

Before V.K. Bali & M.L. Singhal, JJ

MEWA SINGH & OTHERS,—*Petitioners*

versus

THE SHIROMANI GURUDWARA PARBANDHAK
COMMITTEE,—*Respondent*

CWP 11735 of 1997

18th April, 1998

Constitution of India, 1950—Art. 226—Sikh Gurudwaras Act, 1925—S. 69—Dismissal from service—Alternative remedy—Order passed by the President, S.G.P.C. imposing fine on delinquent officials found guilty of offences involving moral turpitude—Order of punishment reversed by the Executive Committee of SGPC and the petitioners dismissed from service—Plea that statutory procedure not followed—Remedy of appeal against dismissal before Sikh Gurudwara Judicial Commission not availed of—High Court refusing to interfere in writ jurisdiction—Petition dismissed as not maintainable and employees left free to avail alternative remedy.

Held that the grievance of the petitioners is that they have been unceremoniously dismissed from service of the SGPC, though there should have been enquiry into their conduct when the charges on which their dismissal proceeded were of very serious and grave nature.

(Para 4)

Further held, that the petitioners should have pursued the remedy given in the Act itself. They should have challenged the order of the Executive Committee before the Sikh Gurudwara Judicial Commission. If the petitioners are allowed to invoke the writ jurisdiction of this Court in the very first instance to challenge the order of S.G.P.C. the very object that any act of any of the employees which is against the religious tenets of the sikh community has to be swiftly punished so that the administration is able to tell the *Sangat* that there is no place for a *patit*, dishonest, or man of bad character or drunkard in the employment of the SGPC would be frustrated.

(Para 12)

Vanita Sapra Kataria, Advocate, *for the Petitioners.*

H.S. Mattewal, Sr. Advocate with Mr. Rajesh Bhardwaj,
Advocate, *for the Respondent.*

JUDGMENT

M.L. Singhal, J.

(1) As common questions of law and fact are involved in CWP Nos. 11735, 11230, 18061, 17012 and 9677 of 1997 all these petitions will be disposed of through this common judgment. Facts are taken from CWP No. 11735 of 1997.

(2) Mewa Singh, Jaswinder Singh, Bhai Major Singh and Bhai Sukhwinder Singh are petitioners in CWP No. 11735 of 1997 where through they have challenged order dated 13th January, 1996 (Annexure P-5) hereby they have been dismissed from the service of Shiromani Gurudwara Parbandhak Committee, Amritsar (hereinafter to be referred as 'SGPC'). It has been alleged that SGPC is a statutory body created under the Sikh Gurudwaras Act, 1925 (hereinafter to be referred as 'the Act') and therefore "State" within the meaning of Article 12 of the Constitution of India. SGPC framed service rules in respect of its employees prescribing their service conditions under Section 69 of the Act. Those rules were approved by the Executive Committee of the SGPC,—*vide* resolution No. 1167 dated, 14th December, 1954 and subsequently amended by the Executive Committee from time to time as per resolutions. Rule 4 provides for dismissal. Rule 5 provides for termination of service. Rule 4(a) lays down that an employee can be dismissed in accordance with the rule 4(b)(i) but appeal against the dismissal by the President shall lie to the Executive Committee within 30 days from the date of dismissal. Rule 4(b) lays down that any employee under the control of Management of any Department of Gurudwara under the SGPC may prefer an appeal against any punishment of suspension, dismissal, fine, warning etc. from the date of issuance of the order. Rule 4(b)(i) to (iv) read as under:—

- (i) Any employee of the Shiromani Committee can be dismissed or degraded for his bad character, dishonesty, drinking or becoming a '*Patit*' but before he is dismissed or degraded, the allegations in the form of written charge-sheet shall be supplied to him, alongwith the statement of allegations, on the basis of which the charges are levelled against him. Representation against these charges shall be received from the employee within reasonable time and in case he denies these charges or prays for holding an enquiry or the Executive Committee deems it fit, these charges shall be got inquired into in the presence of the employee and for each item of the charge-sheet, which has not been admitted, evidence shall be recorded

in his presence and the employee shall be entitled to cross-examine these witnesses. In case an employee wishes to produce his defence, the same shall be entertained, but in case if the inquiring committee feels that certain evidence is not necessary, it shall not be permitted to be produced for the reasons to be recorded in writing. Action shall be taken against the employee only when the charge is established.

