

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reservation	30.10.2019
Date of Judgment	18.12.2019

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH
and

THE HONOURABLE MRS. JUSTICE T.KRISHNAVALLI

OSA No.28 of 2019
and

CMP Nos.21727 and 1677 of 2019

Rev.S.Ananda Selva Kumar,
Pastor,
T.E.L.C Church,
Chengalpattu,
No.12, GST Road,
Chengalpattu-1.

: Appellant/Plaintiff

Vs.

Tamil Evangelical Lutheran Church,
represented by its Administrator,
Justice K.Venkatraman (Retd.),
(L-Block), 125, 17th Street,
East Anna Nagar, Chennai-600 102.

: Respondent/Defendant

Prayer: Original Side Appeal filed under Order 36 Rule 1 of Original Side Rules r/w clause 15 of the Letters Patent, against the judgment and decree, dated 30.10.2018 made in C.S.No.607 of 2018 on the file of the Original Side of this Court.

For Appellant

: Mr.S.Balasubramanian

For respondents

: Mr.S.Karthikeya Balan

J U D G M E N T

T.KRISHNAVALLI, J

This original side appeal is directed against the judgment of this court passed in C.S.No.607 of 2018, dated 30.10.2018.

2.The case of the appellant/plaintiff is that he is the member and a Devotee of TELC (Tamil Evangelical Lutheran Church) from his birth and from the childhood, he had a passion for religious service and preaching etc., and his first appointment was in the year 2002 at Tarapuram, TELC Church as Theological

Trained Men to assist the Pastor and served the post upto the year 2007 and in the year 2007, the plaintiff received the Ordination from the Bishop and was promoted to Candidate and was posted as Sadras, TELC Church at Kalpakkam and the plaintiff received the 2nd Ordination in the year 2008 and was promoted as Pastor and Chairman of the Pastorate Committee, Sadras, TELC Church, Kalpakkam and thereafter, he was transferred to TELC Chengalpattu and he joined there as Pastor and Chairman, Pastorate Committee, Chengalpattu, TELC Church and had completed only 3 years of service as of now and he was appointed as the Pastor and Chairman, Pastorate Committee by the Secretary of the Church Council, which is the Apex and the Superior most Council of the TELC and in the meantime, the elected period of Church Council was over by the year 2016 and fresh elections were needed to be conducted and a dispute arose between two groups within TELC and consequently gave rise to litigations, thereby creating a situation that elections to the Church Council could not be conducted and there was a condition that there whole establishment was suffering without the formation of the New Church Council by conducting elections and in the year 2016, this Court had appointed Justice V.Kanagaraj, the retired Judge of this court as an Administrator of the TELC Church by virtue of the Orders of this court in LPA Nos.3 and 5 of 2015 to administer the TELC Church and to conduct the elections for the Church Council. In due course, the learned Justice, the Administrator of TELC had relieved himself from all responsibilities as the Administrator of TELC, attributing his health and family situations and in the meantime, the Synod Committee was constituted as per the Order of this court, wherein it was decided to follow the Church Council Rules of TELC in future for all the matters including elections. When that being the position, the present Administrator namely the defendant was appointed as an Administrator to administer the TELC (Tamil Evangelical Lutheran Church) and to conduct the elections for the same by the order of the Hon'ble Supreme Court and hence, the defendant has taken charge as Administrator of TELC Church and there was a person within the Chengalpattu, TELC, who was enjoying the properties of TELC by paying low rent and was running a hotel by occupying a vast portion of land and the Bungalow belonging to TELC for a meagre rent and the above said tenant was always trying to create confusion and misunderstanding within the TELC and he had mustered a group of TELC members as his supports and in the month of October 2017, TELC, Chengalpattu had received a sum of Rs.43,38,440/- as compensation for the land which was acquired by the Government from the TELC, Chengalpattu and the bank account of TELC, Chengalpattu was operated by Pastor, Chairman, Pastorate Committee and the Treasurer, Pastorate Committee jointly and as per the TELC procedures and norms, any inform from the local Pastorate and Churches will be divided in the ratio 70:30

