IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 29.01.2024

Pronounced on : .02.2024

CORAM

THE HONOURABLE MS. JUSTICE R.N. MANJULA

Writ Petition No.13671 of 2020

R. Jayakumar .. Petitioner

Versus

1 The Additional Chief Secretary,
Tourism, Cultural and Endowment Department,
Secretariat, Chennai

2 The Principal Secretary,
Tourism, Cultural and Endowment Department,
Secretariat, Chennai

3 The Commissioner,
Hindu Religious and Charitable Endowment Department,
Chennai.

4 The Joint Commissioner,
Hindu Religious and Charitable Endowment Department,
Thanjavur District.

5 The Executive Officer,
Arulmigu Thiyagaraja Swamy Temple,
Thiruvarur District.

6 Hereditary Trustee,
Abhisheka Kattalai and Annadhana Kattalai,
Arulmigu Thiyagaraja Swami Temple Trust
Thiruvarur District. ... Respondents
(R6 impleaded vide Orders in
WMP No.22908 of 2023, dated 23.08.2023)

Writ Petition is filed under Article 226 of the Constitution of India to issue a writ of Certiorarified Mandamus, calling for the records relating to the impugned G.O.(P) No.135 dated 21.10.2019 of the 1st respondent confirming the order of the 3rd respondent in proceedings Se.Mu.Na.Ka. No.28692/2014/L.1, dated 15.10.2015, quash the same as illegal and consequently reinstate the petitioner as the Executive Officer Grade No.1 in the 3rd respondent Department with all benefits place the petitioner in appropriate seniority on par with the similarly placed persons.

For Petitioner	:	Mrs.R.Dhakshaini Reddy, Senior Counsel assisted by Ms.Reshmi Christy
For Respondents For R1 and R2	:	Mr. M. Rajendra Prasad, Additional Government Pleader
For R3 to R5	:	Mr. C. Jayaprakash Government Advocate (HR & CE)
For R6	:	Mr. A.R.Nixon

ORDER

This writ petition has been filed for issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the Government Order in G.O.(P) No.135 dated 21.10.2019 passed by the 1st respondent confirming the order of the 3rd respondent in proceedings Se.Mu.Na.Ka. No.28692/2014/L.1, dated 15.10.2015 and quash the same and consequently reinstate the petitioner as the Executive Officer Grade No.1 in the 3rd respondent Department with all benefits in appropriate seniority on par with the similarly placed persons.

2. The petitioner was working as an Executive Officer and he was transferred to Arulmigu Thiyagaraja Swami Temple, Thiruvarur District, in the year 2011 in the same capacity. During that time, he was issued with certain Charges. Totally 22 charges have been framed against the petitioner. Enquiry has been conducted, in which 19 charges were proved and thereafter the petitioner was given with the punishment of dismissal from service. The petitioner has filed an appeal before the 1st respondent and the same was dismissed confirming the order of the 3rd respondent. Hence, the petitioner has preferred the present Writ Petition.

3. Heard Mrs.R.Dhakshayani Reddy, learned Senior Counsel assisted by Ms.Reshmi Christy, counsel for the petitioner, Mr.M.Rajendra Prasad, learned Additional Government Pleader appearing for the Respondents 1 and 2, Mr.C.Jaya prakash, learned Government Advocate (HR & CE) appearing for the Respondents 3 to 5 and Mr.A.R.Nixon, learned counsel appearing for the 6th Respondent.

4. Mrs.R.Dhakshayani Reddy, learned Senior Counsel assisted by Ms.Reshmi Christy, counsel for the petitioner submitted that in the year 1938, some hereditary trusties filed a suit before this Court in O.S.No.20 of 1938, challenging the appointment of Executive Officer of Arulmigu Thiyagaraja Swami Temple, Thiruvarur. This Court had passed a Judgment in the suit on 05.08.1940, by observing that the Trustees shall be in possession of immovable properties and Rajan Kattalai would be responsible for proper Management there of, subject to certain conditions imposed by this Court. As per the said conditions, the entire management of immovable properties including collection of rent is under the responsibility of the trustees. The Trustees collected rents and profits of all Kattalai properties and handed over the same to the Executive Officer and the same stood part of the order dated 05.08.1940. The Decree passed in the suit has attained finality in the year 2013.

