



W.P.(MD)No.3556 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 29.10.2024

PRONOUNCED ON : 27.01.2025

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD)No.3556 of 2021

and

W.M.P.(MD)Nos.2877 and 17955 of 2021

G.Amarishram

... Petitioner

Vs.

1.The Joint Commissioner/ Executive
Officer, Arulmigu Meenakshi
Sundareshwarar Thirukovil,
Madurai.

2.The Thakkar,
Arulmigu Meenakshi Sundareshwarar
Thirukovil, Madurai.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the entire records in connection with the impugned order passed by the 2nd respondent vide proceedings reference No.1153/2020/Aa1 dated 08.12.2020, quash the same and consequently reinstate the petitioner back in service with all back wages and monetary benefits and treat the period of suspension as service period.



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For Petitioner : Mr.Niranjan S Kumar
For R-1 : Mr.P.Subburaj,
Special Government Pleader
For R-2 : Mr.V.R.Shanmuganathan,
Standing counsel

ORDER

Heard, the learned counsel for the petitioner Mr.Niranjan S.Kumar, Mr.P.Subburaj, learned Special Government Pleader for the 1st respondent, Mr. V.R. Shanmuganathan, the learned standing counsel for the 2nd respondent and carefully perused the materials available on the record.

2.The petitioner was appointed as an internal oothuvaar in a vacant post by the first respondent, by an order dated 05.03.2013. Thereafter, he was regularised on completion of the probation period by an order dated 26.03.2016. On 28.02.2020, a complaint was lodged by one Alagupandi, electrician, that his mobile phone went missing on 27.02.2020 while executing his work at Swami Sanathi Artha Mandabam. Based on the said complaint made by Alagupandi, an enquiry was conducted on 29.02.2020. At the time of reciting songs at Swami Sanathi Artha Mandabam, the petitioner found a mobile phone



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Thereafter, he had taken the phone and subsequently handed over the same to Mr.Alagupandi. However, by that time the complaint was lodged by the said Alagupandi, and on 29.02.2020, the petitioner appeared before the enquiry officer and duly submitted his explanation.

3.The claim of the petitioner is that, as per the direction of the first respondent, he gave a statement in writing, admitting the guilt, as the first respondent ensured him orally that in case of a letter admitting the guilt, the complaint would be closed and further action would be dropped. Accordingly, the petitioner on 29.02.2020, he had given a statement as per the oral direction of the first respondent. However, thereafter, on 04.03.2020, the petitioner was transferred from Arulmigu Meenakshi Sundareshwarar Temple and was posted as Aamur Oothuvaar at Arulmighu Thirumarainathar Swami Temple at Thiruvathavur and Arulmighu Ayyampozhil Easwarar Temple. Thereafter, the petitioner accepted the transfer and joined duties in the aforesaid temples. While being so, on 23.03.2020, the petitioner was placed under suspension by the proceedings of the first respondent dated 23.03.2020, following which a charge memo was also issued in the same proceedings. Aggrieved by the suspension order, the petitioner filed a writ petition in W.P.(MD)No. 6432 of 2020 before this Court and



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this Court was pleased to dismiss the same on 07.07.2020, directing the respondent to complete the enquiry contemplated against the petitioner within a period of two months from the date of receipt of a copy of the order in that writ petition.

4. Pursuant to the same, on 24.08.2020, the first respondent required the petitioner to submit an explanation to each and every charge in the charge memo and granted seven days time to submit the petitioner's explanation. On the same day, by another communication, the petitioner was called for an oral enquiry on 01.09.2020. On 26.08.2020, a detailed explanation was offered by the petitioner to the first respondent. However, without appointing an independent enquiry officer, the first respondent himself acted as the enquiry officer and gave a report. On 01.09.2020, three witnesses were examined, including the petitioner. Even though the witnesses gave contradictory answers, the petitioner was not given an opportunity to cross-examine them. On 07.10.2020, the first respondent completed his enquiry, and submitted a report to the second respondent and the petitioner was required to submit his further explanation on the report. The petitioner duly submitted his explanation on 19.10.2020 along with the request to reinstate him into service. However, the second respondent by the proceedings dated 08.12.2020 dismissed the petitioner from service.



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Challenging the same, this writ petition is filed.

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5.The claim of the petitioner's counsel is that the order of dismissal is disproportionate to the gravity of the charges, and hence the same is liable to be set aside. The petitioner was working as an Oothuvar in the Meenakshi Sundareshwarar temple. On 27.02.2020, an electrician who was working in the temple, namely, M.Alagupandi, gave a complaint that his mobile phone was lost. On the basis of the said complaint, an enquiry was initiated, and a preliminary enquiry was conducted in which the petitioner denied the accusation of having taken the mobile phone belonging to Alagupandi. However, ultimately, after seeing the CCTV footage, the petitioner had given a candid admission before the authorities stating that he had mistakenly taken the mobile phone of Alagupandi and thereafter returned back to Alagupandi and sought for dropping a disciplinary action against him.

6.On the basis of the admission dated 29.02.2020, the fit person of the Meenakshi Sundareshwarar temple took a decision by passing a resolution on 18.03.2020 to take disciplinary action against the petitioner and also decided to suspend the petitioner during the pendency of disciplinary proceedings. Five charges were framed as against the petitioner. The enquiry officer examined the petitioner, the



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complainant, Thiru. Alagupandi, and the witness named Kalaivanan and also examined various photographs of the temple along with CCTV footage. On the basis of the available evidence and other documents, the enquiry officer proceeded to conclude that the petitioner had stolen the mobile phone belonging to the complainant Thiru.Alagupandi and only thereafter on a complaint being lodged by the said Thiru.Alagupandi on enquiry, initially having refused the contention of Alagupandi that the petitioner had taken his mobile phone, later handed over the mobile phone back to the said complainant and it was also confirmed by the enquiry officer that the petitioner had also damaged the SIM card which was in the mobile phone belonging to the Alagupandi and on that basis, the enquiry officer held that all the five charges framed as against the petitioner stood proved.

7.Further observing that the enquiry officer concluded the enquiry report stating that the petitioner, being a person serving as Oothuvar for seven years, ought to have handed over the cell phone found out by him immediately at the office of the Menakshi Sundareshwarar temple. Having not done that and having tried to utilize the same by damaging the SIM card in the said mobile phone and thereafter, handing over the mobile phone along with the damaged SIM card to Alagupandi on a



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complaint being made by Alagupandi will not go well as far as the conduct of a Government servant serving in a temple is concerned and has caused disrepute to the institution / temple in which the petitioner was serving and accordingly passed the order of dismissal of the petitioner from service with effect from 08.12.2020.

8.Though the delinquency of misappropriation of a mobile phone identified in the place of work by the petitioner has been proved and the same would amount to bringing disrepute to the institution / temple wherein the petitioner was working, considering the fact that on enquiry, the petitioner had handed over the said mobile phone back to the complainant Thiru.Alagupandi, this Court is of the considered view that the imposition of punishment of dismissal from service is harsh and shockingly disproportionate.

9.In view of the same, the impugned order of dismissal of the petitioner from service is hereby set aside and remanded back to the second respondent with a direction to modify the punishment from that of removal of service to that of compulsory retirement.



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10. Accordingly, this writ petition is allowed. There shall be no order as to costs. Consequently connected miscellaneous petitions are closed.

27.01.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes
Sml

To

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Sundareshwarar Thirukovil,
Madurai.
- 2.The Thakkar,
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L.VICTORIA GOWRI, J.,

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