



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.07.2020

CORAM

THE HON'BLE MR. JUSTICE R. SURESH KUMAR

W.P. (MD) No. 6432 of 2020

and

W.M.P (MD) .No. 5721 of 2020

WEB COPY

G.Amrishraam

... Petitioner

-Vs-

1.The Commissioner,
Hindu Religious Charitable Endowment Department,
Chennai-34.

2.The Joint Commissioner/Executive Officer,
Arulmighu Meenakshi Sundareswarar Thirukovil,
Madurai District.

3.The Thakkar/Chairman,
Arulmighu Meenakshi Sundareswarar Thirukovil,
Madurai District.

... Respondents

Prayer: Writ Petition is filed under Article 226 of Constitution of India, praying to issue a Writ of Certiorari, to call for the records pertaining to the impugned order made in Se.Mu.NaDa.Na.Ka.No.1153/2020/AA1 dated 23.03.2020 passed by the second respondent and quash the same.

For Petitioner : Mr.P.R.Prithviraj
For Respondents : Mr.VR.Shanmuganathan
Special Government Pleader

ORDER

Prayer sought for herein is a Writ of Certiorari calling for records pertaining to the impugned order made in Se.Mu.NaDa.Na.Ka.No.1153/2020/AA1 dated 23.03.2020 passed by the second respondent and quash the same.

2.That the petitioner was working as 'Odhuvar' at the third respondent temple and on 27.02.2020, it was alleged that an employee, namely M.Alaghupandi, a Lineman working in the temple, lost his mobile phone and on complaint, it was enquired and since some accusation was made against the petitioner, preliminary enquiry was conducted and it seems that, the petitioner denied such accusation as he was not responsible for stealing the mobile phone of the other employee. However, ultimately it seems that, after seeing the CCTV footage, the petitioner has given a candid admission



before the authorities stating that, he has mistakenly taken the mobile phone of the other employee and it has been returned so to the owner of the mobile phone and therefore, a lenient view can be taken without taking disciplinary action against him.

3. However, on the basis of said admission dated 29.02.2020 said to have been made by the petitioner, the fit person of the third respondent temple has taken a decision by passing a resolution on 18.03.2020 decided to take disciplinary action against the petitioner and also decided to suspend during the pendency of the disciplinary proceedings.

4. Pursuant to the said resolution passed on 18.03.2020, the Executive Officer of the third respondent temple passed the impugned order/communication dated 23.03.2020, wherein, the petitioner was placed under suspension from 18.03.2020 in view of the pendency of the charges framed against him. Challenging the said order of suspension communicated by the Executive Officer of the third respondent temple dated 23.03.2020, the petitioner preferred this writ petition.

5. Heard Mr. P. R. Prithviraj, learned counsel appearing for the petitioner, who would submit that, on the ground of want of authority in passing the impugned order dated 23.03.2020, the said order is being challenged. The learned counsel would further elaborate his submission stating that, under Section 56(1) of the 'Tamil Nadu Hindu Religious and Charitable Endowment Act, 1959' (for the sake of brevity 'said Act'), it is for the fit person to take decision with regard to disciplinary proceedings, such as, imposing punishment of fine, suspension, removal or dismissal of service and if any such punishment is awarded by the fit person under Section 56 (1) of the said Act, under Sub Section 2 of Section 56 of the said Act, appeal can be preferred by the aggrieved party to the Joint Commissioner or the Deputy Commissioner, as the case may be.

6. For easy reference, the relevant section i.e., 56 (1) and (2) of the said Act is extracted hereunder:-

"56. Punishment of Office-holders and servants in religious institutions: (1) All office-holders and servants attached to a religious institution or in receipt of any emolument or perquisite therefrom shall be controlled by the trustee and the trustee may, after following the prescribed procedure, if any, fine, suspend, remove or dismiss any of them for breach of trust, incapacity, disobedience of orders, neglect of duty, misconduct or other sufficient cause.

(2) Any office-holder or servant punished by a trustee under Sub-section (1) may, within one month from the date of the receipt of the order by him, appeal



against the order to the Joint Commissioner or the Deputy Commissioner, as the case may be.”

