

***HONOURBLE SRI JUSTICE D.V.S.S. SOMAYAJULU**

+ W.P.Nos.9641 and 12908 of 2021

% 21.09.2021

WP.No.9641 of 2021

Sri Raghavendra Swamy Mutt,
Mantralayam, Kurnool District

... Petitioner

Vs.

\$ The State of Andhra Pradesh
Rep., by its Special Chief Secretary to Government,
Guntur and 4 others

... Respondents

WP.No.12908 of 2021

M.Shivanand, S/o Dubbanna,
Ramachandranagar, Mantralayam,
Kurnool District

... Petitioner

Vs.

\$ The State of Andhra Pradesh
Rep., by its Special Secretary, Endowments Department,
Guntur and 3 others

... Respondents

! Counsel for the petitioners : Sri C.R.Sridharan, learned senior
counsel rep. Sri G.V.S.Ganesh

! Counsel for the Respondents : Government Pleader
for Endowments

< Gist:

> Head Note:

? Cases referred:

¹ 2006 (3) ALD 22

² (2017) 1 SCC 148

³ Manu/UP/0049/2012

HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU

WP.No.9641 and 12908 of 2021

COMMON ORDER:

WP.No.9641 of 2021 is filed by the petitioner-Math for the following reliefs:

“to declare a the Memo Nos. dated 04/07/2018 and 05/12/2018 issued by the Respondent No.1 herein and the consequent impugned direction in Rc.No.DP1/25031/3/2020 dated 19/04/2021 issued by the Respondent No.5 herein as inapplicable, void, without jurisdiction and without authority of law (b) and consequently issue a Writ of Mandamus or a Writ in the nature of Mandamus restraining the Respondents herein permanently from implementing the impugned direction vide Rc.No.DP1/25031/3/2020 dated 19/04/2021 issued by the Respondent No.5 herein and (c) any other writ, order or direction as this Hon'ble Court may deem fit and proper in the circumstances of the case including awarding of exemplary costs against the Respondents and in favour of the Petitioner and render justice...”

WP.No.12908 of 2021 is filed by the petitioner therein for the following reliefs:

“to issue an appropriate writ, order or direction more in the nature of Writ of mandamus declaring the action of the respondent No.4 in not extending minimum time scale of pay attached to the last grade service even though the petitioner was discharging the duties similar to that of a Permanent employee by implementing the directions of the 2nd respondent dated 19.04.2021 in Rc.No.DP1/25032/3/2020 and the in action on the part

of the 3rd respondent even after bringing to his notice about the deprivation of Minimum Wages through the representation dated 17.05.2021 by the petitioner as being illegal, arbitrary and is in violation of Articles 14, 16, 19 and 21 of the Constitution of India and consequently direct the respondents to pay the Minimum time scale of pay attached to the Sanitary Sweeper post along with arrears forthwith..”

This Court has heard Sri C.R.Sridharan, learned senior counsel for the petitioner representing Sri G.V.S.Ganesh and the Government Pleader for Endowments representing the respondents in WP.No.12908 of 2021.

The order passed in WP.No.9641 of 2021 will have a direct consequence on the second writ petition. Hence, WP.No.9641 of 2021 was heard at length.

Learned senior counsel submits that the petitioner is a Math, which is a specific religious denomination based at Manthralayam in Kurnool. According to the learned senior counsel, the writ petition had to be filed under Article 226 of the Constitution of India because the respondent was attempting to interfere with the activities of the Math and directing the petitioner to pay minimum wages etc., to the persons employed in the Math. This action of the respondent, which is as per the memos dated 04.07.2018, 05.12.2018 and the consequential direction dated 19.04.2021 is challenged. Learned senior counsel argues that the Math is a religious institution which is discharging both religious and secular functions. It is his contention that the respondent-State does

