

**(1997) 10 MAD CK 0088**

**In the Madras High Court**

**Case No :** Writ Petition No. 10208 of 1997 and Contempt Application No. 393 of 1997

K. Manoharan

APPELLANT

Vs

The Commissioner, Hindu Religious and Charitable Endowments Departments, Madras-600 034, The Deputy Commissioner, Hindu Religious and Charitable Endowments Department, Coimbatore - 18 and The Executive Officer, Arulmigu Viswesvara Swamy Veeraraghavaperumal Temple, Tiruppur

RESPONDENT

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**Date of Decision :** 29-10-1997

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation :** (1997) 10 MAD CK 0088

**Hon'ble Judges :** P.Sathasivam, J

**Bench :** Single Bench

**Advocate :** N.R. Chandran, for Mr. N. Ishtiaq Ahmed, for the Petitioners in W.P. No. 10208/97 and in Contempt application No.393/97, for the Appellant; A. Subramaniya Iyer, Advocate for the 3rd Respondent in W.P. No. 10208/97 and for the Respondent in Contempt Application No.393/97 and the Respondents 1 and 2 in W.P.No. 10208/97, for the Respondent

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**Judgement**

P.Sathasivam, J.—Aggrieved against the order of third respondent dated 24.6.97 dismissing the petitioner from service, he has filed the above writ petition to quash the said order and consequential direction directing the respondents to reinstate the petitioner with all attendant benefits from the date of suspension viz., 25.2.94. The case of the petitioner is briefly stated here under—According to him, he joined as a clerk in the Office of the third respondent viz., Arulmigu Viswesvaraswamy Veeraraghava Perumal temple, Tiruppur with effect from 17.3.1987. The then Executive Officer, who joined in the third respondent temple on 1.4.94, developed some sort of hatred against the petitioner under a wrong conception that he is obstructing in all the ways; hence he transferred the petitioner on 30.9.94 to a different Office and on the representation of the

petitioner to the second respondent, he was again re-transferred to the same Office by the order of the second respondent dated- 5.12.94. Thereafter, the Executive Officer in order to quench his thirst of vengeance and malice against the petitioner by his order of suspension on 26.2.95 in his proceedings No. 174/1404 without any prima facie case against him on a false and baseless allegation that he had been arrested and kept in custody. The Third respondent in his proceedings dated 9.6.95 has issued a charge memo to the petitioner. The petitioner submitted his explanation on 10.7.95. Thereafter no enquiry was conducted on the charge memo. In the meanwhile, the complaint given by the third respondent in C.C.Nos. 161/95 and 164/95 were taken on file by the Judicial Magistrate-No. 2, Tiruppur in C.C.Nos.205 and 144 of 95 respectively. Both the said criminal cases were dismissed after full-fledged trial and by an order dated 30.5.96, the petitioner was acquitted. Thereafter, he sent representations to the second and third respondents and requested them to revoke the order of suspension. Since no action was taken on the said representations, he has filed WJP.No.U401 of 96 seeking a writ of Certiorarified Mandamus to call for the records relating to the order of the third respondent dated 26.2.95. By order dated 27.3.97 this Court has allowed the writ petition with costs and the impugned order of suspension dated 26.2.95 passed by the third respondent was quashed and the respondents are directed to pay the salary and other emoluments to the petitioner.

2. It is further contended that aggrieved against the orders passed in W.P.No. 11401 of 96, the third respondent preferred an appeal viz., Writ Appeal No.476 of 197 before the Division Bench of this Court. The Division Bench while granting stay directed the third respondent to pay the arrears of salary at the rate of Rs. 900/- from 1.6.96 to 30.4.97 and further directed to pay the subsistence allowance till the disposal of the writ appeal. The Bench has permitted the third respondent to continue the domestic enquiry and complete the same within eight weeks. In pursuance of the direction of this Court, the third respondent called upon the petitioner to appear for an enquiry fixed on 30.5.97. Meanwhile the petitioner was paid a sum of Rs. 10,035/- being the salary for the period from 1.6.96 to 30.4.97. The petitioner appeared before the third respondent on 30.5.97 and submitted his written explanation. The procedure contemplated for departmental enquiry under the relevant rules made under Hindu Religious and Charitable Endowments Act was not followed. The third respondent without affording sufficient opportunity to give a reply to the findings, passed an order of dismissal in his proceedings dated 24.6.97. Even though there is a right of appeal against the order of the third respondent, since the impugned order has been passed in flagrant violation of the principles established under law and in violation of the mandatory provisions and rules of the H.R. and C.E. Act and in violation of the directions given by the Division Bench of this Court in C.M.P.No.6284/97 in Writ Appeal No.476/97 dated 30.4.97, the petitioners has approached this Court by way of the present Writ petition.

