

(2021) 10 TEL CK 0002
In the Telangana High Court
Case No : Writ Petition No. 13959 Of 2021

Kolichelma Veeresham

APPELLANT

Vs

State Of Telangana

RESPONDENT

Date of Decision : 01-10-2021

Acts Referred:

Constitution Of India, 1950 — Article 311
A.P Charitable And Hindu Religious Institutions And Endowments Office Holders And Servants Service Rules, 2000 — Rule 11(3)
Telangana Charitable and Hindu Religious Institutions And Endowments Office Holders And Servant Punishment Rules, 1987 — Rule 4, 5
Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1963 — Rule 19
Telangana Civil Services (Classification, Control and Appeal) Rules, 1991 — Rule 20, 20(2), 20(3), 20(4)
Telangana Charitable And Hindu Religious Institutions And Endowments Act, 1987 — Section 37, 38, 153

Citation : (2021) 10 TEL CK 0002

Hon'ble Judges : B. Vijaysen Reddy, J

Bench : Single Bench

Final Decision : Allowed

Judgement

1. This writ petition is filed challenging the impugned Memo No.SEVDBD/2020 dated 28.11.2020 issued by the respondent No.3, terminating the services of the petitioner, as being illegal, arbitrary, unconstitutional and contrary to the provisions of the Telangana Charitable and Hindu Religious Institutions and Endowments Act, 1987 (for short 'the Act').

2. The petitioner was initially appointed as Sweeper on 01.10.2011 in the respondent No.3/temple by its then Chairman on a consolidated pay of Rs.1,200/- per month. The services of the petitioner were regularized and pay scale was fixed as per the RPS - 2015 in view of the Government order vide G.O.Rt.No.577 Rev. (Endts.I) Department dated 15.09.2017 vide proceedings in Rc.No.SEVDBD/2018 dated 17.08.2018. The impugned memo dated 28.11.2020 was issued by the respondent No.3, said to have been received by the petitioner

on 04.12.2020, removing the petitioner from service.

3. It is the case of the petitioner that the impugned proceedings have been issued without any notice and without affording any opportunity to him. The impugned proceedings have been issued on the allegation that a theft case was registered against the petitioner in Papannapet Police Station. On 06.12.2020, the petitioner submitted a detailed representation stating that he had not committed any theft and requested to drop the proceedings and permit him to join duty. The petitioner submitted that the impugned proceedings are in violation of principles of natural justice, unconstitutional and contrary to the provisions of the Act.

4. In the counter affidavit filed by the respondent No.3, it was stated that the petitioner was involved in theft of silver door steps frame of the subject temple and the same was recorded in CCTV footage of the temple. FIR.No.120 of 2020 was registered on the file of the Papannapet Police Station, investigation was completed, charge sheet was filed and the case is pending for trial in CC.No.109 of 2021 on the file of the Judicial First Class Magistrate, Andole. It is further stated in the counter affidavit that the impugned memo was issued removing the petitioner from services as there was overwhelming evidence against him in the form of CCTV footage. The petitioner did not submit satisfactory explanation. The petitioner is not governed by CCA Rules or Article 311 of the Constitution of India. The petitioner is governed under Office Holders and Servants Service Rules, 2000, notified under G.O.Ms.No.888, Revenue (Endowments.I) dated 08.12.2020 and as per Rule 11(3) of the Rules, the petitioner is ineligible to continue as servant in the subject temple. The petitioner ought to have filed an appeal against the decision of the Executive Officer under Section 37 of the Act and as alternate remedy available, this writ petition is not maintainable.

5. In the reply affidavit filed by the petitioner, it was stated that under Section 37 of the Act, the punishment of dismissal can be imposed only after following due procedure. No notice was issued to the petitioner; no opportunity was given to him and no enquiry was conducted before the impugned dismissal order was passed. The impugned dismissal order is ab initio void and unconstitutional. Rule 11(3) of the aforesaid Rules issued under G.O.Ms.No.888 dated 08.12.2020 is not applicable in the facts and circumstances of the case.