not have the right to interfere with the Management of the Math and issue the directions contained in the impugned memos dated 04.07.2018, 05.12.2018 and the consequential direction dated 19.04.2021. Learned counsel for the petitioner argues that there is a clear distinction between a temple and a Math. He relies upon section 2(17) of the A.P. Charitable and Hindu Religious Institutions & Endowments Act, 1987 (for short 'the Act'), which defines a Math as an institution whose principal duty is the propagation of religion and philosophy or the philosophy of a denomination etc. He points out that a temple is a place of public religious worship. Therefore, he submits that there is a fundamental distinction between a Math and a temple although both can be called a religious institution. He draws the attention of this Court to Chapter III and V of the Act; points out the distinction and argues that the visible differences between Chapter III and V make it clear that the respondents do not have the power or control to interfere in these affairs of a Math. Relying upon section 6 of the Act, learned senior counsel submits that this section provides for the preparation and publication of list of charitable and religious institutions and endowments on the basis of income. Section 6(a) (ii), 6(b)(ii) clearly exclude a 'Math' from the operation of the section. He points out that even though a Math is to be registered/included in the list, the Commissioner does not have the power to change or alter the classification given to the Math, unlike in the other cases

covered by Section 6(a), 6(b) or 6 (c) of the Act and depending upon the incomes specified in these clauses.

Coming to the documents which are relied upon and are filed as material papers, the learned senior counsel argues that the memo dated 04.07.2018 and 05.12.2018 are relating to specific temples alone and not to the Math. He points out that memo dated 04.07.2018 deals with temple employees and writ petitions filed for extension of minimum time scale of pay. Learned senior counsel argues that the Government had appointed a Committee which had issued directions to the concerned Executive Officers of the temples to extend the minimum time scale. Relying on the memo dated 05.12.2018 also, a similar argument is advanced. Learned senior counsel also points out that this memo dated 05.12.2018 is an order passed on a representation given by Junior Assistants of the Srikalihasthiswara Swami Temple, Srikalahasthi. The learned senior counsel also refers to the circular dated 24.09.2018 which also deals with temple employees service matters, but does not deal with a Math. Learned senior counsel also relies upon the proceedings dated 20.07.2018 filed with a counter of the respondents, wherein also he points out that the writ petitions referred only to the Devasthanams and temples and the Government memo which is impugned is also referred to in the said letter. Learned senior counsel points out that the last para of the letter is clearly addressed to the Executive Officer of prominent

temples in the State of Andhra Pradesh. He draws the attention of this Court to the addresses/recipients of the letter from 1 to 10 who are all Executive Officers of temples only. He therefore submits that the memos on which the respondents are relying upon relate to the temples alone and not to a Math. He also argues that the Minimum Wages Act will not apply to a religious Math and states that the case law referred to by him and filed as a material paper including the judgment of the Hon'ble Supreme Court of India in Civil Appeal No.5305 of 2007 is squarely applicable to the facts and circumstances of the case. Lastly, he relies upon the judgment of the learned single Judge of this Court in ***H.H.Arjun Doss Mahant, Disciple of Guru Devender Dass, Sri Swamy Hatiramji Math, Tirumala, Tirupati v. Commissioner of Endowments, Endowment Department, Hyderabad***¹ to argue that the State cannot interfere in the secular activities of the Math and give directions. Therefore, he prays for orders.

In reply to this, learned Government Pleader for Endowments argues that the respondents have control and authority over the Math. She relies upon the definitions of Sections 2(17), 2(23) and 29 read with Section 6 of the Act to argue that a Math is also included in the provisions of the Act and is subject to the control of the Commissioner and Additional Commissioner as per section 8 of the Act. She

¹2006 (3) ALD 22

points out that the Commissioner has powers over the Maths which are described in section 6 (b) as per 8(2) of the Act. Learned Government Pleader also draws the attention of this Court to the A.P.Charitable and Hindu Religious Institutions and Endowments Office Holders and Servants Service Rules, 2000 issued by G.O.Ms.No.888 dated 08.12.2000 (hereinafter called 'the Service Rules') to argue that section 1 (ii) of the Service Rules clearly states that the Rules shall apply to the servants of all the Maths. Relying upon Sections 47 and 48 of the Act, learned Government Pleader argues that what is excluded in Section 48 of the Act are only six sections of the Act (sections 18,19,20,21,22,25 and 28) and their applicability to the Math. She therefore, submits that all the other Sections are applicable and that the respondents are entitled to issue the directions.