3. The third respondent has filed a counter affidavit wherein it is contended that

the petitioner was placed under suspension by the competent authority. Though he was acquitted in the Criminal Cases, departmental enquiry was going on. He did not cooperate with the enquiry and the enquiry was being postponed for some reason or other. As directed by the Bench of this Court, the third respondent conducted a domestic enquiry and completed the same within the stipulated period, by passing final order of dismissal of the petitioner from service on 24.6.97. If the petitioner has any grievance, he should - have moved before the Deputy Commissioner and appealed against the said order under the provisions of the H.R and C.E.Act. He did not do so. He has filed a number of writ petitions without any sufficient cause and without exhausting alternative remedies provided under the Act and Rules. It is also contended that the petitioner has to approach the Deputy Commissioner against the order of dismissal if he is aggrieved. It is also contended that after giving proper and adequate opportunities the third respondent has passed the order dismissing the petitioner from service considering the grave charges made against him. With these averments, the third respondent prayed for dismissal of the writ petition.

4. In the light of the above pleadings. I have heard Mr.N.R. Chandran, learned senior counsel for the petitioner and Mr.A. Subramaniya Iyer, learned counsel for the third respondent.

5. Mr. N.R. Chandran, learned senior counsel raised the following submissions:-

1) The impugned order is against the order, of the Division Bench made in C.M.P.No.6284/97 in Writ Appeal No.476/97.

2) Inasmuch as the Executive Officer has no jurisdiction to pass the impugned order, the ultimate order of dismissal passed by him cannot be sustained.

3) The third respondent has not followed the mandatory provisions prescribed in the Rules framed with regard to Section 56 of the Act.

6. On the other hand, Mr. A. Subramaniya Iyer, learned counsel for the third respondent raised the following submissions:

1) Against the order of the third respondent, a statutory appeal lies before the Deputy Commissioner under the provisions of the Act; hence the present Writ petition without exhausting the effective statutory alternative remedy is not maintainable.

2) The petitioner is a Government servant; hence the writ petition in this Court is not maintainable and liable to be dismissed.

3) In the absence of a trustee, it is the Executive Officer who is competent to pass the impugned order.

4) The third respondent has fully complied with the provisions of the Act and Rules and after affording sufficient opportunity only the impugned order of dismissal was passed.

7. I have carefully considered the rival submissions.

8. On earlier occasion, against the order of suspension, the petitioner has approached this Court in W.P.No. 11401 of 96. In as much as the suspension order was based on the criminal charges and even after acquittal of the criminal case, the suspension was not revoked, the petitioner has filed the above said writ petition. By order dated 27.3.97 this Court has allowed the writ petition and quashed the order of suspension. Aggrieved by the said order, the third respondent preferred Writ Appeal No.476 of 97 before the Division Bench of this Court. While entertaining the appeal and C.M.P.No.6284/97 on 30.4.97, the Division Bench of this Court has passed the following Order:-

"..Interim stay on condition that the Executive Officer/petitioner should pay the arrears of salary at the rate of Rs. 900/- (Rupees Nine Hundred only) per month from 1.6.96 to 30.4.97, within four weeks from the date of this Order and he is also directed to pay the subsistence allowance thereafter continuously every month till the disposal of the writ appeal. In the meanwhile the appellant is permitted to continue the domestic enquiry and complete the same within eight weeks from the date of this order. The first respondent in the Writ appeal is directed to cooperate with the appellant herein in the matter of completing the enquiry initiated against him."

