



W.P.(MD).No.16798 of 2023

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.08.2023

CORAM

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD).No.16798 of 2023

and

W.M.P(MD)No.14033 of 2023

Kumar @ Perumal Poosari

... Petitioner

Vs.

- 1.The Joint Commissioner,
Hindu Religious and Charitable Endowments Department,
Trichy, Trichy District.
- 2.The Assistant Commissioner,
Hindu Religious and Charitable Endowments Department,
Trichy, Trichy District.
- 3.The Thakkar / Inspector,
Arulmigu Muthumariyamman Kovil,
Karaipatti Village, Marungapurai Taluk,
Trichy District.
- 4.Ponnan
- 5.Ramasamy
- 6.Lakshmanan,
The Assistant Commissioner,
Hindu Religious and Charitable Endowments Department,
Trichy, Trichy District.



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7.Anbazhagan,
The Thakkar / Inspector,
Arulmigu Muthumariyamman Kovil,
Karaipatti Village,
Marungapuri Taluk,
Trichy District.

... Respondents

(R5 is impleaded vide Court order, dated 27.07.2023 in W.M.P(MD)No.15070 of 2023 in W.P(MD)No.16798 of 2023)

(Respondents 6 & 7 are suo motu impleaded vide Court order, dated 08.08.2023 in W.P(MD)No.16798 of 2023)

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings, dated 08.07.2023 issued by the third respondent and quash the same and consequently direct the respondents 1 to 3 reinstate the petitioner forthwith with all attendant benefits.

For Petitioner : Mr.K.R.Laxman
for Mr.P.R.Prithiviraj

For R-1 to R-3 : Mr.R.Baskaran
Additional Advocate General
for Mr.S.Kameswaran
Government Advocate

For R-4 : No appearance

For R-5 : M/s.D.Rojaramani



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ORDER

The present writ petition is for a Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings, dated 08.07.2023 issued by the third respondent and quash the same and consequently direct the respondents 1 to 3 to reinstate the petitioner forthwith with all attendant benefits.

2. Heard the learned Counsel for the petitioner, the learned Additional Advocate General, representing for the learned Government Advocate for the respondents 1 to 3 and the learned Counsel for the fifth respondent and carefully perused the materials available on record.

3. The petitioner is the Parambarai Poosari of Arulmigu Muthumariyamman Kovil. Arulmigu Muthumariyamman Kovil, Karaipatti is for the community people in Karaipatti Village, Manjampatti Village and Vadakattupatti Village. Following the petitioner's great grand-father, Perumal, grand-father Marimuthu and father Shamugam, the petitioner is continuing to hold the post of Parambarai Poosari in the aforesaid Temple. The petitioner



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claims that due to the political vengeance, the fifth respondent has foisted a complaint, dated 02.04.2023 to the Hon'ble Minister, Urban Development Department, Chennai stating that on 09.06.2022, while solemnizing the ear piercing function of his son headed by the Minister in the empty space opposite to the said Temple, the petitioner locked the Temple and went away at the time when the Minister arrived the destination. On the said complaint, an enquiry notice, dated 23.05.2023 was issued by the second respondent. The fifth respondent, the petitioner and the petitioner's father appeared for the enquiry, which was held on 05.06.2023. While so, the impugned suspension-cum-charge memo, dated 08.07.2023 containing three charges came to be passed. Challenging the same, this writ petition came to be filed.

4. The learned Counsel for the petitioner submitted that the impugned suspension-cum-charge memo order is bad and non-est in law and the same is liable to be quashed for the following reasons:

- (i) the charges in three counts are vague and not specific,
- (ii) especially in charge 1, the time of visit of the Minister and the time of closure of the Temple is not specifically stated and



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(iii) the other two charges are with respect to the petitioner's irregularity in the conduct of pooja of the Temple and also in giving discriminative treatment to the devotees of the Temple without any specific details.

