

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

TUESDAY, THE 3RD DAY OF NOVEMBER 2015/12TH KARTHIKA, 1937

WP(C).No. 17976 of 2015 (V)

PETITIONER(S):

P.M.SANKARANARAYANA PRASAD, AGED 35 YEARS
S/O NARAYANAN NAMBOODIRI, MARAKKATTILLAM, KOROME
P.O. CHALAKODE, KANNUR DISTRICT.

BY ADVS.SRI.M.RAMESH CHANDER (SR.)
SRI.ANEESH JOSEPH
SMT.DENNIS VARGHESE

RESPONDENT(S):

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1. MALABAR DEVASWOM BOARD
REPRESENTED BY ITS PRESIDENT
ERANHIPALAM P.O.-673006, KOZHIKODE.
 2. THE COMMISSIONER
MALABAR DEVASWOM BOARD, ERANHIPALAM P.O.-673006
KOZHIKODE.
 3. THE ASSISTANT COMMISSIONER
MALABAR DEVASWOM BOARD, THALASSERY-670101.
 4. EXECUTIVE OFFICER
PALLIKUNNU SREE MOOKAMBIKA DEVI TEMPLE
PALLIKUNNU-670 004, KANNUR.
 5. THE CHAIRMAN
TRUSTEE BOARD
PALLIKUNNU SREE MOOKAMBIKA DEVI TEMPLE
PALLIKUNNU-670 004, KANNUR.

ADDITIONAL RESPONDENT*:

Addl.6. SRI.M.MANOCHARAN
EXECUTIVE OFFICER, MANANPURATHKAVU POST
NILESWARAM POST, KASARAGOD DISTRICT - 671 121.
(*ADDL.R6 IMPEADED AS PER ORDER DATED 06.08.2015 IN IA 11190/15)

R2-R3 BY ADV. SRI.K.R.SUNIL, SC, MALABAR DEVASWOM BOARD
R5 BY ADV. SRI.MAHESH V RAMAKRISHNAN
R4 BY ADV. SRI.S.UNNIKRISHNAN (VARKALA)
R6 BY ADV. SRI.V.R.KESAVA KAIMAL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 03-11-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1: PHOTOSTAT COPY OF THE NOTICE DATED 5.11.2014
- EXHIBIT P2: PHOTOSTAT COPY OF THE COMMUNICATION DATED 11.2.2015 TO THE 4TH RESPONDENT.
- EXHIBIT P3: PHOTOSTAT COPY OF THE REPRESENTATION DATED 3.3.2015. TO THE RESPONDENTS.
- EXHIBIT P4: PHOTOSTAT COPY OF THE ORDER IN WPC 11376/2015 DATED 7.4.2015.
- EXHIBIT P5: PHOTOSTAT COPY OF THE ORDER ISSUED BY 4TH RESPONDENT DATED 28.4.2015.
- EXHIBIT P6: PHOTOSTAT COPY OF ORDER ISSUED BY 3RD RESPONDENT DATED 25.5.2015.
- EXHIBIT P7: PHOTOSTAT COPY OF THE CIRCULAR ISSUED BY THE 2ND RESPONDENT DATED 10.4.2014.
- EXHIBIT P8: PHOTOSTAT COPY OF THE COMMUNICATION CANCELLING THE APPOINTMENT OF THE PETITIONER ISSUED BY 4TH RESPONDENT.
- EXT.P9 COPY OF THE COMMUNICATION SENT TO THE 4TH RESPONDENT, WHICH WAS ALSO SENT TO THE 5TH RESPONDENT DTD. 18.6.15
- EXT.P10 COPY OF THE COMMUNICATION RECEIVED BY THE PETITIONER ON 30.6.15 FROM THE EXECUTIVE OFFICER, THE 4TH RESPONDENT.
- EXT.P11 COPY OF THE COMMUNICATION BY THE EXECUTIVE OFFICER OF THE TEMPLE DTD. 5.3.15
- EXT.P12 COPY OF THE APPLICATIONS INVITED WITH RESPECT TO VELLORA SREE CHUZHALI BHAGAVATHI TEMPLE.
- EXT.P13 COPY OF THE APPLICATION INVITED FOR APPOINTMENT OF SANTHI IN VADASSERY EATTITHADAM SREEKRISHNA TEMPLE UNDER THE BOARD
- EXT.P14 COPY OF THE APPLICATION INVITED FOR APPOINTMENT OF SANTHI IN KOROM SRI CHENANKAVU BHAGAVATHI TEMPLE.

