2011 as Foreign Service Superintendent and was working there till 08.09.2013. During that tenure, the petitioner was posted as Tonsure Section Superintendent. Tonsured Human Hairs were collected and were put into steel Hundials. Later, the Tonsured hairs were taken to godown and stocks were maintained at the godown. After the petitioner assumed charge, he found that Tonsured Human Hairs, which were in the steel Hundials and then, at godown where they are stored, are without any safety and it requires double locking system. Hence, the petitioner made a request in this regard to the third respondent and in proceedings dated 01.04.2013, the double lock system was introduced for steel Hundials alone and not for godown.

3. The contention of the petitioner is that the godown keys were never handed over to the petitioner after he assumed the office and the keys were with the third respondent. The petitioner contended that even after he assumed the office, he doubted the works of the employees who gathered the tonsured human hair. On account of continuous and cautious supervision, the shortage in tonsured human hair were identified and they have been redeemed back to the temple, at the instance of the petitioner.

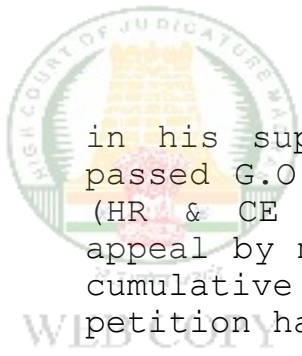
4. While so, on 07.08.2013, one Senthil Kumar, who was in charge of the keys of godown, had reported that there was a shortage of four number of Tonsured Human Hair Band. Thereafter, on 09.08.2013, the petitioner went to the godown and verified the stocks, and found that there was huge shortage in stocks. Accordingly, the petitioner submitted a report to the third respondent, who in turn found that there was a shortage of 1253 numbers of Tonsured Human Hair Bands between 01.02.2013 to 05.08.2013. Immediately, he lodged a complaint to the local police against the employees for shortage. To the shock and surprise of the petitioner, the respondent Nos.3 and 4 lodged the complaint against the petitioner. The case was registered in Crime No.159 of 2013 for the offences under Section 381 of IPC on 30.08.2013, against him and eight others by Adivaram Police, Palani. The said Police investigated the case and found that the petitioner had only unearthed the illegal commission of offences and he had no role to play in the allegations. Accordingly, a charge sheet dated 16.04.2014 has been laid against Vijayakumar and others, and the name of the petitioner was omitted from the charge sheet. However, by earlier proceedings dated 04.09.2013 of the second respondent, the petitioner was placed under suspension and the four charges were framed under Rule 17(b) of Tamil Nadu Civil Services (D&A) Rules.



The first charge is that the petitioner has failed to supervise properly which resulted in loss of 1253 number of tonsured human hair Bands. The second charge is that the petitioner has caused shortage in the stock to the number of 1253 and thereby caused loss to the temple to the tune of Rs.16,15,117/- . The third charge is that he has misappropriated the stock in connivance with other staffs. The fourth charge is that he has acted without integrity and devotion to duty.

5. According to the petitioner, the charges 2 and 3 are inconsistent and contrary to charge No.1. Charges 2 and 3 directly attribute liability on the petitioner as if the petitioner has committed the theft. Charge No.1 attributes negligence on his part in not preventing the theft. In fact, charges 2 and 3 are found to be false both in police investigation and departmental enquiry. Charge No.4 is only consequential of first three charges. The petitioner submitted his explanation on 23.09.2013 and 30.10.2013 with all supporting documents. Despite that, the second respondent appointed an Enquiry Officer by proceedings dated 19.11.2013 and the Enquiry Officer submitted his report dated 05.03.2014 stating that the charge Nos.2,3 and 4 are not proved, but charge No.1 relating to negligence alone is proved. The Enquiry Officer has also rendered a finding that the petitioner could have maintained a Register at the godown where stocks were kept, which would have enabled the finding of shortage.

6. The petitioner contended that the Enquiry Officer failed to see that it is the petitioner, who at the first instance brought to the light of shortage of stocks and who sought double lock system at Tonsured point and godown. However, the Joint Commissioner has provided double lock system only at Tonsuring point alone, but the godown was continued to be maintained with single key and even that key was not handed over to the petitioner. The second respondent, by proceedings dated 21.04.2014, called upon the petitioner to show cause as to why the findings of Enquiry Officer in respect of charges 2 and 4 could not be overlooked. The petitioner submitted his explanation on 01.05.2014. Regarding Charge No.1, he has submitted his explanation on 29.05.2014 to the first respondent. However, by proceedings dated 03.09.2014 of the second respondent, the suspension of the petitioner was revoked and he was reinstated on the same day. The second respondent passed final order on the same day inflicting punishment of stoppage of increment with cumulative effect for one year, after holding that the charges 1 and 2 are proved and that charges 3 and 4 are not proved. Aggrieved over the same, the petitioner preferred an appeal before the first respondent. The first respondent, in turn, had sought for the opinion of the Tamil Nadu Public Service Commission. The Tamil Nadu Public Service Commission has rendered its opinion on 05.05.2015 and recommended for punishment of stoppage of increment without cumulative effect on the sole ground that there is a little defect

