

(2008) 03 AP CK 0035

In the Andhra Pradesh High Court

Case No : Writ Appeal No's. 1789 of 2004 and 150 of 2006 and Writ Petition No. 24815 of 2005

N. Ravindra Murthy

APPELLANT

Vs

Shri Veerabhadra Swamy Temple and Others
 Pusala
Murali Krishna Vs The Assistant Commissioner, Endowments
Department
 R.S.P.S. Dattu Vs The Commissioner,
Endowments Department

RESPONDENT

Date of Decision : 19-03-2008

Acts Referred:

Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1966 — Section 27(5)
Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 — Section 15, 153, 153(1), 155, 155(2)
Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1963 — Rule 19
Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991 — Rule 20, 3, 3(1), 7, 8
Andhra Pradesh Executive Officers Disciplinary (Control and Appeal) Rules, 1977 — Rule 2, 4, 6
Andhra Pradesh State and Subordinate Service Rules, 1996 — Rule 22, 22A
Constitution of India, 1950 — Article 202, 203, 204, 205, 206
Office Holders and Servants Punishment Rules, 1987 — Rule 3, 37, 38, 39, 4
Representation of the People Act, 1951 — Section 77

Citation : (2008) 3 ALD 372 : (2008) 3 ALT 287 : (2008) 3 LLJ 712

Hon'ble Judges : V.V.S. Rao, J;G. Yethirajulu, J

Bench : Division Bench

Advocate : D.V. Seetha Rama Murthy and N. Guru Gopal, for the Appellant;
Vijay Kumar Heroor, G.P. and Ch. Satish Kumar, for the Respondent

Judgement

V.V.S. Rao, J.

Introduction

1. These cases involve question of power of Commissioner, Deputy Commissioner and/or Assistant Commissioner of Department of Endowments (Department

Officers) to suspend a temple employee discharging functions of executive officer (hereafter called, person-in-management (PIM)). Liability of a religious institution The term "religious institution" is used in this Judgment so as to include all Hindu Religious, and Charitable Institutions and Endowments. or temple to pay the salary of PIM who on transfer works in other temple is also another core issue. The reference made by Division Bench disagreeing with the view of another Division Bench in an unreported decision in W.P. No. 5736 of 2005 wherein it was held that a PIM shall be deemed to be an employee of Government of Andhra Pradesh (GoAP). The referring bench prima facie opined that in the absence of legislative fiction, temple employees discharging functions of EO cannot be deemed to be employees of Government.

Legal Context

2. Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (the Act, for brevity) regulates administration and governance of religious institutions in the State. Section 153 of the Act empowers GoAP to make Rules for carrying out all or any purpose of the Act. Various provisions require an action to be taken "as prescribed", which means prescribed by Rules. To the extent relevant for the purpose, employees serving religious institutions may be divided into two: Executive Officers (EO) appointed and posted as such and secondly, employees of temples - these two classes of persons serving temple are governed by two separate sets of rules. In exercise of powers u/s 29 read with Section 153(1) of the Act, A.P. Charitable and Hindu Religious Institutions and Endowments Subordinate Service (Non-Gazetted) Rules, 2002 (hereafter, Endowment Service Rules) were promulgated. These Rules inter alia provide for conditions of service of EOs, who constitute separate cadre. They are the employees of Department of Endowments, but are under control of the management of the temple. Their service is treated as subordinate service as per Rule 7 of Andhra Pradesh Civil Services (Classification, Conduct and Appeal) Rules, 1991 (hereafter, CCA Rules). In addition to EO wherever posted a religious institution has office holders and servants like archakas, pujaris, clerks, cashiers, assistants and attenders etc. Two different sets of Rules are made in relation to office holders and servants (hereafter, temple employees). Office Holders and Servants Punishment Rules, 1987 (hereafter, Disciplinary Rules) were made for the purpose of Sections 37 and 38 of the Act, which provide for the punishment of office holders and servants. Section 35 of the Act deals with appointment of office holders and servants and Sub-section (4) thereof is to the effect that qualifications, method of recruitment and temporary appointments, pay and allowances, discipline and conduct and other conditions of service of temple employees shall be such as may be prescribed. For this purpose, Andhra Pradesh Charitable and Hindu Religious Institutions Office Holders and Servants Service Rules, 2000, (hereafter, Office Holders Rules) were promulgated. To a limited extent, by reference, Andhra Pradesh State and Subordinate Service Rules, 1996 (hereafter, General Rules) and CCA Rules are also made applicable.

Temple employees

3. The term "office holders and servants" is not defined in the Act. The power of general superintendence and control of institution vests in the Commissioner of Endowments appointed u/s 3(1) of the Act. As per Sections 23(1), 35 to 38 of the Act, over all control of temple employees is given to a "trustee", which as defined in Section 2(29) of the Act includes a board of trustees or trust board constituted u/s 15 read with 17 of the Act. Section 35 of the Act deals with appointment of office holders and servants and reads as below.

35. Appointment of office holders and servants, etc.:

(1) Every vacancy, whether permanent or temporary, amongst the office-holders or servants of a charitable or religious institution or endowment shall be filled by the Trustee. Provided that in the case of a charitable or religious institution or endowment whose annual income exceeds rupees ten lakhs the Executive Officer, shall appoint the office holders and servants thereof.

(2) and (3) Omitted

(4) The qualifications, method of recruitment and temporary appointments, pay and allowances, discipline and conduct and other conditions of service of the office holders and servants of a charitable or religious institution or endowment, shall be such as may be prescribed.

4. Permanent or temporary employees of a religious institution shall be appointed by trustee. If the annual income of such temple exceeds Rupees ten lakhs, EO shall appoint office holders and servants. Qualifications, method of recruitment etc are provided by Office Holders Rules. EO as provided by the Act has to function under the administrative control of the trustee and therefore, as a necessary corollary in matters of appointment of temple employees, trustee is ultimate decision maker. The exercise of power by trustee is however circumscribed by statutory rules.

5. Even in matters of discipline and punishment of temple employees, ultimate power and jurisdiction is given to the trustee or trust board. Sections 37 and 38 of the Act are relevant and they read as below.

37. Punishment of office holders and servants:

(1) All office-holders and servants attached to a charitable or religious institution or endowment, shall be under the control of the trustee; and the trustee may, after following the prescribed procedure and for reason to be recorded in writing, impose fine, or order suspension, removal, dismissal or any other prescribed penalty, or any of them for breach of trust, misappropriation, incapacity, disobedience of orders, misconduct, violation of the code of conduct laid down or neglect of duty assigned by or under this Act or other sufficient cause.

(2) (3) and (4) Omitted

(5) (a) Where it is noticed by the trustee that any office-holder or servant attached to an institution or endowment has not been dealt with suitably by the Executive Officer under Sub-section (2), for any of the lapses specified in Sub-section (1), the trustee may direct the Executive Officer to take action under Sub-section (2), failing which the trustee may, after following the prescribed procedure, impose, by an order in writing any of the penalties specified in Sub-section (1).

(b) Any office-holder or servant aggrieved by an order passed by the trustee or by the Executive Officer, in pursuance of the direction given under Clause (a) may, within sixty days from the date of receipt of the order by him, prefer an appeal to the Commissioner.

38. Power of Commissioner, Deputy Commissioner or Assistant Commissioner to punish office-holders etc., in certain cases:

(1) where it is noticed by the Commissioner, the Deputy Commissioner or the Assistant Commissioner having jurisdiction that any office holder or servant attached to an institution or endowment has not been dealt with suitably by the trustee or the Executive Officer as the case may be u/s 37 for any of the lapses specified in Sub-section (1) thereof, the Commissioner, the Deputy Commissioner or the Assistant Commissioner as the case may be, may direct the trustee or the Executive Officer to take action u/s 37, failing which the Commissioner, the Deputy Commissioner or the Assistant Commissioner as the case may be, may after following the prescribed procedure, impose by an order in writing any of the penalties specified in Sub-section (1) of that section on such office-holder or servant.

(2) Any office holder or servant aggrieved by an order passed under Sub-section (1) may within sixty days from the date of receipt of the order by him, prefer an appeal if such order is passed by--

(a) the Commissioner, to the Government;

(b) the Deputy Commissioner, to the Commissioner, and

(c) the Assistant Commissioner to the Deputy Commissioner; and any order passed in such appeal shall be final.

6. Section 37 of the Act declares that office holders and servants attached to a religious institution shall be under the control of trustee or board of trustees. They can be dismissed, removed, suspended or fined for breach of trust, misappropriation, incapacity, disobedience, misconduct, violation of code of conduct or neglect of duty or for any other sufficient cause. The exercise of power however is subject to procedure prescribed under Disciplinary Rules. Sub-section (2) of Section 37 of the Act provides that if annual income of temple exceeds ten lakh rupees, power to impose any of the penalties, has to be exercised by EO as per rules. Sub-section (2) of Section 37 of the Act is given overriding effect, which only means that it has application only in respect of

temples classified u/s 6(a) of the Act. In regard to temples, whose annual income is less than five lakh rupees and are classified either u/s 6(b) or 6(c) of the Act, only trustee is given disciplinary power. Sub-section (3) of Section 37 of the Act provides for an appeal against order of trustee to appropriate authority and Sub-section (4) provides further second appeal either to the Government or the Commissioner, as the case may be. Sub-section (5) enables trustee to direct EO to take suitable action against office holder. If action is not taken by EO, trustee can take action ignoring EO. Section 38 of the Act is a provision intended to control exercise of disciplinary power by the Board of Trustees or EO, as the case may be in certain situations. If trustee does not deal with an employee, Section 38(1) of the Act empowers appropriate authority of Department of Endowments to direct taking action u/s 37 of the Act and in disobedience thereof impose penalties u/s 37(1) of the Act.

