BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 12.03.2024

PRONOUNCED ON : 25 .03.2024

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR
and
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.A(MD).No.330 of 2024
and CMP(MD).No.3052 of 2024

1.The Additional Chief Secretary to Government
Hindu Religious and Charitable Endowments Department
Secretariat
St.George Fort
Chennai 600 009

2.The Secretary
Tamil Nadu Tourism & Hindu Religious and Charitable
Endowments Department
State of Tamil Nadu
St.George Fort
Chennai 600 009

3.The Principal Secretary/Commissioner
Hindu Religious and Charitable Endowments Department
119, Uthamar Gandhi Salai
Thousand Lights West
Nungambakkam
Chennai 600 034 ...Appellants/Respondents 1,2 & 4

Vs

1.T.Anitha ...1st Respondent/writ petitioner

2.The Deputy Secretary
Tamil Nadu Public Service Commission
Chennai 600 003 ...2nd Respondent/3rd Respondent

Prayer: Writ Appeal filed under Clause 15 of Letters Patent, to set aside the order dated 20.10.2022 in WP(MD).No.10320 of 2021.

For Appellants : Mr.Veera.Kathiravan
Additional Advocate General
Assisted by Mr.S.P.Maharajan
Special Government Pleader

For R1 : Mr.K.Govindarajan
For Mr.R.Murali

JUDGMENT

(Made by **R.VIJAYAKUMAR,J.**)

The respondents 1, 2 and 4 in the writ petition are the appellants herein. The first respondent as writ petitioner had filed W.P(MD).No.10320 of 2021 challenging the order passed by the third respondent herein on 11.03.2020 and the order of the Appellate Authority dated 07.01.2021.

2.The writ Court after considering the submissions made on either side, had set aside the order of punishment and had allowed the writ petition. Challenging the same, the present writ appeal has been filed.

(A).Facts leading to the filing of this writ appeal are as follows:

3.The petitioner while she was working as an Executive Officer of Arulmigu Koodal Alagar Temple at Madurai was issued with a charge memo under Rule 17(a) of Tamil Nadu Civil Services (Discipline and Appeal) Rules 1955 on 20.12.2019 alleging that due to lack of supervision on her part, she had permitted one of the employees of the temple namely Sabarinathan, who had temporarily misappropriated the temple funds by not depositing the same in EPF account in time. The petitioner had submitted her detailed explanation on 06.01.2020. Considering her reply, final orders were passed by the third respondent herein on 11.03.2020 imposing a punishment of stoppage of increment for two years without cumulative effect. Challenging the said order, the petitioner had filed an appeal before the first appellant herein. The Appellate Authority had confirmed the order passed by the Original Authority.

4.Challenging the same, the petitioner had filed the above writ petition. The writ Court had arrived at a finding that the petitioner alone had found out the misconduct of her subordinate namely Sabarinathan and had lodged a police complaint. The entire amount due to the temple has been recovered.

5.The writ Court had further found that not only the petitioner, but also the other predecessor Executive Officers were issuing self-payee cheques to the concerned employee for drawing money from the Bank and thereafter, remit to the same to the EPF organization. Therefore, the petitioner has been selectively targeted alleging lack of supervision. The writ Court had further found that the Appellate Authority had not properly appreciated the grounds raised by the writ petitioner. Based on the above said observations, the writ Court had allowed the writ petition. Challenging the same, the present writ appeal has been filed.

(B).Contentions of the learned Additional Advocate General appearing for the appellants are as follows:

6.The petitioner is the Executive Officer of the temple and she should not have issued self-payee cheques to the in-charge cashier for drawing the amount from the Bank. Remittence to the EPF organization should be carried out only through Net Banking. That apart, if the writ petitioner had properly scrutinized the Bank statement and the EPF statement, it would have come to her knowledge that EPF amount have not been remitted regularly.

7.The learned Additional Advocate General had further contended that the EPF amount of the employers as well as the employees' share have been remitted belatedly to the EPF association and the penalty amount has been paid by the concerned delinquent namely Sabarinathan. These facts have not come to the knowledge of the writ petitioner due to the lack of supervision.

8.He had further contended that the misappropriation of the EPF amount is a serious charge and therefore, the punishment imposed by the authorities are commensurate with proved charges. The Court ought not to have interfered with the quantum of punishment unless the same is highly disproportionate to the proved charges or shocking conscience of the Court. Hence, he prayed for allowing the writ appeal.

(C).Contentions of the learned counsel appearing for the first respondent are as follows:

9.While the writ petitioner was working as the Executive Officer at the temple, she had gone on a maternity leave. During the relevant period, two other officers have served as Executive Officers. They have also followed the same methodology by issuing self-payee cheques to the delinquent namely Sabarinathan. Immediately, after the writ petitioner had resumed office, she had found out the illegality and had lodged a complaint to the Commissioner, HR & CE Department and the police officials.

10.The learned counsel for the first respondent had further contended that the concerned delinquent was charge sheeted and convicted. He was also removed from service. The entire amount due to the temple was recovered and properly remitted to EPF organization. Therefore, there is no loss either to the temple or to the concerned employees.

