
(1978) 03 OHC CK 0002
In the Orissa High Court
Case No : O.J.C. No. 676 of 1977

Sri Biswanath Dash

APPELLANT

Vs

The Commissioner of O.H.R. Endowments and Another

RESPONDENT

Date of Decision : 23-03-1978

Acts Referred:

Constitution of India, 1950 — Article 226

Orissa Hindu Religious Endowments Act, 1951 — Section 32(1), 32(2), 79, 9

Citation : (1978) 45 CLT 505

Hon'ble Judges : R.N. Misra, J;P.K. Mohanti, J

Bench : Division Bench

Advocate : G.N. Misra, for the Appellant; S. Misra and S. Mohanty, for the Respondent

Judgement

P.K. Mohanti, J.—Challenge in this writ petition is to the order dated 16-8-1977 (Annexure-2) of the Commissioner of Endowments passed in Revision Case No. 8 of 1977.

2. The Petitioner is a non-hereditary servant of the temple of Shri Satyabadi Gopinath Dev at Sakhigopal in the district of Puri. On 15-1-1977 he was suspended from service by the Board of Trustees on the allegation that he had misappropriated 30 Gounis of paddy belonging to the deity. He preferred an appeal u/s 32(2) of the Orissa Hindu Religious Endowments Act, 1951 (hereinafter referred to as the 'Act') before the Assistant Commissioner of Endowments who set aside the order of suspension on the ground of violation of the principles of natural justice. Against the appellate order of the Asst. Commissioner a revisional application u/s 9 of the Act was preferred by the Executive Officer of the temple (opposite party No. 2) before the Commissioner of Endowments and it was registered as Revision Case No. 8 of 1977. The revision was allowed and the order of the Assistant Commissioner was set aside on the ground that under the provisions of the Scheme of Administration for the institution the appeal lay to the Commissioner and the Assistant Commissioner of

Endowments had no jurisdiction to entertain the same. The impugned order is challenged on the ground that the findings of the Commissioner are contrary to the provisions of Sub-section (2) of Section 32 of the Act.

3. In the counter affidavit filed by the opposite party No. 2 it is contended that the order of suspension dated 15-1-1977 was an interim order made during the pendency of a disciplinary proceeding against the Petitioner and not in the nature of a penalty u/s 32(1) of the Act and as such the appeal preferred by the Petitioner u/s 32(2) of the Act was premature. It is also contended that the writ application has, become infructuous as the Petitioner tendered resignation from his post which was duly accepted by the Board of Trustees on 12-11-1977.

4. Since the determination of the main question raised in this writ application turns on the true interpretation of subsections (1) and (2) of Section 32 of the Act, it would be convenient at this stage to set out both the Sub-sections of that section which read as follows:

32(1). All office-holders and servants attached to a religious institution or in receipt of any emolument or perquisite from the institution shall, whether the office or service is hereditary or not be, controlled by the trustee; and the trustee may fine, suspend, remove or dismiss any of them for breach of trust, incapacity, disobedience of orders, neglect of duty, misconduct or other sufficient cause.

(2) Any office-holder or servant punished by a trustee under Sub-section (1), may, within one month from the date of the communication of the order to him, appeal to the Assistant Commissioner whose order shall be final.

x x x

5. A plain reading of Sub-section (1) makes it clear that suspension from service has been provided for as a penalty and not as an interim measure during the pendency of a disciplinary proceeding. On a reference to the record of proceedings before the Board of Trustees it appears that the charge of misappropriation against the Petitioner was enquired into by two of the trustees, viz. Gopinath Nanda and Damodar Mohapatra before the order of suspension was made. Order No. 216 dated 15-1-1977 which was communicated to the Petitioner clearly mentions that the Petitioner was suspended from service for having misappropriated paddy. There is nothing to indicate that the order of suspension was made as an interim measure during the pendency of a disciplinary proceeding. There is also nothing to show that a disciplinary proceeding was in contemplation at the time when the order of suspension was made. We accordingly hold that the order of suspension from service was made as a measure of substantive punishment and not as an interim measure during the pendency of any disciplinary proceeding.