6. Heard Mr. Raj Kumar Rudra, learned counsel for the petitioner and Mr. K. Jagan Mohan Reddy, learned counsel for the respondent No.3.

7. Learned counsel for the petitioner referred to the Telangana Charitable and Hindu Religious Institutions and Endowments Office Holders and Servant Punishment Rules, 1987, which have been made in exercise of powers conferred under Sections 37 and 38 read with Section 153 of the Act. He submitted that the as per Rule 4 of the said Rules, the petitioner cannot be removed from service without there being conviction against him by a criminal Court and by following the procedure laid down under Rule 19 of the Andhra Pradesh Civil

Services (Classification, Control and Appeal) Rules, 1963.

8. Rules 4 and 5 of the aforesaid Rules of 1987 are extracted hereunder for the sake of convenience:

4. No order imposing, on an office-holder or servant attached to a Charitable or Religious Institution or Endowment, any of the penalties specified in Section 37 and Rule 3 above other than an order based on facts which have led to the conviction of the office-holder or servant by a Criminal Court shall be passed except after following the procedure laid down in Rule 19 of the Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1963:

Provided that this rule shall not apply where the authority competent to impose the penalty is satisfied that, for reasons to be recorded in writing, it is not reasonably practicable to hold inquiry or give opportunity as required under aforesaid Rule 19.

5. All or any of the provisions of the aforesaid Rule 19 may, in exceptional cases and for special and sufficient reasons to be recorded by the competent Authority in writing, be waived where there is difficulty in observing fully the requirements of that rule provided that such waiver does not cause any injustice to the office-holder or servant charged.

9. Be it noted that the Telangana Civil Services (Classification, Control and Appeal) Rules, 1991, had been made in supersession of the Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1963. Rule 20 of the Rules of 1991 corresponds to Rule 19 of the Rules of 1963. Rule 20 of the Rules of 1991 contemplates a procedure for imposing penalties. An inquiry has to be conducted in terms of Sub-Rules (2) and (3) of Rule 20 and under Sub-Rule (4) articles of charge have to be served on the Government servant enabling him to submit defence statement and further personal hearing has to be given. The manner in which inquiry has to be conducted is spelt out in Sub-Rules (5) to (18). Evidently, such procedure is not followed. It is clear from the above Rules that notice ought to have been given by the respondent No.3 to the petitioner before the impugned order was passed. Admittedly, no enquiry was conducted by the respondent No.3 before the petitioner was removed from service. Thus, the impugned proceedings are in gross violation of the principles of natural justice and Rules 4 and 5 of the Rules of 1987 read with Rule 20 of the Rules of 1991.

10. The Rules, 2000 regulate the service conditions of employees covered under the Telangana Charitable and Hindu Religious Institutions and Endowments Act, 1987, including pay, allowances, recruitment, leave, resignation etc. But they do not deal with disciplinary proceedings on punishment. Rule 11 thereof deals with disqualifications. The contention of the learned standing counsel for the respondent No.3 that as per Rule 11(3) of the Rules, 2000 issued under G.O.Ms.No.888 dated 08.12.2020, the petitioner has incurred disqualification is without merit. Rule 11(3) comes into play only when an employee has been convicted and sentenced by a criminal Court for the offence involving moral

turpitude. In the instant case, the petitioner is not so far convicted. Thus, the question of disqualification does not arise.

11. The further contention of the learned standing counsel is that the petitioner has effective alternate remedy of appeal under Section 37 of the Act. As discussed above, the impugned proceedings are in violation of principles of natural justice and in breach of statutory rights and constitutional rights and this Court is of the view that availability of alternate remedy cannot be an impediment for invoking the writ jurisdiction as held in catena of decisions by this Court and the Supreme Court (MAGADH SUGAR & ENERGY LTD. v. STATE OF BIHAR [2021 SCC Online SC 801] (See para 25).

12. For the above reasons, this Court holds that the impugned proceedings are ex facie illegal and unconstitutional and hence, set aside.

The writ petition is allowed. Pending miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.