

In the High Court of Judicature at Madras

Reserved on : 11.03.2015

Dated : 19.03.2015

Coram:

The Hon'ble Mr.Justice SATISH K. AGNIHOTRI
and

The Hon'ble Mr.Justice M.VENUGOPAL

W.A.Nos.1441 & 1448 of 2014

and

M.P.Nos.1 & 1 & 2 of 2014

1.Hindu Religious & Charitable
Endowments Board,
Rep. by its Commissioner,
Nungambakkam High Road,
Chennai-600 034.

.. Appellant in W.A.1441/2014 / 1st
Respondent & R-2 in W.A.1448/2014 /
1st Respondent

2.Arulmighu Meenakshi
Sundareswarar Thirukoil,
rep. by its Executive Officer,
Madurai.

.. Appellant in W.A.1448/2014/2nd
Respondent & R-2 in W.A.1441/2014 /
2nd Respondent

Vs.

1.Athitia Gnaanam

.. R-1 in both W.As/Petitioner

Common Prayer: Writ Appeals filed under Clause 15 of the Letters Patent Act, against the order dated 01.07.2014 and made in W.P.No.14345 of 2012 by the learned Judge of this Court.

WP.No.14345/2012: Writ Petition under Article 226 of the Constitution of India, to issue a writ of certiorarified mandamus, calling for the records of the 1st respondent in connection with the proceedings bearing Reference No.Na.Ka.No.71344/2008/Z 2 dated 28.9.2011 quash the same and consequently direct the respondents herein to promote the petitioner as Junior Engineer-Electrical on regular basis with effect from 15.9.2006 the date of resolution passed by the Board of Trustees of the 2nd respondent or any other date as may be fixed by this Honourable court.

For Appellant : Mr.S.Kandasamy
in W.A.1441/2014 Spl. Government Pleader
& R2 in W.A.1448/2014

For R-1 : Mr.V.Prakash, Senior Counsel
for K.Sudaliakannu in both W.As
Mr.T.L.Ram Mohan for
Mr.B.Sivakumar, Advocate for the
Respondent 2 in WA.No.144/14 and
for the Appellant in
WA.No.1448/14

C O M M O N J U D G M E N T

M.VENUGOPAL, J.

The Appellants/Hindu Religious and Charitable Endowments Board & Arilmighu Meenakshi Sundareswarar Temple have preferred the instant intra Court Writ Appeals W.A.Nos.1441 & 1448 of 2014 respectively before this Court as against the order dated 01.07.2014 in W.P.No.14345 of 2012 passed by the Writ Court.

2.The Writ Court while passing the impugned order dated 01.07.2014 in W.P.No.14345 of 2012 (filed by the Respondent/Petitioner) in para 9 had observed to the effect that "though normally this Court would not direct order for promotion to be made, in the case of this nature as a Special case, wherein, the Petitioner is fully qualified and he has been doing the same job for long years in the same temple, and the temple authorities have also recommended his case for promotion twice by passing resolution, and the earlier direction of this Court for considering promotion. I am inclined to allow this Writ Petition by specifically directing the First Respondent herein to promote the Petitioner to the post of Junior Engineer (Electrical) with effect from 15.09.2006, by notionally promoting him as Foremen and thereafter, Junior Engineer (Electrical) immediately. The entire exercise promoting the Petitioner as directed above shall be completed by the First Respondent within a period of two months from the date of receipt of a copy of this order" and allowed the Writ Petition without costs.

3.The Writ Facts:-

The Respondent/Petitioner with his Diploma qualification in Electrical and Electronics Engineering joined service of Second Respondent/Temple, Madurai (Appellant in W.A.1448/2014) on 01.02.1997 as an Electrician on nominal muster roll. He was confirmed as a Plumber in the year 1981 after putting four years of service. Later on 01.11.1988, he was promoted as Electrical Section Clerk and he was further promoted as Electrician on 26.10.1994. As a matter of fact, on 20.05.1997, the Electrical Inspector of the Tamil Nadu Electricity Board directed the Temple Authority to appoint a person holding 'C' license as Electrical Supervisor in view of the various electrical equipments in the Temple which requires a person of such qualification to attend and to maintain the same. He acquired Diploma in Electrical and

Electronics Engineering during the year 1997 and he was issued with 'C' license on 21.07.1999. Therefore, he had acquired the qualification to be appointed as Electrical Supervisor.

4.It comes to be known that on 03.10.1997, the Joint Commissioner/Executive Officer of the Second Respondent/Temple (Appellant in W.A.1448 of 2014) addressed a letter to the Commissioner, Hindu Religious and Charitable Endowments Department mentioning that there is 500 KV transformer in the Temple and as per the Electrical Inspector's directions, as per statutory requirements, a person is to be appointed as Electrical Supervisor holding 'C' license and since there was a ban on recruitment by the Government, two posts of Electricians could be combined and in that place, an Electrical Supervisor could be appointed in the said post. As such, the Respondent/Petitioner's name was recommended by the Joint Commissioner of the Temple to be appointed in the said post. A resolution was passed by the Fit Person of the Temple on 15.09.2006 to promote the First Respondent/Petitioner to the post of Junior Engineer combining the post of Electrical Supervisor and promotion was sought for promoting him. Indeed, a special resolution was passed by the Joint Commissioner/Executive Officer of the Temple. However, no action was taken so far.

5.Inasmuch as the case was not considered for promotion as Junior Engineer notwithstanding the fact that he has been discharging the service as 'Electrician' with all the qualifications and service required by the Competent Authority, in fact, the Authorities had ignored the recommendation as well as the resolution of the Temple Authorities and that the Commissioner/Endowments Board (Appellant in W.A.1441/14) had rejected the proposal of the Joint Commissioner/Executive Officer of the Temple on 21.09.2006 for promotion of First Respondent/Petitioner as Junior Engineer (Electrical) Grade-I without ascribing any reasons.