5. The learned Counsel for the petitioner vehemently submitted that the Temple was one following the Saiva Agamam. No doubt under the Saiva Agamam, it is mandatory that the Temple has to be opened from 06.00 am till noon 01.00 pm and it should remain closed during noon time and should be open again in the evening after 04.30 pm and be kept open till 08.00 pm and the petitioner is functioning as Poosari by strictly following the Saiva Agamam and he had kept the Temple close during noon time and he cannot be fixed with a liability of taking disciplinary action against him for keeping the Temple close during noon time.

6. He further relied upon the judgment passed by the Hon'ble Apex Court in *Shri Anant R.Kulkarni Vs. Y.P.Education Society and Others*, dated **26.04.2013**. The relevant portion, which is applicable to this case is extracted as follows:

“Enquiry – on vague charges:



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9. In *Surath Chandra Chakravarty Vs. The State of West Bengal*, AIR 1971 SC 752 this Court held, that it is not permissible to hold an enquiry on vague charges, as the same do not give a clear picture to the delinquent to make out an effective defence as he will be unaware of the exact nature of the allegations against him, and what kind of defence he should put up for rebuttal thereof. The Court observed as under:- “The grounds on which it is proposed to take action have to be reduced to the form of a definite charge or charges which have to be communicated to the person charged together with a statement of the allegations on which each charge is based and any other circumstance which it is proposed to be taken into consideration in passing orders has to be stated. This rule embodies a principle which is one of the specific contents of a reasonable or adequate opportunity for defending oneself. If a person is not told clearly and definitely what the allegations are on which the charges preferred against him are founded, he cannot possibly, by projecting his own imagination, discover all the facts and circumstances that may be in the contemplation of the authorities to be established against him.” (Emphasis added)”

7. Relying upon the same, the learned Counsel for the petitioner submitted that the allegations are not specific and no definite description of the charge as against the petitioner is also furnished and since all the three counts of charges are vague, the enquiry which was conducted after issuance of the



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said charge and suspension order stands vitiated and on that ground alone this impugned order has to be quashed.

8. Per contra, the learned Additional Advocate General, representing for the learned Government Advocate for the respondents 1 to 3 pointing out the fact that the petitioner himself has admitted that he was given sufficient opportunity by the conduct of enquiry and it can never be construed as a case, where there is a violation of principles of natural justice for want of giving appropriate opportunity to the petitioner and the petitioner has not conducted himself in proper terms in performing his duties as a Poosari and though the time is not specifically mentioned in the first charge, in view of the fact that the petitioner himself has made an admission by giving a statement that he attended the ear piercing function conducted by the fifth respondent. He has the knowledge of the conduct of the said ear piercing function and it is implied that ear piercing function will never be conducted during noon time and hence, naturally the Minister should have attended the function only during the morning time when the said function was held. In view of the same, the learned Counsel for the petitioner's argument that the Temple was closed only during noon time is not sustainable. He further vehemently submitted that the entire



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exercise of passing the impugned order, dated 08.07.2023 has been done as contemplated under Section 56(1) of the Tamil Nadu Hindu Religious and Charitable Endowment Act, 1959 and he further submitted that Section 56(2) of the aforesaid act has mandated that if any office-holder or servant, who is punished under sub section (1) may, within one month from the date of the receipt of such an order may appeal against the said order to the Joint Commissioner or the Deputy Commissioner within a period of one month. Having not availed the alternate remedy which is mandated in the Tamil Nadu Hindu Religious and Charitable Endowment Trust, 1959, this writ petition is not maintainable. On that ground alone, this writ petition is liable to be dismissed. For which, he relied upon the order passed by this Court in W.P(MD)No.17897 of 2014, dated 08.07.2014. The relevant portion of which is extracted as follows:

“3. A perusal of the impugned order of suspension would disclose that the petitioner is having an effective alternative remedy under Section 56(2) of the Tamil Nadu Hindu Religious and Endowments Act. According to the petitioner, he has also preferred an appeal on the file of the second respondent.

4. The learned Counsel appearing for the petitioner, would submit that the third respondent is not competent to pass the impugned order of suspension and therefore, the petitioner has



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chosen to file this writ petition though he has also invoked the appeal remedy.