7. Can temple employee attached to religious institutions be transferred to another religious institution? The Commissioner, Additional Commissioner or Regional Joint Commissioner, Deputy Commissioner and Assistant Commissioner are appointed u/s 3 of the Act. Section 8 of the Act enumerates powers and functions of Commissioner and Additional Commissioner. The Administration of religious institutions shall be under the general superintendence and control of Commissioner. This power includes passing of any order, which may be necessary to ensure that all religious institutions are properly administered and their income is duly and properly used. In addition to general power, Section 39 of the Act provides for transfer of temple employees. Section 39(1) of the Act confers power on the Commissioner to transfer any temple employee attached to religious institution to any other institution in accordance with the Rules made by Government. Section 39(2) of the Act confers power of transfer on Deputy Commissioner or Assistant Commissioner, as the case may be having jurisdiction over an area. Rules which are made by the Government are not brought to the notice of this Court. In the absence of Rules laying down modalities for exercise of power of transfer, it can be presumed that such power has to be exercised keeping in view the provisions of Section 8(1) of the Act. That is to say, transfer of temple employee from one institution to another institution has to be effected keeping in view proper administration of religious institution.

Office Holders Rules

8. Reverting back to Section 35 of the Act, which deals with appointment of temple employees, one may also notice Office Holders Rules promulgated by the Government u/s 35(4) read with Section 153 of the Act. In these comprehensive Rules, office holder or servant is defined, to include a person, who holds office to which an inam is granted, confirmed or recognized by the Government or which is remunerated by the institution concerned, and who is either whole time or part time functionary. As per Rule 2(e) of these Rules, the term "ulthurai servant" means a servant whose duties relate mainly to performance and rendering assistance in puja and rituals to the deity, recitation of mantras, Vedas and

prabhandas etc. They provide for qualifications, appointment, probation, seniority, promotion, resignation etc. In respect of eight (8) big temples like Bhadrachalam temple, special additional provisions (Rules 37 to 46) are also made. They extend certain Government employees' benefits like leave, leave salary, leave travel concession, surrender leave, family planning incentives etc to employees of eight temples.

9. Rule 6 of the Office Holders Rules reiterates that the appointing authority for all posts shall be as specified in Section 35(1) of the Act, i.e. trustee or trust board as the case may be. Rule 4 of Office Holders Rules makes reference to general rules and conduct rules applicable to public servants. It reads:

4. Applicability of other rules:- (1) The rule of special representation envisaged in Rules 22 and 22-A of the Andhra Pradesh State and Subordinate Service Rules shall apply to the appointment by direct recruitment to all posts other than Ulthurai servants.

(2) The conduct rules and Government Orders pertaining to the maintenance of personal files which are applicable to Government employees shall apply to the employees of Institutions and endowments from the cadre of the Superintendents and other employees drawing the scale of pay applicable to the cadre of Superintendent.

10. A plain reading of the above would show that rule of reservation envisaged by General Rules is applicable to the appointment by direct recruitment to all the posts of office holders and servants. But Government Conduct Rules are applicable only to those persons holding the posts of superintendence and above in the temple establishment. To say in other words, the CCA Rules or Government Conduct Rules have no application to the posts of UDC, LDC, Assistants, class IV servants and helpers in the temple establishment. This is understandable because the disciplinary matters of temple employees are covered by Disciplinary Rules promulgated by the Government vide their orders in G.O.Ms. No. 830, dated 18.08.1989 in exercise of powers under Sections 37 and 38 read with Section 153 of the Act.

Disciplinary Rules of temple employees

11. Rule 2 of Disciplinary Rules applicable to temple employees defines competent authority means trustee or executive officer as the case may be of a religious institution to which such temple employee is attached. In addition to the penalties specified in Section 37(1) of the Act, penalties such as censure, withholding of increments or promotion, reduction to a lower rank in the seniority or to a lower stage in the time scale of pay and recovery of pay for pecuniary loss can also be imposed on temple servants. What is the procedure to be followed in disciplinary enquiries against temple employees? Rules 4, 5 and 6(1) contain procedure and are extracted below:

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: 1963 CCA Rules have been repealed by 1991 CCA Rules. Rule 20 of new Rules contains disciplinary enquiry procedure. 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.

6. (1) An office-holder or servant attached to a charitable or religious institution or endowment may be ordered to be under suspension from office or service by the trustee, the Executive Officer, the Assistant Commissioner, the Deputy Commissioner or the Regional Joint Commissioner or the Additional Commissioner or the Commissioner, as the case may be, pending investigation or enquiry into grave charges where such suspension is necessary in public interest:

Provisos omitted

Rule 4 makes a reference to procedure laid down in CCA Rules. Though reference is made to Rule 19 of CCA Rules of 1963, by reason of the amendment, it may be mentioned that Rule 20 of CCA Rules of 1991 applies and no order imposing any major penalty can be imposed without following procedure laid down in Rule 20 in CCA Rules, 1991. Rule 5 is an exception to Rule 4 and in certain circumstances the procedure under CCA Rules can be waived. Rule 6 speaks about suspension of a temple employee pending enquiry. Though in first blush it appears to confer power on the departmental authorities, a careful reading would show that power of placing temple employee under suspension pending enquiry has to be exercised by the trustee or EO. Having regard to Section 38 of the Act, Rule 6 has to be understood as conferring power on the department officers in the event of failure on the part of the trustee to place a temple employee under suspension pending enquiry. If the rule is read as conferring power on departmental officers, the same may render itself ultra vires provisions of Section 38 of the Act. A rule made by delegated legislative authority has to be interpreted in tune with the provisions of the Act.

Executive Officers

12. EOs are treated distinctly separate from temple employees. Section 2(13) of the Act defines EO as to include trust board. Even Section 3 of the Act, which provides for appointment of a hierarchy of endowment officers does not deal with

EOs. Section 29 of the Act provides for appointment and duties of EOs. To the extent necessary, it reads as below.

29. Appointment and duties of Executive Officer:- (1) The Government may constitute not more than three charitable or religious institutions or endowments each of whose annual income is rupees fifty thousand but does not exceed rupees one lakh into such groups as may be prescribed.

(2) For each such group of charitable or religious institutions or endowments there shall be appointed an Executive officer for exercising the powers and discharging the duties conferred on him by or under this Act.

(3) The Government may for purpose of this Act, constitute such grade of Executive officers, prescribing their appointing authorities and authorize them to exercise such powers and discharge such duties as may be prescribed:

Provided that twenty percent of vacancies in each grade of Executive Officers shall be filled by the employees belonging to the institutions or Endowments of prescribed grade.

Provided further that, it shall be competent for the Government to appoint a Regional Joint Commissioner, a Deputy Commissioner or an Assistant Commissioner as an Executive Officer.

(4) omitted

(5) (a) to (c) omitted

(d) Where there is no Executive Officer in respect of any Charitable or Religious Institution or Endowment the trustee or the Chairman of the Board of Trustees or any employee of any Institution or Endowment duly authorized by the Commissioner in this behalf shall exercise the powers perform the functions and discharge the duties of an Executive officer.

(6) The Executive Officer appointed under this section shall be the employee of the Government and the conditions of his service shall be such as may be determined by the Government. The salary, allowances, pension and other remuneration of the Executive Officer shall be paid in the first instance out of the Consolidated Fund of the State and later recovered from the Endowments Administration Fund established u/s 69 of this Act.

13. On an analysis of Section 29 of the Act, three delineable aspects become clear. As per Sub-sections (1) to (3), Government may constitute not more than three charitable or religious institutions with annual income of Rs. 50,000/- each into group temples. Each such group shall have an EO for exercising powers and discharging duties conferred under the Act. For the purpose of appointment of EOs, Government has to constitute such grade of EOs prescribing their appointing authorities and authorized authority to exercise such powers and discharge such duties as may be prescribed. As per first proviso to Section 29(3) of the Act, twenty per cent of the vacancies in each grade of EOs shall be filled

by the temple employees. As per Section 29(6) of the Act, EOs appointed u/s 29(2) read with Sub-section (3), shall be the employee of Government, and conditions of service shall be as determined by Government. The salary, allowances, pension and other remuneration of EO shall be paid in first instance out of Consolidated Fund of State (CFS) and later recovered from Endowment Administration Fund established u/s 69 of the Act.

14. The Government promulgated Endowment Service Rules u/s 153(1) read with Section 29 of the Act, vide G.O.Ms. No. 262, Revenue (Endowments-I), dated 20.05.2002. Class I of endowment subordinate service consists of three categories of EOs, namely, Grade I, Grade II and Grade III. Class II consists of ten categories of posts, which are engineering and technical posts. For Grade I and Grade II EOs unit of appointment is the Zone and for EOs of Grade III unit of appointment is Revenue District. Rule 3 deals with method of appointment and appointing authorities. Note appended thereto provides for rule of rotation among various feeder posts. The temple employees like Superintendents, Senior Assistants and Junior Assistants can be appointed as EO by transfer as prescribed by Rule 5 read with Annexure. Rule 9 stipulates that every person appointed by direct recruitment or promotion or by transfer to the post of EO shall undergo, immediately after appointment, a course of training for such period and according to such programme as may be prescribed by Commissioner from time to time and every such EO has to pass accounts test for public works department officers and subordinate officers Part I and II endowment department tests within the period of probation of two years.