- (ii) In case the employee wishes to produce any record or document in his defence he shall be permitted to do so and if he asks for the copies of these documents, the same shall be supplied to him without any objection and he shall be permitted to inspect the record free of cost.
- (iii) Every employee, who has been dismissed or degraded or removed shall be supplied with copies of the report of inquiry committee and also final decision of the Executive Committee free of cost.
- (iv) (a) The record pertaining to the dismissal or degradation of an employee shall not be destroyed for three years, rather it shall be kept in safe custody.
- (b) If an employee is reinstated on exoneration after his suspension, he shall be entitled to the arrears of salary of the suspension period.

(3) Petitioner No. 1 joined the service of SGPC on 26th November, 1974 and was confirmed on 1st March, 1979. Petitioner No. 2 joined the service on 14th October, 1974 as Sewadar, became regular/cofirmed on 16th August, 1977. Since 12th April, 1977, petitioner No. 3 is also a regular/permanent employee of SGPC. Petitioner No. 4 joined the service of SGPC and was a temporary employee. On 3rd June, 1995, the petitioners were given the duty of taking Pious Saroop from Darbar Sahib to Calcutta. On 9th November, 1995 charge-sheets were issued to the petitioners for committing bad acts during journey to Calcutta and for consuming liquor. Charge-sheets served on petitioners No. 1 and 2 dated 9th November, 1995 are Annexures P-1 and P-2. Similar charge-sheets were issued against petitioners No. 3 and 4 also. They filed replies to the charge-sheets explaining therein that the charge of taking liquor or raising noise against them was false. President, SGPC

after considering the replies filed by the petitioners passed an order on 16th December, 1995 imposing fine on the petitioners and ordered their reinstatement. Said order is Annexure P-4. They deposited fine. They were reinstated in pursuance of the order of the President of SGPC. Without holding an enquiry and giving opportunity of hearing to the petitioners, the Executive Committee of SGPC dismissed them from service on 13th January, 1996,—*vide* order Annexure P-5. Order Annexure P-5 was conveyed to them through order Annexure P-6 dated 16th January, 1996. It is alleged that their dismissal is inherently illegal, erroneous and against the service rules framed by the SGPC. Under Rule 4 appeal lies to the Executive Committee against the order of punishment by the President. Executive Committee is appellate authority under the rules. Order Annexure P-5 passed by the Executive Committee is without jurisdiction. The petitioners did not file any appeal against the order of punishment by the President against them. In the absence of any appeal by the petitioners before the Executive Committee order Annexure P-5 is patently without jurisdiction. No enquiry whatsoever as contemplated under Rule 4 was held. The entire action against the petitioners has been taken on a complaint made on the telephone and *ex parte* investigation was made by the Flying Squad in which petitioners were never associated. As per Rule 4(i) an employee of the SGPC could be dismissed or degraded for his bad character, dishonesty, drinking or becoming a '*patit*' but before dismissing or degrading any employee allegations should have set out in the form of a charge sheet which should have been furnished to the employee alongwith statement of allegations. An enquiry was required to be held into charges after receiving representation from the employee in that behalf. Evidence was required to be recorded in the presence of the employee and the employee was required to have been permitted to cross-examine the witnesses. Termination was also dismissal inasmuch as serious allegations/charges have been levelled.

(4) In nutshell, the grievance of the petitioners is that they have been unceremoniously dismissed from service of the SGPC, though there should have been enquiry into their conduct when the charges on which their dismissal proceeded were of very serious and grave nature.