Coming to the issue of wages, learned counsel argues that the respondents are not insisting upon the payment of the wages, more so, under the Minimum Wages Act, but are essentially trying to ensure that the equal pay for equal work principle as enunciated in the case of **State of Punjab v. Jagjit Singh**² is actually followed. She points out that therefore it is not the Minimum Wages Act, but the judgment of the Hon'ble Supreme Court which directed equal pay for equal work and the extension of minimum time scale to

² (2017) 1 SCC 148

equally placed servants of the society, which is directed to be implemented.

COURT:

After considering the submissions made by both the learned counsel, this Court notices that it is a fact that a "Math" is distinct from a 'Temple'. Both are religious institutions, but the purposes for which they are established and the manner in which they function are clearly specified in the definition itself. Section 2 (17) of the Act is as follows:

2 (17) "*Math*" means a Hindu Religious Institution presided over by a person, whose principal duty is to engage himself in the teaching and propagation of Hindu religion and philosophy or the teachings and philosophy of the denomination, sect or sampradaya to which the math belongs and in imparting religious instruction and training and rendering spiritual service or who exercises or claims to exercise spiritual headship over a body of disciples ; and includes any place or places of religious worship, instruction or training which are appurtenant to the institution;

Section 2 (27) of the Act is as follows:

2 (27) "*Temple*" means a place by whatever designation known used as a place of public religious worship, and dedicated to, or for the benefit of, or used as of right by the Hindu community or any section thereof, as a place of public religious worship and includes sub-shrines, utsava mandapas, tanks and other necessary appurtenant structures and land;

A reading of these two Sections make it clear that a Math is an institution headed by a person whose primary job is to engage himself in teaching, propagation of religious philosophy etc., and impart religious training etc. On the other hand, a temple is a place, which is dedicated to and

keep used as a place of public religious worship. The distinction between these two institutions is clear.

Under Section 6 of the Act also, the income or the change in income of the Math cannot lead to a change in the classification of the Math. It is only possible for the institutions and endowments under Section 6(a), 6(b) and 6(c) of the Act, which are included in this section. If their income exceeds or falls below the stipulated limit, for the three years, their position can be changed, but this is clearly not applicable to a Math.

It is also true that under section 8(2) of the Act, the Commissioner has certain powers as mentioned in this section in case of a Math, registered under section 6(b), but the question in this case is whether the power extends to giving the direction to pay Minimum Wage or the minimum time scale. No specific statutory provision has been pointed out to support the argument that power is given to the Commissioner or the Additional Commissioner to interfere in the secular activity of the service conditions of the employees of a Math and to give directions.

The distinction between Chapter III and V of the Act also is very clear. Chapter III of the Act deals with administration and management of Hindu Religious Institutions and Endowments, whereas Chapter V deals with Maths as Specific Endowments. Chapter III contains provisions for

appointment of a trustee, for appointment and duties of an Executive Officer, appointment of Engineers etc., appointment of Office holders and servants, (section 35) and so on. Power to punish office holders and servants is also given to the trustee under section 37; to the Commissioners under 38(a) of the Act under certain circumstances. The power to transfer is also conferred under section 39 of the Act. However, when it comes to chapter V, these sort of sections conferring power over Officers/staff etc., of a Math are conspicuous by their absence. Section 48 of Chapter V also excludes Sections 18, 19, 20, 21, 22, 25 and 28 from their applicability to a Math, which deal with Board of Trustees etc. The other sections do not deal with the employees or the servants of the Math.