6.It is to be noted that the First Respondent/Petitioner on earlier occasion filed W.P.No.11472/2009 before this Court and this Court disposed of the Writ Petition by directing the Respondents/Endowments Board and Temple to consider his case after setting aside the order passed by the Commissioner/Endowments Board on the basis of the resolution passed by the Department. Since no orders were passed, Contempt Petition No.1808 of 2011 was filed and the impugned order of rejection was passed on 28.09.2011 whereby and where-under the claim for promotion of the First Respondent/Petitioner was rejected.

7.The contents of counter of the Hindu Religious and Charitable Endowments Board (Appellant in W.A.1441 of 2014/Second Respondent in W.A.1448 of 2014):

a.The First Respondent/Petitioner is a Temple employee governed by the Rules framed under Section 116(2)(XXIII) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 namely, The Tamil Nadu Hindu Religious Institutions (Officers and Servants) Rules, 1964 as amended by G.O.Ms.255, TDRE&I Department

dated 28.06.2010 serving as Electrician in the Temple. The First Respondent/Petitioner was originally appointed as Electrician as a nominal muster roll worker on daily wages basis and subsequently, he is now serving as Electrician.

b.As per the approved Schedule of Establishment in the petition temple, there is availability of one post of Junior Engineer (Electrical) and in that post, one Mookasamy worked till 31.01.2011. Apart from that, the Trust Board of the Temple passed a resolution No.33 dated 18.01.1997 for creating a new post of Junior Engineer (Electrical) and after sanction by the Commissioner, the said post has to be filled up by recruitment through Foreign Service with persons possessing 'C' License. The Temple sent a proposal to the Endowments Board stating that there is statutory requirement to appoint an individual holding 'C' license as Electrical Supervisor and that there is a ban on recruitment by the Government, two posts of Electricians could be merged into one post and appoint the Petitioner as Electrical Supervisor. Later on 15.09.2006, the Fit Person of the Temple passed a resolution to promote the Petitioner to the post of Junior Engineer combining the post of Electrical Supervisor with the same and sought permission of the Respondents/Endowments Board and Temple Authorities for promoting the Petitioner/First Respondent. When the proposal was under consideration, the First Respondent/Petitioner filed W.P.30642 of 2008 to accord approval for the proposal forwarded by the Board of Trustees of the Temple and the Writ Petition was disposed of by this Court on 23.12.2008 with a direction to consider the proposal of the Executive Officer and subsequently, a representation was made by the Petitioner but the proposal of the Executive Officer of the Temple was rejected by the Endowments Board in R.C.No.424/2009/Z2 dated 03.02.2009 which was under challenge before this Court in W.P.11472 of 2009 and on 06.04.2011, set aside the impugned order passed by the Endowments Board and remitted the matter to the Endowments Board to consider the matter afresh in the light of availability of vacancy from 01.02.2011 as well as the resolution passed by the Trust Board of the Temple on 15.09.2006 and pass a fresh order within a period of four weeks from the date of receipt of copy of the order.

c.The Endowments Board passed orders in R.C.No.71344/2008/Z2 dated 28.09.2011 and in the meanwhile, the First Respondent/Petitioner filed Contempt Petition No.1808 of 2011 which was closed by an order dated 22.11.2011 because of the order passed by the Hindu Religious and Charitable Endowments Board as the First Respondent/Petitioner has not satisfied requisite qualifications, conditions, the proposal of the Temple and Trust Board resolution dated 15.09.2006 was rejected by the Endowments Board in the order impugned. Later, a proposal of the Joint Commissioner/Executive Officer of the Temple dated 07.04.2012 was rejected by the Endowments Board in R.C.No.18986/2012/Z2 dated 06.09.2012.

8.The Resume of the counter of the Appellant/Temple in

i) In regard to the post of Junior Engineer (Electrical) of the Temple as per the Schedule of Establishment personnel of the Temple there is one post of Junior Engineer (Electrical) and in the said post one Mookasamy was working. Further, there is a Trust Board resolution No.33 dated 18.01.2007 recommending the Commissioner for creation of the above said post of the Temple. After retirement of Mookasamy, the First Respondent/Petitioner is looking after his post and he holds 'C' license which is pre-requisite qualification to hold the post of Junior Engineer (Electrical).

ii) The First Respondent/Petitioner is only an employee holding 'C' license and he is looking after the post of Electrical Supervisor job after the retirement of Mookasamy and consequently, the Temple passed a resolution on 15.09.2006 and the Board of Trustees of the Temple again on 10.12.2011 passed a resolution No.256, recommending for the promotion of the First Respondent/Petitioner to the post of Junior Engineer (Electrical) of the Temple and the said resolution was duly communicated to the Commissioner, Endowments Board by the Executive Officer in his letter dated 15.12.2011. Moreover, the resolution of the 'Thakkar' of the Temple bearing No.256 requesting the Commissioner, Endowments Board to promote the First Respondent/Petitioner as Junior Engineer (Electrical) but the Commissioner, Endowments Board/Appellant in W.A.1441/2014 declined to promote him on the ground that there is no post of Junior Engineer (Electrical) in the Temple.