5. The learned Senior counsel further submitted that a private party has filed a Public Interest Litigation in W.P.No.32894 of 2013 seeking a direction to the Executive Officer to initiate action against the 6th respondent therein for putting up construction over the property belonging to the temple and the same was dismissed by stating that no direction could be issued against the respondents 1 to 4 therein and the Writ Petition itself is not maintainable; one among the respondent in the Writ Petition is the Executive Officer who is the 4th respondent; further it is observed that the suit between the trustees of the

Kattalai and the Executive Officer had ended in favour of the Trustee; over looking the above facts, the charges have been framed against the petitioner who is responsible for the Management of the Kattalai and the temple properties and that he fails to prevent the third parties from putting up any construction in the properties; according to the petitioner, even when there is no misappropriation on the part of the petitioner, he has given with the punishment of removal from service; even if there is a presumption that there is a negligence on the part of the petitioner that should not have lead to the capital punishment of removal from service; these aspects were not considered by both R3/ Disciplinary Authority or R1 / Appellate Authority; hence, the petitioner has filed the present Writ Petition.

6. Mr.C.Jayaprakash, learned Government Advocate appearing for the Respondents 3 to 5 submitted that the petitioner has disbursed the amount to the constructors without getting prior approval from the Respondents 3 and 4. The petitioner cannot shriek away his responsibility by taking advantage of the Judgment made in O.S.No.20 of 1938. The Executive Officer is not responsible for managing the temple and monitor the day to day affairs of the Kattalai. The petitioner had colluded with some of the Kattalaidars and he was instrumental in diluting the interest of the temple over its properties. Hence, it is right on the part of the respondents to initiate disciplinary action against the petitioner than to dismiss him from service in view of the proved charges. Reasonable opportunity was given to the petitioner during enquiry proceedings; Detailed enquiry was conducted and he also effectively participated in the proceedings. Hence, no prejudice would be caused to the petitioner; The punishment imposed on the petitioner is fitting to the charges proved against him. Hence, the learned Government Advocate prayed for dismissal of the Writ Petition.

7. The charges are of two types; one type of charges namely 1 to 6, 10, 13 and 15 relate to putting up constructions on the temple land and out of which, Charge No.13 is not proved. The second type of charge is also in respect of putting up Sundarar Mandabam at the Temple properties, for which, the petitioner has paid an advance to the constructing Agency. The allegation is that the Contractor did not put up construction after receiving the money.

8. However, it is submitted by the learned Senior Counsel for the petitioner that the construction has been done for the amount received by the Constructing Agent and hence there is no misappropriation on the part of the petitioner. The enquiry officer has admitted that the petitioner has initiated action against the unauthorised constructions put up in the temple properties. But he did not take it up to the logical end by way of filing a suit for recovery of the property. It is the submission of the petitioner that the essential facts which would affect the origin of charges itself were omitted to be considered and that resulted in the punishment of dismissal from service. The petitioner has taken action even to cancel the Patta in respect of Charge No.8 and informed it to the Trustee.

9. The Arulmigu Thiyagaraja Swami Temple, Thiruvarur has an exclusive kind of Management which would bestow the responsibility of the proper management of the temple on Rajan Kattalai. In fact, the very appointment of the Executive officer itself was challenged by the Kattalaidars by way of filing a Suit in O.S. No. 20 of 1938. As per the Decree passed by the Court, the Trustee shall be in possession of the immovable properties of Rajan Kattalai and they shall be responsible for the proper management of the same. The role of the Executive officer is limited to consultation and not decision making in respect of the Management of the temple and its properties. In fact, the limited role that has to be played by the Executive Officer is one of the basis of the decree of the Court made in O.S.No.20 of 1938.

10. Even though the Executive officer was a consultative Authority, much power has been given to the Trustees of the Kattalai. The Trustees and the Kattalai nominated by the Trustees are entitled to see whether the services are duly carried out and for which they are entitled to examine the accounts maintained by the Executive Officer. So far as the accounts relating to the Management of the immovable properties of the Kattalai is concerned, the Trustees shall maintain necessary accounts of receipts from the Trustee. However, it is the Board which has the power to redefine the power and duties in case the trustee commits any wilful default and they are found to be guilty of wilful negligence by giving appropriate notice to the trustees. So far as the litigations are concerned, it is the Rajan Kattalai which has to sue.