7. By relying upon these provisions, the learned counsel for the petitioner would submit that, under Section 56(1) of the said Act only the fit person has to take decision on disciplinary matters including to suspend an employee and against such decision taken by the fit person, aggrieved person can prefer appeal to the Appellate Authority, who is none other than the Joint Commissioner or the Deputy Commissioner, as the case may be, under Sub-Section 2 of Section 56 of the said Act. He would further submit that, in the case in hand, the impugned order, since has been passed by the Executive Officer suspending the petitioner from 18.03.2020, the said order is without jurisdiction, as such kind of order of suspension ought to have been made only by the fit person and not by the Executive Officer, as such action would go against the provisions of Section 56 of the said Act, as quoted above.

8. Insofar as the merits of the case is concerned, though submissions were made by the learned counsel for the petitioner, since charge has been framed and the enquiry is contemplated, where petitioner has been placed under suspension, which is under challenge mainly on the ground of want of jurisdiction, those issue on merits of the case was not much canvassed by both sides.

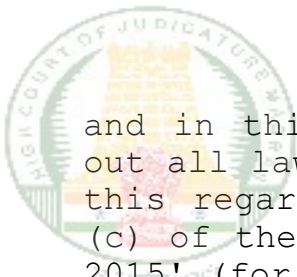
9. On the other hand, Mr. VR. Shanmuganathan, learned Special Government Pleader appearing for the respondents would contend that, no doubt under Section 56(1) of the said Act, only the fit person can take a decision with regard to the disciplinary matter of an employee including suspension of an employee and in the case in hand, such a decision was taken only by the fit person by way of resolution on 18.03.2020 and in this regard, the learned Special Government Pleader has relied upon the resolution passed on 18.03.2020, which reads thus:-

“பார்வை:

தீர்மானம் எண்.4631/நாள் 18.03.2020 இத்திருக்கோயிலில்
ஒதுவாராக பணி புரிந்து வரும் திரு.க.அம்ரீந் ராம் என்பவர் மீது
பொருளில் கண்டுள்ள குற்றச்சாட்டின் அடிப்படையில் குற்றச்சாட்டு
நிலுவையில் இருக்க அன்னாரை தற்காலிக பணி நீக்கம் செய்யத்
தீர்மானிக்கப்படுகிறது.

(ஒ.ம்)திரு.கருமுத்து தி.கண்ணன்
தக்கார்
அலுவலக கண்காணிப்பாளர்”

10. The learned Special Government Pleader would also submit that, the decision so taken by the fit person by way of resolution on 18.03.2020 has only been communicated by the Executive Officer



and in this regard, the Executive Officer is responsible to carry out all lawful directions issued by the Trustee or fit person and in this regard, learned Special Government Pleader relied upon Rule 4 (c) of the 'Conditions for Appointment of Executive Officers Rules, 2015' (for the sake of brevity 'said Rule').

WEB COPY

11. For easy reference, the relevant Rule i.e., Rule 4(c) of the said Rule is extracted hereunder:-

"4. The Executive Officer so appointed under rule 3 shall perform his duties, subject to the following conditions, namely:-

(a)

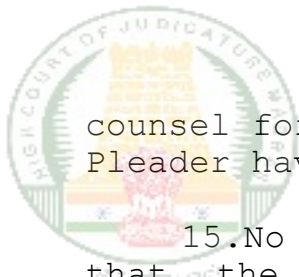
(b)

(c) He shall be responsible for carrying out all lawful directions issued by the trustee of the religious institution and the directions as may be issued, from time to time, by the authorities under the Act."

12. By relying upon the said Rule, learned Special Government Pleader would submit that, the decision was actually taken by the fit person of the temple by resolution dated 18.03.2020 and the same has been executed and carried out by the Executive Officer, who is responsible to carry out the same under Rule 4(c) referred to above and therefore, it cannot be said that the order impugned dated 23.03.2020 issued by the Executive Officer is an actual order of suspension of the petitioner and on that ground, it can be challenged for want of jurisdiction. On the merits of the issue pertaining to the charge framed against the petitioner, the learned Special Government Pleader also would submit that, after preliminary enquiry, the petitioner admitted his guilt before the third respondent authority on 29.02.2020. Nevertheless, in order to meet the legal requirements of *audi alteram partem* by way of conducting a full-fledged enquiry an enquiry has been contemplated and enabling the smooth conduct of the enquiry only as per the relevant provisions of the Act as well as the Rule, the petitioner has been placed under suspension and once the enquiry is commenced and the petitioner is ready and willing to co-operate with the Enquiry Officer, it will be over within a shortest possible time and on merits, the final order will be passed.

