

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

MONDAY, THE 28TH DAY OF SEPTEMBER 2015/6TH ASWINA, 1937

WP(C).No. 34938 of 2007 (H)

PETITIONER :

**SAJEEVAN P.,
S/O. T. RAGHAVAN PODUVAL, PARAMBATH HOUSE
KUTTAMATHPONMALAM, CHERUVATHOOR (PO)
KASARAGOD (DISTRICT).**

**BY ADVS.SRI.K.MOHANAKANNAN
SMT.A.R.PRAVITHA**

RESPONDENT(S) :

- 1. THE COMMISSIONER
HINDU RELIGIOUS & CHARITABLE ENDOWMENTS
CIVIL STATION, KOZHIKODE.**
- 2. THE EXECUTIVE OFFICER
SREE MANNAMPURATH KAVU DEVASWOM, NEELESHWAR
KASARAGOD (DISTRICT).**
- 3. V.SUBRAMANINAN,
S/O. KUNJANANDAN,
"VAISHAKH" NEELESHWAR,
KASARAGOD (DISTRICT)**
- 4. P.NARAYANA PIDARAR,
FIT PERSON APPOINTED BY THE HEREDITARY TRUSTEE
SRI.VASUDEVAN MOOTHA PIDARAR, KIZHAKKE ILLAM
NEELESHWAR P.O., KASARAGOD (DISTRICT)**
- 5. STATE OF KERALA
REPRESENTED BY SECRETARY TO GOVERNMENT
REVENUE (DEVASWOMS DEPARTMENT), THIRUVANANTHAPURAM.**

6. THE SELECTION COMMITTEE TO THE POST OF VAZHIPADU CLERK,
SREE MANNAMPURATHKAVU, BHAGAWATHY TEMPLE,
NEELESHWAR, KASARAGOD DISTRICT
REPRESENTED BY ITS CHAIRMAN
ASSISTANT COMMISSIONER (H.R.& C.E), NEELESHWAR
KASARGOD DISTRICT.

R1 BY ADV. SRI.K.R.SUNIL, SC

R2 BY ADV. SRI.M.SASINDRAN

R4 BY ADV. SRI.JAWAHAR JOSE

R5 BY SR. GOVT. PLEADER SRI. K.K. SAIDALAVI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 28-09-2015,
ALONG WITH WPC. 13361/2008, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

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APPENDIX

PETITIONER'S EXHIBITS :

- EXT.P1 : COPY OF THE APPOINTMENT ORDER OF THE PETITIONER DATED 12.11.2005.
- EXT.P1(a) COPY OF THE POSTAL COVER ENCLOSING THE APPOINTMENT ORDER OF THE PETITIONER.
- EXT.P2 COPY OF THE ORDER NO. HR15 8124/2005 DATED 29.10.05 ISSUED BY THE 1ST RESPONDENT TO THE 4TH RESPONDENT.
- EXT.P3 COPY OF THE REPRESENTATION DATED 8.12.2005 FILED BY THE 3RD RESPONDENT BEFORE THE 1ST RESPONDENT.
- EXT.P4 COPY OF THE JUDGMENT DATED 9.6.06 IN WP(C) NO. 5105/06 OF THIS HON'BLE COURT.
- EXT.P5 COPY OF THE COMPLAINT FILED BY THE 3RD RESPONDENT DATED 5.8.06 BEFORE THE 1ST RESPONDENT.
- EXT.P6 COPY OF THE COUNTER STATEMENT FILED BY THE PETITIONER DATED 3.8.06 IN ANSWER TO EXT.P2.
- EXT.P7 COPY OF THE OBJECTION FILED BY THE PETITIONER ON 10.8.06 AGAINST EXT.P4.
- EXT.P8 COPY OF THE ORDER NO. 133938/06 DATED 2.8.06 PASSED BY THE 1ST RESPONDENT.
- EXT.P8(a) COPY OF THE INTERIM ORDER DT. 22.9.06 IN WP(C) NO. 25025/06 OF THIS HON'BLE COURT.
- EXT.P9 COPY OF THE ORDER OF TERMINATION ISSUED BY THE 2ND RESPONDENT BEARING NO. MKE-1/2005 DATED 20.9.2006.
- EXT.P10 COPY OF THE POSTAL COVER SENT BY THE 2ND RESPONDENT CONTAINING EXT.P-9.
- EXT.P11 COPY OF THE JUDGMENT DT. 7.10.07 IN WP(C) NO. 25025/06 OF THIS HON'BLE COURT.

(Contd...)