6. It is also made clear in the impugned order of suspension, that the said order can be challenged by invoking Section 56(2) of the Tamil Nadu Hindu Religious and Endowments Act. It is the specific case of the petitioner that he has also preferred an appeal before the second respondent. In the light of the availability of effective alternative remedy, this Court is not inclined to entertain this writ petition, and therefore, the same is dismissed at the admission stage itself. However, the second respondent is directed to entertain the statutory appeal preferred by the petitioner, if the papers are in order, and dispose of the same on merits and in accordance with law as expeditiously as possible and not later than six weeks from the date of receipt of copy of this order.”

9. Following the order passed in the aforesaid judgment, he insisted that this writ petition has to be dismissed. Such an argument of the learned Additional Advocate General was resisted by the learned Counsel for the petitioner by submitting that Rule 2(a) of the Punishment of Office-holders and Servants of Religious Institutions (Other than Maths and Specific Endowments Attached Thereto), Rules, 1960 contemplates a specific procedure to be followed in case of disciplinary action as against the servants of religious institution and when a specific procedure has been contemplated under a statute, the entire exercise ought to have been done as contemplated in the



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aforesaid rules. Though enquiry was conducted in terms of Section 2(a) of the aforesaid Rule and the petitioner was offered with an opportunity of giving an explanation, he was not furnished with an enquiry report. As a result of which, the entire disciplinary action would stand vitiated and would be nugatory.

10. Rule 2(a) of the Punishment of Office-holders and Servants of Religious Institutions (Other than Maths and Specific Endowments Attached Thereto), Rules, 1960 is extracted as follows:

“2(a). No order imposing any punishment other than a fine under sub-section (1) of section 56 (other than an order based on facts which have led to his conviction by a Criminal Court) shall be made against any office-holder or servant unless he has been informed, in writing, of the grounds on which it is proposed to take action and has been afforded an adequate opportunity of defending himself. The grounds on which it is proposed to take action shall be reduced to the form of a definite charge or charges which shall be communicated to the person charged, together with statement of the allegations on which each charge is based and of any other circumstances which it is proposed to take into consideration in passing orders in the case. He shall be required, within a reasonable time, to put in a written statement of his defence and to state whether he desires an oral enquiry or only to be heard in person. An oral enquiry shall be held if such an enquiry is desired



by the person charged or is decided upon by the trustee. At that enquiry, oral evidence shall be heard as to such of the allegations as are not admitted, and the person concerned shall be entitled to cross-examine witnesses, to give evidence in person and to have such witnesses called as he may wish, provided that the trustee may, for special and sufficient reason to be recorded in writing, refuse to call witness or require the delinquent to bear the expenses of such witnesses. After the enquiry has been completed, the person charged shall be entitled to put in, if he so desires, any further written statement of his defence. If no oral enquiry is held and if he had desired to be heard in person, a personal hearing shall be given to him. The proceedings shall contain a sufficient record of the evidence and a statement of the findings and the grounds thereof. Every order of suspension, removal or dismissal shall state the charges, the explanation and the finding on each charge with the reasons therefor.”

11. The learned Counsel for the petitioner further relied upon the order passed by this Court in the case of ***M.Natanam Vs. The Assistant Commissioner, Hindu Religious and Charitable Endowments and Fit Person Arulmighu Thillai Kallamman Thirukovil Chidambaram and Another reported in 1999 (III) CTC 657***, the relevant portion of which is extracted as follows:



