

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.04.2018

CORAM

THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.A.No.765 of 2015 and
M.P.No.1 of 2015 and C.M.P.No.4610 of 2016

1.A.Anandakumar
2.S.Sivakumar
3.K.Chandran Appellants/Petitioners

-vs-

1.The Commissioner,
Hindu Religious and Charitable Endowments Department,
Nungambakkam,
Chennai-600 034.

2.The Joint Commissioner,
Hindu Religious and Charitable Endowments Department,
Coimbatore-641 018.

3.The Assistant Commissioner / Executive Officer,
Arulmighu Vanapathra Kaliyamman Thirukovil,
Thekkampatty, Mettupalayam Taluk,
Coimbatore District.

4.The Hereditary Trustee,
Arulmighu Vanapathra Kaliyamman Thirukovil,
Thekkampatty, Mettupalayam Taluk,
Coimbatore District. सत्यमेव जयते ... Respondents

Appeal filed under Clause 15 of the Letters Patent, against the order passed by this Court in W.P.No.14236 of 2013 dated 17.04.2015.

PRAYER IN WP.14236 OF 2013:-

Writ Petition filed Under Article 226 of the Constitution of India praying this court for the issuance of Writ of Certiorarified Mandamus To call for the records relating to the Advertisement/ Notification jointly issued by 3rd and 4th respondents in Na.Ka. No.78/2012/A2 dated 22.4.2013 and to quash the same in so far as the Notification of vacancies to the Post of Assistant Poojari is concerned and consequently direct the

respondents to regularize the service of the petitioner retrospectively in the Post of Assistant Poojari from the date of sanctioning of posts with consequential and attendant benefits including arrears of salary within the time frame to be fixed by this Honourable Court.

For Appellants :: Mr.G.Sankaran

For Respondents:: Mr.M.Maharaja,
Spl.GP, HR & CE for R1 to R3

Mr.S.Subbiah for R4

JUDGMENT

(Delivered by HULUVADI G.RAMESH, J.)

The issue involved in this appeal pertains to the claim of the appellants to be permanently absorbed as Assistant Pujaries, in Arulmigu Vanapathra Kaliamman Thirukovil, Thekkampatty, Mettupalayam Taluk, Coimbatore District, and regularisation of their services from the date of sanction of the posts.

2.The appellants filed W.P.Nos.35356 of 2012, 14236 of 2013 and 1463 of 2014, the first one for quashing the proceedings of the third respondent dated 27.11.2012 published in the newspaper on 07.12.2012 in so far as the post of Parisaragar is concerned and to consequently direct the respondents to absorb them in the post of Assistant Poojari / Parisaragar in the available vacancies with all consequential benefits, the second one for quashing the Notification / Advertisement dated 22.04.2013 issued by the third and fourth respondents for filling up of vacancies to the post of Assistant Poojari and to regularise the services of the appellants in the post of Assistant Poojari, and the third one for a Mandamus to forbear the respondents from interfering with the functioning of the appellants as Assistant Poojari in the fourth respondent temple and to regularise the services of the appellants in the post of Assistant Poojari.

3.The appellants in these appeals seek for regularisation of their services as Assistant Pujaries in Vanabadrakali Amman Temple. Their claim for regularisation is primarily based on three contentions. Firstly, the Assistant Commissioner, HR & CE Department, vide proceedings dated 01.02.1996, granted permission for engaging their services as Assistant Pujaris. Secondly, the proposal submitted by the third respondent to the second respondent dated 10.01.2002 and the proposal forwarded by the second respondent to the first respondent dated 18.04.2002, recommended for sanction of three posts of Assistant Pujaries intended to accommodate the appellants and to absorb them in the regular service and to provide them scale of pay. When these proposals were considered and posts were sanctioned, the

appellants alone should have been accommodated in the said posts without calling for applications from the open market to fill up those posts. Thirdly, the respondents failed to adhere to the directions issued by this Court in its order dated 10.08.2012 in W.P.No.625 of 2012, which was confirmed by the Hon'ble Division Bench in W.A.No.107 of 2013 dated 18.01.2013.

4. With regard to the first contention, the learned single Judge has observed that the order dated 01.02.1996 issued by the Assistant Commissioner, HR & CE Department, Mettupalayam Taluk, is not a proceeding or circular, but merely an Office Order presumably for the purpose of regulating the administration within the precinct of the Temple; the said order states that for the purpose of helping the Pujari (additional charge), he is entitled to engage the services of the three persons namely S.Sivakumar as Assistant Pujari, A.Anandakumar as Assistant Pujari and K.Kalimuthu as Assistant. It was observed that as per the Office Order, Pujari is solely responsible for engaging the services of the three persons and they are required to sign a register maintained by the "Maniam" of the Temple before they enter the Temple and they have to act as per the directions issued by the Pujari and the rules and regulations of the Temple and if they cause any disturbance or interference in the affairs of the Temple, the Temple Authorities will have full right to expel them out of the temple. Further, since the name of the third appellant, viz. K.Chandran does not find place in the Office Order dated 01.02.1996, and that no document is produced to establish that under what circumstances he was permitted to enter the Temple, much less to perform any religious activities, the third appellant was liable to be non-suited, it was observed.

