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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.06.2017

CORAM :

THE HONOURABLE MR.JUSTICE A.SELVAM

AND

THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

Writ Appeal (MD) Nos.374 and 375 of 2016
in

W.P. (MD) .Nos.8381 and 8490 of 2015

and

C.M.P. (MD) .Nos.2395 and 2398 of 2016

and

C.M.P. (MD) .Nos.3291 and 3292 of 2017

M.Yogananth

... Appellant/Petitioner in
both Appeals

Vs.

1. The District Elementary Educational Officer,
Madurai District,
Madurai.

2. Mr.E.D.Charles,
Secretary,
Executive Committee,
Tamil Evangelical Lutheran Church,
Post Box No.86,
Tranquebar House,
Trichy-01.

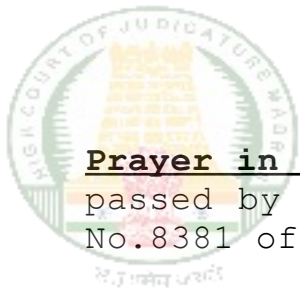
3. Mr.Ruban Vasanthakumar,
Secondary Grade Teacher,
TELC Middle School,
Peraiyur Road,
Usilampatti, Madurai.

... Respondents in
W.A. (MD) .No.374 of 2016

1. The District Elementary Educational Officer,
Madurai District,
Madurai.

2. Mr.E.D.Charles,
Secretary,
Executive Committee,
Tamil Evangelical Lutheran Church,
Post Box No.86,
Tranquebar House,
Trichy-01.

... Respondents in W.A. (MD) .375/16



Prayer in W.A. (MD) .No.374/2016:Writ Appeal filed against the order passed by His Lordship the Hon'ble Mr.Justice T.Raja in W.P.(MD). No.8381 of 2015, dated 05.01.2016.

Prayer in W.A. (MD) .No.375/2016:Writ Appeal filed against the order passed by His Lordship the Hon'ble Mr.Justice T.Raja in W.P.(MD). No.8490 of 2015, dated 05.01.2016.

Prayer in WP(MD) . 8381/ 2015 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of Certiorari to call for the records on the file of the 2nd respondent in connection with the impugned order of cancellation of correspondentship vide his proceedings dated 17.2.2015 extracted from the EC proceedings No.1250 dated 28.10.2014 and quash the same as illegal and ultravires and pass such further or other orders.

Prayer in WP(MD) . 8490/ 2015 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari, to call for the records on the file of the 2nd respondent in connection with the impugned order of cancellation of Correspondentship vide his proceedings dated 17.02.2015 extracted from the EC Proceedings No. 1250 dated 28.10.2014 and quash the same as illegal and ultravires and pass such further or other orders.

For Appellant in both W.As : Ms.N.Krishnaveni,
Sr. Counsel for
Mr.D.Selvanayagam

For R- 1 in both W.As : Mr.M.Govindan
Special Government Pleader

For R-2 in both W.As : Mr.Cibi Chakaraborthy

For R-3 in W.A. (MD) .374/2016 : No appearance

COMMON JUDGMENT

(Judgment of the Court was delivered by Mr.N.AUTHINATHAN.J.,)

The appellant has come up with these writ appeals, challenging the common order passed by this Court in W.P.(MD). Nos.8381 and 8490 of 2015, dated 05.01.2016.

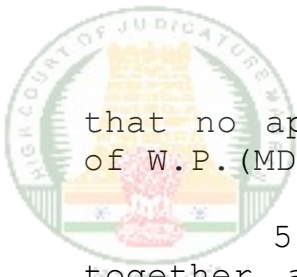
2.Tamil Evangelical Lutheran Church (TELC) runs various services (e.g. Govt. Primary Schools). TELC is governed by its own bye-laws known as 'The Tamil Evangelical Lutheran Church rules' and its affairs are administered by a Managing Committee, known as



Executive Committee, formerly known as 'Church Council'.

