

(1957) 10 AP CK 0002

In the Andhra Pradesh High Court

Case No : Writ Petition No. 338 of 1957

Agnihotram Ananthacharyulu and Another

APPELLANT

Vs

The Executive Officer, Sri Venugopalaswami Temple, Thotla
Valluru, Vijayawada Taluk, and Others

RESPONDENT

Date of Decision : 15-10-1957

Acts Referred:

Citation : AIR 1958 AP 325

Hon'ble Judges : Bhimasankaram, J

Bench : Single Bench

Advocate : D.V. Reddi Pantulu, for the Appellant; M. Seshachalapathi and M.V. Srinivasa Rao for Respondent 1 and N. Subba Reddi for Respondent 2, for the Respondent

Judgement

Bhimasankaram, J.—The petitioners are hereditary archakas of Sri Venugopalaswami Temple which is situate in Thotla Valluru, Vijayawada Taluk. The 1st respondent who is the Executive Officer of the temple appointed under the Madras Hindu Religious and Charitable Endowments Act (Act XIX of 1951) hereinafter referred to as the Act, suspended the petitioners from service pending an inquiry into certain charges which he framed against them. The charges were in connection with the disappearance of certain jewels belonging to the deity.

2. The petitioners challenge the order of interim suspension from service pending enquiry on the ground that the Executive Officer has no power under the Act to pass such an order. S. 49 deals with the power of the trustee - which term under the Act includes the Executive Officer - of a temple to punish office-holders and servants in religious institutions. Sub-section (1)" of S. 49 which only is material for the present purpose is in these terms :

All office-holders and servants attached to a religious institution or in receipt of any emolument Or prerequisite therefrom shall, whether the office or service is hereditary or not, 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.

It is pointed out that there is no provision in this Section for interim orders of suspension. Reference is made by way of contrast to the provisions made in S. 45 of the Act which deals with the power of the Deputy Commissioner to punish trustees. Sub-section (3) of that Section expressly enacts that the Deputy Commissioner shall have power to suspend a trustee pending enquiry. For the Government, reliance is placed upon R. 3 of the rules framed by the Government under S. 49 (1) of the Act which is as follows:

3. Pending the disposal of the grave charge or charges against the office-holder or servant the trustee may place him under suspension when such suspension is necessary in the interest of public service.

Section 100 (2) (a) of the Act enables the Government to make rules in respect of all matters which are expressly required or allowed by the Act to be prescribed. If the rule is intra vires, then the action of the Executive Officer in the present case is valid. But learned counsel for the petitioners urges that the power to suspend is not a matter of procedure and the Government cannot make a rule empowering the trustee to exercise such a power. I am inclined to think that as a rule the power, to suspend pending an enquiry is incidental to the power to conduct an enquiry in a proper manner, and is really a matter of procedure.

It does not involve any punishment by itself and only clears the ground for the proper and efficient, conduct of the enquiry. If the enquiry results in exoneration of the servant against whom charges are framed, then of course the order of suspension also falls to the ground and he will be treated as not having been suspended at all. In such a case the suspension does not clearly operate as a penalty. If, on the other hand, the servant is found guilty and he is either dismissed or suspended for a term exceeding the period during which the enquiry was pending then it would merge in the later order of dismissal or suspension.

Thus the suspension during the period of the enquiry cannot itself be considered as a penalty. There is an essential distinction which is well-recognised between a suspension by way of a penalty and a suspension pending an enquiry. This is brought out in several cases and reference may be made to the case, reported in *V Om Prakash Gupta Vs. The State of Uttar Pradesh*, to which I shall refer again in the course of this judgment.

3. If the above view is right that the power to suspend pending an enquiry is necessarily incidental to the power to conduct an enquiry and inflict punishment, then, even apart from R. 3, the Executive Officer could pass the order now impugned. For the petitioners, strong reliance is placed on the decision reported, in *West Godavari Dt. Village Officers Association v. The State of Madras (now Andhra)*, 1956 Andh WR 768 (B), a decision of my learned brother

Umamaheswaram J. The learned Judge was dealing in that case with the power of the Collector under S. 7 of the Madras Hereditary Villages Offices Act III of 1895, as it stood before it was amended by the Andhra Act XXIII of 1955.