- EXT.P12 COPY OF THE REVISION FILED BY THE PETITIONER LEAVING OUT THE EXHIBITS.
- EXT.P13 COPY OF THE ORDER OF THE 2ND RESPONDENT DATED 21.9.07.
- EXT.P14 COPY OF THE HEARING NOTICE ISSUED BY THE 5TH RESPONDENT DATED 25.9.2007 TO THE PETITIONER.
- EXT.P15 COPY OF THE ARGUMENT NOTE SUBMITTED BY THE PETITIONER DATED 1.10.07.
- EXT.P16 COPY OF THE NEWSPAPER REPORT PERTAINING TO THE 3RD RESPONDENT DT. 10.10.07 IN MATHRUBHUMI DAILY.
- EXT.P17 COPY OF THE G.O.(RT) 4569/07/RD DATED 17.11.2007 ISSUED BY THE 5TH RESPONDENT.
- EXT.P18 COPY OF THE LETTER ISSUED BY THE EXECUTIVE OFFICER OF THE TEMPLE DATED 23.9.2014.

RESPONDENT'S EXHIBITS :

- EXT.R4(a) : COPY OF ORDER NO. HRJ-5 8124/2005 DATED 29-10-2005 ISSUED BY THE FIRST RESPONDENT.
- EXT.R4(b) COPY OF RELEVANT PAGE OF CHITTY PASS BOOK.
- EXT.R4(c) COPY OF NEWSPAPER REPORT DATED 27-2-2007 APPEARED IN MATHRUBHUMI DAILY.
- EXT.R4(d) COPY OF NEWSPAPER REPORT DATED 21-4-2007 APPEARED IN DEEPIKA DAILY.

//TRUE COPY//

P.S. TO JUDGE

A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) Nos.34938 of 2007 & 13361 of 2008

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Dated this the 28th day of September, 2015

JUDGMENT

These writ petitions relate to the appointment of Vazhipadu Clerk in Sree Mannamburathkavu Bhagavathy Temple, Neeleshwar at Kasaragod district.

2. W.P(C) No.34938 of 2007 is filed by the candidate, selected by the Devaswom for appointment as Vazhipadu Clerk, challenging the order passed by the Commissioner, HR&CE, Kozhikode, cancelling his selection, which was later upheld by the Secretary to the Government, Revenue (Devaswoms Department).

3. The petitioner was appointed as a Vazhipadu Clerk in the aforesaid Temple by Ext.P1 order dated 12.11.2005. The third respondent, an applicant to the post of the Vazhipadu Clerk, who appeared for the interview, has approached the first respondent Commissioner by filing representations alleging that he is more

experienced and qualified than the petitioner. The Commissioner has passed Ext.P8 order cancelling the appointment of the petitioner. The same was challenged by the petitioner before this Court in W.P(C) No.25025 of 2006 and this Court granted Ext.P8(a) interim order staying the termination of service of the petitioner provided, Ext.P8 has not been given effect to. Ext.P9 is the order of termination which was communicated to the petitioner only on 25.9.06. Therefore, the writ petition was amended by incorporating the challenge against Ext.P9 as well. This Court disposed of the writ petition by Ext.P11 permitting the petitioner to file a revision before the Government against Ext.P8 order and the order of termination was stayed for a period of one month. The petitioner was reinstated in service. Thereafter Ext.P12 revision was filed and the same was dismissed by the Government cancelling the entire selection and directing to make fresh selection to the post in question by Ext.P17 order.

4. The petitioner alleges that the only issue in the revision that

has to be decided by the Government was whether Ext.P8 order is correct and whether the third respondent was eligible to be appointed in the place of the petitioner. The petitioner further alleges that the third respondent was an accused in several criminal cases and is now in judicial custody as evidenced from Ext.P16. Moreover, nobody has challenged the selection process. Therefore, Ext.P17 order is vitiated by procedural irregularity, arbitrariness and violation of statutory provisions; it is alleged.

5. In this writ petition, only the fourth respondent, the fit person appointed by the hereditary trustee, filed counter affidavit contending as follows:

Applications were invited from eligible candidates for filling up the vacancy of Vazhipadu Clerk in the Temple in September, 2005 and a selection committee was constituted consisting of the representative of the Commissioner, HR&CE, the Assistant Commissioner, HR&CE, the Executive Officer and the representative

of the Trustees. Since there was no consensus between the trustees, the Commissioner has appointed the fourth respondent as the representative of all the trustees vide Ext.R4(a) order dated 29.10.2005. It was further contended that altogether, 56 candidates were interviewed by the Board and a list of five candidates were published. In the list, the petitioner was ranked No.1 and the third respondent was ranked No.2. In the process of interview, comparative merits of the candidates were weighed and the petitioner was found to be qualified, was selected and appointed. The interview board consisting of four members altogether assigned 281 marks to the petitioner and, therefore, he was placed as Rank No.1 and has given appointment.

