



W.P.No.20214 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17..07..2023

Coram

THE HON'BLE MR JUSTICE N.SATHISH KUMAR

Writ Petition No.20214 of 2023

and

W.M.P.Nos.19538 & 19539 of 2023

R.Muthuswamy

..... Petitioner

-Versus-

1.State of Tamil Nadu,
Rep. by its Principal Secretary to Government,
Hindu Religious and Charitable Endowments Department,
Fort St. George, Secretariat,
Chennai 600 009.

2.The Commissioner,
Hindu Religious and Charitable Endowments Department,
119, Uthamar Gandhi Salai,
Nungambakkam High Road,
Chennai 6000034.

..... Respondents

Petition filed under Article 226 of The Constitution of India, praying to issue a Writ of Certiorari calling for the records relating to the impugned notice issued by the 2nd respondent in Na.Ka.No.30232/2020/L1 dated 11.04.2022 actually served on the petitioner on 06.05.2023 enclosing the Enquiry Officer's Report in Na.Ka.No.05/2021 dated 31.03.2022 and to quash the same.



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For Petitioner : *Mr.G.Sankaran,*
Senior Counsel for
Mr.S.Nedunchezhiyan

For Respondents : *Mr.S.Yashwanth*
Addl. Government Pleader
for RR1 & 2

ORDER

This writ petition has been filed challenging the notice issued by the 2nd respondent in Na.Ka.No.30232/2020/L1 dated 11.04.2022 enclosing the Enquiry Officer's Report in Na.Ka.No.05/2021 dated 31.03.2022 and to quash the same.

2. The case of the petitioner is that he was appointed as Executive Officer Gr.III in the respondent department through TNPSC on 16.10.2000. He was subsequently promoted as Executive Officer Gr.II in 2008 and thereafter, he was further promoted as Executive Officer in 2016. While he was working as such, he was placed under suspension on 08.09.2020 for certain alleged irregularities. The substance of allegation is that there was short fall in the maintenance work carried out in the temple. He has sought voluntary retirement by application dated 03.08.2020. It was rejected by order dated 05.11.2020 on the ground that since charges were framed for certain irregularities, as per Rule 56(3) of the Fundamental Rules, the request for



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voluntary retirement could not be granted. Challenging the same, he filed a writ petition in W.P.No.3470 of 2021. This court by order dated 16.03.2021 quashed the order of the 2nd respondent dated 05.11.2020 rejecting the request for voluntary retirement. As per the order of this court, he is deemed to have been retired from service w.e.f. 31.10.2020 and he is entitled for retirement benefits. While so, an enquiry officer came to be appointed to conduct an enquiry on the charge memo issued to him. As against the said orders, the respondents filed an appeal in Writ Appeal No.2453 of 2022 and a Division Bench of this Court has by order dated 16.11.2022 has stayed the order of the single judge of this court. The above said Writ Appeal is still pending. However, the enquiry officer had, without awaiting final orders in the Writ Petition, proceeded with the enquiry ex parte, concluded the same and submitted his report. Now, a copy of the enquiry report is sought to be served on him. It is this enquiry report and the consequential show cause notices which are under challenge in the present writ petition.

3. The learned senior counsel for the petitioner would submit that non appearance of the petitioner before the enquiry officer was only due to the pendency of the writ petition before this court and there was no deliberate inaction on the part of the petitioner and if the enquiry is conducted by giving



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an opportunity, the petitioner is prepared to vindicate his grievances before the disciplinary authority. The learned senior counsel also made a request that a direction may be given for payment of subsistence allowance to the petitioner.

4. The learned Additional Government Pleader, on instructions, submitted that the disciplinary authority is ready to conduct a fresh enquiry by giving opportunity to the petitioner.

5. In the light of the submissions made by both the learned senior counsel and the learned Additional Government Pleader, the enquiry report dated 31.03.2022 and the consequential notices are quashed. The matter is remitted back to the respondents and the respondent concerned shall commence the enquiry afresh from the stage of explanation already received by them and appoint an enquiry officer afresh, complete the enquiry and pass appropriate final orders within a period of four months from the date of receipt of a copy of this order. Sufficient opportunity shall be given to the petitioner to participate in the enquiry. The petitioner shall co-operate with the disciplinary authority so as to complete the enquiry within the time stipulated above by this court. In the event the petitioner fails to cooperate with the enquiry, the enquiry officer is at liberty to proceed with the enquiry in accordance with law. The respondents are directed to pay the subsistence allowance as per rules from the date of



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suspension of the petitioner till date, if not so far paid, without any delay.

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This writ petition is disposed of accordingly with the above directions.

No costs. Consequently, connected MPs are closed.

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Index : yes / no
Neutral Citation : yes / no
Speaking / Non Speaking Order
kmk

To

- 1.The Principal Secretary to Government of Tamil Nadu,
Hindu Religious and Charitable Endowments Department,
Fort St. George, Secretariat,
Chennai 600 009.
- 2.The Commissioner,
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