9. The Contentions of the Appellant/Endowments Board:

i) The Learned Special Government Pleader appearing for the Endowments Board submits that the First Respondent/Petitioner was appointed as Plumber in the Second Respondent/Temple during the year 1983 and subsequently, he was appointed as Attender from the year 1988 and later, he was promoted as Clerk and transferred to work as Electrician in the newly created post from 1994 and therefore, he is a Temple employee governed by the Tamil Nadu Hindu Religious Institutions (Officers and Servants) Service Rules, 1964.

ii) The Learned Special Government Pleader brings it to the notice of this Court that the amended Service Rules by G.O.Ms.No.255, Tamil Development, Religious and Endowment Department, dated 28.06.2010 was challenged before this Court in W.P.No.1890 of 2011 and the same was set aside by an order dated 05.07.2012. Furthermore, Writ Appeal No.491 of 2013 was filed against the order of W.P.1890 of 2011 and on 22.01.2015, the Writ Appeal was disposed of by this Court to frame new rules and as such, the original service rules 1964 is in force.

iii) It is the specific contention of the Appellant/Endowments Board that Rule 14 of the Tamil Nadu Hindu Religious Institutions (Officers and Servants) Service Rules, 1964 deals with "Schedule of Establishment" framed by the Trustees and approved by the Assistant Commissioner for non listed Temples or the Joint/Deputy Commissioner for other Temples. Further, it prohibits the Trustees

from altering the schedule without prior permission from the said Authorities.

iv)The Learned Special Government Pleader takes a stand that in terms of Section 55 of the Hindu Religious and Charitable Endowments Act 22 of 1959, the appointment of office holders and servants in Religious Institutions exclusively vest with the Trustee in all cases but under Section 55(4), any person aggrieved by an order of Trustees under sub section (1) may within one month from the date of the receipt of the order by him, appeal against the order of the Joint Commissioner or the Deputy Commissioner. That apart, in the aforesaid two circumstances, the Joint Commissioner mentioned is only the Regional Joint Commissioner who is exercising the powers and duties enumerated under Section 13(A) of the aforesaid Hindu Religious and Charitable Endowments Act (and not the Joint Commissioner functioning as the Executive Officer of the Senior Grade Temple).

v)The Learned Special Government Pleader draws the attention of this Court that the Executive Officer of any cadre including the Joint Commissioner/Executive Officer as under Section 6(9) of the Hindu Religious and Charitable Endowments Act, means, a person appointed to exercise such powers and discharge such duties pertaining to the administration of the Religious Institution as are assigned to him by or under the Act or the rules made thereunder or by any scheme settled or deemed to have been settled under this Act.

vi)The Learned Special Government Pleader takes a stand that the division of powers and duties to the above said Executive Officer are defined by the Commissioner under Section 45(3) of the aforesaid Act and further that the Executive Officer in the cadre of Joint Commissioner is treated as on other duty and he cannot exercise his powers of the Regional Joint Commissioner conferred under Act or the Rules framed thereunder. Moreover, the Regional Joint Commissioner and the Joint Commissioner/Executive Officer are different functionaries enjoying different powers.

Vii)The Learned Special Government Pleader strenuously contends that the appointment either directly or by promotion for the scheduled post in a particular Temple is in the exclusive domain of the Trustees. Admittedly, if there is any irregularity or legal violation, the Commissioner, Hindu Religious and Charitable Endowments Department is empowered to intervene under Section 21 of the afore said Act as Revisional Authority.

viii)Apart from the above, the Learned Government Pleader for the Appellant/Endowments Board contends that as far as the present case is concerned, the trust Board has again and again passed resolutions on the application of the First Respondent/Writ Petitioner seeking permission from the Commissioner/Appellant in W.A.1441 of 2014 which is unwarranted and also that, as the General Supervisory Authority, the Commissioner was constrained to verify the correctness, legality and proposals and sent reply.

ix) Added further, as per Section 55 of the Hindu Religious and Charitable Endowments Act, 22 of 1959, the Trustee (or the Fit Person appointed in the absence of Trustee) alone is legally competent to make appointment of office holders and servants in the aforesaid Temple and not the Commissioner who is only a Revisional Authority.

10. The Submissions of the Appellant/Temple in W.A.1448 of 2014:

a) The Learned counsel for the Temple contends that the service conditions are governed by Rules framed under Section 116(2) (XXV) of the Act and G.O.Ms.255 dated 28.06.2010 framed as per the direction of the High Court in W.A.No.1497 of 2005 dated 22.01.2009. Further, in the matter of promotion, it is represented on behalf of the Temple that the rules framed by the Government are binding on the Trustee of the Temple.

b) The Learned counsel for the Temple submits that the decision of the Division Bench of this Court reported in 2000 (2) LW 250 [Assistant Commissioner/Executive Officer, Arulmigu Vana Badrakaliamman Temple, Thekkampattai, Mettupalayam Taluk, Coimbatore District Vs. T.Kumaresan and two others] is not applicable to the facts of the present case because of the reason that the said decision relates to Section 55 of the Act dealing with appointment of Temple servants to be made by the Trustees.

11. The pleas of the First Respondent/Petitioner:

i) The Learned Senior counsel for the First Respondent submits that in the decision of the Division Bench of this Court in 2000 (2) LW 250 [Assistant Commissioner/Executive Officer, Arulmigu Vana Badrakaliamman Temple, Thekkampattai, Mettupalayam Taluk, Coimbatore District Vs. T.Kumaresan and two others] it is clearly observed that as per Section 55 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 the trustees have power to appoint such office holders, and in the absence of such restriction to get prior approval from the Commissioner to exercise the statutory function, insisting such approval by an administrative order cannot be sustained and further, even if the Trustees appoint disqualified persons or persons who should not have been appointed, the Commissioner can always exercise his powers under Section 21 of the said Act to set aside such illegal orders.

