



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.10.2017

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE M.VENUGOPAL
AND
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.A. (MD) No.1335 of 2017
and
C.M.P. (MD) No.9455 of 2017

K.C.Palanisamy : Appellant

Vs.

1. The Principal Secretary,
Secretariat,
Tourism, Culture and Religious
Endowment Department,
St. George Fort, Chennai.

2. The Commissioner,
Hindu Religious and Charitable
Endowment Department,
Chennai-600 034.

3. C.Kalyani,
Holding the office of Joint Commissioner,
Hindu Religious and Charitable
Endowment Department,
Trichy-6.

: Respondents

PRAYER: Writ Appeal is filed under Clause 15 of Letters Patent, praying to set aside the order dated 14.09.2017, made in W.P. (MD) No.17367 of 2017.

Prayer in WP(MD). 17367/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Quo-Warranto against the 3rd respondent directing her to explain under what authority she holds the office of Joint Commissioner, Hindu Religious and Charitable Endowment Department, Trichy as on date and to continuous to hold the said post.

For Appellant

: Mr.AN.Ramanathan

For Respondents

: Mr.VR.Shanmuganathan,

Special Government Pleader

R1 & R2

**JUDGMENT**

[Judgment of the Court was delivered by **M.VENUGOPAL, J.**]

Mr.VR.Shanmuganathan, Learned Special Government Pleader, takes notice for the Respondents.

2. Heard both sides.

3. According to the Learned Counsel for the Appellant, the Learned Single Judge, while dismissing the Writ Petition in W.P. (MD)No.17367 of 2017 on 14.09.2017, had not considered an important fact that the third Respondent do not have any authority to hold the Office of the Joint Commissioner, Hindu Religious and Charitable Endowments Department, Trichy, as on date when she was transferred from the post with effect from 01.06.2017. That apart, it is projected on the side of the Appellant that the Respondent Nos.1 and 2 should not have retained the third Respondent in the post without issuing relieving order for five months.

4. Continuing further, the Learned Counsel for the Appellant projects an argument that the Respondent Nos.1 and 2 should not have retained the third Respondent in the post of Joint Commissioner, Hindu Religious and Charitable Endowments Department, Trichy, without passing any further orders from 01.06.2017. In such an event, the third Respondent is holding the Office without any authority as on date.

5. The Learned Counsel for the Appellant takes an emphatic stand that the third Respondent ought not to be retained in the post for unlimited period citing administrative reasons.

6. Lastly, it is the submission of the Learned Counsel for the Appellant that the Learned Single Judge should have taken into account of the fact that holding the post of Joint Commissioner, Hindu Religious and Charitable Endowments Department by the third Respondent, after transfer, is without any legal basis.

7. Per contra, it is the submission of the Learned Special Government Pleader appearing for the Respondents that the Learned Single Judge had rightly dismissed W.P.(MD)No.17367 of 2017 filed by the Appellant/Writ Petitioner finding no merits in the said Writ Petition. Apart from that, the Learned Special Government Pleader appearing for the Respondents brings it to the notice of this Court that the Appellant/Writ Petitioner has no right to file the instant Writ Petition because of the simple reason that a Court of Law is to be subjectively satisfied as to the following aspects:

(i) The Office in question is a Public Office; and

(ii) The holder must be an usurper in Law and that too, without any legal authority.

<https://hcservices.accounts.gov.in/hcservices/>

No doubt, this would lead to an enquiry as to whether the



appointment was made in accordance with Law or not. But the fact of the matter is that the third Respondent was transferred by means of a common order dated 01.06.2017 to Myladuthurai as Joint Commissioner of Hindu Religious and Charitable Endowments Department. Moreover, in her place at Trichy, the Joint Commissioner serving at Myladuthurai was posted. Before issuance of the relieving order, it comes to be known that this Court had passed an order in an idol theft case giving some more assignment to the Joint Commissioner serving at Myladuthurai. Consequently, the Joint Commissioner serving at Mayiladuthurai was not relieved.

8. It is to be borne in mind that for issuance of a 'Writ of Quo- Warranto', only when the appointment is made in negation of any statutory rule, the same is per se maintainable in law. However, in the instant case, on the side of the Appellant, it is not brought before this Court that any violation of statutory rules has been committed by the concerned authority. Viewed in that perspective, the present Writ Appeal is devoid of merits and it fails.

9. In fine, the Writ Appeal is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(AE)

/True Copy/

Sub Assistant Registrar

To

1. The Principal Secretary,
Secretariat,
Tourism, Culture and Religious
Endowment Department,
St. George Fort, Chennai.

2.The Commissioner,
Hindu Religious and Charitable
Endowment Department,Chennai-600 034.

+ 1 cc TO Mr.AN.Ramanathan , Advocate in SR No. 83124

SML

AE/KK/SAR2/01.11.2017/3P/4C

**Judgment made in
W.A. (MD) No.1335 of 2017
Dated: 23.10.2017**