BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.03.2025

CORAM:

THE HONOURABLE MRS.JUSTICE J. NISHA BANU
and
THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.A(MD)No.26 of 2025
and
C.M.P(MD).No.201 of 2025

1.The Principal Secretary to Government,
Tourism, Culture and Religious Endowments
Department,
Fort St. George, Secretariat,
Chennai – 600 009.

2.The Commissioner,
Hindu Religious and Charitable Endowments
Department,
Gandhi Adigal Salai, Nungampakkam,
Chennai – 34. ... Appellants

Vs.

Pon Nandagopal ... Respondent

Prayer: Writ Appeal filed under Clause 15 of the Letter Patent against the order of this Court in W.P.(MD)No.2254 of 2019, dated 14.11.2022.

For Appellants :Mr.J.Ashok
Additional Government Pleader
For Respondent :Mr.R.Murali

JUDGMENT

(Judgment of the Court was delivered by **S.SRIMATHY, J.**)

This Writ Appeal is filed by the respondents in the writ petition challenging the order dated 14.11.2022 passed in Writ Petition W.P.(MD)No. 2254 of 2019.

2. The Writ Petition was filed for Writ of Certiorarified Mandamus, to quash the G.O.No.(Pa).No.124, dated 05.12.2018 issued by the 2nd respondent as illegal and consequentially, to direct the respondents to sanction the Pensionary benefits.

3. The writ petitioner was working as Grade I Executive Officer in Hindu Religious and Charitable Endowment Department, from 1979 onwards. In the year 2010, while he was working as Assistant Commissioner at Thiruvarur, a charge memo dated 03.08.2011 was issued alleging the writ petitioner failed to take action against the encroachers, thereby lack of supervision on the part of the writ petitioner. Enquiry was conducted wherein the enquiry officer had held charges are “not proved”. However, the

government disagreed with the findings and issued notice to the writ petitioner. The writ petitioner had submitted an explanation for the said notice and requested to drop the proceedings. After considering the same the appointing authority had issued order of punishment to cut Rs.3,000/- per month for a period of 7 years from the pension. The same was challenged in the writ petition. The Writ Court has considered and has held the charge itself is not maintainable, there is nothing on record to show that the petitioner was aware that the property in question was an endowed property and the writ petitioner had willfully turned a blind eye to the acts of encroachment. Further, the Writ Court had held mere installation of stones on the endowed land could not have attracted the petitioner's attention, hence the charge itself is frivolous. Based on the reasoning the punishment order was quashed. Aggrieved over the same, the State had preferred this writ appeal.

4. The charge against the writ petitioner is that the petitioner failed to take action against the encroachment. The contention of the petitioner is that he was not aware the property is a kattalai property and there is an encroachment in the property. But the contention of the writ appellants is that the writ petitioner cannot state that he is not aware of kattalai lands. Further, it is not

simple installation of stone but the lands are divided by erecting stone for the purpose of dividing the lands into housing plots, since the writ petitioner was having his office in the same town cannot turn the blind eye to the encroachment and to the attempts made to divide the lands into housing plots, resulting in revenue loss.

5. After hearing the rival submission, this Court is of the considered opinion that for taking disciplinary proceedings there ought to be acts of negligence with ill motive and deliberate willful intention to cause loss to the employer. The Hon'ble Supreme Court in the case of ***Union of India Vs J. Ahmed*** reported in ***(1979) 2 Supreme Court Cases 286*** has held misconduct means misconduct arising from ill motive and acts of negligence. Mere error of judgments or innocent mistake do not constitute such misconduct. Moreover, a single act of omission or error would not constitute misconduct. In the present case there is no such ingredients to initiate disciplinary proceeding. Especially there is no deliberate intension to create loss. Even if it is considered as misconduct, it is only single incident and at least under this ground the writ petition is entitled to relief. Further the allegation against the petitioner is that he failed to exercise the supervisory power against the trustees and the kattalai

properties. Under such circumstances, the charge is too frivolous and the Writ Court has rightly held so. Therefore, this Court is of the considered opinion this ground has no legally sanctity.

6. The next ground of the appellants is that the punishment was imposed after obtaining the opinion from the Tamil Nadu Public Service Commission. The said ground cannot be entertained, since the TNPSC has only opined. Any opinion cannot be a ground to impose punishment. Further when the basis of the disciplinary action was held to be frivolous, the ground that the appellants have the concurrence of the TNPSC has no value at all.

7. The next contention raised by the appellant is that if the punishment is disproportionate, then the Writ Court ought to have remitted back the case to the appellant. This Court of the considered opinion, if the writ petitioner was in service, then remitting the case back to the appellants may be appropriate. But in the present case writ petitioner has already obtain superannuation and retired from service, hence there is no fruitful purpose. More so when the charges are held to be frivolous. Hence, this ground also cannot be entertained.

8. The next ground is that recovery was made for a considerable period of time, hence ordering to refund the amount already deducted is illegal. The said ground cannot be entertained. When this Court has held the charge as frivolous and the punishment as disproportionate, then the appellants cannot be permitted to deduct the amount. Hence already deducted amount ought to be refunded. Infact the Writ Court has declined to impose interest for the refund and the same itself is relief to the appellants.

9. Therefore, the appellants have not raised any legally sustainable ground. Hence, for the reasons stated above, the writ appeal is dismissed, confirming the order of the Writ Court. No costs. Consequently, connected Miscellaneous Petition is closed.

[J.N.B., J.] [S.S.Y., J.]
03.03.2025

Index : Yes / No

Tmg

To:

1.The Principal Secretary to Government,
Tourism, Culture and Religious Endowments Department,
Fort St.George, Secretariat,
Chennai – 600 009.

2.The Commissioner,
Hindu Religious and Charitable Endowments Department,
Gandhi Adigal Salai,
Nungampakkam,
Chennai – 600 034.

J.NISHA BANU, J.

and

S.SRIMATHY, J.

Tmg

W.A(MD)No.26 of 2025

03.03.2025