13. I have considered the said submission made by the learned counsel appearing for both sides and perused the materials placed before this Court.

14. The only ground raised by the petitioner to challenge the impugned order, dated 23.03.2020, is that the impugned order is suffered with for want of jurisdiction. The relevant provision of the Act as well as the Rule as has been relied upon by the learned



counsel for the petitioner as well as the learned Special Government Pleader have already been extracted.

15.No doubt, Section 56(1) of the said Act makes it very clear that the disciplinary action against all Office-holders and servants, attached to any religious institution under the Hindu Religious and Charitable Endowment Act can only be taken by the trustee or fit person, which includes imposition of fine, removal or dismissal of an employee, which includes suspension of the employee. Once such disciplinary action is taken by the fit person or trustee of the religious institution, the aggrieved party i.e., the Office-holder or servant punished by a trustee under Sub-Section (1) of Section 56 of the said Act, can prefer appeal before the Appellate Authority, who is none other than the Joint Commissioner or the Deputy Commissioner, as the case may be.

16.In this context, even though it was submitted by the learned counsel for the petitioner that, the Executive Officer, who passes the impugned order, himself, is the joint commissioner, therefore, he being the Appellate Authority cannot sit over the order passed by him on 23.03.2020 i.e., the impugned order, if ultimately the petitioner would be in a position to prefer appeal before the Appellate Authority. However, the said issue raised by the petitioner's counsel has been suitably answered by the learned Special Government Pleader appearing for the respondents, as he would submit that no doubt either the Joint Commissioner or the Deputy Commissioner would be the Appellate Authority and merely because, the Executive Officer of the third respondent temple is in the rank of the Joint Commissioner, he cannot be treated as an Appellate Authority, as no appeal would be filed before him, insofar as the disciplinary action taken against any Office-holders or Staff or Servant of the third respondent religious institution. Instead, the appeal would lie before the regular Joint Commissioner or Deputy Commissioner, as the case may be, who are the Appellate Authority designated in this regard under the Act as well as Rule framed thereunder and therefore, the Executive Officer/Joint Commissioner of the third respondent, who passes the impugned order would never be an Appellate Authority of any order of punishment or disciplinary action arising out of the third respondent religious institution.

17.Insofar as the decision taken by the fit person on 18.03.2020 by way of resolution is concerned, the learned counsel for the petitioner would point out that, if at all any resolution is taken and passed pursuant to which, order of suspension or order placing the petitioner under suspension ought to have been passed only by the fit person and not by the Executive Officer, in this regard, the learned counsel for the petitioner has relied upon the operative portion of the order impugned by relying upon the following lines:-



“பார்வை 3ல் காணும் இத்திருக்கோயில் தக்கார் தீர்மானத்தின்படி ஒதுவார் திரு.க.அம்ரீஷ்ராம் என்பவர் மீது 1959ம் ஆண்டு இந்து சமய அறநிலையத்துறை சட்டப்பிரிவு 56(1)ன் கீழ் கீழ்க் கண்டவாறு குற்றச்சாட்டுக்கள் சுமத்தப்பட்டு, குற்றச்சாட்டுக்கள் நிலுவையில் இருக்க அன்னாரை 18.03.2020ந் தேதி முதல் தற்காலிக பணி நீக்கம் செய்து உத்தரவிடப்படுகிறது.”

18.The words “தற்காலிக பணி நீக்கம் செய்து உத்தரவிடப்படுகிறது” make it very clear, according to the learned counsel for the petitioner, that the order placing the petitioner under suspension from 18.03.2020 was made only by the Executive Officer, therefore, it cannot be construed as an execution or a communication of the decision taken by the fit person, pursuant to the resolution dated 18.03.2020.