3. The appellant in the present appeals was appointed as Correspondent of TELC Middle School, Peraiyur road, Usilampatti and TELC Girls Higher Secondary School, Usilampatti. It is said that the appellant leased out a property belonged to the church in favour of his wife for a period of 99 years. He has also sold various properties belonging to the church by using forged documents including a playground of TELC Girls Higher Secondary School, Usilampatti. The Executive Committee resolved to take action against him. A show-cause notice was issued on 08.03.2014 calling for explanation from him within a period of one week. The appellant did not send any reply to the show-cause notice. A criminal case was registered on 20.04.2014 in F.I.R.No.137 of 2014 for the offences punishable under Sections 120(B), 468, 471, 406 and 420 I.P.C against the appellant. The appellant resigned his post as Correspondent of TELC Girls Higher Secondary School and submitted his resignation letter on 07.05.2014. The Executive Committee by its proceedings No.1250, dated 28.10.2014, gave him a week's time to take steps for reconveyance of the school properties. In the mean time, a suit in O.S.No.181 of 2014 on the file of the Principal District Judge, Trichirappalli has been filed by one Manthiri Rajakumar. He obtained an order of interim injunction in I.A.No.372 of 2014 restraining the respondents therein from acting as the Executive Committee members. Hence, no action was taken against the appellant. The interim order was vacated by the Court on 07.02.2015. Thereafter, the Executive Committee met on 17.02.2015. All the members, except the petitioner participated in the meeting. The Committee resolved to initiate action against the petitioner and further resolved to remove him from his post as Correspondent of TELC Girls' Higher Secondary School, Usilampatti and TELC Middle School, vide proceedings No.1251/17/2013-2016, dated 17.02.2015. One Rooban Vasanthakumar/3rd respondent in W.A.(MD).No.374/2016 was nominated as Correspondent of TELC Middle School, Peraiyur Road, Usilampatti and the second respondent in both writ appeals viz., E.D.Charles was appointed as Correspondent of TELC Girls Higher Secondary School, Usilampatti with effect from 17.02.2015.

4. Aggrieved by the said order of removal, the appellant filed a suit on the file of Subordinate Judge, Usilampatti for a declaration that the impugned order was null and void and for an injunction against the respondents viz., E.D.Charles and Rooban Vasanthakumar from interfering with the administration of the said Schools by him. Subsequently, the appellant has withdrawn the suit and approached this Court by way of writ petitions W.P.(MD). Nos.8381 and 8490 of 2015, challenging the order of removal from his post as Correspondent of the said schools. One Ramesh Kumar filed W.P.(MD).No.3124 of 2015 challenging the replacement of Correspondent by the TELC. All the writ petitions were heard together. All the writ petitions have been dismissed. It is said



that no appeal has been preferred against the order of dismissal of W.P. (MD).No.3124 of 2015.

5.The Writ Court heard all the three writ petitions together and passed a common order, dated 05.01.2016. The Writ Court, having taken note of the pendency of the criminal cases and the serious nature of the allegations, dismissed the writ petitions. The Writ Court held that it was not legally permissible for the petitioner to function as Correspondent of the schools.

6.Aggrieved by the order of the learned Single Judge, the appellant has preferred the present writ appeals.

7.The learned Senior Counsel appearing for the appellant would contend that the impugned order, dated 17.02.2015 has been passed without jurisdiction and in breach of natural justice. The learned Senior Counsel has submitted that the appellant was removed from his post as Correspondent of the schools on the main allegation that he has sold a property of the school. The learned Senior Counsel has pointed out that as per the sale deeds dated 29.01.2014, the Property Officer of TELC sold the properties on the strength of the Church Council Proceedings No.1223, dated 04.02.2013 and the appellant signed the sale deed only as a witness.

8.The learned counsel for the respondents advanced their arguments in support of the impugned order. It is submitted that the TELC has not violated any law and the impugned order of removal was passed by the Executive Committee of TELC, after following the principles of natural justice.

