

(2001) 03 KL CK 0078

High Court Of Kerala

Case No: O.P. No. 6683/01

Sasikumar

APPELLANT

Vs

Secretary, T.D.B. and
Another

RESPONDENT

Date of Decision: March 29, 2001

Acts Referred:

- Travancore-Cochin Hindu Religious Institutions Act, 1950 - Section 35(2)
- Travancore-Cochin Hindu Religious Institutions Rules - Rule 10, 28, 3, 6, 8

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

Bench: Division Bench

Advocate: Govind K. Bharathan and C.P. Kunjikannan, for the Appellant; P.G. Parameswara Panicker and P. Gopal, for the Respondent

Judgement

S. Sankarasubban, J.

Petitioner in this Original Petition is employed as a Watchman at the Avanipuram Devaswom, Varkala Group, under the Travancore Devaswom Board. Petitioner has completed 19 years of service and there has not been any complaint against him so far. He is also the General Secretary of Devaswom Employees Union, which is a part of Devaswom Employees Front, which was formed by bringing under one banner the Devaswom Employees Union and seven other Unions and Associations. This coming together under one banner was insisted to because of the judgment of this Court in O.P. No. 3821/90 in which it was laid down that union activities were not conducive in Temples and their service in a temple not being like service in other branches. According to the Petitioner, he being the Secretary of the Devaswom Employees Union, was informed by members of the Union who were on Bhandaram special duty that one bundle of 100 notes of Rs. 500 totalling Rs. 50,000 was missing. Then the Petitioner filed a representation before the President of the Travancore Devaswom Board, copy of which is produced as Ext. P-1. Tnereafter, Petitioner received a letter of the Vigilance Officer, Travancore Devaswom Board dated 21st

December 2000 asking him to appear before the Vigilance Officer to give evidence in the matter regarding the complaint about missing notes bundle in Sabarimala Bhandaram. That letter is produced as Ext. P-2. Thereafter, the Devaswom Commissioner issued a show cause notice, dated 19th January 2001 to the Petitioner, to show cause why action should not be taken against him. Petitioner submitted a reply to the Devaswom Commissioner, copy of which is produced as Ext. P-4. In Ext. P-3 show cause notice, it is stated that the Petitioner has caused a news item to be published in Malayala Manorama daily, dated 24th December 2000 regarding the missing of the notes from the Bhandaram. It is stated that this is bringing down the reputation of the management and unnecessarily interfering with the work of the employees. Hence, the Petitioner was asked to show cause why action should not be taken against him. Petitioner filed a reply, Ext. P-4. In Ext. P-4, Petitioner admits that he gave a representation before the Devaswom Board. But he has stated that he has not given any publication in the newspaper. Hence, according to him, there is nothing to inquire because whatever he had informed the Board was in the interest of the Board. On 9th February 2001 Petitioner received the suspension order which is signed by the Secretary of the Travancore Devaswom Board. The suspension order is produced as Ext. P-5. The suspension order is issued on the basis of the report of the Vigilance Officer dated 30th December 2000. Pursuant to the order of suspension Petitioner was relieved. It is challenging the suspension order, the original petition is filed.

2. The main contention of the Petitioner is that proper person to issue the suspension order is the Devaswom Commissioner. The Devaswom Board. cannot issue the suspension order. Secondly, it is stated that the Petitioner has not committed any misconduct. He has filed a representation before the Board of Directors, bringing to their notice certain irregularities that is being practised at the site of the Bhandaram. He has further stated that he has not brought to the notice of the newspaper regarding the news item. As a matter of fact, the Devaswom Board has not enquired whether the news item was published at the instance of the Petitioner. Further, the news item was not given by the Petitioner. A counter affidavit has been filed by the Secretary, Travancore Devaswom Board. It admits the receipt of the representation by the Petitioner. It is stated that the matter was enquired through the Vigilance Officer and it was found that there was no substance in the complaint. It further assumes that the publication in the newspaper was made on the request of the Petitioner and that it affects the Travancore Devaswom Board-considerably. It is further stated that, in that view of the matter, the suspension order is issued and further stated that enquiry will be conducted soon. Both the parties cited certain decisions.

3. The Travancore Devaswom Board has framed rules u/s 35(2)(e) of the Travancore Cochin Hindu Religious institutions Act. These rules have been framed with regard to the service conditions of the Devaswom employees. Rules regarding conduct are stated at Rule 6. Clause (b) of Rule 6 deals with discipline. It states that disciplinary

action will be taken if the rules are violated or if any duty is done carelessly. It is further stated that the temple atmosphere should not be polluted and that the employee should not work against the interest of the Board and further that he should not issue any statement bringing the name of the Board into disrepute before the public. The rules also give power under Rule 10(d) to impose the punishment of suspension. Under Rule 10, an employee can be suspended only after an enquiry under Rule 3(b). It is true that suspension pending enquiry is not a punishment and that during the pendency of enquiry, Petitioner is entitled to subsistence allowance. But even then, it has been held by courts that placing a person under suspension is not an automatic act. It should be done after considering the grave nature of the charges and other things. In [State of Orissa Vs. Bimal Kumar Mohanty](#), the Supreme Court has held as follows:

Normally when an appointing authority or the disciplinary authority seeks to suspend an employee, pending inquiry or contemplated inquiry or pending investigation into grave charges of misconduct of defalcation of funds or serious acts of omission and commission, the order of suspension would be passed after taking into consideration the gravity of the misconduct sought to be inquired into or and on application of the mind by disciplinary authority. Appointing authority or disciplinary authority should consider the above aspects and decide whether it is expedient to keep an employee under suspension pending aforesaid action. It would not be as an administrative routine or an automatic order to suspend an employee. It should be on consideration of the gravity of the alleged misconduct or the nature of the allegations imputed to the delinquent employee. The Court or the Tribunal must consider each case on its own facts and no general law could be laid down in that behalf.

