

Ashok Kumar.G. Vs. Travancore Devaswom Board

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Court : Kerala

Decided On : Feb-03-2014

Judge : Honourable Mr. Justice Babu Mathew P.Joseph

Appellant : Ashok Kumar.G.

Respondent : Travancore Devaswom Board

Judgement :

C.R. IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH MONDAY, THE 3D DAY OF FEBRUARY 2014 14TH MAGHA, 1935 WP(C).No. 26053 of 2013 (F) ----- PETITIONERS:

1. ASHOK KUMAR.G. S/O.p.GOPALAKRISHNAN NAIR, PUTHENPURACKAL HOUSE PAYYANALLOOR, NOORANADU P.O. ALAPPUZHA DISTRICT-690 504, (KAZHAKAM (UNDER SUSPENSION), PADINJATTUKAVU DEVASWOM).

2. ANANDRAJAN P.G. S/O.P.M.GOPALAKRISHNAN, PALATHINAL HOUSE THRIKKARIYOOR P.O., THRIKKARIYOOR KOTHAMANGALAM-686 692 (KARANMA POOJAKOTTU THRIKKARIYOOR DEVASWOM). BY ADVS.SRI.S.SUBHASH CHAND SRI.SHINDO VARGHESE RESPONDENTS:

1. TRAVANCORE DEVASWOM BOARD OFFICE OF THE TRAVANCORE DEVASWOM BOARD DEVASWOM BUILDINGS, NANDHANCODE, THIRUVANANTHAPURAM REPRESENTED BY ITS SECREARY.

2. DEVASWOM COMMISSIONER OFFICE OF THE TRAVANCORE DEVASWOM BOARD DEVASWOM BUILDINGS, NANDHANCODE, THIRUVANANTHAPURAM3 THE ASSISTANT DEVASWOM COMMISSIONER OFFICE OF THE ASSISTANT DEVASWOM COMMISSIONER THRIKKARIYOOR GROUP, THRIKKARIYOOR KOTHAMANGALAM-686 692.

4. THE SUB GROUP OFFICER THRIKKARIYOOR DEVASWOM, THRIKKARIYOOR GROUP THRIKKARIYOOR, KOTHAMANGALAM-686 692. R BY ADV. SRI.A.N.RAJAN BABU, SC, TRAVANCORE DEVASWOM BOARD THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON0302- 2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: WP(C).No. 26053 of 2013 (F) ----- APPENDIX PETITIONER(S)' EXHIBITS ----- EXHIBIT P1. TRUE COPY OF THE

ORDER

BEARING ROC NO.9/13/MIS DATED202/2013 ISSUED BY RESPONDENT NO.2. EXHIBIT P2. TRUE COPY OF THE REPRESENTATION DATED227/2013 SUBMITTED BY THE PETITIONERS BEFORE RESPONDENT NO.2. EXHIBIT P3. TRUE COPY OF THE REPRESENTATION DATED207/2013 SUBMITTED BY THE PETITIONERS BEFORE RESPONDENT NO.2. EXHIBIT P4. TRUE COPY OF THE

ORDER

BEARING NO.ROC913/MINS. A DATED59/2013 PASSED BY RESPONDENT NO.2. EXHIBIT P5. TRUE COPY OF THE REPRESENTATION DATED249/2013 SUBMITTED BEFORE RESPONDENT NO.1. WITHOUT ANNEXURES EXT.P6: TRUE COPY OF THE RELEVANT PORTION OF THE RULES REGARDING KARANMA SERVICE FRAMED BY RESPONDENT NO.1 UNDER SECTION28OF THE ACT EXT.P7:

ORDER

DATED2611.2011 ISSUED BY EXECUTIVE OFFICER SABARIMALA DEVASWOM. RESPONDENTS EXTS: ANNEXURE R1(A) TRUE COPY OF THE

ORDER

OF THE DEPUTY DEVASWOM COMMISISONER ADMINISTRATION
ROC913/MIS A DATED611/2013 ANNEXURE R1(B) TRUE COPY FO THE
RODER OF THE COMMISISONER ISSUED ROC913 MIS A DATED811/13 TO
THE SEC RETARY OF THE DEVASWOM BOARD. ks. TRUE COPY P.S. TO
JUDGE C.R. BABU MATHEW P. JOSEPH, J.

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= = = = = = = = = = Dated this the 3rd day of February, 2014

JUDGMENT

The question that arises for consideration in this writ petition is as to whether a Karanma employee attending to the service of a temple under the Travancore Devaswom Board is entitled to subsistence allowance during the period he is kept under suspension contemplating disciplinary proceedings or not? 2. Heard the learned counsel appearing for the petitioners and the learned Standing Counsel appearing for the respondents.