In pursuance of the direction by the Bench, the third respondent has completed the enquiry and imposed punishment of dismissal from service. By pointing out the above said order of the Division Bench dated 30.4.97, learned senior counsel for the petitioner contended that the present order of dismissal is contrary to the same. In other words, according to him, the Bench has permitted the third respondent to continue the domestic enquiry and complete the same within 8 weeks from the said order. Hence according to him before passing any order in pursuance of the enquiry, the third respondent ought to have apprised or obtained permission from the Bench. However, learned counsel for the third respondent submitted that there is no bar for imposing appropriate punishment. A perusal of the order of the Division Bench referred above shows that the Bench has permitted the third respondent to continue the domestic enquiry and the same has to be completed within 8 weeks from the said date. In the very same order, the Bench has directed the third respondent to pay subsistence allowance continuously every month till the disposal of the writ appeal. In the light of the above mentioned direction, the contention of the learned senior counsel is to some extent well-founded. However, it is admitted by both sides when the said Writ Appeal No.476 of 97 came up for further hearing, the same has been dismissed as infructuous. In other words, the petitioner did not raise any objection with regard to imposition of punishment in pursuance of the enquiry. Even though the learned senior counsel for the petitioner submitted that by that time against the impugned order of dismissal, the petitioner has filed the present writ petition and obtained stay before this Court, he was not serious to raise such an objection before the Bench. In such circumstance, even though there is no

specific permission by the Bench to pass appropriate orders in pursuance of enquiry in view of the fact that the main Writ Appeal is dismissed without any objection by the petitioner, the first submission of the learned senior counsel for the petitioner cannot be accepted.

9. The other contention of the learned senior counsel for the petitioner is that the impugned order passed by the Executive Officer of the third respondent temple cannot be sustained, since he is incompetent to take action against the servants of the third respondent temple. In support of his contention, he has relied on Section 56 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. According to him, as per Section 56(1) of the said Act, only the trustee is competent to punish the Office-holders and servants of the third respondent temple and not the Executive Officer. However, the learned counsel for the third respondent submitted that in the absence of trustee, the Executive Officer is competent to take action against the servants of the third respondent temple, hence the impugned order passed by the Executive Officer cannot be assailed. Section 56(1) of the said Act runs as follows: -

"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 therefrom shall be contributed by the trustee and the trustee may after following the prescribed procedure, if any, controlled, suspend, remove or dismiss any of them for breach of trust, incapacity, disobedience of orders, neglect of duty, misconduct or other sufficient cause."

The applicability of Section 56(1) of the Act for the petitioner has not been disputed by the learned counsel for the third respondent. Section 56(1) enables the trustee after following the procedure prescribed to impose appropriate punishment like fine, suspension, removal or dismissal for breach of trust, incapacity, disobedience of orders, neglect of duty, misconduct or other sufficient cause. A perusal of the charges leveled against the petitioner undoubtedly comes within the mischief of Section 56(1) of the Act. In this regard, it is relevant to note that section 45 of the Act enables the Commissioner, Hindu Religious and Charitable Endowments Department to appoint Executive Officers for religious institutions other than a math or a specified endowment attached to a math. Section 45(2) deals with power of the Executive Officer as per Clause (2) of Section 45. Executive Officer has to exercise such powers and discharge such duties as may be assigned to him by the Commissioner. The proviso to Section 45(2) of the Act makes it clear that only such powers and duties as appertain to the administration of the properties of the religious institution referred in sub-section (1) shall be assigned to the Executive Officer. A reading of Section 45(1) (2) as well as proviso to sub-Section (2) of section 45 read with 56(1) of the Act shows that the primary duty of the Executive Officer is to administer the properties of the religious institution referred to in section 45(1) of the Act. Further, section 45(3) also makes the position clear the power and duties exercisable by the Executive Officer and the trustee. As per section 45(3) the