ii) Continuing further, the Learned Senior counsel for the First Respondent/Petitioner projects an argument that in the aforesaid decision, it is crystal clear that when a statute prescribed such a procedure for appointment and rectification of the illegal orders if any, the Commissioner by way of administrative orders cannot insist trustees to get prior approval before making appointment.

iii) The Learned Senior counsel for the First Respondent/Petitioner cites the decision of the Hon'ble Supreme

Court in 1986 (2) SCC at page 679 and at Special page 691 to 693 wherein in paras 18 to 20 it is observed as follows:

"18. The first contention urged by learned Counsel for the Appellants was that the Division Bench of the High Court could not issue a writ of mandamus to direct a public authority to exercise its discretion in a particular manner. There is a basic fallacy underlying this submission both with respect to the order of the Division Bench and the purpose and scope of the writ of mandamus. The High Court had not issued a writ of mandamus. A writ of mandamus was the relief prayed for by the Respondents in their writ petition. What the Division Bench did was to issue directions to the Appellants in the exercise of its jurisdiction under Article 226 of the Constitution. Under Article 226 of the Constitution, every High Court has the power to issue to any person or authority, including in appropriate cases, any Government, throughout the territories in relation to which it exercises jurisdiction, directions, orders, or writs including writs in the nature of habeas corpus, mandamus, quo warranto and certiorari, or any of them, for the enforcement of the Fundamental Rights conferred by Part III of the Constitution or for any other purpose. In *Dwarkanath, Hindu Undivided Family v. Income-Tax Officer, Special Circle, Kanpur, and another*, [1965] 3 S.C.R. 536, 540 this Court pointed out that Article 226 is designedly couched in a wide language in order not to confine the power conferred by it only to the power to issue prerogative writs as understood in England, such wide language being used to enable the High Courts "to reach injustice wherever it is found" and "to mould the reliefs to meet the peculiar and complicated requirements of this country." In *Hochtief Gammon v. State of Orissa & Ors.*, [1976] 1 S.C.R. 667, 676 this Court held that the powers of the courts in England as regards the control which the Judiciary has over the Executive indicate the minimum limit to which the courts in this country would be prepared to go in considering the validity of orders passed by the Government or its officers.

19. Even had the Division Bench issued a writ of mandamus giving the directions which it did, if circumstances of the case justified such directions, the High Court would have been entitled in law to do so for even the courts in England could have issued a writ of mandamus giving such directions. Almost a hundred and thirty years ago Martin, B., in *Mayor of Rochester v. Regina*, [1858] E.B. & E. 1024, 1032, 1034 said :

"But, were there no authority upon the subject, we should be prepared upon principle to affirm the judgment of the Court of Queen's Bench. That Court has power by the prerogative writ of mandamus, to amend

all errors which tend to the oppression of the subject or other misgovernment, and ought to be used when the law has provided no specific remedy, and justice and good government require that there ought to be one for the execution of the common law or the provisions of a statute : Comyn's Digest, Mandamus (A) Instead of being astute to discover reasons for not applying this great constitutional remedy for error and misgovernment, we think it our duty to be vigilant to apply it in every case to which, by any reasonable construction, it can be made applicable."

The principle enunciated in the above case was approved and followed in *The King v. The Revising Barrister for the Borough of Hanley*, [1912] 3 K.B. 518, 528-9, 531. In *Hochstetler v. Gammon's Case* this Court pointed out (at page 675) that the powers of the Courts in relation to the orders of the Government or an officer of the Government who has been conferred any power under any statute, which apparently confer on them absolute discretionary powers, are not confined to cases where such power is exercised or refused to be exercised on irrelevant considerations or on erroneous ground or mala fide, and in such a case a party would be entitled to move the High Court for a writ of mandamus. In *Padfield and Others v. Minister of Agriculture, Fisheries and Food and Others*, [1968] A.C. 997 the House of Lords held that where Parliament had conferred a discretion on the Minister of Agriculture, Fisheries and Food, to appoint a committee of investigation so that it could be used to promote the policy and objects of the Agricultural Marketing Act, 1958, which were to be determined by the construction of the Act which was a matter of law for the court and though there might be reasons which would justify the Minister in refusing to refer a complaint to a committee of investigation, the Minister's discretion was not unlimited and if it appeared that the effect of his refusal to appoint a committee of investigation was to frustrate the policy of the Act, the court was entitled to interfere by an order of mandamus. In *Halsbury's Laws of England*, Fourth Edition, Volume I, Paragraph 89, it is stated that the purpose of an order of mandamus "is to remedy defects of justice; and accordingly it will issue, to the end that justice may be done, in all cases where there is a specific legal right and no specific legal remedy for enforcing that right; and it may issue in cases where, although there is an alternative legal remedy, yet that mode of redress is less convenient, beneficial and effectual."

20. There is thus no doubt that the High Courts in India exercising their jurisdiction under Article 226 have the power to issue a writ of mandamus or a writ in

the nature of mandamus or to pass orders and give necessary directions where the Government or a public authority has failed to exercise or has wrongly exercised the discretion conferred upon it by a statute or a rule or a policy decision of the Government or has exercised such discretion mala fide or on irrelevant considerations or by ignoring the relevant considerations and materials or in such a manner as to frustrate the object of conferring such discretion or the policy for implementing which such discretion has been conferred. In all such cases and in any other fit and proper case a High Court can, in the exercise of its jurisdiction under Article 226, issue a writ of mandamus or a writ in the nature of mandamus or pass orders and give directions to compel the performance in a proper and lawful manner of the discretion conferred upon the Government or a public authority, and in a proper case, in order to prevent injustice resulting to the concerned parties, the Court may itself pass an order or give directions which the Government or the public authority should have passed or given had it properly and lawfully exercised its discretion."