In the opinion of this Court, a general power of superintendence given to the Commissioner does not extend to interfere in the secular activity and is limited in its scope. A reading of section 8 makes it clear that the superintendence and control includes the power to pass an order to ensure that institution is properly administered and the income is spent for the purpose for which they were found. The use of the conjunction 'and' makes it clear that this power under section 8 (1) is to ensure that the funds are spent for the purposes for which they are intended only. Similarly, section 8(2) which starts with a non-obstante clause also talks of exercise of powers 'conferred' on him or the functions

'entitled' to him by the Act. No statutory provision has been pointed out by which this particular power to give directions to pay minimum wages etc., is shown to the Court. Lastly, this Court is of the opinion on this issue that if section 8(1) and section 49 of the Act are read together, the limited powers of the Commissioner become clear. They are limited to the fixing/spending/utilization of the 'dittam' only. In case of disagreement, the matter has to be referred to a Court for decision (Section 49-Proviso). Similarly, the amendments to sections 51-53 etc., where the Commissioner has been substituted by the "Dharmika Parishad" also makes it clear that the role of the Commissioner is very limited.

Even the Rules, which are relied upon, are in the opinion of this Court are not applicable with regard to the service conditions, pay; allowances etc. The Appointing Authority referred to in the Rules (Rule 6) talks of a person who is mentioned in section 35 of the Act namely the 'Trustee'. Rule 5 also talks of a power being given to a Trustee of the institution specifying to prepare a schedule specifying the designations, number of posts, scale of pay, allowances etc. The reference is again to a Trustee. Similarly, Rule 36 deals with 8 specific temples to which the Rules also apply. Cadre strength is for these 8 temples also fixed by the Commissioner (Rule 38) and it cannot be varied by the 'Board of Trustee' (section 38(2)). The Gratuity, Life Insurance scheme described in Annexure-1 and as per Rule

37 (a) relates only to section 6(a) and (b) institutions. These rules are also framed under section 35 of the Act, which is under Chapter III of the Act. Therefore, this Court has to hold that the Math does not come within these Rules.

Apart from this, the argument about Minimum Wages Act as advanced by the learned senior counsel has to be accepted. Learned senior counsel relying upon the definition in Section 3 of the Minimum Wages Act and the preamble argues that this Act will not apply to a Math at all. He also relies upon the order of the Hon'ble Supreme Court of India which is filed as a material paper in Civil Appeal No.5305 of 2019. It was held by the Hon'ble Supreme Court that the Minimum Wages Act does not apply to a temple. The judgment of the Alhabad High Court from which the Civil Appeals were filed are also filed as material papers. They clearly show that the Minimum Wages Act applies only to certain industries and not to a temple. Subsequent judgment of the high Court of Allahabad reported in ***Shree Satya Narain Tulsi Manas Mandir v. Workman Compensation Commissioner***³ in which proceedings which the order of the Supreme Court referred to are also filed as material papers.

The Minimum Wages Act applies to certain employments (preamble) which are specified as 'scheduled employments' (section 2(g)). The minimum wages are fixed for

³Manu/UP/0049/2012

employments specified in part-I/II of the schedule (Section 3). The schedule is silent about employment in a Math.

The learned Government Pleader sought to distinguish the issue by saying that the State is not trying to enforce the Minimum Wages Act, but is trying to rely upon equal pay for equal work and the judgment in **Jagjit Singh's** case (2 supra). But a reading of the counter would show that (para 13), it is pleaded very clearly that the petitioners are under a bounden duty to pay minimum wages to their employees. Therefore, the argument that only the judgment of the Hon'ble Supreme Court of India in **Jagjit Singh** is being enforceable is not strictly correct.

Lastly, this Court also notices that the petitioners have relied upon the judgment of the Hon'ble high Court of A.P. reported in **H.H.Arjun Doss Mahant, Disciple of Guru Devender Dass, Sri Swamy Hatiramji Math, Tirumala, Tirupati** (1 supra). The learned single Judge by referring to the decision of the Hon'ble Supreme Court of India held as follows:

29. It is also relevant to note the following observations made by the Supreme Court in Sri Sri Sri Lakshamana Yatendrulu v. State of A.P. MANU/SC/0368/1996 : [1996]1SCR929 , in which the Court was dealing with the provisions under The A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1987 (30 of 1987).