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EXT.P15 COPY OF THE APPLICATION INVITED FOR THE APPOINTMENT OF
SANTHI FOR A TEMPLE UNDER THE BOARD.

RESPONDENT(S)' EXHIBITS:

EXT.R5(A) COPY OF THE ORDER NO. H5-1669/2015/MDB DTD. 24.3.15 ISSUED
BY THE 2ND RESPONDENT.

EXT.R5(B) COPY OF EXT.P5 COMMUNICATION ISSUED TO THE PETITIONER.

EXT.R5(C) COPY OF THE NOTIFICATION DTD. 5.7.14 ISSUED BY THE 4TH
RESPONDENT.

EXT.R2(A) COPY OF THE RESOLUTION NO.(25) DATED 28.01.15 TO CANCEL
THE NOTIFICATION AND ISSUE RE-NOTIFICATION.

EXT.R4(A) OFFICE COPY OF THE COMMUNICATION ISSUED BY THIS
RESPONDENT TO THE PETITIONER A COPY OF WHICH IS
MAINTAINED AT THE OFFICE OF THE RESPONDENT TEMPLE

EXT.R4(B) COPY OF THE CARBON COPY OF THE COMMUNICATION DTD.
28.4.15 ISSUED TO THE PETITIONER.

// TRUE COPY //

PA TO JUDGE.

SB

K. VINOD CHANDRAN, J.

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W.P.(C) No.17976 of 2015 - V

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Dated this the 3rd day of November, 2015

J U D G M E N T

The petitioner was an applicant to the post of Santhikaran in the Pallikkunnu Sree Mookambika Temple. Admittedly, the Santhi of the said temple is alternated between hereditary Santhi and the non-hereditary Santhikaran; each holding charge for two months. A notification is said to have been issued calling for qualified and experienced 'Santhikaran' produced at Ext.R5(c), dated 01.07.2014. The controversy arose allegedly due to the prescription of age in Ext.R5(c) between 35-50; as on 01.01.2014.

2. The petitioner was called for the interview as per Ext.P1. Four persons are stated to have been interviewed by the interview board constituted by the Assistant Commissioner of the Malabar Devaswom Board, the 3rd respondent herein. The

members of the interview board were the Inspector Gr.I of the Thalassery Division of the Board, the Thanthri of the temple, the Chairman of the Trustee Board and the Executive Officer of the temple. The 1st rank holder is said to have relinquished his claim as per Ext.P2.

3. The petitioner aggrieved by the fact that no appointment order has been issued to him, despite he being the 2nd in the rank list, approached this Court by W.P.(C) No.11376 of 2015, wherein, there was an interim order passed, not to appoint any other person lower in the rank list, to the petitioner, in the temple. The petitioner was also issued with an order dated 28.04.2015 at Ext.P5 permitting him to join as on 01.07.2015, in compliance with the interim order. However it is to be stated that the Trustee Board had filed an application to vacate the interim order.

4. Subsequently, the Assistant Commissioner, the 3rd respondent herein issued a communication at Ext.P6, to the

Executive Officer of the temple, cancelling the selection as such for reason of the age limit having not been specified as available in the Rules. Ext.P6 communication reveals that as per the Rules under Section 100(2)(y), of the Hindu Religious and Charitable Endowments Rules (for brevity, 'the Rules'), the age for appointment of employees to the Board is between 18-65. In accordance with which the Commissioner is said to have issued a Circular, which is also produced at Ext.P7.

5. Faced with Ext.P6 communication, which in effect cancelled the appointment of the petitioner, the petitioner withdrew the earlier writ petition, and filed the present writ petition. Ext.P8 was also issued cancelling the appointment to the petitioner on the basis of the Assistant Commissioner's letter. The petitioner hence was before this Court contending that he is the 2nd person in the rank list and he ought to be granted appointment, as the 1st rank holder has specifically relinquished his claim.

6. I have heard the learned Senior Counsel for the petitioner, the learned Standing Counsel appearing for the respondent Board, the learned counsel for the Chairman of the Trustee Board and the incumbent Executive Officer; as also the Executive Officer, who was holding charge at the time of the interview, who issued Ext.P5, and was impleaded as the additional 6th respondent.