It was stated that the third respondent has no experience as Vazhipadu Clerk. The experience certificate produced by the third respondent is a bogus one since in the Temple in which Sri. Subramanian has stated to have been worked as a Vazhipadu Clerk is not a Temple having daily pooja. It is a Temple in name and the third respondent is conducting Chitties in the name "Vairajathante

Easwarante Kshethram Vaka”. Copy of the relevant pages of the Chitty Pass Book is produced as Ext.R4(b). The third respondent has made an attempt to secure the job by producing a bogus certificate to the effect that he has experience as a Vazhipadu Clerk. In fact the Vairajathante Temple is a private Temple of a family and no daily poojas were conducted in the Temple and there is no post of any Vazhipadu Clerk or no Vazhipadu counter in the Temple.

It was further stated that the third respondent is an accused in 500 criminal cases alleging offenses punishable under Sections 419 and 420 IPC and also for violation of the provisions of Chitties Act and now in judicial custody. Some news items pertain to the issue published in the Mathrubhoomi daily dated 27.2.2007 and Deepika daily dated 21.4.2004 which is produced as Exts.R4(c) and R4(d). It was further stated that pursuant to the direction of this Court in W.P(C) No.25025 of 2006 by the petitioner, hearing was conducted by the Government, the fourth respondent have appeared before the first respondent and pointed out that the order of the Commissioner (Ext.P8) is not correct

and that the persons claims to be more qualified than the petitioner was not qualified and accused in several criminal cases. It was also pointed out that he was in the judicial custody and was not in a position to be appointed as Vazhipadu Clerk or a Temple Servant. It was stated before the first respondent that the petitioner was rightly appointed after considering his qualification and experience and there is no infirmity whatsoever in the process of selection and that his conduct as Vazhipadu Clerk is good and requested to allow his appeal and permit him to continue as Vazhipadu Clerk. The Government vide Ext.P17 rejected the appeal which is under challenge in this W.P(C).

It was further stated that this respondent is the representative of the Trustees and the decision taken by the Commissioner (Ext.P8) is totally without jurisdiction and the disciplinary authority in the case of a Temple under the trustees is the trustee under Section 49 of the HR&CE Act. Therefore, the order of the Commissioner which is confirmed in Ext.P17 is all vitiated by lack of jurisdiction and liable to be set aside. It was also stated that the

petitioner is continuing as a Vazhipadu Clerk under orders of this Court even now. The petitioner is fully dedicated to the day-to-day affairs of the Temple and also having sufficient experience and knowledge in the matter of Temple affairs. A fresh selection as ordered by the Government is, therefore, unnecessary. The appointment of the petitioner was challenged at the instance of the third respondent. Since he unfit, there is no necessity to conduct fresh selection process to make fresh selection. Therefore, the petitioner be allowed to continue as Vazhipadu Clerk.

6. W.P(C) No.13361 of 2008 was filed by Sree Mannampurath Kavu Bhagavathy Devaswom, which is a Hindu Public Religious Institution challenging the competence, legality, and propriety of Ext.P4 order passed by the Commissioner, HR&CE (Admn.) Department, Kozhikode, in the matter of appointment of Temple servants which, according to the petitioner is the sole domain of the Trustees of the Devaswom under Section 48(1) of the High Religious

and Charitable Endowments (HR&CE) Act, 1951. In this writ petition, the petitioner alleges that because of the pendency of the other writ petition, the Devaswom administration took a decision to wait for its final adjudication on merit, which is found fault with in the impugned order.

7. In W.P(C) No.13361 of 2008, the State has filed a counter affidavit justifying Ext.P4 order passed in that writ petition. It was contended that the Temple is a public religious institution coming under the purview of the Madras HR&CE Act, 1951, the administration of which was carried on by a Board of Trustees and the day-to-day management was carried on by the Executive Officer appointed by the Department as per the scheme of administration. It was stated that the scheme already made has been cancelled and fresh selection was ordered. Orders were issued terminating the service of the petitioner. In revision, the Government confirmed that order. It is challenging that order, Ext.P1 writ petition has been filed and the

judgment in that writ petition stands confirmed under Ext.P2. In such circumstances, the decision in Ext.P3 is improper and unwarranted and is in violation of the direction of this Court. It is in this view of the matter that Ext.P4 order has been issued.