6. Sub-section (2) of Section 32 of the Act provides that a servant of the temple punished under Sub-section (1) may appeal to the Assistant Commissioner

whose order shall be final Suspension from service is one of the punishments enumerated in Sub-section (I). The Commissioner of Endowments has taken the view that under the terms of the Scheme of Administration the Assistant Commissioner has no power to entertain an appeal. Clause 18 of the Scheme of Administration provides as follows:

18(a). The Executive Officer may fine, reduce, suspend, remove or dismiss any non-hereditary servant of the temple for neglect of duty, breach of discipline, carelessness or other misconduct.

(b) The servant so punished may appeal to the Endowment Commissioner within a week of the date of communication of the order of punishment and the Endowment Commissioner's decision shall be final.

It would thus be seen that under the Scheme of Administration the power to entertain an appeal has been conferred on the Commissioner of Endowments whereas under Sub-section (2) of Section 32 of the Act such power has been conferred on the Assistant Commissioner of Endowments. The Scheme of Administration appears to have been framed on October 10, 1952 when the old Act of 193; was in force. The Orissa Hindu Religious Endowments Act, 1951 came into force from January 1, 1955. In view of the provisions of Section 79 of the Act of 1951 an Schemes settled under the old Act shall be deemed to have been settled under the new Act. Clause 18 of the Scheme of Administration providing for an appeal to the Commissioner is inconsistent with the provisions of the statute. A Scheme of Administration framed for the institution cannot override the provisions of a legislative enactment. We accordingly hold that Sub-section (2) of Section 32 of the Act shall prevail over the provisions of Clause 18 of the Scheme of Administration.

The Commissioner of Endowments erred in law in holding that the Assistant Commissioner had no power to entertain the appeal. The impugned order is, therefore, liable to be quashed.

7. Now the question arises whether the present writ petition has become infructuous as a result of acceptance of resignation tendered by the Petitioner. In his affidavit dated 29-11-1977, the Petitioner has stated that being in severe mental agony due to harassment by opposite party No. 2, he sent an application for resignation, but subsequently withdrew the same on 27-11-1977. According to the opposite parties, the resignation tendered by the Petitioner had been accepted by the Board of Trustees on 12-11-1977 and as the relationship of master and servant came to an end with the acceptance of the resignation, the withdrawal on 28-11-1977 was not operative. According to Mr. Misra for the Petitioner, the acceptance was not in accordance with law and, therefore, would not operate as a bar to withdrawal of the letter of resignation. We do not think, such a question should be permitted to be examined within the ambit of this writ application. Reliance is placed on the principle indicated by us in the case of *Mulsankar Ojha v. Pareswar Khuntia and Ors.* O.J.C. No. 289 of 1974, where we

held that in a writ proceeding for certiorari under Article 226 of the Constitution, the Court is called upon to determine whether the impugned decision is sustainable on the materials on record before the authority whose decision is impugned and the correctness of the decision would not be available to be adjudicated by referring to new material. Again, disputed questions are not available to be adjudicated by us in a proceeding for certiorari. We would accordingly leave it open to the Commissioner of Endowments to determine this question as to whether there has been termination of Petitioner's service by the acceptance of his resignation. Under the scheme for the institution, the Commissioner has general jurisdiction to dispose of questions of dispute and it would, therefore, be appropriate to leave it to him for disposing of the question as to whether Petitioner continues to be an employee of the institution or his service has come to an end. In case, the Commissioner finds that the Petitioner's service has come to terminate by acceptance of his resignation, the relief available as a result of our judgment would be operative till the date of acceptance of such resignation. In case the Commissioner holds that there has been no resignation, Petitioner would certainly be in employment in terms of the appellate order of the Assistant Commissioner.

There would be no direction for costs.

R.N. Misra, J.

I agree.

Ordered accordingly.