15. The second aspect of Section 29 is contained in Section 29(5)(a)(b) and (c) of the Act. These enumerate duties, functions and powers of EO appointed u/s 29 of the Act. The EO shall be under administrative control of trustee of the institution and shall be responsible for carrying out directions issued by trustee. He has to maintain all records, accounts and other documents as well as jewels, valuables, money, funds and property of the institution. He is also responsible for income and expenditure and shall sue and be sued in the name of institution in all legal proceedings. A perusal of Sections 37(2), 38(1) and 41 of the Act would show that a person appointed as EO u/s 29 of the Act acts as a chief of temple administration of religious institution subject to control of the trustee even in the matter of appointment, disciplinary enquiries and conducting investigations. An executive officer is a statutory creation appointed in accordance with the statute and statutory rules. He discharges duties, functions and powers exercising over all control in the temple administration. Perhaps, for this reason, EOs are treated as Government employees entitled for payment of salaries from out of CFS.

16. The third noticeable aspect in Section 29 of the Act is specified in Section 29(5)(d) of the Act. When there is no EO in religious institution, trustee or Chairman of Board of Trustees can discharge the functions of EO. The Commissioner also may, as stop gap arrangement, authorise any employee of any institution to be PIM of any other institution. The present Section 29(5)(d) of

the Act was inserted in the statute by Act No. 14 of 2001. As originally existed, Section 29(5)(d) Prior to amendment, Section 29(5)(d) reads as follows. 29. (5) (d) Where there is no Executive Officer in respect of any charitable or religious institution or endowment, the trustee or the Chairman of the Board of Trustees, as the case may be, of the institution or endowment shall exercise the powers, perform the functions and discharge the duties of an Executive Officer. enabled the trustee or chairman of trust board to discharge functions of the EO. Even after amendment, chairman of trust board can discharge functions of EO. Act nowhere contemplates payment of salary to chairman.

17. The Government has promulgated Disciplinary Rules for EOs, whose appointment and other conditions of service are regulated by Endowment Service Rules. Before Act No. 30 of 1987 repealed earlier Act, Andhra Pradesh Executive Officers" Disciplinary (Control and Appeal) Rules, 1977 (hereafter, EOs Disciplinary Rules) made u/s 27(5) of Act No. 17 of 1966 were holding the field. These are on the same lines of CCA Rules, applicable to State and Subordinate Services in the Government. There were also Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Executive Officers (Conduct) Rules, 1978 (hereafter, EOs Conduct Rules) for EOs. Section 155 of the Act deals with repeals and savings. As per Section 155(2)(a) of the Act, all the rules under repealed Act, insofar as they are not inconsistent with the new Act shall have effect until they are modified, cancelled or superseded under the provisions of the repealing Act. Therefore, EOs Disciplinary Rules and EOs Conduct Rules are applicable to disciplinary matters while dealing with EOs. These rules nowhere make CCA Rules applicable for disciplinary enquiries against EOs.

Dispute in writ petitions

(A) W.A. No. 1789 of 2004 is filed against order of learned single Judge, dated 04.02.2004 in W.P. No. 4649 of 2003. Writ petition is filed by Sri Veerabhadra Swamy Temple (SVST), Bonthupalli, Medak District, assailing an order, dated 07.03.2003 issued by Deputy Commissioner of Endowments, Hyderabad, directing them to pay arrears of salary to N. Ravindra Murthy. He was a junior assistant in SVST. He was transferred to Sri Suryagari Yellamma Temple (SSYT), Ravirala village, with effect from 01.09.2001. He was also authorized to discharge powers and functions of EO at SSYT, by proceedings of commissioner of endowments, dated 31.08.2001. He filed W.P. No. 24828 of 2002 assailing action in asking him to handover charge to PIM, SVST. The same was disposed of on 14.08.2002 directing authorities to clarify as to which authority will pay salary to him. The commissioner then passed orders on 23.11.2002 according permission to Ravindra Murthy working at SSYT to take salary from SVST, which was his parent institution. This was assailed by SVST in W.P. No. 25133 of 2002. In interlocutory proceedings, this Court by order, dated 07.01.2003 suspended commissioner"s directions. Subsequently in W.V.M.P. No. 187 of 2003, by order dated 31.03.2003, interim suspension was modified directing commissioner to reconsider entire issue relating to payment of salary, in obedience thereto,

impeached order, dated 07.03.2003, was issued.

The order of Deputy Commissioner is assailed on the ground that when Ravindra Murthy was not working with them from 01.09.2001, it is illegal to give a direction to temple to pay arrears of salary up to February, 2003. In view of increased establishment expenditure, the trust board passed resolution on 01.10.2002 expressing inability to pay salary of transferred PIM and that Commissioner had no such power to compel temple to pay salary of PIM of another temple. The action was defended by Commissioner inter alia on the ground that as agreed, the salary has to be paid from the funds of parent temple till the funds of temple where employee is working are generated. It was also urged that office of Commissioner being corporate sole u/s 7 of the Act, Section 8 confers such power on the Commissioner to pass any order in the interest of proper administration of institution. Ravindra Murthy contended that having discharged the functions of EO, he is entitled to be paid salary treating him as such u/s 29(6) of the Act. It was, however, admitted on his behalf that as he was rendering service as PIM at SSYT, the impugned order directing SVST to pay salary is not authorized, but State is under an obligation to pay the salary u/s 29(6) of the Act.

Learned single Judge set aside the order of Deputy Commissioner, but declared that the State is liable to pay the salary and emoluments of Ravindra Murthy "from wherever it is authorized to draw funds for such payment". Direction was also issued to reimburse the amounts paid by SVST during interregnum. Aggrieved by order of learned single Judge, Ravindra Murthy filed writ appeal insofar as the Judgment went against him.

(B) W.P. No. 24815 of 2005 is filed by one Pusala Murali Krishna, assailing proceedings of Assistant Commissioner, Ongole, suspending him pending enquiry into eight charges including indictment of misappropriation and acts of malfeasance and misfeasance. He was appointed in July, 1993 as Junior Assistant in group temples, Pakala, Prakasam District. By proceedings, dated 31.08.2001, issued by Commissioner, he was authorized to exercise powers, perform the functions and discharge duties of EO of Sri Madana Venugopala Swamy Temple Group, Pamuru (consisting of seven other temples). A news item appeared on 02.09.2005 in Andhra Jyothi daily newspaper that Murali Krishna did not account for the sale proceeds of temple lands in any bank and that funds of the temple are misappropriated. Inspector, Endowments Department, Kandukuru, conducted preliminary enquiry and submitted a report on 07.09.2005 opining that Murali Krishna registered temple lands by collecting balance amount but did not deposit in bank in the shape of FDR, that he forged signatures and withdrawn amounts from 01.01.2005 to 02.09.2005 and that in spite of advice, he did not produce accounts for verification. Based on this, eight charges are framed, Murali Krishna was directed to submit explanation and pending enquiry, he was placed under suspension. The order of suspension is challenged mainly on the ground that Assistant Commissioner has no authority or power to take disciplinary action

against a temple employee.

The Deputy Commissioner in the office of Commissioner filed counter affidavit. It is stated that a person appointed as a clerk in group temples is under the control of EO. EO is competent to take disciplinary action against said clerk as per Sections 37 and 38 of the Act. As Murali Krishna is authorized to be PIM, Commissioner is exercising powers as per circular No. C.O.E/05/2003 (file No. J2/1467/2003), dated 13.02.2003, and that Assistant Commissioner being head of the District Endowment Department has to arrest mismanagement and misappropriation of temple funds and that in view of serious allegations, he was placed under suspension.

(C) Junior Assistant-cum-Manager, by name R.S.P.S. Dattu, of Sri Ramesampeta Group Temples, Rangampet Mandal, East Godavari District, filed W.P. No. 27352 of 2005. He was appointed as junior assistant on 30.09.1980 by the temple. By proceedings, dated 31.08.2001, Commissioner authorized him to be PIM. It appears a report was sent by Regional Joint Commissioner, Kakinada, on 29.07.2005, stating that Dattu committed misconduct of booking false expenditure and misappropriation of temple funds. Therefore, in purported exercise of power under Rule 8(1) of CCA Rules, Commissioner issued proceedings, dated 18.11.2005 placing Dattu under suspension pending enquiry into the charges. Writ petition is filed impeaching suspension proceeding. The commissioner - sole respondent therein, did not file counter.

18. Learned single Judge placed reliance on Judgment of Division Bench, in W.P. No. 5736 of 2005 and dismissed the writ petition observing that "Division Bench took the view that PIM is endowed with same functions and duties as EO and thereby amenable to jurisdiction of Commissioner u/s 29(6) of the Act". This order is assailed in writ appeal in W.A. No. 150 of 2006 urging that PIM is not a Government employee nor holding a civil post, that suspension is in contravention of Sections 37 and 38 of the Act, that executive instructions cannot override statutory provisions and that order of suspension is without jurisdiction.