iv) He also cites the decision of the Hon'ble Supreme Court in 2000 (8) SCC at page 395 [Badrinath Vs. Government of Tamil Nadu and others] wherein it has been observed that for the proposition that in an appropriate case, Mandamus can be issued for rendering justice and to cut short further proceedings when discretion is exercised improperly or in unlawful manner and repeatedly so.

v) The Learned Senior counsel for the Appellant/Temple in W.A.1448 of 2014 cites the decision of Hon'ble Supreme Court in P.U.Joshi and others Vs. Accountant General, Ahmedabad and others with Union of India and others Vs. Basudeba Dora and others [2003 (2) SCC at page 632 and at Special page 639] wherein in para 10 to 13 it is observed as follows:

"10. We have carefully considered the submissions made on behalf of both parties. Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of policy is within the exclusive discretion and jurisdiction of the State, subject, of course, to the limitations or restrictions envisaged in the Constitution of India and it is not for the statutory tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State. Similarly, it is

well open and within the competency of the State to change the rules relating to a service and alter or amend and vary by addition/subtraction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigencies may need or necessitate. Likewise, the State by appropriate rules is entitled to amalgamate departments or bifurcate departments into more and constitute different categories of posts or cadres by undertaking further classification, bifurcation or amalgamation as well as reconstitute and restructure the pattern and cadres/categories of service, as may be required from time to time by abolishing the existing cadres/posts and creating new cadres/posts. There is no right in any employee of the State to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service.

11. So far as the grievances of the appellants and respondent private parties in the above cases are concerned, they have no sound or valid basis in law. Even before bifurcation on 01.03.1984, the posts of Supervisors, Selection Grade Supervisors as well as Section Officers and Selection Grade Section Officers existed separately. Section Officers were considered senior to Supervisors and promotion to higher posts of Accounts Officers was open to Section Officers only and not to Supervisors. After bifurcation, since there was no cadre of Supervisors in the Audit Offices, the question of accommodating them in the Audit Offices as Supervisors did not arise. With the implementation of the recommendations of the Fourth Central Pay Commission, "Selection Grades" were abolished from all non-gazetted cadres in all departments of the Government of India all over the country, including the Department of IA & AD. As observed by the Bench of CAT at Cuttack which held in favour of the private parties on some other ground, it will be too late in the day to put the clock back by claiming to resurrect the abolished selection grade which was found to be already non functional, too. As noticed supra, the supervisory cadre for A&E Offices w.e.f.

01.04.1987 came to consist of [a]Section Officers-20% (SOGE-qualified hands); [b]Assistant Accounts Officers-80% (SOGE-qualified hands with further experience of three years' regular service in the grade); and [c]Supervisors (unqualified hands-to the extent whenever clauses (a) and (b) were not available only). As noticed earlier, a Supervisor (unqualified) has to undertake SOG Examination to be promoted as Section Officer and thereafter only get promoted as AAO. Merely because the pay scales were similarly granted to these unqualified Supervisors on a par with Section Officers alone apparently due to alteration and restructuring in the set-up of offices-those Supervisors, who had not even passed the SOG Examination, therefore, could neither be appointed on promotion as Section Officers nor could claim equal status with the SOG Examination-qualified persons to straight away get promoted as AAOs, to which the feeder category is only Section Officers and not Supervisors. It is necessary to notice here that Supervisors even earlier could not have been promoted to the higher post of Accounts Officers. In addition to it, the other criterion of three years' regular service as Section Officer, before becoming eligible for consideration to be appointed as AAOs on promotion also must be satisfied. The Cuttack Bench of CAT, which decided the matter and which decision is challenged by the Department in Civil Appeal No.10983 of 1996, committed a grave error in taking for granted equality in status and grade of persons like the respondent private parties on a par with Section Officers with higher qualifications merely because a common seniority list was prepared-- ignoring the fact that it was not for purposes of further promotion but for the limited purpose of giving only the benefit of non-functional selection grade.

12.Consequently, as long as the appellants in Civil Appeal Nos.4679-80 of 1996 and the respondents in Civil Appeal No.10983 of 1996 have not acquired the qualification of passing the SOG Examination and got promoted to the post of Section Officers and put in three years' regular service as such, which alone constituted the feeder category for further promotion as AAOs, there is no scope for according promotion to them despite the fact that there may be vacancies available in AAOs. The Tribunal, which passed the order, which is the subject-matter of challenge in Civil Appeal No.10983 of 1996, was not right in directing the promotion to them in derogation of the statutory rules under which they are ineligible for any such promotion.

13.The plea based on the denial of equal opportunity and equal protection of laws has rightly been rejected in the light of the principles laid down by this Court in the decisions noticed by the Bench of the Tribunal, which rendered the decision in respect of the appellants, who serve in the State of Gujarat. Likewise, it was impermissible for the Bench of the Tribunal at Cuttack to have further directed to give the promotional monetary benefits and other benefits flowing from such promotion when they will not be entitled to any such relief under the statutory rules, which the Tribunal itself could not, on its own, either bypass or alter or give a go-by to or direct the Department to ignore and contravene."

12.In the instant case on hand, the Joint Commissioner/Executive Officer of the Temple had in R.C.No.3064/2006/B1 dated 21.09.2006 had addressed a communication to the Commissioner, Endowments Board (Appellant in W.A.1441 of 2014) inter alia stating that "there is only one post of Junior Engineer (Electrical) in this Temple is available. All the electrical works in the Temple which is in extent of 15 acres are being managed night and day with the service of the aforesaid Junior Engineer (Electrical) without any break with much difficulty. In view of the historical importance of this temple and values of the Temple, a heavy flow of foreign travellers and tourist visiting this Temple during day and night, an additional Junior Engineer (Electrical) is necessary to carry out the electrical work uninterrupted. Further, since Electrical Inspector of the Tamil Nadu Government had expressed the same, the above matter was taken into consideration of the Fit person of the Temple who passed a resolution and forwarded application seeking permission for promotion to the Commissioner, Endowments Board to designate the above said Athitha Gnanam, Electrician as Junior Engineer (Electrical) Grade-I within a time scale of pay of Rs.5500-175-9000 etc.

