

HONOURABLE SRI JUSTICE N.V.SHRAVAN KUMAR

WRIT PETITION (TR) Nos. 1256 and 4868 OF 2017

COMMON ORDER:

Writ Petition(TR) No.1256 of 2017 has been filed on 10.12.2013 seeking to set aside the impugned Order in Memo Proceedings No.E3/10775/2013-1, dated 15.04.2013 issued by the 2nd respondent as the 2nd respondent has no jurisdiction or source of power and in view of the orders issued by the Hon'ble High Court in the Judgment reported in 2008 (3) ALT Page No.287, by duly setting aside all the consequential proceedings.

Writ Petition (TR) No.4868 of 2017 has been filed on 04.09.2015 seeking to set-aside the impugned order in Proceedings No.C2/10775/2013, dated 31.08.2015 issued by the 2nd respondent with all consequential benefits.

2. Since the issue raised in both these writ petitions is connected to each other, they are being disposed of by way of this common order. For the sake of convenience, the facts in WP No.4868 of 2017 are hereunder considered:

COMMON FACTS IN WRIT PETITION (TR) NO.1256 & 4868 OF 2017

3. The brief facts of the case are that, petitioner was initially appointed as Clerk in Sri Durgeshwara Swamy Temple, Girmajipet, Warangal Town and District, vide proceedings L.Dis.No.A/6413/87, dated 29.08.1987. Thereafter, petitioner was promoted as Senior Assistant on 13.09.1993, vide R.C.No.A1/7195/1993 and further he was appointed as Person-in Management, Vide Rc.No.G2/46608/2001-2, Dated 13.08.2001. Thereafter, he was transferred to Sri Veerabhadra Swamy Temple, Kothakonda Village Bheemdevarpally Mandal, Karimnagar District, vide Rc.No.G3/5009/2003, dated 04.05.2003, however, the designation of the petitioner was changed as Manager, though there is no change of status of his temple service to that of Executive Officer. Thereafter, he was appointed by transfer as Executive Officer Grade-II, vide proceedings in Rc.No.D318300/2012-3, dated 24.07.2012 and he was posted at Sri Bugulu Venkateshwara Swamy Temple, Chilkurgutta Village, Warangal District vide proceeding Rc.No.B3/18300/2012, dated 28.07.2012.

4. It is submitted that while working as Executive Officer Grade-II in Sri Bugulu Venkateshwara Swamy Temple, Chilkurgutta Village, Warangal District, one Mr.B.Rajaiah made a complaint against the

petitioner and others with regard to his duty period at Odela, by creating a trick (morphed) photo. Thereafter, Regional Joint Commissioner, Multi Zone-III has appointed the Deputy Commissioner, Warangal as Enquiry Officer and directed to submit report, after conducting the enquiry. The Enquiry Officer has submitted report to the Regional Joint Commissioner, MZ-III, and Hyderabad, vide proceeding Rc.No.C/4819/2012, dated 29.01.2013, stating that the allegations leveled against the petitioner have not been found correct and there is also no evidence that the photograph produced along with the complaint belongs to the Temple Guest House and thereafter Regional Joint Commissioner issued proceeding Rc.No.B/1810/2012-1, dated 19.02.2013 which reads as:

“Attention of the Deputy Commissioner Endowments Department Warangal is drawn to the reference cited and he is directed to issue a stringent warning with a speaking order to Sri N.Sudarshan Reddy, former Manager of subject temple and presently working as Executive Officer at Sri Bugulu Venkateshwara Swamy Devasthanam, Chalipurgutta(V), Stationghanpur (M) Warangal (District) with directions not involve in such incidents/affairs in future by the incumbent and submit the copy of the same for this office record.

Further, the Deputy Commissioner, Endowments Department, Warangal is also directed to examine and suggest suitable

place in any 6(a) institution (Superintendent cadre) in Kareemnagar District itself to post/transfer/depute Sri M.Kumara SWAMY, Jr. Assit of subject temple immediately.”

5. As the things stood, thus one G.Prakash Rao, has made another complaint against the petitioner on the same set of facts to the respondents. Based on the said complaint, the respondent No.2 issued impugned proceeding, vide Rc.No.E3/10775/2013-1, dated 14.05.2013 framing two (2) charges against the petitioner exercising power under Section 27 of Act, 1966. It is further submitted, while issuing impugned charge memo, simultaneously, the petitioner was placed under suspension, vide proceedings in Rc.No.E3/10775/2013-2, dated 15.04.2013. Against the said suspension order, OA No.8660 of 2013 has been filed and the same was re-numbered as WP(TR) No.1256 of 2017.