Reference to Full Bench

19. Initially writ appeal No. 150 of 2006 was listed before Division Bench consisting of Hon"ble Sri Prakash Rao and Hon"ble Sri Apparao, JJ. They noticed that while dismissing Review W.P.M.P. No. 11041 of 2005 in W.P. No. 5736 of 2005, the Court held that for the purpose of Section 29(6) of the Act, a PIM shall be deemed to be regular EO and therefore, is a Government servant. This was not agreed to. In the opinion of Division Bench, "as long as the provisions of the Act do not spell out, deeming situation, presumption cannot be drawn that person-in-management authorized u/s 29(5)(d) of the Act shall be deemed to be EO for the purpose of Section 29(6) of the Act". Division Bench by order, dated 01.03.2006, therefore referred matter to Full Bench. Subsequently, when writ appeal No. 1789 of 2004 was listed before Division Bench of Hon"ble Sri Prakash

Rao and Hon"ble Dr. Yethirajulu, JJ, the same was also referred to Full Bench to be heard along with writ appeal No. 150 of 2006. Subsequently, when writ petition No. 24815 of 2005 came to be listed before Hon"ble Sri L. Narasimha Reddy, J, the case was directed to be listed along with other similar matters.

Arguments of counsel

20. Learned Counsel for appellant in W.A. No. 1789 of 2004 Sri D.V. Sitarama Murthy, submits that PIM authorized to discharge the functions of EO of religious institution u/s 29(5)(a) of the Act, shall have deemed to be a regular EO for the purpose of Section 29(6) of the Act. According to learned Counsel, if the legislature wanted to distinguish between EO and PIM, they ought to have indicated same. In the absence of any such indication or distinction, EOs and temple employees, who discharge similar powers and functions of EO cannot be sub-classified into two categories. Such sub-categorisation would result in discrimination and is not warranted. Alternatively, he submits that in W.P. No. 4649 of 2003 having declared that State is liable to pay salary and emoluments of Ravindra Murthy, this Court ought to have issued a Mandamus to State to pay salary of Ravindra Murthy. Learned Counsel would submit that having regard to Section 29 of the Act, there cannot be any distinction between "authorisation" and "appointment" of EO.

21. Appearing for petitioner in W.P. No. 24815 of 2005 and appellant in W.A. No. 150 of 2006 Sri N. Gurugopal argued that temple employees are governed by separate provisions in the Act and separately made statutory rules, namely, Disciplinary Rules and Office Holders Rules. The Act or the Rules, nowhere confer power on Commissioner or other Department Officers to initiate disciplinary action against temple employee as such or the temple employee authorized to be PIM. Any order of suspension in purported exercise of power either u/s 38 of the Act or Rule 8 of CCA Rules by the Commissioner or Assistant Commissioner is without jurisdiction and void. He would further submit that Rule 6 of the Disciplinary Rules applicable to temple employees has to be construed in accordance with Section 38 of the Act. If that is done, according to learned Counsel, in the first instance, department officer has to advise the Trust Board or trustee to take disciplinary action or suspend pending enquiry, and in the event of failure on their part to do so, the departmental officials can themselves take action either u/s 37 of the Act or Rule 6 of Disciplinary Rules.

22. Learned Government Pleader for Endowments made following submissions opposing petitioner/appellants. A temple employee authorized to be PIM has to be paid salary and emoluments from out of temple funds. Such person cannot be considered to be holding a civil post and therefore, as per Section 29(6) of the Act, such PIM cannot be paid salary and the allowances from out of CFS. Persons appointed u/s 29(2) of the Act and as per EO Rules are different class. The temple employees authorized u/s 29(5)(d) of the Act, to be PIMs of religious institutions in the absence of a Trust Board, cannot be equated with EOs either in status or with reference to payment of salaries and emoluments. The appellant in

W.P. No. 1789 of 2004, therefore, cannot be paid from out of CFS nor Mandamus can be given to Government to pay salary of said person. u/s 8(1) of the Act, administration of all religious institutions shall be under general superintendence and control of Commissioner. He was given specific power u/s 39 of the Act to transfer any temple employee from one institution to another institution. He has also powers u/s 38 of the Act to initiate disciplinary action. Therefore, Sections 8, 38, 39 read with Section 29(5)(d) of the Act empower Commissioner or Assistant Commissioner to initiate disciplinary action against a temple employee working as PIM and suspend pending enquiry. Under Rules 4 and 6 of Disciplinary Rules, department officers are vested with power of suspending PIM or a temple employee. Lastly, insofar as Endowments Subordinate Service is concerned, being the head of department, under Rule 8 of the CCA Rules, Commissioner has power to suspend a temple employee. Reliance is placed on State of Assam and Others Vs. Shri Kanak Chandra Dutta, , Surinder Singh Vs. Central Government and Others, , P.V. Srinivasa Sastry and others Vs. Comptroller and Auditor General and others, , G. Ramana Murthy Vs. Govt. of A.P. and Others, , A.B. Srinivasan Vs. State of A.P. and Others, and Kondapaka Lakshmi Narasimha Charyulu Vs. J. Sudhakar and Others, .

Points for consideration

23. The referring Bench in its order, dated 01.03.2006, referred the question, whether on the facts and circumstances, a temple employee who has been appointed u/s 29(5)(d) of the Act as a person in charge of the Executive Officer and where no salary is being paid as EO from Government funds and his salary being continued to be paid from the temple funds and more so, in the absence of specific deeming provision, can be treated as an Executive Officer for all or any purpose under the Act including for initiating any disciplinary action?

24. After perusing the order of learned single Judge impugned in writ appeal No. 150 of 2006 and also reading the order of reference made by two learned Judges, this Bench deems it necessary to consider two questions as below. (1) Whether employees (officers and servants) of Charitable and Hindu Religious Institutions and Endowments authorized to discharge functions of Executive Officers u/s 29(5)(d) of A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1987, are to be treated as Executive Officers for the purpose of Section 29(2) read with Section 29(3) and 29(6) of the Act? (2) Whether temple employees authorized to discharge duties, functions and powers of EO, are under disciplinary control of Commissioner of Endowments by reason of the powers under Sections 8, 39 and 29(5)(d) of the Act?

Principles of Interpretation

25. Interpretation of provisions in primary legislation (Act) and secondary legislation (delegated legislation) has to be in accordance with sound principles of reading and construing statutes. Literal or strict rule of interpretation is norm. It is the golden rule. In simplest words, it means to read script of the statute to

know the spirit of the statute. The spirit of the statute ought to be according to the script. Any deviation from principle of reading statute by giving plain meaning to the "words and phrases" used by legislative body would - sometimes unwarrantedly; results in interpolating or extrapolating legislative intent. If meaning is plain, legislative intent must be determined with regard to language used. This has, however, many exceptions. If the grammatical and literal reading leads to absurdities, one has to ignore text and search context and purpose. These principles are well settled.

26. In *Chief Justice of Andhra Pradesh and Others Vs. L.V.A. Dixitulu and Others*, , a Constitution Bench of the Supreme Court observed as under:

The primary principle of interpretation is that a constitutional or statutory provision should be construed "according to the intent of they that made it" (Code). Normally, such intent is gathered from the language of the provision. If the language of the phraseology employed by the legislation is precise and plain and thus by itself, proclaims the legislative intent in unequivocal terms, the same must be given effect to, regardless of the consequences that may follow. But if the words used in the provision are imprecise, protean, or evocative or can reasonably bear meaning more than one, the rule of strict grammatical construction ceases to be a sure guide to reach at the real legislative intent. In such a case, in order to ascertain the true meaning of the terms and phrases employed, it is legitimate for the court to go beyond the arid literal confines of the provision and to call in aid other well- recognised rules of construction such as its legislative history, the basic scheme and framework of the statute as a whole, each portion throwing light on the rest, the purpose of the legislation, the object sought to be achieved and the consequences that may flow from the adoption of one in preference to the other possible interpretation.

27. In *Kehar Singh and Others Vs. State (Delhi Administration)*, , it was held:

We now look for the "intention" of the legislature or the "purpose" of the statute. First we examine the words of the statute. If the words are precise and cover the situation on hand, we do not go further. We expound those words in the natural and ordinary sense of the words. But if the words are ambiguous, uncertain or any doubt arises as to the terms employed, we deem it as our paramount duty to put upon the language of the legislature rational meaning. We then examine every word, every section and every provision. We examine the act as a whole. We examine the necessity which gave rise to the Act. We took at the mischiefs which the legislature intended to redress. We look at the whole situation and not just one-to-one relation. We will not consider any provision out of the framework of the statute. We will not view the provisions as abstract principles separated from the motive force behind. We will consider the provisions in the circumstances to which they owe their origin. We will consider the provisions to ensure coherence and consistency within the law as a whole and to avoid undesirable consequences.

28. After referring to the earlier judgments of the Supreme Court in *State of Himachal Pradesh and another Vs. Kailash Chand Mahajan and others*, and *Reserve Bank of India Vs. Peerless General Finance and Investment Co. Ltd. and Others*, , in *District Mining Officer and Others Vs. Tata Iron and Steel Co. and Another*, , apex Court reiterated the principles thus:

If a statutory provision is open to more than one interpretation the Court has to choose that interpretation which represents the true intention of the Legislature. This task very often raises the difficulties because of various reasons, inasmuch as the words used may not be scientific symbols having any precise or definite meaning and the language may be an imperfect medium to convey one's thought or that the assembly of Legislatures consisting of persons of various shades of opinion purport to convey a meaning which may be obscure. It is impossible even for the most imaginative Legislature to forestall exhaustively situations and circumstances that may emerge after enacting a statute where its application may be called for. Nonetheless, the function of the Courts is only to expound and not to legislate. Legislation in a modern State is actuated with some policy to curb some public evil or to effectuate some public benefit. The legislation is primarily directed to the problems before the Legislature based on information derived from past and present experience. It may also be designed by use of general words to cover similar problems arising in future. But, from the very nature of things, it is impossible to anticipate fully the varied situations arising in future in which the application of the legislation in hand may be called for, and, words chosen to communicate such indefinite referents are bound to be in many cases lacking in clarity and precision and thus giving rise to controversial questions of construction. The process of construction combines both literal and purposive approaches. In other words the legislative intention i.e., the true or legal meaning of an enactment is derived by considering the meaning of the words used in the enactment in the light of any discernible purpose or object which comprehends the mischief and its remedy to which the enactment is directed.

