

K.Murugesan. Vs. the Deputy Commissioner/ Executive Officer, and anr.

K.Murugesan. Vs. the Deputy Commissioner/ Executive Officer, and anr.

SooperKanoon Citation : sooperkanoon.com/915599

Court : Chennai

Decided On : Mar-31-2011

Judge : Mr. Justice K.Chandru, J.

Appeal No. : W.P.No.23089 of 2010 & M.P.No.1 of 2010.

Appellant : K.Murugesan.

Respondent : The Deputy Commissioner/ Executive Officer, and anr.

Advocate for Def. : Mr.T.Chandrasekaran, Adv.

Advocate for Pet/Ap. : Mr.S.Sathia Chandran, Adv.

Judgement :

1. The petitioner was initially appointed as a Sanitary Worker in the 2nd respondent Temple with effect from 5.4.1996. Thereafter he was posted as Token Stamper. Subsequently, he was also posted as Driver from the year 2004. The petitioner filed a Writ Petition before this Court in W.P.No.26557 of 2007 seeking for a direction to the respondents to consider his representation dated 19.4.2007 to regularize his service, in the light of the Government Order in G.O.Ms.No.22, P&AR; Department dated 25.2.2006. This Court without going into the merits of the case, by an order dated 8.8.2007 directed the respondents to consider his representation in accordance with law.

2. Thereafter, it transpires that the 1st respondent Executive Officer has also recommended the case of the petitioner for regularization and also to grant

appropriate exemption from the educational qualification vide his recommendation dated 31.3.2008. The petitioner was consistently making representations to the respondents. In the meanwhile, the petitioner was suspended by an order dated 17.9.2010 by the 2nd respondent Chairman of the Trust Board of Arulmigu Subramaniaswamy Temple, Marudamalai. It was stated that if the petitioner was aggrieved by the said order, he can file an appeal to the appellate authority in terms of Section 56(2) of the Act. The appellate authority is the Commissioner, HR & CE Department, Coimbatore.

3.It is seen from the HR & CE Act that under Section 56(2), the appeal is only in respect of penalty and not for any suspension pending enquiry. Therefore, this Court is not inclined to direct the petitioner to approach the appellate authority to avail the appeal remedy. On the other hand, in the normal circumstances, this Court is not inclined to go into the desirability or otherwise of the suspension order. But, in the peculiar circumstances of the case, it found that the suspension has to be interfered with. The gravamen of the charge against the petitioner was started when the petitioner made a complaint to the Inspector of the Police, Vadavalli Police Station on 28.5.2010 complaining that the Chairman and the other Trustees have called him by caste name and also insulted him and therefore he requested action to be initiated against them under the provisions of Scheduled Caste and Scheduled Tribe Act (Prevention of Atrocities) Act, 1989. Even before any action could be initiated, on coming to know about the said complaint, the 2nd respondent Board passed a Resolution No.7 dated 28.8.2010 making several charges against the petitioner including the charge relating to not-attending the duty without prior information with effect from 4.6.2010 and was trying to help persons who have put up shop by encroachment in the temple land and also without coming to work he has signed the attendance register on several days from March 2010 to August 2010. Therefore, it was felt that the petitioner has acted against the interest of the temple and he should be placed under suspension. But the charge No.1 related to the petitioner's complaint to the police authorities and even before the said complaint could be enquired into, it is not known as to how the 2nd respondent can frame a charge against the petitioner as it will amount to interfering with the legal process initiated by the petitioner. It is only because of this charge, the Court was inclined to call for a counter affidavit on

the side of the respondents.

4. Accordingly, a counter affidavit dated 7.12.2010 was filed by the 1st respondent Executive Officer. In relation to the regularization plea made by the petitioner, it was stated that the Temple authority has decided to consider his case in due course along with the claim of others. But, there is no averment that the petitioner was informed about any such decision. In any event, it was claimed that the petitioner was bringing pressure through the Association to which he is a member for which also the 1st respondent took exception. In normal circumstances, the 1st respondent should have advised the Trust Board to withdraw the first charge as it will amount to interfere with the process of law. On the other hand, the 1st respondent, though the Government Servant was appointed as Executive Officer, in paragraph 13 had taken a stand which is as follows:

"It is submitted that in Proc.Rc.No.328/2010 A3 dated 17.9.2010, three charges were framed against this petitioner and he was placed under suspension. There are no malafides or error in framing charges and placing under suspension. The charges were framed only because of the lapses and irregularities committed by the petitioner. Now the enquiry is pending. After proper enquiry, appropriate orders will be passed in this matter."

5. Therefore, it is very clear that it is the decision of the Trust Board, who are aggrieved on the petitioner's complaint to the police authorities, which became the root cause for placing the petitioner under suspension. Notwithstanding the fact that the petitioner was a Class IV employee and in order to hide the fact, the 1st charge was made and the other charges have also been added.

6. If the Trust Board has passed a resolution on 28.8.2010, the charge itself has been framed along with the suspension order only on 17.9.2010. But, without going into the merits or demerits of the allegations, this Court was of the opinion that since the petitioner has made a complaint against the Board of Trustees, they got angered, in order to bring a solution to the issue on hand requested the petitioner's counsel to find out whether the petitioner was willing to withdraw the complaint in the police.

7. Accordingly, the learned counsel for the petitioner has filed a memo dated 31.3.2011 and in the said memo, in paragraphs a and b, the petitioner had made the following statement:

"a. The petitioner submits that the petitioner's complaint dated 28.5.2010 has not been registered by the Vadavalli Police till date and further the petitioner has also not pursued the said complaint any further.

b. The petitioner submits that in order to give a quietus to the whole issue, the petitioner hereby undertakes that he would not pursue his complaint dated 28.5.2010 made to the Vadavalli Police.

8. However, Mr.T.Chandrasekaran, learned Special Government Pleader stated that there is no bar to withdraw the complaint. In a complaint of this nature, the petitioner cannot withdraw any complaint as the offence alleged under the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act is a cognizable offence. On any person having made a complaint, without investigation the complaint cannot be closed. But the said memo, which is also filed with sincerity and conscience should satisfy the authorities. Ultimately the police authorities can be directed to give a quietus to the complaint. If the Board is willing to revoke the suspension and reinstate the petitioner, they should also give an opportunity to continue to work under the Temple establishment.

9. In the light of the memo filed by the petitioner, this Court is of the opinion that the 2nd respondent Board should withdraw the suspension order and allow the petitioner to resume work. Since the petitioner has also filed a memo stating that he is not willing to pursue the complaint, the 1st charge is deemed to be closed. In respect of the other charges, the Trust Board may decide to drop the charges so that the petitioner will have an opportunity to prove that he can render services to the temple without any further complications. The Writ Petition is disposed of accordingly. The respondents are hereby directed to pass orders in the light of the order of this Court within a period of one week from the date of receipt of a copy of this order and also restore the petitioner in service. No costs. The connected Miscellaneous Petition is closed.