11. The above terms of decree remains in force from the year 1938 onwards. However, the Trustees were not given with any overriding powers. It is the Board which has to redefine the duties and responsibilities of the Trustees when there is change of circumstances. But so far, no such steps have been taken by the Board also. Even though the Trustees have the obligation to scrutinise the accounts maintained by the Executive Officer as regards the management of the immovable properties, it appears that they did not show any inclination.

12. As far as the cash management relating to immovable properties is concerned, the trustees have to maintain necessary accounts as per the decree. They did not raise any objection when money was paid by the Executive Officer through the contractor for construction of Sundarar Mandabam. Even though the immovable properties are under the possession of Trustees, they are responsible for proper management of the same. They also did not raise any objection in respect of the constructions put up by the third parties in the temple properties. Since the Management structure and the obligations attached to the Executive Officer in this regard is different from other Devasthanams, the petitioner in his capacity as the Executive Officer, cannot be solely held responsible for all the lapses. Had the Audit been done in a proper manner, the disbursal of the amounts could have been traced at the earliest point of time. Had the trustees were vigilant in having full control over the immovable properties, it would not have been possible by the Executive Officer to disburse amounts for putting up any constructions in the temple properties. Various third parties have raised construction on the site which was given to them for rent. Both the Trustees and the Executive Officer were indifferent for years together. If things are not going in accordance with the decree in O.S.No.20 of 1938, it is the Board who ought to have taken appropriate action to redefine the functions and powers of the Trustees. The

Executive Officer ought to have kept the Board informed about how the third parties have assumed undue advantage due to the indifferent attitude of the person other than him and who were at the helm of the affairs.

13. The petitioner seems to have been in charge of the Executive Officer of Arulmigu Thiyagaraja Swami Temple, Thiruvarur for a short period. Since the Thiyagaraja Swami Temple, Thiruvarur has been managed by the Trustees in consultation with the Executive Officers from the year 1940, the petitioner alone cannot be blamed for any malfunctions or deterioration of the property. In fact, the petitioner seems to have submitted his explanation by stating that the properties were constructed by the third parties long ago, and he cannot take action on his own in view of the peculiar nature of Management in respect of Thiyagaraja Swami Temple, Thiruvarur District**.** Since the Management of the Thiyagaraja Swami Temple, Thiruvarur District requires a complete overhaul at every stage of its Management of nearly 2000 acres of lands of the temple, the petitioner cannot be expected to do any marvel on his own.

14. In fact, the petitioner has submitted that there is no exclusive surveyor attached to the temple especially for measuring the lands which comprised in 2000 acres. It is impossible for them to take control of the encroachments. The Trustees have been given with the discretion to choose the staff required for proper management in terms of the decree passed in O.S.No.20 of 1938. The fact that the contractor whose money has been spent for the 70% of the construction was also overlooked by the disciplinary Authorities. Despite several allegations made against the petitioner in the disciplinary proceedings, no action has been taken by the Board to overhaul the entire system of management of the properties belonging to the temple and to redefine the duties and responsibilities.

15. No doubt, the petitioner ought to have submitted detailed reports or updates to the concerned Authorities about the impracticability of managing 2000 acres of land owned by the temple, in the pattern stipulated under the terms of the decree in O.S.No.20 of 1938 and invited their interference in redefining the shape and form of the management by restricting and extending the powers and functions of persons in the affairs of the temple. Because as per the decree of the Court, re-defining the power and functions in the best interest of the temple is permitted. Had the petitioner was pro-active and dutiful, he could have given his appraisal to the authorities concerned and got the administration of the temple reformed. But he did not take any steps and just leaned on the terms of the Judgment. This has also contributed to the damage of the temple properties.

16. The petitioner was dismissed from service after he had put a bare 8 years of service. As stated already, the deterioration in the management of the properties belonging to the temple would have started long ago and even before decades. Without holding any other persons accountable for the lapses, the entire blame for the unhappy management was thrown on the petitioner. Consequently, the petitioner was made answerable for the various charges framed against him.

17. No doubt, the petitioner is also equally responsible for the indifference on his part. But it is unfair and unreasonable to hold that the petitioner as wholly responsible for the actions like unauthorised constructions and other undue advantages enjoyed by the third parties in respect of the properties belonging to the temple. The 3rd respondent and the 1st respondent could have considered the peculiar nature of the Management of the Thiyagaraja Swami Temple, Thiruvarur and the deterioration that had happened gradually. They also omitted to consider the impracticability of the super human responsibility shouldered by one Executive Officer over the affairs of 2000 acres of land owned by the temple.