wherein 70% will be retained by the local Pastorate for conducting the Pastorate and Church activities and development activities and 30% will be paid to the Central Office of TELC and while so, a sum of Rs.43,38,440/- was transferred to the account of the Central Office without the knowledge and consent of the signatories of the banking transactions namely the Chairman and Treasurer of the Pastorate Committee and hence, the Treasurer was compelled to give a formal complaint to the Bank Higher Officials against the officers of the Bank and as a result of which, the defendant had thought of installing the new Advisory Committee in the place of the Pastorate Committee by removing some members of the Pastorate Committee and including the new members in the Advisory Committee and thereby taken steps to install the new Advisory Committee with new members by means of the letter, dated 20.07.2018 and since the plaintiff was not able to install the new Advisory Committee in the place of Pastorate Committee due to the opinion and objection of the Church Members, the defendant had taken steps to transfer the plaintiff to a newly established Pastorate at Nalallam, Vizhupuram District, which is more than 100 Kms from Chengalpattu and in this regard, the defendant had sent the proceedings, dated 10.08.2018 wherein he has stated that the plaintiff has transferred to Nalallam Pastorate due to the Administrative reasons. Hence, the Civil Suit declaring the proceedings letter, dated 10.08.2018 issued by the defendant against the plaintiff as illegal, null and void and for permanent injunction restraining the defendant, his men, servants, agents or anybody else acting under or through the defendant from enforcing and implementing the proceedings, dated 10.08.2018 from transferring the plaintiff, the post of Pastorate, Chengalpattu to Nallalam and for costs of the suit.

3.The respondent/defendant contended that the appellant/plaintiff who is a Pastor in TELC Church had filed the suit challenging the order passed by the Judge/Administrator, TELC, dated 10.08.2018 in C.S.No.607 of 2018 and the same was dismissed on 30.10.2018 on the ground maintainability and as per the order passed by the Division Bench of this court in LPA Nos.3 and 5 of 2015, dated 07.12.2016, no suits or other legal proceedings can be initiated in matters relating to Administration and Management of TELC Church except before the Principal District Judge, Tiruchirapalli and prays for dismissal of the appeal.

4.Now, the points to be decided in this appeal are:-

(1)Whether the Church is an Institution?

(2)Whether the plaintiff is an employee of

the Church?

(3) Whether this court has jurisdiction to try the case?

(4) Whether the judgment passed by the learned single Judge is correct?

(5) Whether the OSA is liable to be allowed ?

(6) To what other relief?

Point Nos.1 to 3:-

5. The main contention raised on the side of the appellant/plaintiff is that the word 'Institution' includes Church and the interpretation made out by the single Judge stating that TELC is a Central Body within which the TELC Churches are functioning and in which the Pastor is also serving as its employee for the purpose of the institution of establishing the Churches and therefore, the Church is also institution is not correct and hence, this court has jurisdiction to try the case and prays that the OSA may be allowed.

6. On the other hand, the learned counsel appearing for the respondent/defendant argued that the appellant/plaintiff questioned the general transfer order, which was issued for administrative reasons and the same being in the realm of management administration of TELC and this cannot be brought to challenge before this court as per the decision taken in LPA Nos.3 and 5 of 2015 of this court and the Pastors are rendering their spiritual service from the administrative part of the Church and it is evident from the preamble position of the TELC Rules, 1991 under the head of administration of Church as thus the Pastor/ appellant/plaintiff is administered by the respondent/defendant herein and the same cannot be disputed by the appellant/plaintiff and as per Rule 8 of the TELC Church. Since the defendant's branch office situated in Chennai, the suit cannot be entertained before this court. Since the jurisdiction of the head office was taken into account and the institution does not include Church as thus the appellant/plaintiff cannot be considered as an employee of TELC as the Pastor is an agent of the Church, who has given to the Pastors for divine service, some cases and spiritual between them and thus the appellant/plaintiff cannot be considered as an employee nor the Church can be considered as an Institution and this appeal is a clear abuse of process of law and it is liable to be dismissed. Further, the learned counsel for the respondent/defendant argued that the definition and meaning of the word 'Institution' was also discussed in LPA Nos.3 and 5 of

2015 and therefore, the word 'Institution' cannot by any stretch of imagination mean to include the Church and thus the Pastor cannot be considered as an employee.

