

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 29TH DAY OF JULY 2015/7TH SRAVANA, 1937

WP(C).No. 3958 of 2013 (T)

PETITIONER(S):

**K.SADASIVAN PILLAI AGED 48 YEARS
CHANDRAMANGALAM, MANAKKUDY PUTHEN VEEEDU
AMACHAL (P.O), THRIKKANJIPURAM, NEYYATTINKARA
THIRUVANANTHAPURAM DISTRICT**

**BY ADVS.SRI.G.BIJU
SRI.S.JAYAPRAKASH (MADAVOOR)
SRI.V.A.VINOD**

RESPONDENT(S):

- 1. TRAVANCORE DEVASWOM BOARD
REPRESENTED BY ITS SECRETARY
THIRUVAANTHAPURAM 695003**
- 2. THE DEVASWOM COMMISSIONER,
TRAVANCORE DEVASWOM BOARD, THIRUVANANTHAPURAM 695003**
- 3. THE DEPUTY DEVASWOM COMMISSIONER,
TRAVANCORE DEVASWOM BOARD, THIRUVANANTHAPURAM 695003**

**Addl.4. K.SASIKUMARAN PILLAI
S/O LATE KUTTAN PILLAI
CHANDRAMANGALATHU MANAKATTU PUTHENVEEDU, AMACHAL PO
THIRUVANANTHAPURAM**

ADDL.R4 IMPEADED AS PER ORDER DATED 21.11.2014 IN IA 15775/14.

**R1 TO 3 BY ADV. SRI.A.N.RAJAN BABU, SC,
TRAVANCORE DEVASWOM BOARD
RADDL 4 BY ADV. SRI.G.SUDHEER**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
29-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS:-

- EXT.P1** TRUE COPY OF THE ORDER DATED 27.06.2002 ISSUED BY THE FIRST RESPONDENT APPROVING THE DATE OF APPOINTMENT OF PETITIONER AS 01.02.1998.
- EXT.P2** TRUE COPY OF THE SHOW CAUSE NOTICE DATED 16.05.2011 ISSUED TO THE KUDUMBAMOOPAN BY 2ND RESPONDENT.
- EXT.P3** TRUE COPY OF THE REPLY SUBMITTED BY THE KUDUMBAMOOPAN TO THE 2ND RESPONDENT.
- EXT.P4** TRUE COPY OF THE NOTICE DATED 25.04.2012 ISSUED BY THE 2ND RESPONDENT TO THE KUDUMBAMOOPAN OF PETITIONER'S FAMILY.
- EXT.P5** TRUE COPY OF THE REQUEST GIVEN BY THE KUDUMBAMOOPAN TO THE 2ND RESPONDENT TO REINSTATE PETITIONER IN SERVICE DATED 12.09.2012.
- EXT.P6** TRUE COPY OF THE APPEAL FILED BY THE PETITIONER BEFORE THE CHIEF COMMISSIONER DATED 01.08.2013.
- EXT.P7** TRUE COPY OF THE ORDER REJECTING PETITIONER'S APPEAL DATED 05.01.2013 BY 1ST RESPONDENT.
- EXT.P8** TRUE COPY OF THE REPORT No., ROC 5735/11/MIS.B. OF DEVASWOM COMMISSIONER REFERRED TO IN EXHIBIT P7.
- ANNEXURE A** TRUE COPY OF CONSENT LETTER EXECUTED BY KUTTAR VELAYUDHAN PILLAI IN FAVOUR OF ME IN STAMP PAPER.
- ANNEXURE B** TRUE COPY OF CERTIFICATES ISSUED BY VILLAGE OFFICER, KULATHUMMAL CERTIFYING THE PETITIONER AS MEMBER OF CHANDRAMANGALATHU MANACAUD PUTHENVEEDU, AMACHAL.

RESPONDENT'S EXHIBITS:-

- EXT.R1(a)** TRUE COPY OF THE REPORT DATED 18.04.2011 SENT BY ASSISTANT DEVASWOM COMMISSIONER
- EXT.R1(b)** TRUE COPY OF THE STATEMENT SUBMITTED BY SECRETARY & COMMITTEE MEMBER OF THE TEMPLE ADVISORY COMMITTEE DATED 05.04.2011
- EXT.R1(c)** TRUE COPY OF THE SHOW CAUSE NOTICE VIDE ROC 5735/11 MIS DATED 16.05.2011 ISSUED TO KUDUMBA MOOPAN
- EXT.R1(d)** TRUE COPY OF THE CHARGE SHEET AND STATEMENT OF ALLEGATIONS VICE ROC 5735/11/ MIS B DATED 26.08.2011
- EXT.R1(e)** TRUE COPY OF THE STATEMENT OF ALLEGATION VIDE ROC No.735/11 MIS B DATED 26.08.2011.

- EXT.R1(f) TRUE COPY OF THE REPLY TO CHARGE MEMO
- EXT.R1(g) TRUE COPY OF THE REPORT DATED 18.1.2012 FILED BY THE DEPUTY DEVASWOM COMMISSIONER BEFORE THE DEVASWOM COMMISSIONER.
- EXT.R1(h) TRUE COPY OF THE REQUEST LETTER SUBMITTED BY SRI.VELAYUDHAN PILLAI KUDUMBA MOOPPAN FORWARDED TO DEPUTY COMMISSIONER ON 25.10.2012
- EXT.R1(i) TRUE COPY OF THE LETTER OF CONSENT SUBMITTED BY FAMILY HEAD ON 15.10.2012 TO DEVASWOM BOARD.
- EXT.R1(j) TRUE COPY OF THE CERTIFICATE ISSUED BY THE VILLAGE OFFICER, KULATHUMMEL
- EXT.R1(k) TRUE COPY OF THE RELEVANT PROVISIONS OF TRAVANCORE COCHIN HINDU RELIGIOUS INSTITUTIONS ACT.