8. Arguments have been heard.

9. For convenience of discussion, the parties can be referred to as they are arrayed in WP(C) No.34938 of 2007.

10. In that writ petition, the orders impugned are Exts.P8, P9 and P17 by which the petitioner's appointment was cancelled and fresh appointment was ordered. The interim relief sought for in this writ petition was declined by the learned single Judge by order dated 29.11.2007. It was ordered that fresh selection to the post of Vaazhipadu Clerk pursuant to Ext.P17 may go on. However, it was made clear that no persons be appointed to the said post, except after obtaining orders from this Court. Though the petitioner has been continuing in service, his request for continuance was refused by the

learned single Judge. The interim order was challenged by the petitioner before the Division Bench in W.A No.2854 of 2007 and the Division Bench by order dated 1.12.2007 ordered that the petitioner could continue as Vazhipadu Clerk till finalisation of selection process if nobody has been appointed in his place.

11. It was the third respondent, who challenged the selection of the petitioner before the Commissioner. It is crucial to note that he has not filed any counter affidavit in this writ petition. It is submitted that there was no further selection process in the Temple and the petitioner has been continuing as Vazhipadu Clerk from 4.10.2007, and his name is included in the salary schedule published and approved by the Assistant Commissioner, who is the competent authority to approve the salary schedule of the Temple under the provisions of the HR&CE Act and the rules framed thereunder. To show that he has been continuing in the service, the petitioner has produced Ext.P18, which is the copy of the letter issued by the

Executive Officer of the Temple dated 23.9.2014, which reveals that he has been working in the Temple from 12.11.2005 and the increment, grade promotion and leave surrender have not been sanctioned so far.

12. In the affidavit filed along with I.A No.13915 of 2015 and Ext.P18, the petitioner alleges that the person who claims appointment to the post of Vazhipadu Clerk (third respondent) has got PSC selection as typist in the Public Works Department five years back and he is continuing in that service. As already pointed out, he has not filed any counter affidavit in this writ petition.

13. The petitioner made a definite challenge that the Assistant Commissioner HR&CE, Kozhikode is a relative of the third respondent and, therefore, Ext.P8 might have been passed due to the influence of the Assistant Commissioner. As rightly submitted by the learned counsel for the petitioner, there is no provision in the HR&CE Act which empowers the first respondent to terminate the

service of an employee of the Devaswom which is not included in the list and is controlled by the trustees. The petitioner points out that the trustee is the appointing authority under Section 48 of the Act. The disciplinary authority, therefore, is the trustee. Section 49 empowers the trustee to award punishment and the Commissioner is the appellate authority as per sub section (3) of Section 49. According to the petitioner, the appellate authority cannot act as an original authority and, therefore, Ext.P8 is vitiated by want of justice.

14. The petitioner has a definite case that no notice has been served on him before terminating him and the same has not been challenged by any of the respondents. Therefore, Ext.P9 order of termination is in clear violation of the principles of natural justice. It appears that the same has not been given effect to at the time of passing the interim order. However, the petitioner is continuing in his post. Though a fresh selection was ordered as per Ext.P17, no such action has taken place. Therefore, this Court is of the view that

the petitioner in W.P(C) No.34938 of 2007 is entitled to get the relief prayed for.

15. Now I shall consider the case of the Devaswom in the W.P (C) No.13361 of 2008 in which, they are relying on Sections 48 and 49 of the HR&CE Act. The petitioner Devaswom points out that the trustees as per Ext.P3 resolution in that case resolved to keep in abeyance the recruitment process pending final adjudication of the pendency of the other writ petition. There is nothing wrong in taking such a decision as long as it is *bona fide* and is a product of application of mind. The trustees are competent to take such a decision also. However, the same was found fault with in Ext.P6 order which is impugned in this writ petition. In the impugned order, there is a declaration that the trustees have no power or authority for taking Ext.P3 decision. The same is against law and without any legal basis. As there is no justifiable reason to cancel the appointment of the petitioner in W.P(C) No.34938 of 2007, Ext.P4 order now

passed by the respondent need not be allowed to stand.

In the result, W.P(C) No.34938 of 2007 is allowed. Exts.P8, P9 and P17 are quashed. As the termination of the petitioner as per Ext.P9 is illegal and since he is continuing in service as Vazhipadu Clerk and as his name is included in the salary schedule published and approved by the Assistant Commissioner, the respondents are directed to grant increment, grade promotion and other service benefits, including leave surrender etc., within a period of three months from the date of receipt of a copy of this judgment.

W.P(C) No.13361 of 2008 is allowed. Ext.P4 is quashed. The respondents are restrained from interfering with the discretionary decision making process of the trustees in due exercise of their jurisdiction under Section 48(1) of the HR&CE Act.

Sd/-

A.V.RAMAKRISHNA PILLAI
JUDGE

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