18. The Trustees who fought tooth and nail against the appointment of the Executive Officer for the Thiyagaraja Swami Temple, Thiruvarur way back in 1938 could not have anticipated much damage. The present Trustees remained silent when constructions were put up by the third parties before a few decades.

19. The petitioner's whole services in the department was only 8 years. Hence, the petitioner alone cannot be held responsible for the misdeeds in the form of encroachments and other undue advantages taken by the third parties over the properties of the temple.

20. So far as the funds are concerned, it is the trustees of the Kattalai who are also equally responsible and they have also omitted to bring out the lapses to the knowledge of the then Executive Officer as and when there is mismanagement. Had these hard truths were considered, it would have been possible for the respondents 1 to 3, to impose any lower punishment than the capital punishment of dismissal from service.

21. The petitioner was transferred from Arulmighu Thiyagaraja Swami Temple, Thiruvarur to Arulmigu Vedanarayanasamy Temple, Thottiyam Taluk, Trichy. Even though he was reluctant to be relieved from Arulmighu Thiyagaraja Swami Temple,Thiruvarur vide the relieving orders dated 17.04.2014, he joined the new post only on 22.09.2014. In the order of punishment, there is no separate discussion about each and every charge proved against the petitioner in order to justify the capital punishment of removal from service. Even while accepting the report of the Enquiry Officer, the 3rd respondent has not made any charge-wise discussions and he has passed a generalised order by relying on a Judgement of the Hon'ble Supreme Court.

22. Despite the petitioner has been charged with 15 charges + 7 additional charges, the third respondent has accepted without application of mind that the charges 1 to 12, 14 to 15 and additional charges 1 to 4 and 6 have been proved. For example, the enquiry officer has stated in his enquiry report that among other charges, the additional charge No.7 has also been proved. However, the third respondent stated in the concluding paragraph of his order that as against the additional charges only the charge Nos.1 to 4 and 6 have been proved and there is no mention about the additional charge No.7.

23. As per the enquiry officer's report, Charge No.13 and additional charge Nos.5 and 6 were not proved. But in other paragraphs, it is mentioned that the additional charge No.6 also proved**.** Despite the proceedings of the 3rd respondent is dated 15.10.2015, the 3rd respondent has affixed his signature on the proceedings only on 26.10.2015.

24. The above material discrepancies and lack of discussions in respect of each and every charge would show that there is no application of mind. The 1st respondent / Appellate Authority also did not comment on the short sightedness in the order of the 3rd respondent and he had chosen to confirm the same. Since the punishment of removal of service is a capital punishment, it ought to have been proceeded on the basis of the thorough discussion with due seriousness and diligence. Even though there are certain negligence on the part the petitioner due to various reasons discussed above, the petitioner cannot be made responsible for the whole mismanagement of the temple properties. Hence, it is unfair on the part of the 3rd respondent to impose a punishment of removal of service and the 1st respondent to confirm the same. In the above stated circumstances, the punishment of removal from service appears to be disproportionate to the lapses on the part of the petitioner and hence I feel some indulgence can be shown in modifying the punishment.

25. In the result, this Writ Petition is partly allowed. The order passed by the 3rd respondent in Se.Mu.Na.Ka.No.28692/2014/L1, dated 15.10.2015 and

G.O.(P) No.135 dated 21.10.2019 issued by the 1st respondent are set aside so far as they relate to the punishment of removal of service and the petitioner is directed to be reinstated into service with continuity of service, without any backwages and with the punishment of postponement of his first promotion for a period of five years from the date on which it would have been due to him, had the petitioner not subjected to the disciplinary proceedings. No costs.

.02.2024

Index: Yes / No
Speaking order / Non-speaking order
Neutral Citation: Yes / No
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To:

1 The Additional Chief Secretary,
Tourism, Cultural and Endowment Department,
Secretariat, Chennai

2 The Principal Secretary,
Tourism, Cultural and Endowment Department,
Secretariat, Chennai

3 The Commissioner,
Hindu Religious and Charitable Endowment Department,
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5 The Executive Officer,
Arulmigu Thiyagaraja Swamy Temple,
Thiruvarur District.

R.N.MANJULA ,J.

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<u>W.P. No.13671 of 2020</u>

.02.2024