
(2013) 09 KL CK 0018
In the High Court Of Kerala
Case No : W.P.(C). No. 20749 of 2013

Harikumar

APPELLANT

Vs

Travancore Devaswom Board

RESPONDENT

Date of Decision : 30-09-2013

Acts Referred:

Citation : (2014) 2 KLJ 709 : (2014) 1 KLT 1027 : (2014) 2 SCT 722

Hon'ble Judges : C.T. Ravi Kumar, J

Bench : Single Bench

Judgement

C.T. Ravi Kumar, J.—The petitioner was placed under order of transfer as per Ext. P2 while working as a Full Time Santhi under the first respondent Travancore Devaswom Board. As per the same, he was transferred to Thrikkodithanam Devaswom under Changanassery Group. Feeling aggrieved by the order of transfer he preferred Ext. P3 appeal before the Board and thereafter, attributing delay in the matter of its disposal he approached this Court by filing W.P.(C). No. 2997 of 2013. That Writ Petition was disposed of as per Ext. P4 judgment directing the first respondent Board to consider and pass appropriate orders on the said appeal. While so, the petitioner was transferred to Kunnamkari Devaswom. Later, as per Ext. R1(h) dated 1.3.2013 the petitioner was placed under suspension and Ext. P5 memo of charges and Ext. P5(a) statement of allegations were then served on the petitioner. This Writ Petition has been filed challenging Ext. P11 order. In the context of the contentions raised in this Writ Petition it is relevant to refer to certain other proceedings after Ext. P2 order of transfer. On receipt of Ext. P5 and P5(a) the petitioner gave his explanation as per Ext. P6 and denied all the allegations against him. Later, the petitioner was served with Ext. P7 notice of hearing in order to comply with the directions in Ext. P4 judgment. The petitioner produced Ext. P8 medical certificate and got the hearing adjourned. Later, Ext. P9 notice of hearing was served on the petitioner and after hearing the petitioner Ext. P11 order was passed. Ext. P11 would reveal that after Ext. P4 judgment a hearing was conducted pursuant to Ext. P9 notice and it was an order was passed pursuant to the said hearing. The

contention of the petitioner is that though this Court directed the respondent Board to consider Ext. P3 appeal preferred against Ext. P2 order of transfer pursuant to the hearing conducted on the said appeal virtually no decision was taken on the appeal and what was done as per Ext. P11 is only finalisation of the disciplinary proceedings initiated against the petitioner as per Ext. P5. According to the petitioner, the said action on the part of the respondents is illegal as the disciplinary proceedings were concluded and finalised in total disregard to the mandatory procedures for imposition of a penalty in terms of the provisions under the Kerala Civil Services (Classification, Control and Appeal) Rules 1960 (for short KCS (CC & A), Rules. A major penalty of reduction in rank was imposed on him without an enquiry, according to the petitioner. It is raising such allegations that the petitioner assails Ext. P11 and seeks for consequential reliefs. A statement has been filed on behalf of the first respondent. Various contentions have been taken thereunder rebutting the claims and contentions of the petitioner. At the very outset, it is to be noted that a scanning of the statements therein would reveal the position that the specific contentions of the petitioner that Ext. P11 order was issued based on the hearing conducted pursuant to Ext. P9 notice, the order finalising the disciplinary proceedings as per Ext. P5 was thus finalised without conducting an enquiry after appointing an enquiry officer and adhering to the procedures for imposing a major penalty and that no decision on Ext. P3 appeal based on the directions in Ext. P4 judgment were not specifically rebutted by the 2nd respondent. Obviously, Exts. P7, P9 and P11 would reveal that such a hearing was actually proposed for hearing Ext. P3 appeal preferred against Ext. P2 and going by Ext. P4 it was to be held, Thus, obviously no decision was taken on Ext. P3 appeal preferred against Ext. P2 despite the specific direction in that regard as per Ext. P4 judgment and even after calling the petitioner for hearing in purported compliance with the directions in Ext. P4 judgment. As contended by the petitioner as per Ext. P11 what was actually done is finalisation of the disciplinary proceedings initiated against the petitioner as per Ext. P5. The next question is whether a full-fledged enquiry as contemplated under KCS (CC & A) Rules was to be conducted for imposition of the aforesaid penalty. The petitioner was admittedly working as a full time Santhi. Ext. P12 would reveal that the post of full time Santhi is a higher post than Kazhakam and that position is virtually indisputable. The post of full time Santhi was originally carrying a scale of pay of Rs. 4510-6230/- and subsequently, as per Ext. P12 it was revised to Rs. 8960-14260/-. A perusal of Ext. P12 would reveal that temple employees who attained the scale of pay of last grade i.e., Kazhakam/Watcher, etc., who are not in Karanma Service were in the scale of pay of Rs. 4510-6230/- and the said scale of pay was revised as per Ext. P12 as Rs. 8500-13210/-. Thus, after Ext. P12 it can only be said that the post of full time Santhi is higher than the post of Kazhakam as the two posts carry different scales of pay and the post of full time Santhi carries the higher scale of pay. The duties and liabilities attached to both the posts are also distinct and different. In the said circumstances going by the impact it can only be treated that as per Ext. P11 the petitioner was virtually imposed with the penalty

of reduction in rank and there is no case for the respondents that a penalty of reduction of rank can be imposed without following the procedures prescribed under R. 15 of the KCS (CC & A) Rules for imposing the major penalty. There is also no case for the respondents that the petitioner was posted as Kazhakam as per Ext. P11 after following the prescribed procedures for imposing a major penalty. Affording an opportunity of being heard cannot and will not satisfy the statutory mandate of holding a full-fledged enquiry in such circumstances. Therefore, the action on the part of the respondents is violative of Art. 311(2) of the Constitution of India. When that position is not in dispute Ext. P11 is liable to be set aside. In the said circumstances, Ext. P11 is set aside and consequently, the petitioner shall be treated to have continued in the post of Santhi and shall be permitted to continue as Full Time Santhi. As noticed hereinbefore the very purpose of the hearing proposed as per Ext. P9 was for a consideration of the appeal preferred by the petitioner against Ext. P2 order of transfer. In terms of Ext. P4 judgment the respondents are bound to consider Ext. P3 appeal preferred against Ext. P2. Obviously, the said appeal was not considered and disposed of as per Ext. P11. In such circumstances, this Writ Petition is disposed of with a direction to the first respondent to consider Ext. P3 appeal preferred by the petitioner against Ext. P2 order of transfer as directed under Ext. P4 judgment and pass appropriate orders. It is made clear that the said order will not stand in the way of the respondents taking or finalising the proceedings initiated as per Ext. P5 in accordance with law. Further it is made clear that prior to the finalisation of such proceedings, even in case it is decided to proceed with the same, an order shall be passed in terms of Ext. P4 judgment on the appeal preferred against Ext. P2, expeditiously, at any rate, within a period of one month from the date of receipt of certified copy of this judgment.