
(2001) 06 KL CK 0043
In the High Court Of Kerala
Case No : O.P. No. 8012 of 2001

Vijayan

APPELLANT

Vs

Guruvayoor Devaswom

RESPONDENT

Date of Decision : 14-06-2001

Acts Referred:

Kerala Civil Services (Classification, Control and Appeal) Rules, 1960 — Rule 10
Kerala Government Servants (Conduct) Rules, 1960 — Rule 62, 63, 65, 76, 77

Citation : (2001) 2 KLJ 176

Hon'ble Judges : S. Sankarasubban, J; Kum. A. Lekshmikutty, J

Bench : Division Bench

Advocate : K. Radhakrishnan, T.A. Unnikrishnan, Sajeev Kumar, K. Gopal and Binoy Vasudevan, for the Appellant; U.K. Ramakrishnan, for the Respondent

Final Decision : Allowed

Judgement

S. Sankarasubban, J.—There are two petitioners in this Original Petition. They are Upper Divisions Clerks in the service of Guruvayoor Devaswom. In the Original Petition, they challenge Ext. P8 and pray for quashing the same. Ext. P8 is an order passed by the Administrator, Guruvayoor Devaswom on 3.3.2001. By this order, the petitioners have been suspended pending disciplinary proceedings. The fact in the Original Petition are as follows:

2. The first petitioner is the Secretary and the second petitioner is the President of the Guruvayoor Devaswom Employees Association. According to the petitioners, it was a registered non-political Association of employees of the Guruvayoor Devaswom. The case of the petitioners is that the Association is fighting against the various illegalities and corruptions committed in the Devaswom. It gives details of the attempt made by the Association to put everything in order when the Managing Committee of the Devaswom had deviated from its path. The petitioner referred to O.P.No. 2071 of 1993 with regard to "Govesala". According to the petitioners, whenever the Managing Committee was exercising its power illegally, the petitioner tried to prevent them

from making anything illegally.

3. In para 7, the petitioners stated that the Devaswom had Driver by name Ponnu. He was sent on deputation to the Kerala Pharmaceutical Corporation as per order of the Health Department dated 17.1.2001. After sending Ponnu on deputation, the Administrator of the Devaswom on 1.2.2001 issued an order appointing one K.Satheesan in the vacancy which arose on account of the deputation. The petitioners contend that virtually it was a non-existing vacancy, which was created by illegal means. There no provisions for sending a Devaswom employee on deputation to any other Government Department. Further, the Health Department has no authority for ordering deputation. When this fact became known, the Association complained before the Commissioner of Guruvayoor Devaswom and the Minister through representation, copy of which is produced and marked as Ext. P3 in the case. Ext. P3 according to the petitioners, has antagonised the first respondent.

4. The first respondent issued to the petitioners stating that the activities of the petitioners are against the Committee of the Devaswom and they are liable for disciplinary action. That notice is produced and marked as Ext. P4. On the next day, the petitioner submitted a reply stating that as there was reference to the Association in Ext. P4, some reasonable time may be given for submitting reply. Ext. P5 is the copy of the reply. On 19.2.2001, the first respondent sent another stating that time up to 26.2.2001 was granted for submitting records as mentioned in Ext.P5. Ext.P6 is the copy of the notice. On 26.2.2001, the petitioner a reply, copy of which is produced and marked as Ext. P7. In Ext. P7, the petitioners wanted certain documents to be supplied to them. It is thereafter on 3.3.2001 that Ext. P8 order was issued suspending the petitioners from service. It is challenging Ext. P8 that this Original Petition is filed.

5. The petitioners challenge Ext. P8 stating that Ext. P8 order was issued with malafide and ulterior motives. It was issued without any authority. The petitioners. had pointed out only the illegality when a person was deputed for which there was no authority. According to the petitioners, they being devotees of Lord Guruvayoorappan, they have every right to point out the illegalities and corruptions. One of the prayers in the Original Petition for a mandamus to conduct an enquiry regarding the administration in the light of the allegations made in Ext.P3.

6. Along with the Original, the petitioners filed C.M.P. No. 1301 of 2001 for staying the suspension order. This court stayed all further proceedings in the disciplinary enquiry, till the disposal of the Original Petition.