29. In addition to above precedents, a reference may also be made to *Harbhajan Singh Vs. Press Council of India and Others*, , *Union of India (UOI) and Another Vs. Hansoli Devi and Others*, , *Easland Combines, Coimbatore Vs. The Collector of Central Excise, Coimbatore*, , *Prakash Nath Khanna and Another Vs. Commissioner of Income Tax and Another*, , *Nathi Devi Vs. Radha Devi Gupta*, , *Bombay Dyeing and Mfg. Co. Ltd. Vs. Bombay Environmental Action Group and Others*, and *Promoters and Builders Association of Pune Vs. Pune Municipal Corporation and Others*, . In all these cases, Supreme Court reiterated that language of the statutes is the key and determinative of purpose and intent of legislation, and that when the language is plain, no two meanings can be ascribed. Whatever be the history of legislation and whatever be the consequences of enforcement, the Court has to give plain meaning. In *Ramesh Mehta Vs. Sanwal Chand Singhvi and Others*, , it was held that amendment to legislation may not always be decisive as regards intention as to whether such

amendment was intended to alter entire law. In view of these, provisions relied on have to be read giving plain meaning to language.

In Re Question No. 1

30. Whether employees (officers and servants) of Charitable and Hindu Religious Institutions and Endowments authorized to discharge functions of Executive Officers u/s 29(5)(d) of A.P. Charitable and Hindu Religious Institutions and endowments Act, 1987, are to be treated as Executive Officers for the purpose of Section 29(2) read with Section 29(3) and 29(6) of the Act?

31. Section 2(13) of the Act defines EO means "an officer appointed as such under the provisions of the Act". Section 29 of the Act which contemplates appointment of EO after constituting religious institutions into groups, also lays down that appointment of EOs shall be in accordance with Rules. For this purpose, Government promulgated Endowment Service Rules. Three grades of EOs are constituted. Proviso to Section 29(3) of the Act requires twenty per cent of vacancies in each grade of EOs to be filled by employees of respective grades like Superintendents, Senior Assistants and Junior Assistants can be appointed in twenty per cent of vacancies of EOs by transfer, which is one of three methods of appointment, as per Rule 3 read with Rule 5 of these Rules. When a temple employee is appointed as EO of any grade, he ceases to be a temple employee and acquires a new status as EO. On such appointment, he acquired status of Government employee. His conditions of service are regulated by Endowment Service Rules and EOs Conduct Rules and Disciplinary Rules. He is EO "appointed under the provisions of the Act" as defined u/s 2(13) read with 29(2) and (3) of the Act and Endowment Service Rules.

32. Section 35 of the Act read with Office Holders Rules deal with appointment of temple employees and other conditions of service. Sections 37 and 38 read with Disciplinary Rules regulate disciplinary matters of these employees. As long as persons discharge functions and duties as temple employees, Section 29(2) and (3) of the Act, Endowment Service Rules and EOs Disciplinary Rules have no application. There is a clear distinction between temple employees and EOs appointed under Act. Apart from this, in applicability of different statutes, and functionally they are different. Therefore, merely because a temple employee is authorized to discharge the functions of EO u/s 29(5)(d) of the Act, such employee cannot be treated as EO for all purposes and for the purpose of Act and Rules made for EOs. A PIM, therefore, cannot be paid salary from out of CFS. It is axiomatic that if the language of the provision is plain, no other meaning can be ascribed to the language. It is not permissible to ignore the language and attempt at legislative intent going into history and object of legislation so as to suit a given hypothesis. Whatever be the consequences, the Court is bound to give plain meaning and enforce law. Applying this, the submission that PIM should be treated as EO and hence Government employee for the purpose of payment of salary cannot be accepted. The Constitution of India also does not permit any such construction.

33. Article 266 of Constitution mandates that all revenues received by Government of Andhra Pradesh, all loans raised etc shall form one consolidated fund of the State. It further prohibits appropriation of CFS except in accordance with law and for the purposes and in the manner provided in Constitution 266. Consolidated Funds and Public Accounts of India and of the States:- (3) No moneys out of the Consolidated Fund of India or the Consolidated Fund of a State shall be appropriated except in accordance with law and for the purposes and in the manner provided in this Constitution. How amount in CFS is appropriated in law? Article 202 of Constitution provides that the Governor of the State shall cause to be laid before the Houses of Legislature a statement of estimated receipts and expenditure of the State for a financial year. This "annual financial statement" (or "budget" in common parlance), must show separately the amount required to meet expenditure, described by Constitution as expenditure charged upon CFS and the amount required to meet other expenditure proposed to be made from CFS. Clause (3) of Article 202 of Constitution requires the State to compulsorily charge, expenditure towards emoluments and allowances of Governor, the salaries and allowances of Judges of High Court, salaries and allowances of Speakers, Deputy Speaker etc to CFS. Article 202(3)(f) provides that, "any other expenditure declared by the Constitution or by the Legislature of the State by law, to be so charged". This means in addition to compulsorily includible items of expenditure as provided under Article 202(3)(a) to (e), all other expenditure, which by law, is to be charged on CFS has to be included in the Budget for legislative approval.

34. Article 203 contains procedure in legislature with respect to estimates. The amount of expenditure charged on CFS need not be submitted to vote of the legislative assembly as is the case in annual financial statement for appropriation of CFS. Such estimates relating to expenditure charged on CFS shall have to be submitted in the form of demands for grants to legislative assembly which may either grant assent or refuse assent to any demands. When once financial annual statement is voted in the form of a financial bill or when the demands for grants are assented to by legislative assembly, the same cannot be deviated while appropriating funds for CFS. In case of additional grants, as per Article 205 of constitution, fresh estimates are to be submitted for legislative assent. Two judgments of Supreme Court, relevant in this regard are *Rai Sahib Ram Jawaya Kapur and Others Vs. The State of Punjab*, and *State of Himachal Pradesh and Another Vs. Umed Ram Sharma and Others*, .

35. In *Ram Jawaya* (supra), Constitution Bench of Supreme Court considered a question whether Government of State can engage in trade or business activity without legislative sanction, in exercise of their executive power so as to carry out the policy of establishing monopoly in a business. Rejecting the contention that such legislative sanction would be necessary, Supreme Court referred to Articles 202 - 204 and 266(3) of constitution and laid down as under.

36. Suppose now that where the Ministry or the executive Government of a State

formulates a particular policy in furtherance of which they want to start a trade or business. Is it necessary that there must be a specific legislation legalising such trade activities before they could be embarked upon? We cannot say that such legislation is always necessary. If the trade or business involves expenditure of funds, it is certainly required that Parliament should authorise such expenditure either directly or under the provisions of a statute.

37. What is generally done in such cases is, that the sums required for carrying on the business are entered in the annual financial statement which the Ministry has to lay before the House or Houses of Legislature in respect of every financial year under Article 202 of the Constitution. So much of the estimates as relate to expenditure other than those charged on the consolidated fund are submitted in the form of demands for grants to the legislature and the legislature has the power to assent or refuse to assent to any such demand or assent to a demand subject to reduction of the amount (Article 203). After the grant is sanctioned, an Appropriation Bill is introduced to provide for the appropriation out of the consolidated fund of the State of all moneys required to meet the grants thus made by the Assembly (Article 204). As soon as the Appropriation Act is passed, the expenditure made under the heads covered by it would be deemed to be properly authorised by law under Article 266(3) of the Constitution.

In *Umed Ram* (supra), Supreme Court laid down that, "Court could not direct State Government to spend beyond the sanctioned amount, which is in the domain of the legislature in view of the provisions of Articles 202 - 207 of constitution so far as the State expenditures are concerned". After analyzing Articles 202 - 207, it was laid down that:

Under our constitutional set up the said demand by the Governor in terms of Sub-article (3) of Article 203 must be on the recommendations of Council of Ministers. Article 204 deals with the Appropriation Bills. After the passing of the Appropriation Bill, making provision for grants for money which are charged on the consolidated funds should be sanctioned by the Legislature. In case of supplementary, additional or excess grants. these must be in compliance with Article 205 of the Constitution which in a sense provides that if any fund is found insufficient for a particular purpose of the year or need has arisen then the Governor i.e. the Government must get sanction to another - statement showing the estimated amount of the additional expenditure and such would be the demand for excess grant and would be passed in accordance with the provisions contained in the other articles of the Constitution.

38. There cannot be any doubt that when Section 29(6) of the Act provides that in the first instance, the salary and emoluments of EOs appointed u/s 29(2) of the Act be paid out of CFS. Section 29(6) of the Act is a law referable to Article 202(3)(f) of Constitution. Unless it is specifically provided by the statute that the salary and emoluments of PIMs shall also be charged on CFS, it would not be possible to say so as commended by learned Counsel for appellant in writ appeal No. 1789 of 2004. Any such interpretation of Section 29(5)(d) and Section 29(6)

of the Act would violate not only Section 29(6) of the Act and also Articles 202 - 207 and Article 266(3) of Constitution.