7. The learned Counsel appearing for the Trustee Board submits that though the interview was conducted, the report of the proceedings were not forwarded to the Trustee Board, who has to make the appointment as per Section 48 of Hindu Religious and Charitable Endowments Act. The issuance of Ext.P5 is doubted on the ground that what is available in the records, substantially differs from what is produced in the writ petition. It is also submitted that there was no rank list prepared and hence the writ petition itself is premature.

8. The learned counsel appearing for the

additional 6th respondent asserts that he had issued Ext.P5. The learned Standing Counsel appearing for the respondent Board produces the carbon copy available in the files of the Trustee Board to contend that there is some manipulation with respect to the document produced as Ext.P5. On a cross verification of the carbon copy with Ext.P5, it is seen that the only correction made in the original is that the word നിയമിക്കുന്നതാണ് is partially struck off to read as നിയമിച്ചതായി. There is no substantial difference insofar as the use and purport of the said words. In any event, Ext.P5 has no consequence as of now, since the earlier writ petition was withdrawn due to the subsequent orders.

9. The learned Standing Counsel for the respondent Board relies on Rule 4(2) of Part I of Section 100(2)(y), to contend that the same is a mandate as to specifying the age for initial appointment to be between 18-65, which reads as under:-

(2) Except in the case of a hereditary officer or servant, no person may be appointed to or hold any office unless he is not less than (eighteen) and

not more than sixty-five years of age.

10. A reading of the above provision would only indicate that none, who is below 18 and above 60, can be appointed as an employee of the temple; unless he/she is a hereditary officer or servant. It does not necessarily follow from the rule that in issuing a notification for fresh appointment, the age specified would have to be between 18-65. It would also be absurd to give such an interpretation to the above provision since, no fresh appointment could be made of a person having 59 years of age. In all appointments made to an Organisation, or in this case, a temple, the temple authorities would have the power to decide on the minimum and maximum age for such fresh appointment which shall not be less than or exceed that provided in the sub-rule(2) of Rule 4 of the Rules. That can be the only purport of the Rule.

11. Sufficient reliance to the above proposition can also be garnered from **K.K. Bhaskaran v. State of Kerala and**

another [1983 KLT 894] relied on by the learned Senior Counsel appearing for the petitioner. As has been held in the aforesaid decision, the tenure prescribed under sub-rule (2) is only to indicate the period of office, which a person appointed, would be entitled to be continued and not a requirement for initial appointment as such.

12. The decision of the Board leading to the cancellation of the selection as such, is produced at Annexure R2 (a), which also deals with only the minimum age having been prescribed as '35'. As has been contented by the learned counsel for the Trustee Board, the Trustee Board has the authority to make the appointments. But however to ensure transparency the Board nominates an officer and constitutes an interview board. Even now, the Trustee Board does not have a case that the notification was not published in accordance with the decision of the Trustee Board. The notification produced at Ext.R5(c) specifically indicates the zone of consideration for appointment

to be between 35-50 years of age. Considering the fact that the appointment is to the post of a Santhikaran, this Court does not find any arbitrariness in such prescription.

13. Further it is to be noticed that though it is alleged that there was a compliant with respect to the notification having not been published properly, the records of the case does not reveal any such complaint having been filed either before the Trustee Board or before the Malabar Devaswom Board. The learned Standing Counsel for the respondent Board submits that a complaint is available in the files of the Assistant Commissioner, which is also produced, across the bar. On going through the compliant, it is only indicated that the complainant had a grievance with respect to the selection having been conducted without following the Rules. The reference in the complaint is also with respect to the Circular produced at Ext.P7. Neither in the various counter affidavits filed, nor in the documents produced, there is any reference, other than the

complaint with respect to the specification of age, in the notification issued.

14. In the teeth of the controversy, this court had also called for the files with respect to the interview, which were at the earlier point of time produced by the learned counsel appearing for the Trustee Board. On a specific query, it was also submitted that the files in fact were with the office of the Assistant Commissioner, who is also present before this Court, as per the specific direction issued by this Court.