19.The said argument of the learned counsel for the petitioner cannot be countenanced because, the last word of the impugned order, referred to above, namely “உத்தரவிடப்படுகிறது” might not have been properly worded and it could have been worded as ‘தெரிவிக்கப்படுகிறது’. “உத்தரவிடப்படுகிறது” means “it is ordered”. ‘தெரிவிக்கப்படுகிறது’ means “it is informed/communicated”. Merely because, a particular word in the order impugned has been wrongly fit in or proper word has not been put in, it cannot be construed that, the order itself was passed by the Executive Officer by applying his mind under his authority. However, the fact remains that, the decision to suspend the petitioner was taken by the fit person under the resolution dated 18.03.2020 and pursuant to which, the decision of the fit person has only been communicated through the impugned order to the petitioner. Therefore, it cannot be construed that, the impugned order passed by the Executive Officer is in violation of Section 56(1) of the said Act and also for want of jurisdiction, the said order is infirm.

20.The said arguments and the interpretation sought to be given as canvassed by the learned counsel for the petitioner, cannot be accepted, as the legal position is clear and unambiguous, where Section 56(1) of the said Act makes it clear that, the decision has to be taken only by the fit person or trustee and thereafter, under Rule 4 (c) of the said Rules, referred to above, it is the responsibility of the Executive Officer to carry out the lawful directions of the fit person or trustee and in this case, the Executive Officer has only carried out the direction of the trustee, which is strictly inconsonance with Rule 4(c).

21.That apart Rule 14 of the “Functioning of the Board of Trustees Rules” (GO.Ms.No.4524, Revenue, dated 5th November, 1960-SRO No.A-583 of 1960) reads thus:

“14.All matters relating to the administration of the religious institution shall be decided at the meetings of the Board of Trustees. The Executive



Officer or the Chairman of the Board of Trustees, as the case may be, shall carry into effect the (decisions of the Boards of Trustees after obtaining the orders of the competent authority on individual subjects). "

22. Therefore, the only ground raised by the petitioner that the impugned order is suffered, because of want of jurisdiction, is completely out of context and is not supported by any legal position as well as the materials before this Court. Therefore, the said argument advanced on behalf of the petitioner is rejected.

23. Insofar as the merits of the case is concerned, this Court does not want to go into facts, as the enquiry has been contemplated and the petitioner has already been placed under suspension. Therefore, the merits of the issue in respect of the charges/accusation made against the petitioner, can be met by facing the enquiry by the petitioner.

24. In view of the above, following orders are passed in this writ petition :

'that the impugned order cannot be said to be unsustainable and therefore, the petitioner has not made out a case to challenge the same successfully. Accordingly, the writ petition is liable to be rejected and therefore, is rejected. However, the respondents are directed to complete the enquiry contemplated against the petitioner within a period of two months from the date of receipt of a copy of this order. No need to mention that the petitioner shall co-operate with the Enquiry Officer for early completion of the enquiry. In the meanwhile, since the petitioner has been placed under suspension, whatever the subsistence allowance, he is entitled for, shall be paid to the petitioner without fail every month.'

25. With the above observations and directions, this Writ Petition is dismissed. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

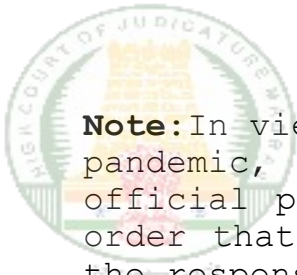
Assistant Registrar (Records)

// True Copy //

/ /2020

Sub Assistant Registrar (CS)

rmk



Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

WEB COPY

To

1. The Commissioner,
Hindu Religious Charitable Endowment Department,
Chennai-34.
2. The Joint Commissioner/Executive Officer,
Arulmighu Meenakshi Sundareswarar Thirukovil,
Madurai District.
3. The Thakkar/Chairman,
Arulmighu Meenakshi Sundareswarar Thirukovil,
Madurai District.

W.P. (MD) No. 6432 of 2020
07.07.2020

AP (27.07.2020) 8P-4C