39. There are other reasons also to reject contention of learned Counsel that EO should be paid salary from out of CFS. A PIM authorized to discharge functions of EO can always be recalled by the Commissioner if such a need ceases. It might be quite possible that subsequently a regular board of trustees is appointed or it could also be possible that a temple in a group of temples goes out of income limit of Rs. 50,000/-. In such context, very incongruous situation would prop up. On a given day, a PIM would draw higher salary as EO u/s 29(6) of the Act and immediately after recall, would again be temple employee. There cannot be dispute or denial that a temple employee even after authorization to act as EO either in the same temple or other temple continues to be temple employee. If this position is not accepted, there is likelihood of PIM losing an opportunity of being considered for the post of EO as per his eligibility. Hence, temple employee acting as PIM cannot be paid salary as per Section 29(6) of the Act. His salary has to be paid by concerned temple out of temple funds.

40. Section 29(5)(d) of the Act as it stands now was substituted by amendment.

As per unamended Section 29(5)(d) (prior to A.P. Act No. 14 of 2002), in the absence of EO, the trustee or chairman of trust board shall exercise powers and discharge functions/duties of EO. It is nobody's case that before 2001, the chairman of trust board or trustee was paid out of CFS. The Act or the Rules nowhere provide for payment of remuneration or emoluments to chairman or member of board of trustees. If any such rule exists, the same is not brought to the notice of this Court. Insofar as trustee or chairman of trust board discharge functions of EO, the position even after amendment of Section 29(5)(d) remains the same. The disjunctive "or" between two parts of Section 29(5)(d) would show that authorization of Commissioner is required only when temple employee is asked to discharge duties as EO. In other words, change introduced in Section 29(5)(d) of the Act is empowering Commissioner to authorize any employee of a temple, to be person-in-management of any temple. If Section 29(5)(d) of the Act is not read as analysed herein and interpreted as if empowering Commissioner to authorize chairman of trust board or the trustee also, it would again result in very absurd situation. In such an event, it can always be argued that the Commissioner can even ask trustee or chairman of trust board of one temple to discharge the functions of EO of another temple. That would be plainly illegal because trust board is appointed or a trustee is recognized only in respect of one temple and one board of trustees appointed for one temple can never be asked to manage another temple. Accepting this situation, when chairman or trust board or the trustee is not paid any salaries or remuneration for discharging function of EO, a temple employee authorized to act as EO cannot claim salary payment out of CFS. Even after such authorization, salary of temple employee has to be paid only out of temple funds and not CFS.

41. That a PIM cannot be equated to EO appointed u/s 29(2) of the Act and

Endowment Service Rules, becomes clear on reading of Sections 29(2), 29(3) 57, 65, 69 and 72 of the Act. As per Section 57(1) of the Act, trustee of every religious institution has to submit an annual budget ninety days prior to the close of financial year. Budget should contain the probable receipts (income) and disbursement (expenditure) under various heads. Reading Section 65 of the Act would show that ordinarily receipts include donations and cash or kind by the donors, sale proceeds of religious books, sale proceeds of jewels, livestock etc., income from agriculture and all other sums received by temple. u/s 57(2) of the Act, the budget should make an adequate provision for payment of salaries not exceeding thirty per cent of the income calculated u/s 65 of the Act. Section 72 of the Act provides that after making provision in the budget as per Section 57(2) of the Act, the surplus funds of a temple have to be utilized for the purpose given therein. Thus, the salary of a temple employee is paid only from out of income of the temple and not from any other source or fund. The Act requires the establishment of Endowments Administration Fund (EAF) and Common Good Fund (CGF). The former is established as per Section 69 of the Act. The following amounts shall be credited to EAF; the balance in the fund constituted u/s 96 and sums due to the Government under 1966 Act A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1966, stood repealed by A.P. Act No. 30 of 1987, the contributions and audit fee when realized, amounts recovered u/s 30 of the Act and the amount accepted by the Commissioner to the credit of the fund, grants or loans from the Government.

42. CGF is created from out of payments made by religious institutions and shall as per Section 70(1)(b)(i) of the Act be utilized for renovation, preservation and maintenance of religious institutions in the State. EAF created u/s 69 of the Act, which shall vest in the Commissioner, shall be used by him to repay the Government sum paid out to CFS in the first instance towards salaries, allowances, pension and other remuneration of persons appointed by the Government for rendering services under any of the provisions of the Act and other expenditure incurred by the Government in the course of rendering service to religious institutions, the loans received, the cost of publication of journals and expenses of committees and sub-committees constituted for the purpose of the Act. When Section 69(3) of the Act thus provides for repayment of the sum paid out of CFS, in the first instance towards salaries and allowances, the legislature is referring to the situation as in Section 29(6) of the Act. So to say, the amount paid towards salaries, pensions and other remunerations of EOs in first instance from out of the CFS, is to be recovered from EAF established u/s 69(1) of the Act. There is no such provision anywhere in the Act or in the Rules that the salary paid to temple employee shall also have to be recovered from EAF. As per Section 57(2) of the Act, salaries of the temple employees in the service of temple are to be provided out of the income of the temple and not from EAF. In conclusion, it must therefore be held that temple employee authorized to discharge the functions of EO u/s 29(5)(d) of the Act is not the EO as described in Section 2(13) and appointed as per Sections 29(2) and (3) of the Act read

with relevant Endowment Service Rules. In Re Question No. 2

43. Whether temple employees authorized to discharge duties, functions and powers of EO, are under disciplinary control of Commissioner of Endowments under Sections 8, 39 and 29(5)(d) of the Act?

44. A contract of employment is always subject to an implied condition that employer can terminate contract for grave misconduct of employee. Employer-employee relationship is therefore sine qua non to enforce such condition of contract of service. There could be number of situations where a person works, provides services or acts for benefit of person but still employer-employee relationship may be lacking by reason of absence of ingredients of master-servant relationship.

45. In *Short v. J and W. Henderson, Ltd.* 174 L.T. 416 (HL), the question whether appellant therein, was working under a contract of service with respondent by way of a manual labour, was considered by House of Lords. Four indicia of contract of service were indicated. These are: (a) Master's power of selection of servant; (b) payment of wages or other remuneration; (c) Master's right to control the method of doing the work; and (d) Master's right of suspension or dismissal. It was held that:

that a contract of service may still exist if some of these elements are absent altogether, or present only in an unusual form, and that the principal requirement of a contract of service is the right of the master in some reasonable sense to control the method of doing the work, and that this factor of superintendence and control has frequently been treated as critical and decisive of the legal quality of the relationship.

In *Argent v. Minister of Social Security* (1968) 3 All E.R. 208, Queens Bench Division, however held that:

Finally, it has been more recently suggested that the matter can be determined by reference to what in modern parlance is called economic reality. All these are matters which have to be borne in mind. To my mind, no single one is decisive. One has to look at the totality of the evidence, at the totality of the facts found and then apply them to the language of the statute. One cannot do better than echo the words of Somervell, L.J., in *Cassidy v. Ministry of Health* (Fahni, Third Party) (1951) 1 All E.R.574:

one, perhaps, cannot get much beyond this: "Was his contract a contract of service within the meaning which an ordinary person would give to the words?"

It seems to me that when one looks at all the facts found one has a picture of a man skilled and experienced in his own profession, of the services of whom the corporation, as the owners of the Guildhall School of Music, were anxious to obtain for the benefit of their students. They give him a fairly free choice of what he teaches and an entirely free choice how he teaches. They do not prescribe his syllabus. They leave to him the actual manner of his teaching as the expert in

that field. They impose no administrative duties on him.

In *Silver Jubilee Tailoring House and Others Vs. Chief Inspector of Shops and Establishments and Another*, , Division Bench of Supreme Court reviewed Indian, American, British and Canadian precedents and indicated the possible test of master-servant relationship. Relevant observations are as under.

It is exceedingly doubtful today whether the search for a formula in the nature of a single test to tell a contract of service from a contract for service will serve any useful purpose. The most that profitably can be done is to examine all the factors that have been referred to in the cases on the topic. Clearly, not all of these factors would be relevant in all these cases or have the same weight in all cases. It is equally clear that no magic formula can be propounded which factors should in any case be treated as determining ones. The plain fact is that in a large number of cases, the court can only perform a balancing operation weighing up the factors which point in one direction and balancing them against those pointing in the opposite direction....

46. ...During the last two decades the emphasis in the field has shifted and no longer rest so strongly upon the question of control. Control is obviously an important factor and in many cases it may still be the decisive factor. But it is wrong to say that in every case it is decisive. It is now no more than a factor, although an important one.

47. In *The Employees' State Insurance Corporation and Another Vs. The Tata Engineering and Locomotive Co. Ltd. and Another*, , another Division Bench of Supreme Court considered question whether an apprentice taken under Apprentices Act, 1961, is "an employee" under Employees' State Insurance Act, 1948. The agreement executed by apprentice provided that on satisfactory completion of training for three years, he may be offered, if so required, employment in the company. This was taken as an important test and Supreme Court laid down as under.

From the terms of the agreement it is clear that apprentices are mere trainees for a particular period for a distinct purpose and the employer is not bound to employ them in their works after the period of training is over. During the apprenticeship they cannot be said to be employed in the work of the company or in connection with the work of the company. That would have been so if they were employed in a regular way by the company. On the other hand the purpose of the engagement under the particular scheme is only to offer training under certain terms and conditions. Besides, the apprentices are not given wages within the meaning of that term under the Act. If they were regular employees under the Act, they would have been entitled to additional remuneration such as daily allowance and other allowances, which are available to the regular employees.