13.At this stage, a perusal of the contents of the aforesaid communication dated 21.09.2006 of the Joint Commissioner/Executive Officer of the Temple shows that by designating the aforesaid Electrician as Junior Electrical Engineer, Grade-I with the above said scale of pay, this Temple will incur a total salary ratio of 37.13% which is 0.05% more than the salary of the employee of this Temple for the fasali 1415 which is 37.08%. Moreover, in the said communication, it was made clear that instead of creating a new post if the person presently working as Electrician is appointed to the above said post, the Temple will incur much less expenditure and therefore, a request was made to permit the Temple to designate Athithya Gnanam, Electrician as Junior Electrical Engineer, since he is experienced and possessed all the necessary educational qualifications.

14.It is to be relevantly pointed out that the Principal Secretary/Commissioner, Chennai in his communication in Na.Ka.No.424/09-122, dated 03.02.2009 addressed to the Joint Commissioner/Executive Officer of the Temple (Appellant in W.A.No.1448 of 2014) had inter-alia stated that 1)the resolution of the Fit person of the Temple dated 15.09.2006 had stated that the Petitioner may be promoted as Junior Engineer (Electrical). As per G.O.Ms.409, Tamil Development and Religious Endowments Department dated 28.11.2000, serial NO.2, the pay scale of the Junior Electrical Engineer is Rs.5500-175-9000. The above said Government Order does not categorise any post of Junior Engineer (Electrical) Grade-I. The recommendation of the Fit person pertains to creation of a post not found in the Government Order; 2)the Board of trustees by its resolution dated 18.01.2007 had resolved, "to create a new post of Assistant Engineer (Electrical) or Junior Engineer (Electrical) and to request the Commissioner to appoint a person by deputation or direct appointment. The Board of Trustees had not passed a specific resolution that since the Petitioner V.Adhithya Gnanam is working as Electrician of the Temple, the post of Assistant Engineer (Electrical) or Junior Engineer (Electrical) may be filled up by promoting him as per Section 55 of the Hindu Religious and Charitable Endowments Act, 1959. The Board of Trustees alone can decide on the matter of appointment of the employees of the Temple; and 3) since the post of Junior Engineer (Electrical) Grade-I to which the above temple Electrician V.Adhithya Gnanam has requested promotion is not in the temple employees pay roll, the request of the above said employee can be considered only if the above post is newly created and finally, rejected the request of the First Respondent/Petitioner.

15.That apart, the Joint Commissioner/Executive Officer of the Temple (Appellant in W.A.1448/2014) had addressed a communication in Na.Ka.3415/2011/A1 as early as 15.12.2011 among other things mentioning that one Mookasamy, Junior Electrical Engineer of the Temple, Madurai had retired on 31.01.2011 on attaining the age of superannuation and the said post was vacant and Athithya Gnanam is taking care of the aforesaid post as additional charge and further, the First Respondent/Petitioner through his letter dated 11.10.2011 had sought promotion to the vacant post of Junior Engineer (Electrical) on the basis of educational qualification and seniority etc.

16.In this connection, this Court very relevantly points out that the First Respondent/Petitioner had obtained 'C' license as on 21.07.1999 and is in the first place in the seniority list. The proposal to promote him to the post of Junior Engineer (Electrical) in the pay scale of Rs.8300-24900-910-3600 was placed for the consideration of the Fit person and by a resolution of the Fit person of the Temple No.256 dated 10.12.2011 it was resolved to request the Commissioner of the Endowments Board (Appellant in W.A.1441 of 2014) to promote the First Respondent/Petitioner, Electrician to the post of Junior Engineer (Electrical) based on seniority.

17. In reality, the communication of the Joint Commissioner/Executive Officer of the Temple dated 15.12.2011 addressed to the Commissioner, Endowments Board shows that by promoting the First Respondent/Petitioner as Junior Engineer (Electrical) in the pay scale of 8300-24900-910-3600 would incur additional expenditure of Rs.04% and the total expenditure as salary including the above is 33.87%. Also that the aforesaid communication indicates clearly that the income of the temple for fasali 1421 was about Rs.16 crores and the expenditure for salary was 25% and based on the resolution of the Fit person dated 10.12.2011, a request was made to promote the First Respondent/Petitioner to the post of Junior Engineer (Electrical) in the pay scale of Rs.8800-24900-G.P.3600.

18. It is to be pointed out that the Appellant/Endowment Board in his letter dated 06.09.2012 addressed to the Joint Commissioner/Executive Officer of the Temple among things stated that since the next higher post to the Electrician post is the Foreman in the Temple, there is no rule to directly promote the First Respondent/Petitioner to the post of Junior Engineer and therefore, even though the said employee is in possession of all the qualifications, he cannot be directly promoted to the post of Junior Engineer. Further, it was stated that one should be Technical Assistant/Supervisor/Draughtsman and should have five years service experience at the Temple to be promoted as Junior Engineer as per G.O.Ms.255, Tamil Development, Religious Endowments Department dated 28.06.2010 and as such, the request of the Joint Commissioner/Executive Officer of the Temple was declined.