Commissioner is competent to define the powers and duties that may be exercised and discharged respectively by the Executive Officer and the trustee of any religious institution. A comparative study of both sections 45 and 56 shows that Executive Officer has to take care of and administer to properties of the religious institution and the trustee has to look after the Office holders and servants attached to the I religious institutions. No doubt, it is for the Commissioner to define the powers and duties of both the Offices relating to their subjects. In this regard, the decision of Kailasam, J., (as he then was) reported in O. Chinnaswamy Thevar and Another Vs. The Executive Officer, Sree Meenakshi Sundareswarar etc., . In that case, two writ petitions were filed by two persons employed in Sree Meenakshi Sundareswarar Devasthanam, Madurai. The charge against the petitioners was that they acted in an indisciplined manner by signing a memorandum given to a political leader, without obtaining permission, regarding the administration of the temple, and by attacking the administration and the Chairman of the board of trustees without any basis in the memorandum. The petitioners in both the Writ petitions were found guilty of the charges and they were dismissed from service by the Executive Officer. The very same contention was raised in that case that the Executive Officer is not the authority empowered to punish the petitioners and as such the entire proceedings are void. Similar contention was also raised on behalf of the respondents in that case stating that the Commissioner by exercising power u/s 67(2) of the Act shall empower the Executive Officer to take disciplinary proceedings against the servants of the temple. Rejecting the said contention, the learned Judge has concluded thus:-

"Under section 56 of the Act of 1939, the servants of the temple, are punishable only by the trustees of the temple, in the manner prescribed under the Act and not by the Executive Officer of the temple. The proviso to Section 67(1) lays down that the Commissioner shall assign to the Executive Officer only such powers and duties as appertain to the administration of the endowments of the religious institution. The proviso rules out conferment of any power of taking disciplinary action against the temple servants. Section 49 of the Act 1951 which corresponds to section 36 of the Act of 1939 empowers the trustees of religious institutions to take disciplinary action against the temple servants. Section 118 of the Act of 1959 which saves rules made etc., under the Old Act cannot be availed of, as the Commissioner cannot validly empower the Executive Officer to take disciplinary action against temple servants u/s 67 of the Act of 1951 or u/s 45 of the Act of 1959. The only authority, therefore, is the trustees, who can take action under the Old Act as well as under the New Act. The order of the Executive Officer dismissing the temple servants would be without jurisdiction and will have to be quashed."

As on today, there is no amendment either to Section 56(1) or 45(1) to (3). As a matter of fact, for the doubt raised by the Court, namely, whether any amendment to the above referred sections or any notification by the Commissioner authorizing the Executive Officer to take action against the Office

holders and servants in the religious institutions there is no concrete material placed before the Court on the side of the third respondent except stating that "in the absence of a trustee, Executive Officer is competent to exercise the powers of a trustee". In the light of what is stated above, I hold that the impugned order passed by the Executive Officer dismissing the petitioner, who is a temple servant is without jurisdiction and the said order has to be quashed.

10. Apart from the above contention, the learned counsel for the petitioner contended that the petitioner was not provided with the order by fit person dated 23.6.97 referred to in the impugned order dated 24.6.97. He also contended that rules framed u/s 56 of the Act, namely, "Punishment of Office Holders and Servants of Religious Institutions Other than a Math or a Specific Endowment attached to a Math "Rules" has not been fully followed in the petitioner's case. He has brought to my notice Rule 2(a) of the said Rules and contended that the same has not been complied with fully in the petitioner's case and even on that ground, namely, for non-compliance of Rule 2(a) of the Rules, referred to above the impugned order has to be set aside. Since I have already held that the impugned order of dismissal passed by the Executive Officer is without jurisdiction, it is unnecessary for me to go into the above aspect.