In [Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another](#), , the Supreme Court has held as follows:

Exercise of right to suspend an employee may be justified on facts of a particular case. Instances, however, are not rare where officers have been found to be afflicted by "suspension syndrome" and the employees have been found to be placed under suspension just for nothing. It is an officer's irritability rather than an employee's trivial lapse which has often resulted in suspension. Suspension notwithstanding, non-payment of subsistence allowance is an Inhuman Act which has an unpropitious effect on the life of an employee when he is placed under suspension, he is demobilised and salary is also paid to him at a reduced rate under the nickname of "subsistence allowance", so that the employee may sustain himself.

In Sreekumar v. Kerala Water Authority 1996 (1) KLT 209 Radhakrishnan, J. following the Supreme Court decision in [State of Orissa Vs. Bimal Kumar Mohanty](#), has held that, "It is therefore evident that suspension is not automatic. The appropriate authority has to apply his mind as to whether a Government servant should be placed under suspension or not taking into consideration the then prevailing

circumstances and also public interest".

4. It is in the above background that, we will have to examine the facts of this case. Petitioner himself admits that he has complained to the Travancore Devaswom Board by Ext. P-1. regarding certain irregularities and illegalities in the counting of notes in the Bhandaram at Sabarimala. On receipt of Ext. P-1 an enquiry was conducted and from Ext. P-2 it is clear that Vigilance Officer has summoned the Petitioner. Thereafter on 19th January 2001 a show cause notice was issued to the Petitioner. This is on the basis of a news item published in Malayala Manorama daily dated 24th December 2000. The news item is produced as Ext. P-6. The news item reads as follows:

According to Ext. P-4, the news item was published at the instance of -Petitioner. Hence he is asked to showcause. In the reply, he has categorically stated that he has not published the news item. In the suspension order, it is stated that publication in the newspaper by the Petitioner is a serious misconduct on the part of the Petitioner. Further they refer to Devaswom Manual, Vol. II, Page 206, stating that Devaswom employee shall not make any publication in newspaper. They also referred to the Vigilance Report dated 30th December 2000. First of all, let us examine is there anything against the Devaswom Board in Ext. P-6. In Ext. P-6, what is stated is that income from the Bhandaram is being diverted. It is found that the person responsible was identified but he was taken back and transferred to Anr. Department. The heading of the publication is according to us, by the mere publication of this news item, it cannot be concluded that it was given by the Petitioner. Now a days, we find newspaper reports of many things. Investigative journalism has reached such an extent even without the person knowing, certain news items are published. This may be as a result of efforts by the journalists at the Travancore Devaswom Board or at Sabarimala. One cannot be sure that the publication was made at the instance of the Petitioner. Further the report dated 30th December 2000 also does not mention that any enquiry was made as to whether this was published at the instance of the Petitioner. The report dated 30th December 2000 is produced as Ext. R-1 (b). It assumes that the statement was given by the Petitioner. No enquiry is made. Now let us examine the provisions in the rules. That is, the rules u/s 35(2)(e) of the Travancore Cochin Hindu Religious Institutions Act. This is the rule relied on by the counsel for the Devaswom Board. Rule 8(b)(1) is as follows:

What is important is that the employee should have acted against the interest of the Board or to bring the Board into disrepute before the public. In the suspension order the rules in the Devaswom Manual is cited, which states that, no Devaswom

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 embarrassing the relations between the Board and the public or any section thereof or the relations between the Board and the Government. Rule 28 is put in Anr. form in Rule 8(b) of the new rules. According to us, a reading of the news item will not show that it was intended to disrepute the Devaswom Board. Prima facie, we are of the view that, it does not convey anything which is capable of embarrassing the relation of the Board and the Public or any section, or the Board and the Government. This publication, at the most, can be said to be a publication bringing to notice that certain irregularities have been committed by the employees of the Board. The publication will disrepute the Board only if it was done intentionally by the Petitioner and without any basis. So, according to us, before action should be taken on the publication against the Petitioner, it should have been found prima facie that-(1) whether the publication was made at the instance of the Petitioner; (2) whether the facts stated in the publication are baseless or untrue and (3) whether it has an effect of affecting the interest and reputation of the Board before the general public.

5. In this context it has to be noted that Petitioner is working as a Watcher. Even admitting for argument sake that the Petitioner has committed a misconduct, we do not think it necessary to suspend him because continuance of the Petitioner under the Travancore Devaswom Board will not in any way affect the enquiry which is initiated under Ext. P-3. There is Anr. aspect also. Petitioner is the general secretary of a Union and further he is also a devotee of the temple. It cannot be said that he can not bring to the notice of the Board, if any irregularity is committed. Taking all these things into consideration, we think that it is not a fit case to suspend the Petitioner from service. Hence, we quash Ext. P-5--the suspension order and direct the Devaswom Board to reinstate the Petitioner immediately. Further enquiry under Ext. P-3 shall be continued and such enquiry shall be completed within a period of six months from today. We are not deciding the competency of" the Devaswom Board to issue the suspension order since we are quashing the; order on merits.

The O. P. is disposed of as above.