THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

WRIT PETITION No.5455 of 2004

ORDER:

This writ petition is filed under Article 226 of the Constitution of India seeking a writ of mandamus declaring the action of the respondent in suspending the petitioner and consequently set aside the impugned order in RC No.H3/11323/04-1, dated 17.3.2004 as the same was passed by the respondent without jurisdiction and against the provisions of Section 37 of Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (the Act, for brevity).

2. The facts leading to filing of the writ petition are briefly as follows: The petitioner was appointed as Junior Assistant in Sri Lakshmi Narasimha Swamy Temple, Nacharam Gutta, Wargal Mandal, Medak District (hereafter referred to as, the Temple) on 01.4.1987. The respondent is the Commissioner of Endowments, Boggulakunta, Tilak Road, Hyderabad. The Temple was classified under Section 6(a) of the Act as a '*religious institution*' as its annual income for the purpose of levy of contribution under Section 65 of the Act is more than Rs.10.00 lakhs. On 10.12.2003, the petitioner made a representation to the Executive Officer of the Temple to transfer him to the nearest temple wherein his wife is working. The Executive Officer also recommended the same to the respondent vide RC No.SLNSD/18/2003, dated 18.12.2003 and the matter is pending for consideration of the respondent. By the impugned order dated 17.3.2004, the respondent suspended the petitioner on the ground that he was not present in the Temple on 10.3.2004 at about 8.30 AM when the respondent made surprise visit to the Temple. Aggrieved by the impugned orders of the respondent, the petitioner filed the present writ petition contending that the Trustee or the Executive Officer of the Temple is empowered to suspend, remove or dismiss an employee of the Temple under Section 37 of the Act and Rule 6 of the Office Holders and Servants Punishment Rules, 1987 made under G.O.Ms.No.830, Revenue

(Endowments-I), dated 18.8.1989 (the Punishment Rules) and that the respondent–Commissioner has no power to pass the impugned order by placing the petitioner under suspension.

3. The respondent filed counter, *inter alia*, contending that in view of Rule 6 of the Punishment Rules, the respondent has power to suspend the petitioner. The respondent has made surprise visit of the Temple on 10.3.2004 and during the inspection he found that the petitioner was unauthorisedly absent from his duties in spite of Brahmothsavams in the Temple were scheduled to start from that day and thereby the petitioner caused much inconvenience to the Executive Authority. Hence the writ petition is liable to be dismissed.

4. The contention of learned counsel for the petitioner is two fold: (1) the respondent has no authority whatsoever to suspend the petitioner in view of Section 37 of the Act; and (2) even as per the Rules made under G.O.Ms.No.830, the respondent has no power to pass the impugned order by placing the petitioner under suspension. *Per contra*, learned Government Pleader for Endowments vehemently submitted that in view of G.O.Ms. No.830, dated 18.8.1989, the respondent is empowered to suspend the petitioner. She further submitted that the respondent has got every right to suspend the employees of the Temple in view of Section 8(1) of the Endowments Act.

5. It is not in dispute that the petitioner has been working as Junior Assistant in the Temple from 01.4.1987. Brahmothsavams in the Temple were scheduled to be commenced on 10.3.2004. A perusal of the record reveals that the petitioner was not attended to his duty on 10.3.2004 at 8.30 AM when the respondent visited the Temple. The respondent passed the impugned order suspending the petitioner.

6. The only question that falls for consideration in this writ petition is "*whether the Commissioner of Endowments can straightaway suspend an employee of the Temple or not?*"

7. To substantiate the argument, learned counsel for the petitioner has drawn my attention to the Full Bench decision of this court in **N.Ravindra Murthy v Shri Veerabhadra Swamy Temple**[1]. The relevant paragraph Nos.6 and 7 read as under:

> 6. Section 37 of the Act declares that office holders and servants attached to a religious institution shall be under the control of trustee or board of trustees. They can be dismissed, removed, suspended or fined for breach of trust, misappropriation, incapacity, disobedience, misconduct, violation of code of conduct or neglect of duty or for any other sufficient cause. The exercise of power however is subject to procedure prescribed under Disciplinary Rules. **Sub section (2) of Section 37 of the Act provides that if annual income of temple exceeds ten lakh rupees, power to impose any of the penalties, has to be exercised by EO as per rules**. Sub section (2) of Section 37 of the Act is given overriding effect, which only means that it has application only in respect of temples classified under Section 6(a) of the Act. In regard to temples, whose annual income is less than five lakh rupees and are classified either under Section 6(b) or 6(c) of the Act, only trustee is given disciplinary power.
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> 7. Sub section (3) of Section 37 of the Act provides for an appeal against order of trustee to appropriate authority and sub section (4) provides further second appeal either to the Government or the Commissioner, as the case may be. Sub section (5) enables trustee to direct EO to take suitable action against office holder. If action is not taken by EO, trustee can take action ignoring EO. Section 38 of the Act is a provision intended to control exercise of disciplinary power by the Board of Trustees or EO, as the case may be in certain situations. **If trustee does not deal with an employee, Section 38(1) of the Act empowers appropriate authority of Department of Endowments to direct taking action under Section 37 of the Act and in disobedience thereof impose penalties under Section 37(1) of the Act.**
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> (emphasis supplied)

8. It is an admitted fact that the Temple is classified as religious institution under Section 6(a) of the Act as its annual income is more than Rs.10.00 lakhs. The disciplinary power is conferred on the Trustee or the Executive Officer of the Temple under Section 37 of the Act. It is not the case of the respondent that the competent authority has not suspended the petitioner in order to cover the matter under Section 38 of the Act.

9. The next contention of the learned Government Pleader is that the respondent has got every right to suspend the petitioner under Section 8(1) of the Act. Section 8(1) of the Act reads as under:

> **8. Powers and functions of Commissioner and Additional Commissioner**:- (1) Subject to the other provisions of this Act, the administration of all Charitable and Hindu Religious institutions and endowments shall be under the general superintendence and control of the Commissioner and such superintendence and control shall include the power to pass any order which may be deemed necessary to ensure that such institutions and endowments are properly administered and their income is duly appropriated for the purposes for which they were found or exist.

In paragraph No.64 of the above referred decision, the Full Bench, while considering the scope of Section 8(1) of the Act, held as follows:

> 64. Section 8 of the Act cannot be construed as a reservoir of omnipotent power. Section 8(1) of the Act declares that the administration of all religious institutions shall be under the general superintendence and control of the Commissioner. Sub-section (1) begins with the phrase, "subject to provisions of the Act". In plain terms, it means whatever power of general superintendence and control is exercised by the Commissioner, the same is circumscribed and strictly regulated by other provisions of the Act as well as Rules made thereunder. **Section 8 of the Act, therefore, even remotely is not source of disciplinary power of Commissioner, even if, 'general superintendence and control' of religious institutions vests in Commissioner.** When power is conferred on public authority, such power has to be exercised subject to express or implied limitations imposed on exercise of such power.

10. Having regard to the facts and circumstances of the case and also the principles enunciated in the case cited supra, the respondent has no power whatsoever to take disciplinary action against the petitioner. Therefore, the impugned order passed by the respondent is liable to be set aside.

11. In the result, the writ petition allowed setting aside the impugned order dated 17.3.2004 passed by the respondent in RC No.H3/11323/04-1. However, it is made clear that allowing of this writ petition does not preclude the competent authority to take appropriate action against the petitioner in accordance with law. Miscellaneous petitions, if any

pending in this writ petition, shall stand closed.

(**T.SUNIL CHOWDARY, J**)

June 08, 2016.

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[1] 2008 (3) ALT 287 (FB)