19. It cannot be lost-sight of that the Commissioner of the Endowments Board in the communication in R.C.No.71344/2008/Z2 dated 28.09.2011, addressed to the Joint Commissioner/Executive Officer of the Temple had stated that First Respondent/Petitioner had not acquired the following qualification prescribed to Annexure II to G.O.Ms.255, Tamil Development, Religious Endowments and Information (R.E.4-2) dated 28.06.2010

Junior Engineer (Electrical)	By direct recruitment	Must possess a Diploma in Electrical Engineering or Electrical & Electronics Engineering
	By promotion from the holders of the post of Technical Assistant/Supervisor/Draughtsman	Must have put in five years of service in temples.

and that in terms of the aforesaid Government Order qualification for direct recruitment is Diploma in Electrical Engineering or Electrical or Electronics Engineering. As a matter of fact, the First Respondent is not in the post of Technical Assistant/Supervisor/Draughtsman and further, in terms of G.O.Ms.109, Tamil Development, Culture and Religious Endowments

Department, dated 28.11.2000, the time scale of pay of Electrician is Rs.3050-75-3950-80-4590 and the time scale pay of Foreman is Rs.4000-100-6000 and the next avenue of promotion is to the post of Junior Engineer with a time scale of pay of Rs.5500-175-9000.

20. In addition to the above, the said communication, it is also stated that as per G.O.Ms.257, dated 30.06.2010 the First Respondent/Petitioner present time scale of pay is Rs.4100-12300+1900 Grade Pay and the next promotional post time scale of pay is Rs.5200-15100+2400 Grade pay and the time scale of pay of Junior Engineer is Rs.8300-24900+3700 Grade Pay. Moreover, there is no post as 'Foreman', next avenue of promotion available in the Temple. But, it was recommended to give promotion to the next stage, Junior Engineer (Electrical) which is unacceptable.

21. In effect, the aforesaid communication dated 28.09.2011 of the Commissioner, Endowments Board addressed to the Joint Commissioner/Executive Board of the Temple only points out that considering the resolution dated 15.09.2006 of the Fit person, G.O.Ms.255 dated 28.06.2010, G.O.Ms.409 dated 28.11.2000 and G.O.Ms.257 dated 30.06.2010, the resolution of the Fit person, non suited for promotion cannot be entertained; in the absence of prescribed qualification for promotion as per the Government Order, the claim for double promotion over and above the next stage cannot be entertained and further, there is no recommendation supported by the Trust Board or Fit person by passing resolution for promotion and therefore, the representation of the First Respondent/Writ Petitioner seeking promotion was rejected.

22. It transpires that the Joint Commissioner/Executive Officer of the Temple (Appellant in W.A.1448 of 2014) in the communication in Na.Ka.No.3263/2913/A1 dated 23.01.2014 addressed to the Commissioner of the Endowments Board (Appellant in W.A.1441 of 2014) had among other things stated that as per G.O.Ms.255 dated 28.06.2010 it was mentioned that the next promotional post for Electrician is Foreman-Vehicle and the next promotional post is Junior Electrical Engineer. The post of Foreman-vehilce is related to the Mechanical side. The requisite qualification for the post is Diploma in Automobile-Mechanical Engineering. The prescribed qualification for Junior Electrical Engineer is Diploma in Electrical Engineering or Electrical and Electronics Engineering. The post of Electrician relates to electrical works. It is informed that it is not possible for promoting a person who holds the post of Electrician to the post of Foreman-vehicle.

23. Besides the above, it was made mentioned that as per eligibility list prepared by the Temple, since Adithya Gnanam (First Respondent/Petitioner) had all the qualifications required for the post of Junior Electrical Engineer the subject was placed before the Fit Person for consideration. A resolution No.1260 dated 17.11.2013 mentioned in Ref.No.2 was passed by the Fit Person stating that as per seniority and educational qualification, it is resolved to obtain permission from the Commissioner to give promotion to Adithya Gnanam etc. In short, there will be

additional expenditure of 0.02% and the total salary expenses comes to 20.72% and ultimately, as per the resolution of the Fit Person dated 17.11.2013 as per seniority list and eligibility list prepared for the post of Electrician for the year 2013-2014, a request was made seeking permission for promoting the First Respondent/Petitioner in the vacant post of Junior Electrical Engineer in the scale of pay of Rs.8300-24900-BB10-salary Rs.3600/-.

24. At this stage, this Court worth recalls and recollects the decision of the Division Bench of this Court in S. Babaji Rajah Bonsle Chatrapathy Hereditary Trustee, Palace Devasthanam, Tanjavur Vs. Commissioner, Hindu Religious and Charitable Endowments Department, Madras 600 034 and another [2007 (5) MLJ at page 289] wherein it is held that under Section 55 of the Hindu Religious and Charitable Endowments Act, 1959, having been delegated to the trustee, the Commissioner of the said Department at the time of appointment of office holders and servants in religious institutions cannot interfere with the process of appointment by asking for prior approval based on his general power of superintendence and whether any appointment has been legally made or not, could be verified only after such appointment is made. Further, this Court aptly points out the decision of Arulmighu Vaithianathaswamy Devasthanam rep. by its Hereditary Trustee, Nagapattinam District Vs. The Government of Tamil Nadu, rep. by its Secretary and others [2013 (1) CWC 409] wherein, it is held that the trustee of temple has been given absolute power to make appointment of office holders and servants and observed that no power is entrusted upon the Government to issue an administrative instruction/order with respect to said appointments etc. Moreover in the said decision, it is observed that G.O.Ms.257 dated 30.06.2010 mentioning that the pay and emoluments of office holders and servants of the Temple shall be in consonance with recommendations of VI Pay Commission, being in contradiction to Section 55 and Rule 14 was declared as an invalid one and consequently, it is quashed.