There under the Collector was authorised either of his own motion or on complaint after enquiry "to suspend or remove the holder" of certain offices mentioned in Cl. (a) of sub-s. (1) and also "to fine, suspend, dismiss or remove the holder" of certain other kinds of offices mentioned in Cl. (b) of the sub-section. It was contended before him that, before the amendment by which the Collector was expressly authorised to suspend the holder of any of the offices referred to in the section pending enquiry, the Collector had no such power. The case before the learned Judge being one which fell to be decided upon the language of the unamended section, he held that the statute not having authorised the Collector to pass an ad-interim-order of suspension pending an enquiry against a holder of an office, the orders passed against the petitioner in that case were illegal and issued a writ of certiorari quashing the orders.

In doing so, he purported to follow the decision of the Supreme Court in *Shrimati Hira Devi and Others Vs. District Board, Shahjahanpur*, and that of the Madras High Court in *Sesha(sic) Aiyangar v. Nataraja Ayyar*, ILR 21 Mad (sic) (D). He distinguished the later decision of (sic) Supreme Court in 1955 SCJ 640: ((S) AIR 19(sic) SC 600) (A), and the "decision of the Madras High Court in *Shrimati Hira Devi and Others Vs. District Board, Shahjahanpur*, , the Supreme Court were dealing with certain provisions in U. P. I(sic) district Boards Act (X of 1922).

They pointed out that the powers of disposal and suspension given to the District Board were defined and circumscribed by the provision of Ss. 71 and 90 of the U. P. District Boards and that it would not be legitimate to have sort to general or implied powers under the of master and servant or under S. 16 of- the U.P. General Clauses Act, having regard to the press provisions of those sections. Section 71 (sic) (sic)ferred upon the District Board a power to pu(sic) or dismiss its secretary subject to certain conditions while S, 90 conferred upon it the powe(sic) suspension either as a punishment or pen(sic) inquiry or orders. The Supreme Court held where a servant had been dismissed by the B(sic) in exercise of its powers under S. 71, it (sic) not pass an order of suspension pending an appeal to the Government because the powe(sic) suspension conferred on them under S. 90 not extend to such an order.

When the power of suspension is expr(sic) made subject to specific statutory limitation would not be permissible to read into the state powers not subject to such limitations. It s(sic) to me that that case has no bearing upon question as to whether the power to conduc(sic) enquiry which might lead to the impositic(sic) the penalty of suspension or removal does necessarily comprehend within its ambit(sic) power to suspend the holder of the office his service, pending enquiry to be made.

The other decision relied on by my learned there was that reported in ILR 21 Mad

179 In that case, a trustee of a temple was suspended from office by a temple committee constituted under Act XX of 1953. Under that Act Committee was to exercise the powers were being exercised previously by the Board Revenue and the local agents under Regulation VII of 1817 which was repealed- The powers the Board of Revenue (and their local agents) under the Regulation were to be found in and 3 thereof, the material provisions of it ran as follows :

2. The general superintendence of all endowments in land or money granted for the support of mosques, Hindu temples or colleges.... is hereby vested in the Board of Revenue.

3. It shall be the duty of the Board to take such measures as may be necessary to ensure that all endowments made for maintenance of establishments of the description above mentioned are duly appropriated to the purpose for which they were destined by Government or the individuals by whom endowments were made.

As stated in *Venkatesa Nayudu v. Shri Gopalaswami*, 7 Mad HCR 77 at p. 81 (F) scope of the Regulation is the prevention misapplication of endowments and all its provisions are to be read with reference to that purpose." It was ruled therefore in *Chinna Angar v. Subbraya Mudali*, 3 Mad HCR 334 (G), that it was within the power of the Board under the Regulation and therefore within the power of the Commissioner under the Act to deprive a trustee of his office "subject however to the right of the trustee to have the grounds of deprivation examined and adjudicated upon by Court of justice. In that case, the trustee was suspended from office in the first instance pending enquiry without his having been called for to offer an explanation. It was alleged against him that he had "caused loss of property and money" to the temple and that he had conducted disorderly in the temple contrary to custom so as to cause a disturbance of the peace.