SUBMISSION OF THE LEARNED COUNSEL FOR THE PETITIONER:

6. Sri Goda Siva, Learned Senior counsel appearing for petitioner would submit that already an enquiry has been conducted by the Joint Commissioner, Multi Zone-III and the Enquiry Officer i.e., Deputy Commissioner of Endowments, Warangal, has found that the allegation against the petitioner is false, hence, successive enquiries on the same set of allegation is bad in law. However, the

respondent No.2 has again appointed the Joint Commissioner, Multi Zone-III, Hyderabad as Enquiry Officer, disowning his own proceeding dated 19.02.2013, stating that the charges against the petitioner were proved and issued notice to the petitioner vide No.E3/10775/2013, dated 27.11.2013 to submit explanation as to why the petitioner should not be removed from the service under the A.P.Executive Officer Disciplinary (Control and Appeals) Rules, 1977, thereafter the petitioner was removed from service, vide proceeding No.C2/10775/2013, dated 31.08.2015. Against the said removal order, OA No.5149 of 2015 has been filed and the same was re-numbered as WP(TR) No.4868 of 2017.

7. Learned Senior Counsel would submit that respondent No.2 has no jurisdiction to initiate any disciplinary proceedings against a temple employee working as Manager/Person-in-Management and he relied on the Full Bench Judgment of this High Court reported in **N.Ravindra Murthy V.Veerabhadra Swamy Temple & Ors**¹ and held that the respondent No.2 has no jurisdiction to initiate disciplinary proceeding and it is only the Trustee or Executive Officer, who has power to do so and in the said Full bench Judgment it was held that the disciplinary rules applicable to the Executive Officers cannot be

¹ 2008 (3) ALT Page No.287

applied to the temple employees who are discharging the functions of the Executive Officer. It is further submitted that petitioner was only a Manager and he was promoted as Executive Officer Grade No-II by the respondent No.2 on 24.07.2012 and the allegation relating to the period between 03.06.2007 to 20.06.2012 and hence, the respondent No.2 has no power to issue charge memo and subsequent proceedings were issued to remove the petitioner from service and prayed this Court to set-aside the impugned order in Proceeding No.C2/10775/2013, dated 31.08.2015, issued by the respondent No.2.

8. However, during the course of arguments, learned senior counsel appearing for the petitioner submits that he is not pressing the jurisdiction aspect of the respondent No.2; and he is not questioning the authority/power of respondent No.2 in issuing proceedings against the petitioner, vide impugned proceeding E3/10775/2013-1, dated 15.04.2013 and No.C2/10775/2013, dated 31.08.2015, however submits that respondent No.2 issued proceedings dated 15.04.2013 and 31.08.2015 without following due process of law.

SUBMISSION OF LEARNED GOVERNMENT PLEADER APPEARING FOR RESPONDENTS:

9. Learned Government Pleader for Services-II submits that in both the writ petitions(TR) counter-affidavits are filed with same facts and pleadings and further draws attention to the fact of the case that, one Sri B.Rajaiah made a complaint on 11.12.2012, before respondent authorities that the petitioner committed illegal contacts with sweeper when he was working at Sri Mallikarjuna Swamy Temple. Basing on the said complaint, the Regional Joint Commissioner, Endowments Department, Hyderabad has directed the Deputy Commissioner, Endowments Department, Warangal vide Rc.No.B/1865/2012, dated 13.12.2012 and 21.12.2012 to visit the subject temple i.e., Sri Mallikarjuna Swamy Temple, Odela (V&M), Karimnagar District and conduct enquiry against Sri M.Kumara Swamy and other concerned. It is submitted that, as per the orders of the Regional joint Commissioner, Endowments Department, Hyderabad the Deputy Commissioner, Endowments Department, Warangal issued notice to the delinquent employee to attend the enquiry, vide Rc.No.C/4819/2012, dated 03.01.2013. Further Deputy Commissioner, Warangal conducted enquiry on 08.01.2013 in the presence of the petitioner along with other two delinquent employees. Based on the enquiry report, the Regional Joint Commissioner, Endowments Department, Hyderabad has issued instruction to the Executive Officer, Sri Mallikarjuna Swamy Temple,

Odela (V&M), Karimnagar District, vide Rc.No.B/1810/2012-2, dated 19.02.2013 to terminate Smt.V.Chinna Laxmi, Sweeper from the service with speaking order and also directed the Deputy Commissioner, Endowments Department, Warangal vide Rc.No.B/1810/2012-1, dated 19.02.2013 to issue a stringent warning with a speaking order to the petitioner. Thereafter, Deputy Commissioner, Endowments Department, issued stringent warning to the applicant, vide Rc.No.C/4819/2012, dated 13.03.2013.