15. The Assistant Commissioner has filed an affidavit, explaining that the notification was published and the interview board was constituted, which conducted the interview and also awarded marks to the respective candidate. The files reveal, four candidates having been interviewed and marks having been awarded by each of the interview board members, out of 10. The Assistant Commissioner also submits that before the marks of the interview was transmitted to the Trustee Board, by reason

of the complaint; relying on the Circular and the Rules, the notification itself was cancelled.

16. What hence has to be considered is whether the selection can be proceeded with on the basis of the marks awarded. As was noticed earlier, the only compliant was with respect to the age specification in the notification not being in compliance with the Rules. This Court has already found that there is no reason why the temples under the Devaswom Board should specify the age of appointment as between 18-65. Especially since, the said Rule only specifies the normal tenure of an employee, to be continued in a temple. The Trustee Board having taken a decision to specify the eligible age for fresh appointment to the post of Santhikaran, to be 35-50, which has already been found to be not arbitrary, there could be no question of examination of reasonableness to such a decision, especially in a petition under Article 226 of the Constitution of India.

17. The learned Standing Counsel for the respondent Board would refer to **Bihar State Electricity Board v. Suresh Prasad and other [(2004) 2 SCC 681]**, to contend that in the absence of any rules to the contrary, there is no mandate on the employer or an Organisation to appoint a person coming second in the rank list to a post, since the mere fact of the ranking would not create any vested right on such person. The declaration made by the Hon'ble Supreme Court is on the peculiar facts arising in the above case. A notification of 1986 was cancelled, after a written test and interview was conducted. In 1992, a fresh notification was published. On certain persons, who applied as per the first notification, challenging the same, the High Court had directed 50% of the vacancies to be filled up from the 1st list and 50% from the 2nd list. The appellant before the Hon'ble Supreme Court, decided to fill up 22 vacancies from the 1st list as per the direction of the High Court. Out of the 22 who were advised for appointment, only four joined. The persons from the

rank No.23 onwards approached the High Court again seeking appointment. The employer contented that from the list prepared for selection, they have selected the first 22 as qualified to be appointed. A panel having been so prepared none who are excluded from the panel could seek an appointment, was the argument. It was in that specific context that the Hon'ble Supreme Court held that there could be no vested right conferred on such candidates especially since, they were not included in the panel and there is no statutory requirement to make such appointment.

18. Herein, the facts are entirely different. A selection was made after issuance of the notification, in which four persons appeared . No cut off marks were provided. The marks were out of 10 and the petitioner had been ranked as the 2nd rank holder and in the context of the 1st rank holder having refused to join, it is only proper that the 2nd rank holder be appointed. There is also not much difference in marks. The

need for a Santhikaran persists and the only contention taken is that a fresh notification is to be issued showing the minimum age as 18. The cancellation of the earlier selection also was on the ground of the notification for appointment having violated the Rules. This Court has already held that the said notification suffered from no such defect. Hence, on the 1st rank holder relinquishing his claim the 2nd rank holder stands selected and is eligible to be appointed.

19. True, as contented by the learned counsel for the Trustee Board the files were not forwarded to the Board and no computation of marks had taken place, which dispels the contention of a ranking having been made. The files, however clearly reveal that on the marks awarded, the petitioner would be ranked 2nd. The Trustee Board does not have a contention that any other factor other than the marks at the interview are relevant for ranking the applicants. The Trustee Board also intends to fill up the post, which is evident from the fresh

notification proposed. The cancellation is also made by the Devaswom Board on grounds which have been negated by this Court.

19. The further contention of the Trustee Board that the Thanthri had given considerably low marks and hence it should be left to the Thanthri to decide on the eligibility of the person, cannot also be countenanced. Even going by Section 48 of the the Act, the authority is on the Trustee Board, in which the Thanthri is not a member. When an interview board is constituted with various persons, the total marks had to be computed and the ranking had to be done on such total computation of marks.

20. In such circumstance, the Assistant Commissioner, the 3rd respondent herein, is directed to forward the files of the interview to the Trustee Board and the Trustee Board is directed to issue appointment order to the petitioner herein, if the 1st rank holder does not express a desire to join duty, after obtaining the

approval of the 1st respondent Devaswom Board.

The writ petition would stand allowed. The parties shall suffer their respective costs.

**Sd/-
K. VINOD CHANDRAN,
JUDGE**

SB/03/11 /2015

// true copy //

P.A to Judge.