11.The learned counsel had further contended that the monthly remittence of EPF amount is being carried out by the concerned officials and therefore, the allegation of lack of supervision on the part of the writ petitioner is not legally sustainable. He had further pointed out that there was no audit objection during the relevant point of time and so it was not brought to the knowledge of the writ petitioner. The other two officials who had followed the same procedure have not been proceeded with. But on the other hand, the petitioner alone has been targeted with disciplinary proceedings. The disciplinary proceedings being discriminatory in nature and have been rightly set aside by the writ Court. Hence, he prayed for sustaining the order passed by the writ Court.

12.We have considered the submissions made on either side and perused the material records.

(D).Discussion:

13.The writ petitioner was serving as an Executive Officer of Arulmigu Koodal Alagar Temple between 01.12.2014 and 17.06.2019. She was on maternity leave between 14.10.2017 to 27.07.2018. Immediately after she came to the knowledge of irregularity, she had sent a report to the Commissioner, HR & CE Department on 20.08.2019 and lodged a complaint to the police official on 03.02.2019. An F.I.R has been registered as against the delinquent namely Sabarinathan on 18.02.2019 in Crime No.94 of 2019 on the file of the Theedir Nagar Police Station, Madurai City. Disciplinary proceedings have been initiated as against the said Sabarinathan and he has been removed from service. The entire amount due to the temple has been recovered and the amount has been remitted to EPF organization. There is no financial loss to the temple. These facts are not in dispute.

14.The allegation as against the writ petitioner is that had she properly supervised the subordinate official, especially the cashier in-charge namely Sabarinathan, this temporary misappropriation would not have happened. The primary allegation as against the writ petitioner is that she had issued self-payee cheques to the cashier in-charge namely Sabarinathan for remitting the EPF amount. The said Sabarinathan had encashed the cheques and he had not remitted the amount to EPF organization. He had temporarily misappropriated the same and belatedly deposited the said amount in the EPF organization by paying penalty from his own pocket. Therefore, the petitioner has faced the allegation of lack of supervision on her part.

15.From the records, it could be seen that the petitioner was on maternity leave between 14.10.2017 to 27.07.2018. During the said period, two officials had served as Executive Officers of the above temple. They have also followed the same method of issuing self-payee cheques to the said Sabarinathan. The typed set of papers filed on behalf of the appellants in the writ appeal discloses that the self-payee cheques were issued by the other officials also who were functioning as Executive Officers in the place of the writ petitioner. Therefore, it is clear that not only the petitioner but also her predecessor and other officials during her maternity leave were also following the same method of issuing self-payee cheque to the cashier in-charge namely Sabarinathan. The authorities have not chosen to initiate any action as against those officials. However, a charge memo has been issued targeting the writ petitioner who had lodged a police complaint as against the misappropriation made by the said Sabarinathan. In fact, the writ petitioner is a whistle-blower.

16.It is true that this Court under Article 226 of Constitution of India, has no jurisdiction to interfere in the quantum of punishment if the charges are proved. Arulmigu Koodal Alagar Temple at Madurai is administered by an Executive Officer in the cadre of Assistant Commissioner of HR & CE Department. The monthly routine of remittence of EPF amount is being carried out by the clerical level staff regularly. No complaint had emanated from the Bank or EPF organization to the temple relating to non remittence of EPF amount. There are no records to show that there was any complaint from any one of the employees alleging non receipt of any deposit into their account. It could be seen from the records that no objection has been raised during internal audit also. The concerned delinquent namely Sabarinathan had encashed the cheque amount and had remitted the EPF amount belatedly. Thereby, it has not come to the knowledge of the temple officials or the concerned employees. The writ petitioner had no reason to doubt about the remittence to EPF organization, when the same procedure has been followed for many years in the temple by her predecessors well as by other officials during her maternity leave period.

17.It is true that this Court under Article 226 of Constitution of India has no jurisdiction to interfere with the quantum of punishment unless it is perverse or shockingly disproportionate to the proved charges. The allegation of lack of supervision has not been substantiated and clearly the writ petitioner has been cherry-picked leaving out the other officials. Therefore, the writ Court was right in setting aside the order of imposition of punishment of stoppage of increment for two years without cumulative effect.

18. However, the writ petitioner being the administrator of a reputed temple, ought to have been cautious enough in verifying the Bank statements periodically. As like her predecessor in the office, she had believed the cashier in-charge and had issued self-payee cheques. Therefore, this Court is of the considered opinion that the punishment of stoppage of increment for two years would be highly disproportionate and shocking the conscience of the Court and the petitioner can be imposed with a punishment of 'Censure'.

19.In the light of the above said observations, the order of the writ Court is set aside and the writ appeal is allowed to the extent of modifying the punishment of stoppage of increment for two years without cumulative effect as punishment of 'Censure'. No costs. Consequently, connected miscellaneous petition is closed.

(D.K.K.J.,) **(R.V.J.,)**

25 .03.2024

Index :yes
Internet :yes
NCC : Yes/No
msa

D.KRISHNAKUMAR, J.
AND
R.VIJAYAKUMAR,J.

msa

Pre-delivery Judgment made in
W.A(MD).No.330 of 2024
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