10. As the matter stood, thus one G.Prakash Rao, former Chairman, APSRTC, submitted material papers along with photographs, basing on the available evidence, the Commissioner for endowments i.e., Regional Joint Commissioner, Endowments Department was appointed as Enquiry officer. Thereafter, respondent No.2 has placed the petitioner under suspension pending enquiry duly framing (3) charges and called for explanation, vide proceedings No.E3/10775/2013-1, dated 15.04.2013 under the A.P.Executive Officer's Disciplinary (control and appeal) Rules 1977 framed under Section 27 of the Act, 1966. The petitioner submitted his explanation on 30.04.2013 on the charges framed against him but not denied the main allegation i.e., participating sex with Chinna Lakshmi, but only stated that due to difference between Sri

M.Kumara Swamy, Jr. Assistant, Smt.Chinna Lakshmi, Sweeper and Sri B.Rajanna, the petitioner was falsely implicated in the said allegations. Accordingly, the Regional Joint Commissioner, Endowments Department has submitted enquiry report on 21.08.2013 stating that all the (3) charges were proved. In view of the same, notice has been issued to the petitioner along with copy of enquiry report with a direction to show cause as to why the punishment of removal from the service should not be imposed upon him, vide Notice No.E3/10775/2012, dated 27.11.2013, as per A.P. Executive officer's Disciplinary (Control and appeal) Rules 1977, but the petitioner had neither attended the enquiry inspite of acknowledging the notice nor submitted any explanation. In view of the said circumstances, it was presumed that, the petitioner has no further defence and explanation from his end to the said show cause notice. After careful examination of the matter, the respondent authorities decided to remove the petitioner from service in view of gravity of proved charges and further submits that there are no merits in the case and the same is liable to be dismissed. The Respondents submits that the decision of the Full Bench Judgment of this High Court reported in **N.Ravindra Murthy V.Veerabhadra Swamy Temple & Ors** (cited 1st supra) is not applicable to the case of the petitioner.

FINDINGS AND CONCLUSION:

11. In view of the submission made by learned Senior counsel appearing for the petitioner that he is not pressing or questioning the jurisdictional aspect, hence this Court is not inclining to express any opinion on the jurisdiction aspect.

12. In the proceedings dated 15.04.2013 issued by the Commissioner Endowments Department placing the petitioner under suspension pending enquiry, it is observed that the petitioner has misbehaved in violation of usage and custom of the temple premises and had shown lack of integrity and devotion in discharging his legitimate duties. As per the Annexure-I,II and III, following are the Articles of Charges framed against the petitioner which are extracted here under:

ANNEXURE-I

STATEMENT OF ARTICLE OF CHARGES FRAMED AGAINST Sri N. SUDARSHAN REDDY, FORMER EXECUTIVE OFFICER, SRI MALLIKARJUNA SWAMY DEVASTHANAM, OQDELA (V&M), KARIMNAGAR DISTRICT PRESENTLY WORKING as Executive OFFICER SRI BUGULU VENKATESWARA SWAMY TEMPLE, CHILUPURUGUTTA (V), STATION GHANPUR (M), WARANGAL DISTRICT.

1. That he has participated illegal sex with V.Chinna Lakshmi, Sweeper In Sri Mallikarjuna SWAMY Devasthanam, Odela (V&M), Karimnagar District.

2. That he has misbehaved in violation of usage and custom of the Temple Premises. That he has showed gross negligence and lack of devotion in discharging his legitimate duties.

ANNEXURE-II

LIST OF DOCUMENTS BY WHICH THE ARTICLE OF CHARGES FRAMED AGAINST Sri N. SUDARSHAN REDDY, FORMER EXECUTIVE OFFICER, SRI MALLIKARJUNA SWAMY DEVASTHANAM, ODELA (V&M), KARIMNAGAR DISTRICT PRESENTLY WORKING AS EXECUTIVE OFFICER SRI BUGULU VENKATESWARA SWAMY TEMPLE, CHILUPURUGUTTA (V), STATION GHANPUR (M), WARANGAL DISTRICT ARE PROPOSED TO BE SUSTAINED.