Chapter V of the Act deals with maths and specific endowments attached thereto. Section 47 defines

'mathadhipathi' to mean any person whether known as Mahant or by any other name in whom "the administration and management of a math or specific endowment attached to a math are vested". In the concept of mathadhipathi, both the elements of power to hold property and duty to properly maintain it are blended and neither can be detached from the other. The Mahant, therefore, as the spiritual head of the math is entrusted with the administration and management of the math or the specific endowment. The personal or beneficial interest of the Mahant in the endowment attached to the math is manifested in his power of administration and disposal of the property. His right to administer and manage the property endowed to the math and other rights of similar character are vested in the office of the Mahant and, therefore, they are legal rights attached to the management and the administration of the property endowed to the math. He holds the office by custom and usage of the institution. He acts for the benefit of the institution of which he is the head. The Mahant as an ascetic holds the property and, therefore, it is not heritable like ordinary devolution of the property since he has completely severed all his mundane connections with his natural family; cut off from the mundane affairs and is ordained to impart religious education to his disciples and teaching of the religious scriptures etc. to the followers of the religion or the sect. Therefore, the ordinary rules of succession to Mahantship do not apply.

30. In the light of the above well-settled principles of law with regard to the rights of the mathadhipathis, undoubtedly the State cannot claim any power or authority to take over the management of the math by separating the religious functions and secular affairs of the math. No doubt, in cases of misconduct or mismanagement of the properties by the mahanth, it is open to the State to initiate action under Section 51 of the Act which provides for removal of mathadhipathi.

However, the said provision, under no circumstances, can be held to have conferred power on the State to continue a custodian to manage the secular affairs of the math indefinitely, in spite of the fact that the vacancy of a mathadhipathi has been filled up on permanent basis under Section 53 of the Act.

The learned single Judge clearly held that only in cases of misconduct or mismanagement of the properties by the Mahant, it would be permissible for the State to interfere under section 51 of the Act (which is found in Chapter V). This judgment clearly holds the field and applies to the facts and circumstances of the case.

This Court also holds that the purpose in which the memos dated 04.07.2018 and 05.12.2018 were issued cannot be lost sight of. They were issued based upon the interim orders passed in various litigations pertaining to temples and temple employees only. The provisions of the Act and interpretation placed on the same relying on the judgment of the learned single Judge of the Court lead to a conclusion that a Math, which is a separate institution rendering certain religious and other functions pertaining to a particular denomination is different from a temple which is open to all for worship. The Math has its own area of operation and the respondents cannot interfere in its secular activity. The Minimum Wages Act, 1948 is not applicable to the Math.

The judgments of the Allahabad High Court and the Hon'ble Supreme Court of India, the definitions in the

Minimum Wages Act, also support this conclusion. The autonomy given to a Math to maintain and administer its activities also supports the view that the respondents cannot interfere in every activity. If the respondents have such a power to interfere every activity it would run contrary to the constitutional and other guarantees given to the religious denominations to carry on their own activities.

One fleeting argument was advanced that the deponent of the affidavit did not have the power to file the writ petition. This Court notices that this is a curable defect and it is not fatal to the entire case. In addition, the respondents/petitioners have also filed an authorization at page 77 of the material papers and the deponent is given power to attend to matters relating to laws and services and any other Math related issues in different forums of law. In the opinion of this Court, this is enough to file/prosecute this writ.

For all the above mentioned reasons, the memos dated 04.07.2018; 05.12.2018 and the consequential memo dated 19.04.2021 are held to be inapplicable to the petitioner-Math. The respondents cannot enforce the same against the petitioner.

For all these reasons, the writ petition is allowed. In view of the orders passed, in W.P.No.9641 of 2021, this Court holds that the petitioner in WP.No.12908 of 2021 is not

entitled to any relief. The writ petition is dismissed. Office is directed to attach a copy of the order in WP.No.9641 of 2021 whenever a copy of the order is issued in WP.No.12908 of 2021.

As a sequel, the miscellaneous petitions if any shall stand dismissed.

D.V.S.S.SOMAYAJULU, J

Date: 21.09.2021

Note: L.R. copy be marked.

KLP