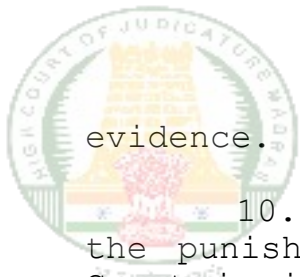


in his supervision. Based on the same, the first respondent has passed G.O.Ms.(Pa).No.20, Tourism Culture and Charitable Endowments (HR & CE 2-1) Department dated 04.02.2016, partly allowing the appeal by modifying the punishment as stoppage of increment without cumulative effect. Aggrieved over the same, the present writ petition has been filed.

7. The respondents have filed a counter affidavit by stating that considering the grave nature of the charges, the petitioner was placed under suspension and thereafter, the charge memo was issued. Based on the available records and subsequent explanation, the punishment was modified as stoppage of increment without cumulative effect. The Enquiry Officer has granted adequate opportunity to the petitioner to explain his stand and there is no violation of the principles of natural justice. Hence, the respondents have prayed to dismiss the writ petition.

8. Heard Mr.J.Anand Kumar, the learned counsel appearing for the petitioner and Mr.P.T.Thiraviam the learned Government Advocate (Civil Side) appearing for the respondent Nos.1 to 3 and Mr.J.S.Murali the learned counsel appearing for the respondent Nos. 4 and 5.

9. It is seen from the records that the petitioner has unearthed the loss of stocks periodically and had come out with the solution to provide double lock system at the Tonsure point as well as in godown. However, the third respondent has provided double lock system at Tonsure point and has not provided the double lock system in godown. In fact, the petitioner has reported that there was a shortage of tonsured human hair Band and the petitioner has also given a complaint. However, a criminal case was registered against the petitioner at the instance of the third and fourth respondent. Thereafter, on thorough investigation, the name of the petitioner was deleted from the First Information Report and the charge sheet was filed before the concerned Judicial Magistrate. Even the Enquiry Officer has reported that the charge Nos.2, 3 and 4 are not proved and charge No.1 which is relating to negligence is alone proved. However, the Disciplinary Authority, in order to deviate the enquiry report, has issued the show cause notice. Even then, it was held that the charge Nos.1 and 2 are proved and the charge Nos.3 and 4 are not proved. The first charge is the negligence on the part of the petitioner and the second charge is that the petitioner has caused shortage in stocks to the number of 1253 tonsured human hair bands. The contention of the petitioner is that because of not providing double lock system in the godown, such shortage of tonsured human hair bands has occurred. Even, in the police investigation as well as the enquiry, the second charge of shortage was not proved against the petitioner. Therefore, this Court is of the considered opinion that the Disciplinary Authority has deviated and held that the charges 1 and 2 are proved, without any proper



evidence.

10. Therefore, this Court is of the considered opinion that the punishment is illegal for the aforesaid reasons. Hence, this Court is inclined to interfere with the punishment. Moreover it is seen that the petitioner is on the verge of retirement. Accordingly, the impugned order passed by the first respondent dated 04.02.2016 confirming the proceedings of the second respondent dated 03.09.2014 is set aside and the respondents are directed to implement this order and disburse all the monetary benefits as applicable to the petitioner within a period of six months from the date of receipt of a copy of this order.

11. Accordingly, the Writ Petition stands allowed. No costs. Connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(AD-I)

// True Copy //

/06/2022

Sub Assistant Registrar(CS)

Ssb

To

- 1.The Secretary to Government,
The State of Tamil Nadu,
Hindu Religious and Charitable Endowments Department,
Chennai.
- 2.The Commissioner,
Hindu Religious and Charitable Endowments Department,
Chennai.
- 3.The Joint Commissioner,
Hindu Religious and Charitable Endowments Department,
Madurai.
- 4.The Joint Commissioner/Executive Officer,
Arulmighu Dandayuthapanisamy Thirukovil,
Palani.

+1 CC to M/s.J. ANANDKUMAR, Advocate (SR-26307[F] dated 17/06/2022)



+1 CC to M/s.K. GOVINDARAJAN, Advocate (SR-26777[F] dated
20/06/2022)

W.P. (MD) No.7912 of 2016
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