// True copy //

PA to Judge

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A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C). No. 3958 of 2013

Dated this the 29th day of July, 2015

JUDGMENT

The petitioner was working as a Karanma Panchavadyam in Thrikanjirapuram Devaswom, Neyyattinkara Sub Group under the respondent board. It is not in dispute that the post of Karanma Panchavadyam is a hereditary post that can be filled only by members of a particular family. The right to nominate a member of the family to occupy the post, is vested with the senior most member of the family. In the instant case, it is the 'Kudumba Mooppan', and the petitioner was nominated as a member of his family by the 'Kudumba Mooppan' to discharge the duties of the Karanma Panchavadyam. Accordingly, the appointment of the petitioner as Karanma Panchavadyam was approved from 01.02.1998 by Ext.P1 order. In 2011, by Ext.P2 show cause notice dated 16.05.2011, disciplinary action was proposed against the petitioner on the allegation that he attended duty after consuming alcohol. Although, Ext.P3 reply to the said show cause notice was submitted by the 'Kudumba Mooppan', in his capacity as the senior most member of the family, and on whom the right to nominate a Karanma Panchavadyam had accrued, the respondent board was not satisfied with the reply submitted and proceeded to conduct an enquiry. Thereafter, on obtaining an enquiry report, and getting

the comments of the 'Kudumba Mooppan', as also after hearing the petitioner, Ext.P4 order dated 25.04.2012 was issued by the 2nd respondent terminating the petitioner from service and requiring the 'Kudumba Mooppan' to nominate another person from the family for appointment to the Karanma Panchavadyam post. Ext.P4 order of the 2nd respondent is impugned in the writ petition by the petitioner, inter alia, on the ground that, before passing the said order, there was no show cause notice or charge memo issued to the petitioner, and he was not subjected to any domestic enquiry prior to entering a finding against him and removing him from the post. It is also relevant to note that, while by Ext.P5 communication, the 'Kudumba Mooppan' had requested the respondent board to reinstate the petitioner, there was no formal challenge by the 'Kudumba Mooppan' against Ext.P4 order, either by way of impugning the same in a writ petition before this Court or by way of preferring an appeal against Ext.P4 order before the appellate authority. The facts in the writ petition would disclose that the petitioner, preferred Ext.P6 appeal before the Chief Commissioner (who was exercising the power of the respondent board) against Ext.P4 order of the 2nd respondent. By Ext.P7 order however, the 1st respondent rejected the appeal based on Ext.P8

report obtained from the Devaswom Commissioner. In the writ petition, the petitioner impugns Exts.P4 and P7inter alia on the ground of violation of natural justice, and on the ground that the punishment imposed is disproportionate to the offence that was alleged to have been committed by him. During the pendency of the writ petition an impleadment application was filed by the brother of the petitioner, and he was impleaded as the additional 4th respondent in the writ petition. Along with the application filed by the additional 4th respondent, it is clearly stated that the 'Kudumba Mooppan' had since exercised a new nomination in favour of the additional 4th respondent, who is also a member of the same family, and that the respondent board was not permitting him to join services as a Karanma Panchavadyam only on account of the pendency of the writ petition.

2. A counter affidavit has been filed by the respondent board, wherein they produced documents to show that the procedure that was followed by the board while completing the disciplinary proceedings against the petitioner was a fair and transparent procedure and that the petitioner was given ample opportunity to defend the allegations against him. It is also stated

that the 'Kudumba Mooppan' had since requested the board to pardon the acts of the petitioner and in that sense, had admitted to the commission of the offence by the petitioner. The nomination made by the 'Kudumba Mooppan' in favour of the petitioner's brother is also mentioned in the counter affidavit of the respondent.

3. I have heard the learned counsel appearing for the petitioner, the learned standing counsel appearing for the respondent board and also the learned counsel appearing for the additional 4th respondent.

On a consideration of the facts and circumstances of the case and the submissions made across the bar, I am of the view that the writ petition in its challenge against Exts.P4 and P7 orders passed by the respondent board must necessarily fail. It is not in dispute that the petitioner was working as a Karanma Panchavadyam under the respondent board, pursuant to a nomination exercised in his favour by the head of the family, on whom the said right vested. It is apparent, therefore, that any right to serve under the respondent board, which the petitioner obtained, was only through

the nomination that was exercised in his favour by the head of the family. It would also follow that, if there was a cessation of the service of the petitioner on account of a breach of discipline by the petitioner or for any other reason, the person who could be said to be aggrieved by the cessation of service or the termination of the service of his nominee, was the head of the family ('Kudumba Mooppan'). It is in these circumstances that it is relevant to note that, against Ext.P4 order of the 2nd respondent, terminating the services of the petitioner, the 'Kudumba Mooppan' himself has not preferred any appeal before the appellate authority or has not approached this Court for a redressal of any grievance that he might have had against Ext.P4 order, terminating the services of his nominee. I am, therefore, of the view that in the absence of a challenge of the termination order by the 'Kudumba Mooppan', the petitioner, who is only a nominee of the 'Kudumba Mooppan', cannot independently allege a violation of any right, since in the absence of a nomination by the 'Kudumba Mooppan' he does not have any right to continue in service, vis-a-vis the respondent board. I also take note of the fact that the 'Kudumba Mooppan' has since nominated the additional 4th respondent for the post of Karanma Panchavadyam, and as long as this nomination stands,

and it is admitted that there can be only one nomination at a time, the petitioner cannot aspire for a reinstatement in service as Karanma Panchavadyam. Thus, in any view of the matter, the prayers in the writ petition cannot be granted. The writ petition fails and is accordingly, dismissed.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

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