(2001) 04 KL CK 0019

In the High Court Of Kerala

Case No : W.A. No. 1105 of 2001

Narayanan Nair APPELLANT

Vs

State of Kerala RESPONDENT

Date of Decision : 05-04-2001

Acts Referred:

Kerala Civil Services (Classification, Control and Appeal) Rules, 1960 — Rule 1, 11, 15, 16

Citation : (2001) 2 ILR (Ker) 455

Hon'ble Judges : K.S. Radhakrishnan, J;G. Sasidharan, J

Bench : Division Bench

Advocate : E. Subramani and S. Easwaran, for the Appellant; M. Ramesh Chander and C.K. Pavithran, Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Radharkrishnan, J.—The only question canvassed before us is whether second respondent Assistant Commissioner (Administration) has got jurisdiction to issue Ext. P4 order of suspension against the appellant who was the Manager of Sree Pariyanampatta Devaswom, Appellant-petitioner maintained the stand that he was appointed as Manger of the Devaswom by the Board of Trustee. Therefore, if at all he can be suspended the same can be done only by the Board of Trustee and not by the Assistant Commissioner. Learned Single Judge however has taken the view that since continuance of the Manger is subject to S. 102 (i) and x(ii) of the Hindu Religious and Charitable Endowment Act, it cannot be said that Assistant Commissioner of Hindu Religious and Charitable Endowment Department is without any authority or control over the functioning of the Manager. Learned Single Judge also placed reliance on the decision of this Court in Madhavan Nair v. Commissioner for H.R. & C.E. and Ors. 1963 KLT 480 where this Court took the view that Commissioner has got the power to suspend the Executive Officer pending enquiry into grave charges.

2. Learned counsel appearing for the appellant Sri. E. Shubramoni submitted that

S. 100(2)(p) and (x)(ii) of the Hindu Religious and Charitable Endowment Act, 1951 would not give any power to the Assistant Commissioner to place the petitioner under suspension. According to the counsel, R. 16 of the Rules and S. 100(2)(p) and (x)(ii) of Act 1951 enables the appointing authority to place an Executive Officer under suspension pending enquiry into grave charges. Counsel submitted that even under S. 102(p) and x(ii) of Act 1951 second respondent or the Commissioner being not the appointing authority could not place an employee under suspension even pending disciplinary proceedings. Counsel further submitted that Manager would not satisfy the definition of Executive Officer under R.1 of the Rules framed under S. 100(2)(x)(ii) of the Act, 1951. It is also his contention that order of suspension is also not traceable under the Kerala Civil Services (Classification, Control and Appeal) Rules, 1960 since the same is not made applicable.

3. Learned counsel appearing for the Commissioner Sri. C.K.Pavithran on the other hand contended that the Rules framed under S.100(2)(x)(ii) of the H.R. and C.E. Act, 1951, would enable the Commissioner or the Assistant Commissioner to take appropriate action against the Manager. Relying upon R.1, Government Pleader submitted that Manager would also come within the definition of Executive Officer in the event of which it is his contention that appropriate proceedings could be initiated against him invoking Rr. 15 and 16 of the Rules.

4. We are of the view that even though Manager was appointed under the Scheme framed under Ext. P1 as amended by Exts. P2 and P3 orders it is amendable to disciplinary powers conferred on the Commissioner under the H.R. & C.E. Act and the Rules framed thereunder. Even if Manager was appointed by the then Board of Trustee the present Board of Trustees has got the power under S. 49 of the H.R. & C.E. Act to take appropriate disciplinary proceedings. Commissioner is also not divested with these powers to take appropriate proceedings under the Rules framed under S. 100(2)(x)(ii) of the Act, 1951. R. 1 states that the expression "Executive Officer" includes any person appointed under a scheme settled or deemed to be settled under the Madras Hindu Religious and Charitable Endowment Act, 1951 (Madras Act XIX of 1951) by whatever designation called, provided that he is the highest executive authority in charge of the administration of the religious institutions. It is evident from the aforementioned rule that the expression "Executive Officer" includes and takes in any paid officer appointed under the Scheme. Therefore, even if the Scheme is settled before the coming into force of the Act, 1951 and a person is appointed under the scheme he is the executive authority in charge of the administration of the religious institutions and would satisfy the definition of Executive Officer.

5. We are therefore of the view that the Manager appointed under the Scheme would come within the expression "Executive Officer". In this connection reference is also made to R.11 which deals with sanction of leave to the Executive Officer. In that Rule the expression "appointing authority" takes in Area

Committee, Assistant Commissioner or the Deputy Commissioner, as the case may be. R. 15 confers powers on the appointing authority to impose punishment on the Executive Officer after following the procedures laid down in R. 16. R. 16 also says that Executive Officer may be placed under suspension pending enquiry into grave charges, where such suspension is necessary in the public interest and in the interest of religious institution concerned. Since the Manager satisfies the definition of Executive Officer, we are of the view that the appointing authority under the Act has got the jurisdiction to take disciplinary proceedings including suspension against the appellant. This view is in accordance with the principle laid down in Madhavan Nai v. Commissioner for H.R. & C.E and Ors. 1963 KLT 480 as well as the Bench decision of this Court in M.Vittal Bhat v. Srimad Anantheswar Temple 1978 (1) SLR 772.

6. In such circumstances we find no reason to interfere with the finding of the learned Single Judge. The appeal is accordingly dismissed. We made it clear we have not expressed anything on the merits of the case. If it is so advised it is open to the appellant to file objections to the show cause notice in the event of which of the same will be considered in accordance with rules.