Lr.dated 25.3.2013 of one Sri G.Prakash Rao, Former Chairman.

ANNEXURE-III

LIST OF WITNESSES BY WHICH THE ARTICLE OF CHARGES FRAMED AGAINST SRI W. SUDARSHAN REDDY, FORMER EXECUTIVE OFFICER, SRI MALLIKARJUNA SWAMY DEVASTHANAM, ODELA {V&M}, KARIMNAGAR DISTRICT PRESENTLY WORKING AS EXECUTIVE OFFICER SRI BUGULU VENKATESWARA SWAMY TEMPLE, CHILUPURUGUTTA (V), STATION GHANPUR {M}, WARANGAL DISTRICT.

PROPOSED TO BE SUSTAINED.

Present Executive Officer of Sri Mallikarjuna Swamy Devasthanam, Odela (V&M), Karimnagar District to produce all records before the Enquiry Officer if appointed and speak to the contents with reference to the charges.

13. The respondent No.2 after conducting detailed enquiry held that the charges leveled against the petitioner were proved and the

petitioner was given an opportunity to submit his explanation to the show cause notice, dated E3/10775/2012, dated 27.11.2013. Though, the petitioner acknowledged the show cause notice on 07.12.2013, he did not choose to submit his explanation, thereby respondent No.2 was constrained to issue proceeding No.C2/10775/2013, dated 31.08.2015 to remove the petitioner from service in view of the gravity of the proved charges under A.P.Executive Officer's disciplinary (Control & Appeal) Rules 1997. Hence, it is to be noted that the petitioner was given every opportunity as per rules, but the petitioner opted to remain silent on the allegations leveled against him.

14. In the proceeding of Commissioner, Endowment Department, dated 31.08.2015, confirming the punishment as indicated in the show cause notice, dated 27.11.2013, it is submitted that when the Charged Officer has acknowledged the show cause notice on 07.12.2013 and has not submitted his explanation to the show cause notice, it is presumed that he has no further defence and explanation from his end.

15. The petitioner being a Public Servant, who was working as Executive Officer, was obligated to discharge his services with integrity and devotion while upholding the usage and custom of the

temple premises. His conduct would have a reflection/representation upon maintaining the sanctity of temple premises and trust. The show cause notice, dated 15.04.2013 has disclosed grave charges of misbehavior, but the petitioner has not offered any explanation, subsequently, the respondent authorities issued punishment of removal from service. As such, the petitioner lacked devotion in discharge of his duties.

16. As regards the submission of learned Senior Counsel appearing for petitioner that successive enquires on the same set of allegation is bad in law, the Hon'ble Supreme Court in **S.Govinda Memon vs The Union of India & Anr**² observed as under:

"We are of the opinion that even if the appellant was not subject to the administrative control of the Government when he was functioning as Commissioner under the Act and was not the servant of the Government subject to its orders at the relevant time, his act or omission as Commissioner could form the subject-matter of disciplinary proceedings provided the act or omission would reflect upon his reputation for integrity or devotion to duty as a member of the Service. In this context reference may be made to the following observations, of Lopes, L. J. in Pearce v. Foster (17 QBD 536, 542)

"If a servant conducts himself in a way inconsistent with the faithful discharge of his duty in the service, it is misconduct which justifies immediate dismissal. That misconduct, according to my view, need not be misconduct in the carrying on of the service or the business.

² AIR 1967 SC 1274

It is sufficient if it is conduct which is prejudicial or is likely to be prejudicial to the interests or to the reputation of the master, and the master will be justified, not only if he discovers it at the time but also if he discovers it afterwards, in dismissing that servant."

17. In view of the above facts and circumstances, the impugned proceeding E3/10775/2013, dated 15.04.2013 placing the petitioner under suspension and the proceeding No.C2/10775/2013, dated 31.08.2015 confirming the punishment as indicated in the show-cause-notice do not warrant any interference by this Court. The Writ Petition (TR) No.1256 of 2017 and Wirt Petition (TR) No.4868 of 2017 are devoid of merits and fails. Accordingly, both the Writ Petition (TR) are dismissed.

18. Miscellaneous applications, if any pending, shall stands closed. No order as to costs.

JUSTICE N.V. SHRAVAN KUMAR

Date: 18-12-2023

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Note: L.R. copy to be marked.

B/o.
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