The trustee having refused to obey that order of suspension, the committee passed subsequent order dismissing him. There was a difference of opinion between the members of the Bench who first heard the appeal and consequently the case as referred to a third Judge. The majority view was that the order of suspension was illegal, *Hollins C. J.*, agreeing with *Davies J.*, pointed out that the power of suspension by the committee was coterminous with the power of dismissal, that the power was not an arbitrary power and that on the facts of the case it was not properly exercised. He observed as follows :

The Committee, having made due enquiry and having called on the trustee for an explanation, may suspend for good and sufficient causes, but not otherwise. In the present case, I am of opinion that the suspension was illegal - no sufficient enquiry having been made into the allegations contained in exhibit N, no explanation required from the plaintiff is obvious to my mind that the case did not deal with any implied power of suspension pending an enquiry and is

therefore no authority for the proposition which my learned brother (sic) ought it had laid down.

4. On the other hand, it seems to me that (sic) decision in ILR 35 Mad 631 (E), is a clear authority to the contrary. It is true that the case (sic) not deal with a statutory power of dismissal suspension and it is also true that the learned (sic) judges say that they did not mean to lay down (sic) that in every case where right to dismiss exists (sic) right of suspension must necessarily be incidental to it, as is evident from the following sentence :

Such might possibly not be the case where (sic) right depends upon the construction of a state as for example where the right of Government to deal with a Municipal Councillor for misconduct was in question, *Vijaya Raghava v. Secretary of State for India*, ILR 7 Mad 466 (FB) (sic))

(sic) it seems to me the argumentum ab inconve(n)sistenti upon which they placed reliance for hold(sic) that the power of suspension must be regarded(sic) as incidental to the right to enquire into and (sic) which applies with equal force to a case like the sent. They also point out the distinction between punitive suspension and suspension pending enquiry and held that suspension pending enquiry is a "disciplinary" power. This distinction was subsequently noticed and approved in (sic) *Rannatha Achariar v. Seenu Bhattachariar*, (sic) 42 Mad 618: (AIR 1920 Mad 880) (I) Krish(sic).J. observed in this case that the interim order suspension pending enquiry without notice is (sic) a disciplinary and" not a punitive one and (sic) remarked that the decision in ILR 35 Mad 631 referred to such a disciplinary order. The (sic) learned Judge Philips J. also distinguished between an interim suspension pending enquiry and punitive suspension. The distinction is noticed in the case of *Om Prakash Gupta Vs. The State of Uttar Pradesh*, in which their Lordships of the Supreme Court observed as follows:

The order of suspension made against the appellant was clearly one made pending an inquiry. It certainly was not a penalty imposed after an enquiry. As the result of the inquiry an order of dismissal by way of penalty had been passed against the appellant. With that order, the order of suspension lapsed. The order of dismissal replaced the order of suspension which then ceased to exist. That clearly was the position between the Government of the United Provinces and the appellant. The subsequent declaration by a Civil Court that the order of dismissal was illegal could not revive an order of suspension which did not exist.

It is instructive to observe that while the learned Attorney-General in that case is stated to have conceded that as between master and servant the former had no power of suspension unless the terms of the contract between them permitted it or a statute or a rule provided for it" he is also stated to have added that this principle, "did not apply to a person in the service of the Crown in India." It is true that their Lordships in that case were not dealing with the question whether there was an implied power to suspend an officer of the Government where an enquiry is pending against him. That case is relevant for the present purpose

only for pointing out the distinction between an order of suspension passed by way of penalty and such an order passed while an enquiry is afoot.

5. In my judgment the power to suspend pending an enquiry is as a rule, implicit in the power to conduct an inquiry and to impose punishment as a result of that enquiry. With great respect to my learned brother, I am unable to agree with the view expressed by him in 1956 Andh WR 768 (B).

6. Even otherwise, I think the present case is governed by R. 3 framed by the State Government under S. 49 (1) of the Act which I hold is intra vires its rule-making power-

7. The contentions urged on behalf of the petitioners, in my opinion, cannot be accepted.

8. The writ petition must therefore fail and is dismissed with costs - Advocate's fee Rs. 100/-.