3. The 1st petitioner is a Kazhakom of Padinjattukavu Devaswom. He is a departmental employee under the 1st respondent Travancore Devaswom Board. The 2nd petitioner WPC260532013 2 is a Karanma Poojakottu of Thrikkariyoor Devaswom. He is working there as the representative of the Karanma family. Both of them were entrusted with the duty of counting of money along with others on 5.1.2013 at Thrikkariyoor Sree Mahadeva Temple. The counting of money was completed on 5.1.2013 itself. Thereafter, based on certain visuals telecast by 'Indiavision', a private news channel, allegedly in respect of the said counting of money and also based on the report of the 3rd respondent Assistant Devaswom Commissioner, the petitioners were suspended from service in contemplation of disciplinary proceedings alleging misappropriation of money as per Ext.P1 order dated 20.2.2013 of the 2nd respondent Devaswom Commissioner. Along with the petitioners, by separate orders, two other officers were also suspended from service. It is the case of the petitioners that they are absolutely innocent of the allegations levelled against them. During the period the petitioners are kept under suspension, they are entitled to WPC260532013 3 subsistence allowance as provided under Rule 55 of Part I of the Kerala Service Rules(for short, the K.S.R.)

as the Travancore Devaswom Board has adopted the K.S.R. in respect of such matters. But, the petitioners have been denied the subsistence allowance illegally. At the same time, those two other officers who were also suspended from service based on similar allegations were granted subsistence allowance as provided under the said Rule 55.

4. Learned Standing Counsel appearing for the respondents filed a statement in this case. It is admitted in the statement that the 1st petitioner, being a departmental employee, is entitled to subsistence allowance as per Rule 55 of Part I of the K.S.R. Since there was no dispute with respect to the entitlement of the 1st petitioner to subsistence allowance, this Court, by way of an interim order passed on 21.11.2013, directed to pay the subsistence allowance to the 1st petitioner during the period of his suspension including its arrears. Accordingly, as submitted by the WPC260532013 4 learned counsel for the petitioners, the 1st petitioner is being paid the subsistence allowance. The only relief which was pressed into service at the hearing of this case is in respect of the payment of subsistence allowance to the 2nd petitioner. Since the 1st petitioner is being paid subsistence allowance, this writ petition, in respect of him, has become infructuous.

5. Learned Standing Counsel for the respondents submitted that the 2nd petitioner, being a Karanma employee, is not entitled to subsistence allowance. Rule 55 of Part I of the K.S.R. is not attracted in the case of a Karanma employee. The case of the 2nd petitioner has to be dealt with as provided under Rule 13 of the Rules Framed Under Section 28 of the Travancore-Cochin Hindu Religious Institutions Act, 1950 Regarding Karanma Service (for short, the Rules). Based on this Rule, it was contended that if a member of a Karanma family is found unfit to retain in service, such person can be removed from service by the WPC260532013 5 Devaswom Board and another person from the Karanma family can be appointed in his place. For removing such a person from service, no disciplinary proceedings need be initiated against him and he can be removed after giving notice to the head of the Karanma family invoking the powers under Rule 13 of the Rules. In fact, accordingly, as per order dated 6.11.2013 of the 2nd respondent, the 2nd petitioner was dismissed from service. Augmenting such a

contention, reliance was also placed on Rule 8 of the Rules which empowers the Devaswom Board to hold the Karanma family always responsible for the irregularities of the family member who actually performs the service. Learned Senior Counsel further contended that after suspending the 2nd petitioner from service, another member of the Karanma family had to be appointed in his place. If subsistence allowance is paid to the 2nd petitioner and salary is paid to his substitute, in fact, there is the risk of double payment which cannot be accepted. For this reason WPC260532013 6 also, according to him, the 2nd petitioner is not entitled to subsistence allowance.