(5) Respondent—SGPC contested this petition urging that SGPC is not instrumentality of the State and cannot be said to be "other authority" within the meaning of Article 12 of the Constitution of India or an authority within the meaning of Article 226 of the

Constitution of India. SGPC is not amenable to the writ jurisdiction of this Court. From the statement of objects and reasons of the Sikh Gurudwaras Act, 1925 (hereinafter to be referred as the Act), it emerges that the Act was brought into being so that the places of Sikh worship may be brought effectively and permanently under Sikh control and their administration reformed so as to make it consistent with the religious view of the Sikh Community and to provide a scheme of purely Sikh management secured by statutory and legal sanction. The statement of objects and reasons also clearly states that the purpose and object alongwith the legislative intend of setting up a judicial commission which is for the settlement of the disputes relating to the administration of places of worship declared or held by the Tribunal to be Sikh Gurudwars or Shrines. Under Section 142 a suit can be filed by the aggrieved party challenging any act by which the SGPC has abused its powers before the Sikh Gurudwara Judicial commission. The Act is for better administration of certain Sikh Gurudwaras and for enquiries into matters and settlement of disputes connected therewith. The second remedy is of appeal to the Sikh Gurudwara Judicial Commission under Rule 4(b) of the Service Rules framed under Section 132 in observance of the powers of the SGPC under Section 69. Petitioners have not availed of any remedy under the Act against the order of their dismissal from service. Article 226 of the Constitution of India is not intended to circumvent the statutory procedure. In case an employee denies charges and prays for holding an enquiry or the Executive Committee deems it fit, the charges shall be got inquired into in the presence of the employee and for each item of the charge sheet, which has not been admitted, evidence shall be recorded in his presence and the employee shall be entitled to cross-examine the witnesses. These unique provisions have been incorporated in the Act as the administration of religious institutions revered by the masses had to be sensitive so as not to hurt their religious sentiments. Any act of any of the employees which is against the religious tenets has to be swiftly punished and seemingly so as the administration is responsible to the Sangat (the people) with their faith being the primary consideration. The petitioners gave their confessional statements. Charge sheet was served upon them and investigation was carried out and then the Executive Committee removed them from service. Annexures R-2 to R-5 suggest that the petitioners themselves admitted their guilt and in such a situation no enquiry was required to be carried out. Petitioners were reinstated by the President. Order of the President is subject to confirmation by the Executive Committee. Executive Committee is

fully competent to reverse the order of the President. Executive Committee passed order Annexure P-5 which was fully warranted by the nature of allegations against the petitioners. Employees of the SGPC are required to be men above board having good character, believing in sikh religion. Services of the employees of SGPC cannot be equated with the service of any other employee who is governed by Articles 14 and 16 of the Constitution of India. Articles 14 and 16 are not applicable so far as the employees of the SGPC are concerned. Charge against the petitioners was grave inasmuch as not only they took liquor but kept the bottle of liquor under the pious saroop. It was sacrilegious on their part to have behaved in that fashion when they knew that they were employees of a religious institution and deputed to perform a religious duty of a sensitive nature.

(6) In CWP No. 11230 of 1997, the petitioners are Raghbir Singh and Kashmir Singh employees of the SGPC against whom the charge was the mis-appropriation of donations made by worshippers.

(7) In CWP No. 18061 of 1997, the petitioner is Jasbir Singh against whom the charge was that while on duty in the Gurudwara took liquor alongwith his friends and conducted himself in a manner unbecoming of an employee of a religious institution like Gurdwara.

(8) In CWP No. 9677 of 1997 the petitioner is Gurbachan Singh against whom the charge was the mis-appropriation of donations made by worshippers to the Gurudwara at Akhand Paths.

(9) In CWP No. 17012 of 1997 petitioners are Balraj Singh and Gurnam Singh against whom the charge was that they were drunk while on duty in the Gurudwara which brought bad name to the religious institution.

(10) We have heard learned counsel for the parties and have gone through the record.