7. At this juncture, it is necessary to refer the relevant paragraph of the order passed in LPA Nos.3 and 5 of 2015, dated 07.12.2016, which would run thus:-

After delivery of the judgment, Mr.G.Masilamani, learned Senior Counsel appearing for the respondents 1 and 2 in the above appeals, inviting the attention of this Court to the judgment reported in 2011(1) CTC 395 (Rt.Re.Dr.H.A.Martin; Samuel Gunaseelaraja Vs. The Tamil Evangelical Lutheran Church, rep. by its Secretary, E.D. Charles and others, would submit that in paragraph No.53(m) of the above cited decision, it has been clarified that No suit or other original proceedings, touching upon (i) the election to the Synod, Church Council and Bishop/President; and (ii) the management and administration of TELC, shall henceforth, be entertained by any Court other than the Principal District Court, Tiruchirappalli, within whose jurisdiction the registered office of TELC is situate. It shall be open to the Principal District Court, Tiruchirappalli, to assign those cases to any of the Additional District Courts or Fast Track Courts. But, this restriction shall not apply to the employees of the various institutions run by TELC, to ventilate their individual grievances, before appropriate Authorities/Courts.

Therefore, submit that similar direction may also be passed as there are very many litigations pending or likely to emanate in future also.

2. This Court heard the submissions of Mr.r.Jayaprakash, learned counsel appearing for the appellant on the submissions made by the learned Senior Counsel appearing for the respondents 1 and 2.

3. This Court is of the view that the direction issued in paragraph 53(m) of the decision reported in 2011(1) CTC 395 (cited supra) shall be scrupulously followed."

8.The next allegation of the appellant/plaintiff was that he must be considered as an individual employee of TELC Institution and by the word 'Institution', the appellant tried to interpret the said word by saying it would include Churches as well. In this context, the definition and meaning of the word 'Institution' was also observed in the order passed by the Hon'ble Division Bench referred supra at paragraph 6, which is extracted here for case reference.

"6.TELC runs and administer 9 Higher Secondary Schools, 128 Primary Schools, 2 Old Age Homes, 28 Orphanages, 1 Hospital, 1 College and 2 Teacher Training Institutions."

Therefore, the word 'Institution' cannot be any stretch of imagination mean to include Churches and thus Pastor cannot be considered as an employee of TELC Institution.

9.It is pertinent to note that Pastor is an agent of the Church, who is given to the Pastorates for divine service, soul care and spiritual leadership and thus, he cannot be considered as an employee nor the Churches can be considered as Institutions.

10.Accordingly, the point Nos.1 to 3 are answered in favour of the respondent.

Point Nos.4 to 6:-

11.It is also pertinent to note that the appellant/plaintiff has misrepresented the facts and gave false undertaking before this court not once, but several times and the same is also recorded in the order of the learned Single Judge as well as in the interim order, dated 13.08.2019 passed by this court in the present appeal, which would clearly show that the conduct of the appellant and thus, the present appeal is a clear abuse of process of law.

12.Further, in the above judgment, it is held that the restriction shall not apply to the employees of various institutions run by TELC to ventilate their individual grievances before Appropriate Authorities/Courts. Hence, it is held that the restrictions stated in LPA Nos.3 and 5 of 2015 is not applicable to the plaintiff. Already it was decided that the plaintiff is not an employee of TELC. On perusal of the judgment pronounced by the learned single Judge of this court, the appellant/plaintiff was directed to file the suit before the Principal District Court, Tiruchirappalli. But the appellant/plaintiff did not appear before the court and the learned counsel for the appellant/plaintiff submitted that the appellant/plaintiff did not cooperate with him and hence, the

learned single Judge pronounced the judgment on merits. No prejudice will be caused to the appellant/plaintiff, when the case will be filed before the Principal District Judge, Tiruchirapalli. Hence, it is held that the impugned judgment passed by the single Judge is correct.

13. Accordingly, the point Nos.4 to 6 are answered in favour of the respondent.

14. For the foregoing reasons, it is held that this court has no jurisdiction to try the case and hence, it is not necessary to interfere with the findings of the learned single Judge of this court.

15. In the result, the Original Side Appeal is dismissed. The appellant/plaintiff is directed to re-present the plaint before the appropriate forum within a period of two months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

// True Copy//

Sub Assistant Registrar

smn/er/cs

To

The Sub Assistant Registrar,
Original Side,
High Court, Madras.

+2cc to S.Balasubramanian, Advocate, SR.No.105249.

Judgment in
OSA No.28 of 2019

CNR(CO)
CSR: 18.02.2020

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