25. In view of the fact that the ingredients of the Section 55 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 unerringly points out that the trustee of the Temple do have absolute power to make appointments to office holders and servants and there is nothing to indicate that the State Government has power to issue administrative instructions or make order in respect of appointment of office holders and servants and also, this Court bearing in mind a primordial fact that G.O.Ms.257, dated 30.06.2010 is only an administrative instruction which is not only in conflict with the Rule 14 of the Service Rules but also in conflict with Section 55 of the Act, comes to an inevitable conclusion that the impugned order dated in R.C.No.71344/2008/Z2 dated 28.09.2011 passed by the Commissioner, Hindu Religious and Charitable Endowments Board (Appellant in W.A.1441 of 2014) addressed to the Joint Commissioner/Executive Officer (Appellant in W.A.1448 of 2014) ultimately rejecting the representation of the First Respondent/Writ Petitioner relating to his promotion as Junior

Engineer (Electrical) is clearly invalid and illegal one and therefore, this Court to prevent an aberration of justice and infurtherance substantial cause of justice, quashes the same.

26.In this connection, this Court significantly points out that ordinarily a Court of Law would not issue a direction for promoting a person from a retrospective date. But on the facts and circumstances of the present case which float on the surface clearly points out that even though the First Respondent/Petitioner is fully qualified and is discharging the duties of Junior Engineer (Electrical) from the date on which he was issued with 'C' license i.e., for very long years in the Temple and also when the Temple Authorities had recommended his case for promotion on two earlier occasions by passing necessary resolution and this Court taking note of the fact that when the First Respondent/Petitioner had approached this Court on previous occasions, issued a direction to consider his case for promotion. At this stage, this Court to prevent an aberration of justice and infurtherance substantial cause of justice and in the interest of Equity, Fair Play, Good Conscience and even as a matter of Prudence, directs the Commissioner, Hindu Religious and Charitable Endowments Board (Appellant in W.A.1441 of 2014) to promote the First Respondent/Petitioner to the post of Junior Engineer (Electrical) on regular basis with effect from 15.09.2006 from the date of resolution passed by the Board of Trustees of the Temple with all attendant, monetary and service benefits on or before 26.03.2015 since the First Respondent/Petitioner is retiring on 31.03.2015.

27.In view of the foregoing reasons, the Writ Appeals are dismissed leaving the parties to bear their own costs. Consequently, connected Miscellaneous Petitions are also closed.

Sd/-
Assistant Registrar
Dated:23.3.15

True Copy

Sub Assistant Registrar

To

- 1.The Commissioner,
Hindu Religious & Charitable
Endowments Board,
Nungambakkam High Road,
Chennai-600 034.

WEB COPY

2.The Executive Officer,
Arulmighu Meenakshi
Sundareswarar Thirukoil,
Madurai.

+2 cc's to The Government Pleader,SR.15951, 15952

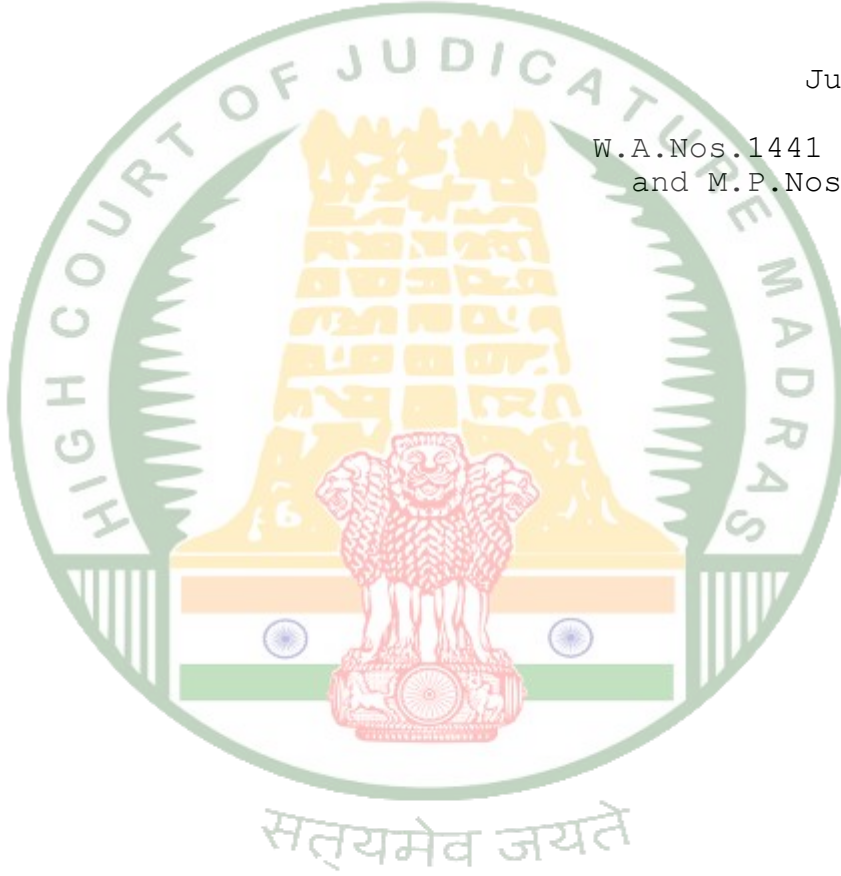
+1 cc to M/s.B.Sivakumar, Advocate,SR.15554.

+1 cc to Mr.K.Sudalaikannu, Advocate,SR.15726.

ug(co)
krd 23/3

Judgment made in

W.A.Nos.1441 & 1448 of 2014
and M.P.Nos.1 & 1 of 2014



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