7. Three counter affidavits were filed by the Guruvayoor Devaswom; one in C.M.P. No. 1301 of 2001 and the other in the main counter affidavit to the Original Petition. The counter affidavit in the Original Petition was sworn to by the Administrator. In the counter affidavit filed in the C.M.P. it is stated that with regard to the first prayer the relief cannot be granted in view of the pendency of

the SLP No. 3431 of 1994 before the Supreme Court and the orders passed thereon. It is further stated that the petitioners are the employees of the second respondent Devaswom and they are not legally entitled to file an Original Petition for an order as prayed for in prayer No. It is further averred in the affidavit that the intention of the petitioners appear as to be to blacken the image of the Managing Committee. According to the Administrator, the petitioners are the employees of the Devaswom and it will amount to misconduct, if they make false allegations against the superiors. It is not duty of the employees to criticise their management. The employees have to do their work regularly. According to the counter affidavit, there is nothing wrong in the deputation of Ponnu or in the appointment of Satheesan. But the petitioners with the intention to malign the Managing Committee, distributed pamphlets against the Managing Committee. Further there is no basis in the allegations made by the petitioner against the Devaswom. Even though the petitioners made wild allegations against the Devaswom, the petitioners did not produce any paper before the Devaswom to convince their originality. According to the counter, as per the Government Servants' Conduct the petitioners are prevented from making any allegations of ill-will against the superior Authorities. It is further stated that if such employees are allowed to criticise the Managing Committee, then will be law and order problem and everything will go into disrepute.

8. The question before us is whether Ext.P8 order of suspension is liable to be interfered with. The employees of the Guruvayoor Devaswom are governed by the Kerala Civil Services (Classification, Control and Appeal) Rules with regard to disciplinary proceedings. R.10 of the said Rules applies with regard to suspension. Regulation 6 of Regulations says that the Kerala Service Rules Parts 1,2 and 3 and the Kerala Service Rules Parts as amended from time to time shall apply. It is also submitted that the Government Servant Conduct Rules applies to the petitioners. The entire cause of action which resulted in Ext. P8, is the submission of Ext. P3 to the Minister for Devaswom, Government of Kerala.

9. Let us find out what is stated in Ext.P3. The first paragraph of Ext. P3 relates to the deputation of Ponnu, Driver Guruvayoor Devaswom. The contention is that Ponnu was deputed to the Pharmaceutical Corporation Kerala Ltd., Trichur without the knowledge of the Devaswom Department. Further, it is stated that hitherto none had been deputed from the Guruvayoor Devaswom. It is further stated that K. Satheesan has been appointed in the vacancy of Ponnu. The next allegation is against the former Administrator, in that he had created a loss of Rs.3 lakhs to the Devaswom. It was further stated that the deputation of Ponnu and the consequential appointment of Satheesan as Driver are example of favouritism and corruption. It is also revealed from Ext. P3 that the Association had sent a letter to the Devaswom Commissioner, No. 117/GDEA/2000, and on the basis of that the Devaswom Department, Thiruvananthapuram had ascertained the opinion of the Administrator. It is stated that, according to the Union all appointments including that of Driver have been made illegally. Ext. P3 requests to take steps to cancel the appointments, which were made without any

guidelines and without permission of the Devaswom Department. It is seen that copies of Ext. P3 had been sent to the then Chief Minister Sri. E.K. Nayanar, the then Health Minister Sri. V.C. Kabeer, the then Devaswom Minister Sri. C.K.Nanu, Chief Justice, High Court of Court of Kerala, Lokayuktha, Government Secretary, Devaswom Department, Trivandrum, Devaswom Commissioner, Devaswom Chairman and Member of the Managing Committee and also to the Administrator, Guruvayoor Devaswom. Ext. P3 is dated 6.2.2001.