6. Learned counsel for the petitioners submitted that, as provided under Section 28 of the Travancore-Cochin Hindu Religious Institutions Act (for short, the Act), all Karanma services are under the absolute control of the Devaswom Board. As provided under Rule 12 of the Rules, the Karanma employees are under the disciplinary control of the Devaswom Board. The competent authority under the Devaswom Board can suspend the Karanma employees pending enquiry or they can even be dismissed from service by the Board. Therefore, the Karanma employees are treated at par with the departmental employees by the Devaswom Board in the matter of disciplinary control. If that be so, invoking Rule 13 of the Rules, the Devaswom Board cannot remove a Karanma employee for bad conduct without recourse to the disciplinary proceedings as contemplated under Rule 12 of the Rules. Unless a WPC260532013 7 Karanma employee is found guilty in the disciplinary proceedings, he cannot be removed from service invoking Rule 13 of the Rules. The contention of the respondents that a Karanma employee can be removed from service by the Devaswom Board for bad conduct invoking Rule 13 of the Rules even without disciplinary proceedings is not the real scope or interpretation of Rule 13 of the Rules. If such an interpretation is given to Rule 13, the provisions under Rule 12 would become redundant.

7. Section 28(1) of the Act deals with the control of the Devaswom Board over Karanma services which reads as follows: "28. Board's control over Karanma services.- (1) The Board shall have absolute control over the holders of all Karanma services and also over all the properties, Thiruppuvarams and other emoluments attached thereto." This provision shows that the holders of all

Karanma WPC260532013 8 services and all the properties, Thiruppuvarams and other emoluments attached thereto are under the absolute control of the Devaswom Board. Rule 12 of the Rules reads as follows: "12. Karanma employees will be subject to the disciplinary control of the Devaswom Board and the officers of the Devaswom Department as any other employee. They may be fined in case of misconduct, by the officers under the Board duly empowered in that behalf but for suspending or dismissing them the orders of the Devaswom Board are necessary. They may, however, be placed under suspension pending enquiry by competent authority the circumstances of the case being immediately reported to the Board. Karanma employees should not be transferred to other institutions." WPC260532013 9 This Rule shows, in unequivocal terms, that the Karanma employees are under the disciplinary control of the Devaswom Board and the officers of the Devaswom Department as any other employees. They may be fined in case of misconduct, by the officers under the Board duly empowered in that behalf. But, for suspending or dismissing the Karanma employees, the orders of the Devaswom Board are necessary. They may also, however, be placed under suspension pending enquiry by the competent authority and the circumstances of the case should be reported immediately to the Board. Therefore, there is no room for any doubt with regard to the fact that all the Karanma employees like the 2nd petitioner are under the disciplinary jurisdiction of the Devaswom Board and their officers. They can be suspended from service pending enquiry or even dismissed from service invoking such disciplinary jurisdiction. In the matter of disciplinary control or jurisdiction all the Karanma employees are treated at par WPC260532013 10 with any other employees under the Devaswom Board as specifically provided in Rule 12 of the Rules.

8. The suspension from service of a Karanma employee contemplated under Rule 12 is not a suspension followed by removal from service without any disciplinary proceedings or enquiry as contended by the learned Senior Counsel for the respondents. This Rule specifies that a Karanma employee can be suspended pending enquiry by the competent authority. Therefore, a suspension from service for any misconduct or bad conduct shall be a suspension pending enquiry into such charges of misconduct or bad conduct. Rule 13 of the Rules reads as follows: "13. If a member of a Karanma family, who is attending to the service, is

found unfit for being retained in service on account of conditions of health, bad conduct, or other causes, such person may be removed from the service by the Devaswom Board and another proper person from the Karanma family WPC260532013 11 appointed instead." The grounds enumerated under this Rule for finding a member of a Karanma family unfit for being retained in service are conditions of health, bad conduct or other causes. Such a person may be removed from service by the Devaswom Board and another proper person from the Karanma family may be appointed in his place. Can the Devaswom Board remove a Karanma employee from service for bad conduct invoking Rule 13 without recourse to disciplinary proceedings? As already found, a suspension from service for misconduct or bad conduct shall be a suspension pending enquiry into such charges. If that be so, the removal from service by the Devaswom Board contemplated under Rule 13 for bad conduct can only be done after finding guilty the Karanma employee of bad conduct warranting his removal from service. Such a mandate emerging by a combined reading of Rules 12 and 13 of the Rules is not at all affected by Rule 8 or any other WPC260532013 12 provisions of the Rules. If an interpretation to Rule 13 as sought for by the learned Senior Counsel is given, the mandatory provisions under Rule 12 would become redundant. Therefore, the only conclusion that can be arrived at is that the Devaswom Board can remove a Karanma employee for bad conduct invoking their powers under Rule 13 only after finding him guilty of bad conduct in a proper disciplinary proceedings.