11. Mr. Subramania Iyer, learned counsel for the third respondent contended that in as much as the petitioner is a Government Servant, the present Writ petition before this Court is not maintainable and even if there is any grievance, he has to approach the State Administrative Tribunal only. Even though the learned counsel has raised this point, he has not brought to my notice the relevant provision to show that the servants of the third respondent temple are Government servants. On the other hand, the perusal of section 12(1) of the Act shows that only the Commissioner, Joint Commissioner, Deputy Commissioners, Assistant Commissioners and other Officers and servants including Executive Officers of religious institution employed for the purpose of this Act alone are the servants of the Government. The petitioner, who is a servant of the third respondent temple cannot be characterised as a Government servant. As stated earlier, the learned counsel for the third respondent has not brought to the notice of the Court regarding the relevant statutory provision in support of his contention. However, the learned senior counsel for the petitioner submitted that when the very same third respondent, namely, Executive Officer suspended the petitioner on the basis of the criminal charges, the petitioner has filed W.P.No. 11401/96 before this Court to quash the said order of suspension. The third respondent contested the said writ petition and after hearing both sides, this Court by order dated 27.3.97 had allowed the writ petition with costs of Rs. 1,000/-and quashed the order of suspension dated 25.2.1995. Before the learned single Judge in that Writ Petition, no objection was taken with regard to the maintainability of the Writ petition. Likewise, when the third respondent filed writ appeal No.476/97 if the petitioner herein is a Government servant and this Court is not the appropriate forum, the third respondent could have raised this point in the said appeal before the Division Bench. Admittedly this objection was

not raised before the Division Bench also. In other words, when the very same petitioner approached this Court against the order of suspension even though the third respondent participated and contested the matter, no objection was taken either before the learned single Judge or before the Division Bench of this Court. In view of the above circumstance, in the absence of any particular provision brought to the notice of the Court with regard to the objection raised by the learned counsel for the third respondent the same cannot be countenanced.

12. One more objection was raised by Mr. Subramania Iyer, learned counsel for the third respondent stating that against the order of the Executive Officer passed u/s 56(1) of the said Act, a statutory appeal lies before Deputy Commissioner as per section 56(2) of the Act. No doubt, as per Section 56(2) any Office holder or servant punished by a trustee under Sub-Section (1) may prefer an appeal within One month from the date of receipt of the order passed by him to the Deputy Commissioner (now appeal lies to Joint Commissioner or Deputy Commissioner). It is true that the petitioner has not availed the said alternative remedy provided u/s 56(2) of the Act. I have already concluded that the impugned order was passed by the Executive Officer, who is incompetent to dismiss the petitioner who is a servant of the 3rd Respondent. When such is the position, namely, the order passed by the authority is incompetent, it is always open to the aggrieved person to approach this Court without resorting to the other alternative remedy. In other words, the impugned order passed by the Executive Officer is no nest, and void; hence the action of the petitioner in approaching this Court cannot be rejected on the ground of availability of alternative remedy. It is true that the existence of an alternative remedy is some times held as a bar to invoke jurisdiction under Article 226 of the Constitution of India and it is not an absolute bar. On the other hand, it is subjected to certain well-established exceptions. If for example an order passed or an award made is a nullity, it can be challenged on that ground directly under Article 226. Hence even the objection of the learned counsel for the third respondent regarding availability of other remedy u/s 56(2) cannot also be accepted.

13. Mr. Subramania Iyer relying on a decision reported in *Rae Bareli Kshetriya Gramin Bank Vs. Bhola Nath Singh and other*, and another decision in *State of U.P. and others Vs. Nand Kishore Shukla and another*, contended that judicial review by this Court with regard to the enquiry and imposition of punishment by the competent authority is very limited and prayed for dismissal of the writ petition. Absolutely there is no dispute with regard to the above mentioned proposition of law. I have not gone into the merits of the order passed by the third respondent. I am also aware of the fact that this Court cannot go into each details of the order passed by the authority as if it is an appellate authority. In this case, it is demonstrated that the authority who has passed the impugned order is incompetent as per the provisions of the Act; hence this Court can very well interfere and set aside the wrong committed by the authority. Under these circumstances, the impugned order of the third respondent dated 24.6.97 is quashed and the respondents are directed to reinstate the petitioner with all

attendant benefits from the date of suspension. Accordingly, the writ petition is allowed as prayed for. No costs. I make it clear that the trustee is at liberty to take any action which he may deem fit in accordance with the provisions of law. In view of the disposal of main Writ petition, Cont.App.No.393/97 is dismissed.