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“14. Rules have been framed as early as 1960 called as “the punishment of office holders and servants of Religious Institutions (other than Maths and Specific Endowments attached thereto) rules.” Rule 2(a) provides that no order imposing any punishment other than a fine under Sub Section (1) of Section 56 shall be made against any servant unless he has been informed in writing of the grounds on which it is proposed to take action and has been afforded an adequate opportunity of defending himself. Such grounds shall be reduced to the form of a definite charge or charges which shall be communicated to the delinquent together with statement of allegations on which each charge is based. The delinquent shall be required to put in a written statement of the defence and to state whether he desires an oral enquiry or only to be heard in person. An oral enquiry shall be held if such an enquiry is decided by the person charged or is decided upon by the trustee. At that enquiry oral evidence shall be heard as to such of the allegations as are not admitted and the person charged shall be entitled to cross examine the witnesses, to give evidence in person and to have such witnesses called as he may wish. After the enquiry has been completed, the person charged shall be entitled to put in, if he so desires, any further written statement of his defence. The proceedings shall contain a sufficient record of the evidence and a statement of the findings and the grounds thereof. Every order of suspension, removal or dismissal shall state the charges, the explanation and the finding on each charge with the reasons there for.



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15. Thus an elaborate procedure has been prescribed by the rules. The rules do provide for compliance with the principles of natural justice and provides for sufficient opportunity to defend to the delinquent. It cannot even be suggested that the said statutory rule excludes the principles of natural justice in any manner. It is the contention of Mr.T.S.Sivagnanam, learned Counsel for the petitioner that on the face of the said statutory rule the failure to communicate a copy of the report, call for objections of the petitioner, on the findings reported by the enquiry officer, violates the principles of natural justice and this goes to the root of the proceedings and that the impugned proceedings is liable to be quashed by this Court on that score.

27. Though Mr.R.Balasubramanian, learned Special Government Pleader contended that the petitioner had rushed to this Court without exhausting the statutory remedy of appeal, it has been repeatedly held that when there is failure of principles of natural justice, and when the contention goes not only to the root of the matter but also renders the proceedings a nullity or non est, it is not necessary for the writ petitioner to prefer an appeal and thereafter approach of this Court. As the failure of principles of natural justice is evident on the face of the record, this Court is well justified in entertaining the writ petition and deciding the two contentions raised by the writ petitioner.

28. It follows that the impugned proceedings has to be quashed and the first respondent, Disciplinary Authority is directed to proceed further communicating the enquiry officer's report,



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inviting objections and thereafter pass orders on merits and according to law after considering the objections raised by the writ petitioner.

29. Merely because enquiry report had not been communicated, the same will not result in the entire Disciplinary proceedings being quashed, nor it would enable the writ petitioner to seek for a de nov proceedings. Such a request advanced by the petitioner cannot be sustained.”

12. *M.Natanam Vs. The Assistant Commissioner, Hindu Religious and Charitable Endowments and Fit Person Arulmighu Thillai Kallamman Thirukovil Chidambaram and Another reported in 1999 (III) CTC 657* would squarely cover this case. Though the learned Additional Advocate General submitted that the petitioner did not avail the alternate remedy which is contemplated under Section 56(2) of the HR&CE Act, 1959 and that the petitioner was given appropriate opportunity without violating the principles of natural justice by permitting him to participate in a fullfledged enquiry, the entire exercise of initiating a disciplinary proceeding as against him is vitiated by the fact that the final enquiry report was not furnished on him. Having not furnished the enquiry report to the petitioner, the third respondent proceeded to pass the impugned order of suspension-cum-charge memo, dated 08.07.2023 in a hurry burry manner and such an exercise is *per se* illegal.



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13. Hence, this Court is inclined to quash the impugned order, dated 08.07.2023 and following the order passed by this Court in the case reported in **1999 (III) CTC 657**, this Court is also inclined to hold that merely because enquiry report has not been communicated to the petitioner that will not result in nullifying the entire disciplinary proceeding nor it would enable the writ petitioner to seek for a denova enquiry. However, the impugned suspension order-cum-charge memo is hereby quashed and consequently the disciplinary authority is directed to proceed further furnishing the enquiry officer's report to the petitioner and thereafter inviting objections and thereafter pass orders on merits according to the law after considering the objections raised by the writ petitioner.

14. This writ petition stands disposed of, accordingly. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

08.08.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes
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- To
- 1.The Joint Commissioner,
Hindu Religious and Charitable Endowments Department,
Trichy, Trichy District.
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Hindu Religious and Charitable Endowments Department,
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L.VICTORIA GOWRI, J.

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