9. When a departmental employee is suspended from service pending enquiry, he is entitled to subsistence allowance as provided under Rule 55 of Part I of K.S.R. A departmental employee is appointed as per the Rules of recruitment prescribed by the Devaswom Board. A Karanma employee is appointed as nominated by the Karanma family. The departmental employee as well as the Karanma employee are working under the same Devaswom Board even though the sources of recruitment are different. They are getting salary from the Devaswom Board irrespective of WPC260532013 13 the sources of recruitment. Both of them are under the disciplinary jurisdiction of the Devaswom Board. No rule has been brought to the notice of this Court prohibiting the payment of subsistence allowance to a Karanma employee. Therefore, in the matter of payment of subsistence allowance alone, a departmental employee and a Karanma employee

cannot be discriminated. If such a discrimination is meted out to a Karanma employee by the Devaswom Board, it will only be violative of Article 14 of the Constitution of India which cannot be countenanced. Therefore, a Karanma employee is also entitled to similar treatment in the matter of payment of subsistence allowance during the period of suspension. The Devaswom Board has adopted the provisions of the K.S.R. in respect of payment of subsistence allowance. The relevant provision in the K.S.R. is Rule 55 of its Part I. This Rule has to be followed, in the matter of payment of subsistence allowance, to a Karanma employee as well. WPC260532013 14 10. The payment of subsistence allowance is not a bounty. The gravity of charges does not disentitle an employee from claiming subsistence allowance. The subsistence allowance is paid to an employee for ensuring his sustenance during the period of suspension and for enabling him to face the disciplinary proceedings. It is grossly unfair to deny subsistence allowance to an employee suspended from service. Such an unfair denial of subsistence allowance will be violative of Article 14 of the Constitution of India. A denial of subsistence allowance will be a denial of right to life guaranteed under Article 21 of the Constitution of India. These are all principles recognised by the Constitutional Courts in this Country. In the case on hand, if the 1st petitioner and the 2nd petitioner are discriminated in the matter of payment of subsistence allowance and, based on such discrimination, subsistence allowance is denied to the 2nd petitioner which will be amounting to violation of Articles 14 and 21 of the WPC260532013 15 Constitution of India. Therefore, the 2nd petitioner is entitled to subsistence allowance as provided under Rule 55 of Part I of the K.S.R.

11. I shall now consider the contention of the learned counsel for the respondents that if the subsistence allowance is allowed to Karanma employees, there will be the risk of double payment. It is true that when a Karanma employee is suspended from service, in his place, another person has to be appointed for performing that duty. In this case, another Karanma Poojakottu has to be appointed in the place of the 2nd petitioner. So, subsistence allowance has to be paid to the 2nd petitioner and salary has to be paid to the substitute appointed in his place. Can this be urged or accepted as a ground for denying subsistence allowance to a Karanma employee? If a departmental employee is suspended from service, then also another person has to be appointed in his place for performing such duties.

Therefore, the necessity of payment of subsistence WPC260532013 16 allowance to the departmental employee and payment of salary to the substitute appointed arise in that case as well. But, in the case of a departmental employee, there is no dispute for the respondents that he is entitled to receive subsistence allowance even though the risk of double payment is there. Therefore, the risk of double payment urged by the respondents has no substance and hence, it is rejected.

12. The petitioners have produced and relied on Ext.P7 order dated 26.11.2011 issued by the Executive Officer of the 1st respondent Devaswom Board suspending a Karanma Kazhakom of Aniyur Devaswom from service, for the purpose of showing that he was paid subsistence allowance during the period of his suspension from service. As could be seen from Ext.P7, in that case the Karanma Kazhakom was suspended from service alleging theft of money from Hundi during night. It is specifically ordered in Ext.P7 that the person so suspended would be entitled to subsistence WPC260532013 17 allowance as per the Rules. Therefore, the Travancore Devaswom Board themselves understood that Karanma employees are entitled to subsistence allowance during the period of their suspension from service as evident from Ext.P7. Therefore, the discriminatory treatment meted out to the 2nd petitioner in the matter of payment of subsistence allowance during the period of his suspension from service cannot stand in the eye of law. He is entitled to subsistence allowance as paid to others similarly placed like him.

13. In view of the discussions and findings in this judgment, the 2nd petitioner is entitled to subsistence allowance during the period he was kept under suspension from service. In the result, the concerned respondent among the respondents is directed to pay subsistence allowance to the 2nd petitioner for the entire period he was kept under suspension from service, as provided under Rule 55 of Part I of the K.S.R. within a period of 30 days from today. WPC260532013 18 This writ petition is allowed as above. Sd/- BABU MATHEW P. JOSEPH JUDGE ks. TRUE COPY P.S.TO JUDGE