

(2021) 01 KL CK 0521

In the High Court Of Kerala

Case No : Writ Petition (C) No. 35004 Of 2019

T.S. Manoj Kumar Embrandiri

APPELLANT

Vs

Cochin Devaswom Board And Ors

RESPONDENT

Date of Decision : 22-01-2021

Acts Referred:

Citation : (2021) 01 KL CK 0521

Hon'ble Judges : Devan Ramachandran, J

Bench : Single Bench

Advocate : A. Muhammed Musthafa, M.P. Sreekrishnan, K.P. Sudheer

Judgement

1. The petitioner impugns Ext.P6 alleging that, though it is framed as a transfer order, it contains certain allegations against him, which will cast a

stigma upon him for rest of his life. He says that Ext.P6 is egregiously improper, since even without a proper enquiry, he has been branded guilty and

has been transferred as a punishment. The petitioner, therefore, prays that Ext.P6 be set aside.

2. Shri.M.P.Sreekrishnan, learned counsel for the petitioner, added to the above by saying that none of the materials available on record, including

Exts.R1(b) and R1(d) - which are stated to be reports of various officers with respect to the incident in question - mulcts any liability on his client nor

has he been found culpable for any guilt; but that, in spite of this, it has been stated in Ext.P6 that his client is guilty and he has been consequently

transferred.

3. Shri.M.P.Sreekrishnan submitted that Ext.P6 certainly, therefore, can only be construed to be punitive in nature and that it is now well settled,

through various judgments of this Court and that of the Honâ??ble Supreme

Court, that a stigmatic order of transfer cannot obtain favour in law and that this is more so in this case, because the applicable Regulations and Rules does not provide for transfer as a method of punishment. He, therefore, reiteratingly prayed that this writ petition be dismissed.

4. In response, the learned Standing Counsel for the Devaswom Board - Shri.K.P.Sudheer, submitted that a counter affidavit has been filed on record, to which, Exts.R1(b) and R1(d) enquiry reports have been appended, in which the petitioner's involvement in the alleged incident has been found credible and therefore, that action has been recommended by the Chief Vigilance Officer of the Board.

5. The learned Standing Counsel submitted that in spite of this, the Board decided to take a very lenient view and that the petitioner has been transferred, not merely on account of being found guilty, but in administrative exigency also. He, therefore, prayed that Ext.P6 be not interdicted and that this writ petition be dismissed.

6. I have considered the afore submissions and have examined very carefully the materials available on record.

7. Indubitably, Ext.P6 order only transfers the petitioner, but it also says that he has been found guilty of dereliction of duty and disciplinary breach.

However, it is apodictic, even going by the counter affidavit of the respondent " Board, that no formal enquiry has been conducted or concluded

against the petitioner, but that they have acted upon Ext.R1(d) report preferred before the Special Devaswom Commissioner by the Chief Vigilance Officer of the Board.

8. The Chief Vigilance Officer has recommended some action against the petitioner and the Board now says that Ext.P6 was issued so that the petitioner will not have to face a disciplinary action thereupon.

9. That said, however, Shri.M.P. Sreekrishnan submits that his client is completely innocent of all the allegations against him and that he has already explained how he is neither guilty of any of the allegations made against him, nor deserving of being found guilty of dereliction of duty. Therefore, I am of the certain opinion that the allegations against the petitioner, mentioned in Ext.P6, cannot be treated as having been established, until such time as they are properly proved through a competent enquiry.

In the afore circumstances, I order this writ petition and set aside Ext.P6; with a consequential liberty being left to the Board to conduct a proper

enquiry against the petitioner, and needless to say, if he is found guilty thereafter, to impose such punishment as may be warranted in law, in terms of

the applicable Rules and Regulations.

I close this writ petition by directing the petitioner to implicitly co-operate with any enquiry that may be initiated by the Board in terms of these

directions and leaving further liberty to the latter to complete the same even in the event he does not do so, as per the applicable law.