10. On 12.2.2001, notices were sent to the petitioners stating that Ext.P3 was discussed in the Managing Committee. Copy of the notice is produced as Ext.P4. Ext P4 directs the petitioner to give proof regarding corruption, which is alleged in Ext.P3. It is stated that the proof should be given before 13.2.2001. On 13.2.2001, the petitioners sent Ext. P5 asking for time. Ext P6 is a letter sent by the Administrator giving seven days time from 19.2.2001. Then Ext.P7 was issued by the petitioners. In that letter, they have requested for the resolution of the Managing Committee on 8.2.2001 and 17.2.2001. Ext. P7 is dated 26.2.2001. On 3.3.2001, Ext, P8 was issued. In Ext.P8, it is stated that since no reply has been given by the petitioners, it was assumed that there is no proof for the allegations. It is stated that the conduct of the petitioners is unbecoming of the employees of the Devaswom. Further it is stated that the intention of the petitioners appears to be to tarnish the image of the Managing Committee. Hence the Managing Committee decided to suspend the petitioners by resolution dated 2.3.2001.

11. As already stated, the Administrator has filed a counter affidavit. In the counter affidavit, he tried to justify the deputation of Ponnu and the consequential appointment of Satheesan. During the pendency of the petition, the petitioner produced certain documents to show that it is on the basis of these documents that the allegations were made. About 27 allegations were made against the Devaswom. The Devaswom had filed a counter affidavit denying those allegations.

12. According to us, the Managing Committee and the Administrator were very sensitive. First of all Ext. P3 was issued by the Association and not by the petitioners individually. It is addressed to the Minister, who is in charge of the Devaswom Department. It only complains about the irregularity in the deputation of Ponnu and consequential appointment of Satheesan and says that those appointment are irregular and are examples of favouritism. It is further stated that many appointments have been made by the Devaswom and the Minister was asked to interfere and cancel those appointments. It was not published in any newspaper. Copies have been given to the various Authorities of the Government and also to the Chief Justice, High Court of Kerala. The Managing Committee now wants the petitioners to submit evidence regarding those allegations.

13. The question is whether the issuance of Ext. P3 amounts to misconduct First of all we are of the view that since it was issued on behalf of the Guruvayoor Devaswom Employees Association, the petitioners cannot be personally

proceeded with. The Government Servants, Conduct Rules allow formation of Associations. R.76 of the Conduct Rules says that no Government servant shall join or continue to be a members of, an association the objects or activities of which are prejudicial to the interests of the sovereignty and integrity of India or public order or morality. R. 77 of the Conduct Rules deals with recognition of the Association. R 77(c) gives right to the Association or Union to give representations. After perusing Ext. P3, find that the Association represented to the Government certain matters which according to them are not in consonance with the Rules and Regulations with regard appointments. We don't think such a representation cannot be made by an Association. So on the first point that the representations are made by the Association, we think, it was not proper on the part of the Devaswom to initiate proceedings against the two office bearers individually. Even supposing it is assumed that the petitioners are responsible for sending Ext. P3, we don't think, what is stated in Ext.P3 is against the Conduct Rules. R.62 of the Conduct, Rules states that no Government servant shall, in any document published by him or in any communication made by him to the Press or in any public utterance delivered by him, make any statement of fact or opinion which is capable of embracing, (a) the relation between the Government and the people or any section thereof, (b) the relations between the Government and the Government of India and (c) the relations between the Government and any other India State, or any foreign country. R.63 of the above Rules states that the Government servant who intends to publish any document or to make any consideration to the Press or to deliver any public utterance containing statements in respect of which any doubt as to the application of the restrictions imposed by R.62 may arise, shall submit to Government a copy or draft of the document which he intends to publish or of the utterance which he intends to deliver , and shall thereafter act in accordance with such orders as may be passed by the Government. R.65 says that no Government servant shall give evidence before a public committee except with the previous sanction of Government. According to us, in Ext. P3 nothing has been stated, which will be embarrassing the Managing Committee or the Administrator, Further, it is stated that the Government have asked for the comments from the Administrator and that Ext.P3 is pending before the Government.In such circumstances, we are of the view that it was not right on the part of the Managing Committee to have initiated disciplinary proceedings against the petitioner and suspended the petitioners.

14. In the above of the matter, Ext.P8 and the disciplinary proceedings initiated against the petitioners on the basis of Ext.P3 are quashed. Original Petition is allowed as above.