9.Admittedly, the appellant was appointed as Correspondent of the TELC Middle school and TELC Girls Higher Secondary School, by the Church Council, as could be seen from the copy of the extract from the C.C Proceedings No.1215, dated 23.09.2010 and No.1226, dated 06 & 07.08.2012 respectively.

10.The Church Council/Executive Committee has resolved to sell some of its properties, vide its proceedings, No.1223, dated 04.02.2012. As per this proceedings, the Property Officer, TELC was requested to make necessary arrangements for registration of sale deed. However, eleven named persons have been authorised to witness the sale deeds. It is not in dispute that the appellant has not been authorised to witness the sale deed. Admittedly, the appellant has signed the sale deed as a witness. The appellant in his common reply affidavit, dated 11.06.2015, has contended as follows: 'It is not against the Church Rules to lease out the land in the name of my wife and all these days, the lease amount has been properly and promptly credited towards the TELC'. Therefore, it is clear that the appellant has leased out a property of TELC



to his wife. It is not his case that he was authorised by the Executive Committee/Church Council to lease out the property in the name of his wife. In these circumstances, it cannot be said that the Church Council or Executive Committee was not justified in taking action against the appellant.

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11. It is significant to note that the appellant is also a member of the Church Council/Executive Committee. For the executive committee meeting held on 17.02.2015, a prior notice was given on 09.02.2015. There are totally nine members in the Executive Committee. All the members of the Committee including the Bishop/President except the appellant were present at the meeting held on 17.02.2015. The Committee, having taken note of the serious allegations of forgery, criminal assault on the responsible members of TELC and arrest of the appellant in connection with a case in F.I.R No.79/2015 on the file of Palakkarai Police Station, Tiruchirappalli, resolved to remove him from his post as Correspondent of the schools. It is also important to note that the appellant has resigned from his post as Correspondent, TELC Girls Higher Secondary School, vide letter, dated 07.05.2014. As the appellant is one of the members of the Executive Committee, he cannot be permitted to contend that the Executive Committee/Church Council has no authority to pass the impugned order, dated 17.02.2015.

12. The Church Council is the executive and administrative body of the church. It is responsible for the proper administration of the church and its finances and its properties, as per its rules. The proceedings of the Executive Committee would show that all the members present at the meeting, having regard to the serious nature of the allegations, unanimously resolved to remove the appellant from the post of Correspondent. The appellant did not avail himself of the opportunity by sending a reply to the show-cause notice, dated 08.03.2014, issued to him. In these circumstances, it can be safely assumed that the appellant was aware of the allegations/charges, as he is a member of the Executive Committee/Church Council. Therefore, no fault can be found with the manner in which, the proceedings were conducted on 17.02.2015.

13. It is not the case of the appellant that the impugned order deprived him of his liberty or his property. The appellant was appointed by the Church Council/Executive Committee. The Committee is responsible to appoint a suitable person as Correspondent of Schools. Correspondent is the most important functionary of a school and it is his responsibility to protect the properties of the school and to enforce discipline in the school. In the case at hand, as already pointed out, the appellant is facing serious allegations and he was arrested in connection with a criminal case. He was not yet exonerated from the allegations. It is not in dispute that criminal cases are



still pending against him. Writ is a discretionary remedy. The appellant failed to show that equity is also in his favour. Therefore, we hold that the Writ Court has come to the correct conclusion and the same does not warrant interference by this Court.

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14. For the reasons stated supra, the writ appeals are dismissed. No costs. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-

Assistant Registrar

/True copy/

Sub Assistant Registrar

To

1. The District Elementary Educational Officer,
Madurai District,
Madurai.

2. The Secretary,
Executive Committee,
Tamil Evangelical Lutheran Church,
Post Box No.86,
Tranquebar House,
Trichy-01.

+1 cc to Mr.T.Cibi Chakraborhy, Advocate in SR.No. 62747

vs

AE/MR KKR/SAR4/05.07.2017/6P/4C

Pre-delivery common judgment made in
Writ Appeal (MD) Nos.374 and 375 of 2016
29.06.2017