(11) It was submitted by learned counsel for the petitioners that the SGPC is an authority and therefore 'State' within the meaning of Article 12 of the Constitution of India. In support of this submission, she has drawn our attention to a Division Bench judgment of this Court in *Ajaib Singh vs. The Shiromani Gurudwara Parbandhak Committee, Amritsar*, CWP No. 7236 of 1996 decided on 3rd October, 1996. We have gone through this

judgment. This point was nowhere decided that SGPC is "State" within the meaning of Article 12 of the Constitution of India in that judgment. Without going into this aspect we can advert to the claim laid in these writ petitions. SGPC is a supreme religious body of the Sikhs. It was created under the Sikh Gurudwaras Act, 1925. Sikh Gurudwaras Act is a complete code in itself. It was brought into being so that places of Sikh worship may be brought effectively and permanently under Sikh control and their administration reformed so as to make it consistent with the religious view of the Sikh Community and to provide a scheme of purely Sikh management secured by statutory and legal sanction. It also provides for the appointment of Judicial Commission consisting of three Sikhs by which certain disputes relating to administration of places of worship declared or held by the Tribunal to be Sikh gurudwaras or shrines are to be settled. The functions of the SGPC *vis-a-vis* the places of worship notified as Sikh gurudwaras under the Act are not governmental functions or closely related thereto. The tenor of the Act is reformatory with the aim of letting the Sikh community manage its places of worship within its religious tenets as bestowed by Articles 25 and 26 of the Constitution of India. Control of the Government would amount to interference with the religious frame of the Sikh Community so far as the management of Sikh Gurudwaras is concerned. A suit can be filed by the aggrieved party challenging any act by which the SGPC has abused its powers before the Sikh Gurudwara Judicial Commission under Section 142 of the Act. Under Section 69 appeal could be to the Sikh Gurudwara Judicial Commission. Employees of SGPC are to be controlled in the manner not provided by service rules framed by the Government for its own employees but as is provided in the Sikh Gurudwara Act, in which religion plays the key role as for instance "patit" in government service does not lose service.

(12) In our opinion, the petitioners should have pursued the remedy given in the Act itself. They should have challenged the order of the Executive Committee before the Sikh Gurudwara Judicial Commission. If the petitioners are allowed to invoke the writ jurisdiction of this Court in the very first instance to challenge the order of SGPC, the very object that any act of any of the employees which is against the religious tenets of the Sikh community has to be swiftly punished so that the administration is

able to tell the Sangat that there is no place for a patit, dishonest, or man of bad character or drunkard in the employment of the SGPC would be frustrated.

(13) These writ petitions in our opinion are not maintainable. Petitioners are relegated to alternative remedy provided in the Sikh Gurudwara Act, 1925 itself.

R.N.R.

Before V.K. Bali & M.L. Singhal, JJ

JUNAID ALI KHAN & OTHERS,—*Petitioners*

versus

STATE OF PUNJAB & OTHERS,—*Respondents*

CWP No. 17069 of 1997

The 28th April, 1998

Constitution of India, 1950—Art. 226—East Punjab Urban Rent Restriction Act, 1949—S.3—Punjab Municipal Act, 1911—S.71—Exemption from Rent Act—Buildings and rented lands falling in Mohali Municipal Area exempted from applicability of Act till 1st April, 1995—From 1st April, 1995, Rent Act made applicable—Punjab Government issuing notification on 6th March, 1997 exempting Mohali Municipal Area retrospectively from 1st April, 1995—Such notification whether valid—Held, notification is constitutionally valid and ejection suits filed and pending from 1st April, 1995 to 6th March, 1997 not liable to be proceeded with in absence of applicability of Rent Act.

Held that, notification Annexure P-2 will, thus, apply to pending proceedings also. Although earlier notification was for a period till 31st March, 1995 exempting the applicability of the Act to buildings and rented lands in the entire area of Mohali, notification Annexure P-2 dated 6th March, 1997 operative retrospectively with effect from 1st April, 1995 to 31st March, 2000 is valid.

(Para 11)

Further held that we do not find any unconstitutionality in