In *State of Gujarat and Others Vs. Raman Lal Keshav Lal and Others*, , a question arose whether persons appointed as employees of Panchayats under

Gujarat Panchayats Act, 1961, can be considered to be holding of civil posts, are to be treated as Government servants. A Constitution Bench of Supreme Court held that Panchayat service constituted under Panchayat Act is civil service of State of Gujarat and that there was a common centralized panchayat service. The Supreme Court after referring to Kanaka Chandra (supra), laid down the test for determination of question whether a person is holding a civil post or is a member of civil service.

...true test for determination of the question whether a person is holding a civil post or is a member of the civil service is the existence of a relationship of master and servant between the State and the person holding a post under it and that the existence of such relationship is dependent upon the right of the State to select and appoint the holder of the post, its right to suspend and dismiss him, its rights to control the manner and method of his doing the work and the payment by it of his wage and remuneration.

48. However, on review, Mathuradas (supra) was set aside. Matter was heard again by Constitution Bench, in State of Gujarat v. Raman Lal Keshav Lal AIR 1984 SC 161, therein it was laid down as under.

it is neither politic nor possible to lay down any definitive test to determine when a person may be said to hold a civil post under the Government. Several factors may indicate the relationship of master and servant. None may be conclusive. On the other hand, no single factor may be considered absolutely essential. The presence of all or some of the factors, such as the right to select for appointment, the right to appoint, the right to terminate the employment, the right to take other disciplinary action, the right to prescribe the conditions of service, the nature of the duties performed by the employee, the right to control the employee's manner and method of the work, the right to issue directions and the right to determine and the source from which wages or salary are paid and a host of such circumstances, may have to be considered to determine the existence of the relationship of master and servant. In each case, it is a question of fact whether a person is a servant of the State or not.

49. Applying above principles, Supreme Court considered question whether members of Gujarat Panchayat service are Government servants. Answering the question in the affirmative, their Lordships observed thus:

We may now revert to the question whether the members of the Gujarat Panchayat Service are Government servants. First, we see that the duties, which they are required to perform are in connection with those affairs of the State, which are entrusted to the Panchayat Institutions, by the statute itself or by transfer by the Government under the statute. Next, the expenditure towards the pay and allowance of officers and servants of the Panchayat Service, serving for the time being under any Panchayat has, no doubt, to be met by the Panchayat from its own fund, but, as we have seen, the fund consists substantially of sums contributed or lent by the State Government and of the proceeds of any tax or

fee imposed by of assigned to the Panchayat under the Act. The imposition of a tax or a fee in the nature of a tax, as we know, is essentially a function of the State. So the salary and allowances of the servants and officers of the Panchayat Service are paid out of funds contributed or lent by the Government or raised by the discharge of an essential governmental function.

The law therefore is well settled that to know whether a post is a civil post and a person occupying a civil post is a Government servant or whether employer-employee relationship between the Government and employee ought to be decided with reference to various factors and not merely the control exercised by higher authority though it is decisive and important factor. Applying the tests laid down in Raman Lal Keshav Lal (*supra*), status of EOs on one hand and PIMs on the other hand need to be examined.

As pointed out earlier the posts of EOs are constituted as a cadre consisting of three grades of EOs. The method and manner of appointment is provided by statutory rules made u/s 29(3) read with 153 of the Act. The appointing authority for various grades of EOs is Commissioner of Endowments. As per Section 29(6) of the Act, salary of EOs is paid from out of CFS. All the EOs are subject to disciplinary action under EOs Disciplinary Rules. Though functionally EOs are under the control of trustee or trust board, they report to department officers in hierarchy. Thus EOs hold civil posts and they are Government servants. They represent Department of Endowments and they report to department officers. Recognizing this, legislature in Section 29(6) of the Act declares EOs to be employees of Government, to whom salary is paid from out of CFS.

The PIM is an employee of a temple authorized u/s 29(5)(d) of the Act to discharge functions of EO as stop gap arrangement wherever there was no such EO in respect of a religious institution. A temple employee is appointed by trustee u/s 35 of the Act read with Officeholders Rules. The salary and emoluments of temple employee are paid from out of the temple funds, which are provided in the temple budget u/s 57(2) of the Act. The disciplinary power and control over temple employee vests in the trustee u/s 37 of the Act and procedure for dealing with misconduct is provided under Disciplinary Rules. Even where trustee fails to take action against an erring temple employee, Commissioner or other department officer cannot take action directly. They have to first advise the trustee or EO (if such EO is there) to take action u/s 37 of the Act failing which - then only - Commissioner or other department officer can take action against erring temple employee. Thus there is no direct relationship of master-servant/employer- employee between commissioner/ Government and temple employee. A legal regime for the purpose of regulating the temple administration is only in place and there is no direct control by the Government over temple employees nor the salary of temple employee, is paid by Government. There would not be any change in the situation even where a temple employee is authorized to be PIM u/s 29(5)(d) of the Act to discharge

functions and duties of EO. As already held above, salary of temple employee authorized to be PIM cannot be paid from out of CFS. It is paid out of temple funds. Therefore Commissioner cannot exercise disciplinary control over temple employee authorized to be PIM. Rule 6 of Disciplinary Rules has to be read along with Section 38 of the Act. So read, it contemplates suspension of PIM pending enquiry by trustee or trust board. In case temple employee is not suspended for grave misconduct, Commissioner or other competent department official has to advise trustee/EO/trust board to place that temple employee acting as PIM under suspension pending enquiry. If advice is ignored, department official can exercise such power. Rule 6 by itself cannot be construed as conferring power on Commissioner to suspend temple employee acting as PIM under suspension, ignoring Section 38 of the Act. Suspension of an employee pending enquiry by incompetent authority would be void.

Assuming that there was no specific power conferred on trustee or trust board to suspend temple employee or temple employee acting as PIM, whether recourse can be had to Section 37 of the Act? Section 37 absolutely confers powers on trustee to impose fine or pass order of suspension, removal, dismissal or any other penalty for breach of trust, misappropriation, disobedience of the orders, misconduct etc. The said provision does not specifically provide for "suspension pending enquiry" but still power to suspend as a punishment also includes power to suspend pending enquiry into grave misconduct. This position is well settled. In *Tappers Co-operative Society v. Superintendent of Excise* 1984(2) A.P.L.J. 1 (FB), majority of Full Bench of this Court considering the question, held:

The power of suspension which is concomitant or adjunct is no doubt restricted by the statutory provision under the proviso in question to pass final orders of suspension but that power cannot be said to have been taken away to pass an interim order of suspension not intended to be a penalty but only interim measure to pass effective orders.... However we must make it clear that this incidental or ancillary powers cannot be exercised in a routine way or as a matter of course. The licensing authority is bound to exercise the discretion reasonably, bona-fide and without negligence considering the circumstances of the case when such interim suspension is necessary.

50. As the power to impose penalty of suspension, removal and dismissal is conferred only on trust or trust board, only they can pass order of suspension pending enquiry. A provision empowering authority to take disciplinary action or to place such employee under suspension pending enquiry has to be construed strictly. When the language is clear, it is not possible to read some unintended word into the provision so as to confer the power on Commissioner. The temple employee or temple employee acting as PIM is an appointee by trustee and even when such temple employee discharges duties of EO, such employee is still subject to disciplinary control of trustee alone.

51. Considerable emphasis is laid by the Government on Sections 8 and 39 of the Act to trace the power of the Commissioner. These two provisions in no manner

change or influence conclusion as above for reasons more than one. Section 39 of the Act is enabling power exclusively given to Commissioner to transfer any employee of religious institution from that institution to any other institution in accordance with the Rules made by the Government. Similarly, the Deputy Commissioner or the Assistant Commissioner as the case may be having jurisdiction over the matter is given power to transfer any temple employee from that institution to any other institution in accordance with the Rules. So far no Rules have been made. But having regard to the object of the Act, namely, smooth administration of religious institutions, it can be inferred that the Commissioner or other authority can effect transfer only if it is in the interest of a religious institution. The power of transfer u/s 39 of the Act is nothing to do with the question for consideration. One can argue that without Section 39 of the Act in the statute book, Section 29(5)(d) of the Act would not have been sustainable insofar as it enables the Commissioner to authorize a temple employee of one religious institution to be PIM of another religious institution of which he is not employee.

52. Section 8 of the Act cannot be construed as a reservoir of omnipotent power. Section 8(1) of the Act declares that the administration of all religious institutions shall be under the general superintendence and control of the Commissioner. Sub-section (1) begins with the phrase, "subject to provisions of the Act". In plain terms, it means whatever power of general superintendence and control is exercised by the Commissioner, the same is circumscribed and strictly regulated by other provisions of the Act as well as Rules made thereunder. Section 8 of the Act, therefore, even remotely is not source of disciplinary power of Commissioner, even if, "general superintendence and control" of religious institutions vests in Commissioner. When power is conferred on public authority, such power has to be exercised subject to express or implied limitations imposed on exercise of such power.

53. In *Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others*, , a Constitution Bench of Supreme Court considered scope and extent of power of Election Commission of India under Article 324 of Constitution, which lays down that, "superintendence, direction and control...of the conduct of all elections to Parliament and to Legislature of other States...shall be vested in Election Commission". It was held that

Two limitations at least are laid on its plenary character in the exercise thereof. Firstly, when Parliament or any State Legislature has made valid law relating to or in connection, with elections, the Commission, shall act in conformity with, not in violation of, such provisions but where such law is silent Article 324 is a reservoir of power to act for the avowed purpose of, not divorced from, pushing forward a free and fair election with expedition. Secondly, the Commission shall be responsible to the rule of law, act bona fide and be amenable to the norms of natural justice in so far as conformance to such canons can reasonably and realistically be a required of it as fairplay-in- action in a most important area of

the constitutional order, viz., elections.

