(2004) 04 MAD CK 0029

In the Madras High Court

Case No : W.A No. 1730 of 2000

M. Pitchai APPELLANT

Vs

The Executive Officer, Moongilanai Kamatchiamman Temple RESPONDENT

Date of Decision : 01-04-2004

Acts Referred:

Citation : (2004) 04 MAD CK 0029

Hon'ble Judges : V.S. Sirpurkar, J;F.M. Ibrahim Kalifulla, J

Bench : Division Bench

Advocate : Srinath Sridevan, for the Appellant; P. Selvaraj, for the Respondent

Final Decision : Allowed

Judgement

V.S. Sirpurkar, J.—The appeal is against the judgment of the learned Single Judge, by which the writ petition filed by the appellant was

dismissed.

2. In that writ petition, the petitioner who is an employee of the Arulmighu Moongilanai Kamakshi Amman Temple, Theni, had challenged the

order dated 29.12.1999 by which he was put under suspension. This order was admittedly passed by the respondent / Executive Officer of that

temple. This order was challenged by the original petitioner on the ground that the Executive Officer did not have any powers either to initiate

departmental enquiry against the employee like the petitioner nor did he have any power to order the suspension. In that view, the suspension

order being without authority was otiose and void ab initio.

3. This contention did not find favour with the learned Single Judge who, following his own judgment reported in 1999 (3) LW 349

(NAGABUSHANAM D.K. -vs- COMMISSIONER, HINDU RELIGIOUS AND

CHARITABLE ENDOWMENT AND ANOTHER) came

to the conclusion that if the said action taken by the Executive Officer is subsequently ratified by the trustees then, the said order would hold good.

It is this judgment which is in challenge before us.

4. Mr. Srinath Sridevan, learned counsel appearing on behalf of the appellant firstly invites our attention to Section 56 of the Act which is as under:

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 holders 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 Joint Commissioner or the Deputy Commissioner.

5. A very look at the language of the section and more particularly of the sub-section (1) would suggest that the office holders and servants

attached to the religious institution who receive emoluments or perquisites or otherwise shall be under the control of the trustee and the trustee,

after following the prescribed procedure, may impose the punishment of fine, suspension, removal or dismissal for the mis-conduct named in that

sub-section. Sub-section (2) is further clear to confirm this ultimate power in the hands of the trustee. It provides that from the order passed by the

trustee of punishment, an appeal could lie to the Joint Commissioner or the Deputy Commissioner as the case may be. The language of the section

therefore is plain and clear and it suggests the authority to award punishment in favour of trustees. There is no scope of ambiguity in this language

and it very plainly suggests that it is the trustee who is having all the power to award punishment. If the trustee has been specifically named by the

language of the section, then, there would be no justification in trying to interpret this section so as to create this power in some one else than the

trustee. Once a particular authority is named having that power, by necessary implication, all the others are excluded. There would be no way to

create that power independently. What cannot be done directly cannot be done indirectly also.

6. This is about the power of the trustee to punish, with which we are afraid, we are not concerned in the present matter. The present matter

pertains to a simple suspension order, which is passed in contemplation of the domestic enquiry. For that purpose, learned counsel for the

appellant takes us to the Rules which are framed by G.O.Ms.No.4524 Revenue dated 5.11.1960. The Rules are called ""Punishment of Office-

Holders and Servants of Religious Institutions (other than Maths and Specific Endowments attached thereto) Rules. There is no dispute by both the

sides that these Rules are the only applicable Rules insofar as punishment to the servants like the petitioner is concerned. Our attention is

specifically drawn by the learned counsel to Rule 4 which is as under:

Pending the disposal of the grave 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.

7. Now, this is again a reiteration of the power which has concentrated in the trustees. Rule 2 speaks about the general procedure of the enquiry

which is also to be held by the trustees and not by the Executive Officers. The plain and simple language of Rule 4 therefore suggests that the

power of suspension shall lie only with the trustees. If that is so, there will be no question of any other authority like the Executive Officer in this

case, exercising their power. We are therefore unable to agree with the learned Single Judge who had taken a view that the order of suspension

which has been duly approved by the Board of trustees, even if that order is not passed by the trustees or by someone else, that order could still

hold good and could be held an order within the jurisdiction.

8. The theory of subsequent ratification by the Board of trustees or the trustee as the case may be, in our opinion, will not apply because, an order

passed by an Executive Officer who has no power whatsoever to pass such an order would be a void order or a nullity and therefore, such an

order would not exist in law and that which does not exist in law cannot be ratified and even if such ratification is brought on record, that ratification

could not have the effect of enlivening something which is not there. On this theory itself, the theory of subsequent ratification has to be rejected.

There is nothing in the Act or the Rules and indeed nothing shown to us suggesting even a trace of authority in the Executive Officer. The Executive

Officer is also a paid servant and a Government servant. He is therefore only to administer. However, in the wake of the provisions of law in the

Act acknowledging the power of the trustees vis-a-vis the temple it is difficult to hold that an Executive Officer, who has nothing to do with the

ownership of the temple, would have a power to award punishment to the servant of the temple or as the case may be, deity. It has to be

remembered that the property in the name of the deity is in the hands of the trustees and if at all there has to be a master and servant relationship,

that relationship will be only between the trustees who represent the deity and the servants. The Executive Officer cannot be elevated to that higher

pedestal of the deity or its representative. In that view, we are of the clear opinion that the order of suspension passed by the Executive Officer

was without any authority and as such was a non est order.

9. With the result, the writ appeal succeeds. The order of the learned Single Judge is set aside and the writ appeal is allowed. Rule made in the writ

petition is directed to be made absolute. The appellant shall be reinstated with immediate effect. He shall also be entitled to the emoluments which

he has lost due to the order of the suspension. No costs. CMP No.14936 of 2000 is closed.

10. Learned counsel appearing on behalf of the respondent tried to submit that the enquiry has already begun and is in progress and that the

appellant is taking part in the enquiry.

11. We are not here to express anything in respect of the enquiry. We are concerned with the limited issue as to whether the suspension order was

within the jurisdiction of the maker thereof and our answer is in the negative. The other aspects may be dealt with by the appropriate authorities at

the appropriate stages.