The Division Bench of this Court, to which one of us is member (V.V.S. Rao, J) in Telugu Desam Party Vs. Election Commission of India and others, was dealing with a case where Election Commission banned election canvassing on electronic media. This was held to be unconstitutional observing thus:

The field is not open for the Election Commission to provide something contrary to or in addition to the provisions made by the Legislature by putting a limit on the expenditure u/s 77 of the Representation of the People Act, 1951. The Legislature in its wisdom has till date, in spite of being repeatedly pointed out by the Apex Court, not provided any limit on the expenditure to be incurred other than by the candidate in the hustings. Thus in our considered view the legislation having taken care of expenditure, the Election Commission in exercise of its power of superintendence cannot impose further restrictions in the garb of providing in the Code of Conduct for the expenditure to be incurred by the persons. As observed earlier, except what has been specifically prohibited in law, it is well recognized that all other modes are permitted. There being no prohibition on the expenditure by an organization/party it would be reasonable for us to assume that persons other than the persons prohibited for incurring the expenditure are at liberty to incur expenditure for propagating for or against a person.

54. A situation might arise where in any of the group temples, trust board is not constituted. In ordinary course, the chairman of trust board can discharge the functions of EO. When a trust board is not constituted and only a temple employee is authorized to discharge the functions of EO, the question would come up as to whether Assistant Commissioner or Commissioner can suspend PIM. This is one area which is not provided for under Disciplinary Rules or Section 38 of the Act. In such a situation, Section 8 of the Act or Rule 6 of Disciplinary Rules may be relied on for suspending PIM. But, wherever a trustee or trust board is available either in the parent temple or temple where PIM is working, necessarily the order of suspension has to be passed only by the trustee and the Commissioner cannot pass an order of suspension.

55. In the counter affidavit filed in W.P. No. 24815 of 2005 support to the power of Commissioner to suspend a temple employee is drawn from executive instructions in circular No. CoE/05/2003 (file No. J2/1467/2003), dated 13.02.2003. It is issued pursuant to a detailed review of working of PIMs in Zones II, III and IV. It was pointed out that there has been no uniformity in dealing with service matters of PIMs, that they were applying for casual leave directly to Commissioner and that though PIMs moved out of their parent temples by taking their SRs, they were not given increments. In this background, Commissioner issued following clarifications: (a) all the PIMs shall function under the control of Assistant Commissioner of the District; (b) for all practical purposes he is the controlling officer for sanction of casual leaves, earned leaves upto one month, granting of increments, taking disciplinary action and for writing

of ACRs of PIMs. It is no doubt true that disciplinary power under said circular is entrusted to Assistant Commissioner having jurisdiction. The Act, Office Holders Service Rules and/or Disciplinary Rules of temple employees nowhere confer such power on Assistant Commissioner. It is axiomatic that when the field is governed by statute, administrative instructions have to be ignored for latter are not substitute to former. It is not possible to countenance the submission of learned Government Pleader who placed reliance on circular issued by Commissioner.

56. Writ appeal No. 150 of 2006 is filed against Judgment of learned single Judge in W.P. No. 37352 of 2005 filed by Dattu, who was suspended pending enquiry by Commissioner. Learned single Judge dismissed the writ petition placing reliance on the decision of Division Bench in W.P. No. 5736 of 2005, dated 31.03.2005. W.P. No. 5736 of 2005 was filed by one Harerama Prasad, who by proceedings, dated 31.08.2000 was authorised to be PIM. He was transferred to another group of temples. He was placed under suspension on 23.02.2001 in exercise of powers under Rule 8(1)(b) of CCA Rules. He challenged the order inter alia on the ground that Commissioner lacks competency to suspend a temple employee. The Division Bench dismissed the writ petition for the following reasons.

57. Thus, by virtue of the order dated 31.08.2001, which is the order relied upon by the petitioner for seeking his relief, he is to be treated as if he is an executive officer to be held responsible for all omissions and commissions by functioning as person-in-management of the group temples, and, for that reason, the petitioner will be deemed to be governed u/s 29(6) of the Act to be employee of the Government. Under Rule 7 of the CCA Rules, the subordinate services shall consist of the services specified in Schedule II to these rules and include any other services that may be notified. The Andhra Pradesh Endowments Executive Officers Subordinate Service is included in the second schedule, and therefore, the Commissioner of Endowments has, rightly, in exercise of his powers under Sub-rule 1(b) of Rule 8, put the petitioner under suspension.

58. By reason of Rule 7 read with Schedule II of CCA Rules, endowment subordinate service is treated as subordinate service for the purpose of CCA Rules. If such inclusion in subordinate service makes CCA Rules applicable, things would have been different but that is not the case. As mentioned supra, EOs Disciplinary Rules made under 1966 Act govern disciplinary proceedings against EOs. Therefore, in view of Rule 3(1)(c) Rule 3. Application:- (1) These Rules shall apply to every Government Servant except - (c) persons for whom special provision is made, in respect of matters covered by these rules, or under any law for the time being in force or in any rule or by or under any contract or agreement entered into by or with the previous approval of the Government before or after the commencement of these rules, in regard to matters covered by such special provisions of CCA Rules, EOs for whom special rules are made are not governed by CCA Rules nor Rule 8 thereof confers power on the Commissioner to suspend EO. Secondly, the Division Bench proceeded on the

premise that PIMs are deemed to be government employees by Section 29(6) of the Act. On a true construction of various sub-sections of Section 29 of the Act, in juxta position with other provisions of the Act, PIMs are only temple employees and they cannot be treated as EOs appointed u/s 29(2) and (3) of the Act read with Endowment Service Rules. The attention of the Division Bench was not drawn to separate set of rules governing temple employees both in the matters of conditions of service and disciplinary matters. Therefore, with utmost respect, it must be held that the judgment of Division Bench is per incuriam and is not a good law. For these reasons, orders of suspension passed by Assistant Commissioner, Ongole, challenged in W.P. No. 24815 of 2005 and the order of Commissioner of Endowments, which is subject matter of writ appeal in W.A. No. 150 of 2006 are unsustainable.

What remains now to be considered is whether State is liable to pay salary and emoluments of appellant in W.A. No. 1789 of 2004. Learned single Judge allowed SVST's writ petition setting aside order, dated 07.03.2003, whereby and whereunder Deputy Commissioner had directed said temple to pay salaries of PIM. In the course of the reasoning, learned single Judge declared that, "the liability to pay the salaries and emoluments of Ravindra Murthy rests with the State". In this Judgment, a reference is made to Articles 202 - 204 and 266 of Constitution. Reading Section 29(5)(d) of the Act in the light of these constitutional provisions, would not warrant any such declaration because temple employees authorized to be PIM, cannot be treated as Government employees holding civil posts and therefore, u/s 29(6) of the Act, they cannot be paid any salary by Government out of CFS. Even if such provision is made by the State, under Articles 202 - 204 of Constitution, the same would be unsustainable because u/s 29(6) of the Act only EOs are entitled in the first instance to be paid out of CFS. However, having regard to Section 70(1)(b) of the Act, Commissioner of Endowments on an application being made by Ravindra Murthy may consider the desirability of paying the salaries for such period as may be determined. The same may be paid from Common Good Fund. As Commissioner has not considered this aspect, at this juncture, it is not necessary to express any opinion on this. If any adverse order is passed, it is always open to challenge in appropriate proceedings.

Answers to referred questions and others

59. The conclusions on questions referred and other related questions are as follows.

- (1) Officer holders and servants of any charitable religious institution or endowment authorized to perform functions and discharge duties of EOs of an institution cannot be treated or considered as EOs appointed u/s 29(2) and (3) of the Act read with Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Subordinate Service (Non-Gazetted) Rules, 2002;
- (2) Officers and holders authorized to perform functions and discharge the duties

of EOs cannot be treated as Government servants u/s 29(6) of the Act, and therefore, they cannot be paid salary, allowances, pension or other remuneration out of Consolidated Fund of State;

(3) Andhra Pradesh Civil Services (Classification, Conduct and Appeal) Rules, 1991 have no application to EOs appointed u/s 29(2) of the Act. As a corollary, these Rules are not applicable to office holders and servants of temple who are authorised to discharge functions of EOs;

(4) The Commissioner and/or Assistant Commissioner of Endowments are not competent to suspend a temple employee performing functions and discharging duties of EO as authorised by Commissioner u/s 29(5)(d) of the Act; and

(5) It is competent to the trustee/board of trustee or EO, as the case may be, to take disciplinary action against temple employees and temple employees discharging functions of EO in accordance with Office Holders and Servants Punishment Rules, 1987. If the trustee or board of trustee or EO fails to take such action including the action to suspend a temple employee pending enquiry, then alone the Commissioner and/or department officers can take action.

Conclusion

60. In the result, for the above reasons, and also having regard to the conclusions as above, writ petition No. 24815 of 2005 and writ appeal No. 150 of 2006 are allowed. The impugned orders of suspension are quashed. Writ appeal No. 1789 of 2004 shall stand disposed of with observations made hereinabove. In the facts and circumstances, this Court directs the parties to bear their own costs.