5. In this respect, a proposal was sent by the Assistant Commissioner on 10.01.2002, through the Joint Commissioner, who in turn forwarded a proposal dated 18.04.2002. In the said proposal the names of all the three appellants find place. The Commissioner passed an order on 24.08.2005, permitting to engage the services of the three Assistant Pujaris on daily wages in furtherance to the Government letter No.197 dated 16.08.2005. By the said order of the Commissioner based on Government Order, the Assistant Commissioner/Executive Officer was permitted to appoint three Assistant Pujaries, one ticket seller and one Writer on daily wage of Rs.50/-. The proceedings of the Commissioner dated 24.08.2005 clearly states that the said posts have to be filled up by scrupulously following the Circular issued by the Commissioner by issuing due publication calling for applications. Admittedly, the appellants did not challenge the order dated 24.08.2005, by which the Commissioner granted permission to the Assistant Commissioner/Executive Officer to induct three Assistant Pujaries, one Ticket Seller and one Writer on daily wage of Rs.50/-. The post of Assistant Pujari

was not sanctioned with retrospective effect and was only prospective that too on daily wages to be filled up after following the due process of recruitment. In view of the said circumstance, the learned single Judge has held that the reliance placed by the appellants, on the proposals dated 10.01.2002 and 18.04.2002 as if they have directed to accommodate the appellants in the said post with retrospective effect, deserves to be outrightly rejected.

6. Pursuant to the direction issued by the Commissioner, HR & CE Department dated 24.08.2005, the Hereditary Trustee called for applications and there were totally ten applications received for the post of Assistant Pujari and the Hereditary Trustee by Resolution dated 27.11.2007, considered the applications of only four persons as eligible to be called for oral interview. Out of the four persons, S. Sivakumar, second appellant was called for interview. In so far as the third appellant K. Chandran is concerned, it was stated that as he has crossed the prescribed age limit of 45 years and has not obtained minimum educational qualification, his application was rejected and in so far as the first appellant A. Anandakumar is concerned, it is seen that he has to remit a sum of Rs. 71,817.40 to the Temple, which was noticed at the time of audit and when he was called upon to remit the said amount, it appears that he has threatened the Hereditary Trustee that unless he is permanently appointed as Pujari, he will not remit the amount. Therefore, the third respondent in its Resolution dated 27.11.2007 recorded that the conduct of the first appellant is not conducive for the Temple and therefore rejected his application.

7. With the above observations, the learned single Judge rejected the appellants' claim for regularisation.

8. With regard to the heavy reliance placed by the appellants on the recommendations/proposals of the third respondent dated 10.01.2002 and the second respondent dated 18.4.2002, it was observed by the learned single Judge that those two proceedings are only a proposal and the ultimate authority to sanction the post is the Government. The Government considered the matter and by Government letter No. 197 dated 16.8.2005, did not sanction the posts as requested, but permitted the Assistant Commissioner/ Executive Officer to engage the services of the three Assistant Pujaries, one Ticket Seller and one Writer on daily wage of Rs. 50/-. While communicating the decision of the Government, the Commissioner made it clear that the recruitment/engagement of persons in those posts on daily wages should be after following the due procedure, by calling for applications. Thus, the proposals dated 10.01.2002 and 18.4.2002, did not fructify to be a positive order to

accommodate the appellants in the post, but, what was sanctioned was only posts on daily wages and candidates to be recruited by calling for applications giving wide publicity. Thus, coming to the conclusion that the posts sanctioned were only posts on daily wages and the incumbents for the said posts were directed to be recruited only by way of calling for applications from the open market, the learned single Judge has observed that it did not fructify to be a positive order to accommodate the appellants in the post. Thus, the second contention was rejected.

9. The third contention raised by the learned counsel for the appellants before the writ Court is that the respondents failed to adhere to the directions issued by this Court in its order dated 10.08.2012 in W.P.No.625 of 2012, which was confirmed by the Hon'ble Division Bench in W.A.No.107 of 2013 dated 18.01.2013. The appellants filed the Writ Petition in W.P.No.625 of 2012 praying for issuance of a writ of mandamus to direct the respondents to bring the appellants into regular establishment by appointing them on permanent basis in the post of Assistant Pujaris in the existing vacancies based on the proposal of the second respondent dated 18.4.2002. As on the date when the writ petition was filed, the proposal of the second respondent dated 18.4.2002 was considered and the Commissioner, HR & CE Department passed orders forwarding the same to the Government and the Government in turn by Government Letter No.197 dated 16.8.2005, passed orders sanctioning the posts on daily wages basis. That was implemented by the Commissioner vide proceedings dated 24.08.2005, granting permission to the Assistant Commissioner/ Executive Officer of the Temple to communicate the service of persons in the said post on daily wage of Rs.50/-, by calling for applications giving wide publicity. Thus, on the date when the appellants approached this Court by way of an earlier writ petition, the proposal dated 18.4.2002 was not pending.

10. In this regard, it has to be noted that the appellants have not challenged the order passed by the Government in Government Letter No.197 dated 16.8.2005 or the consequential proceedings of the Commissioner dated 24.8.2005. This is what the learned single Judge has observed in the impugned order. That apart, it is clear that subsequent developments after the proposal dated 18.4.2002 was not placed before the Court. Therefore, the direction issued by this Court in the earlier writ petition having been confirmed by the Hon'ble Division Bench, does not in any manner advance the case of the appellants, more so, when the first respondent complied with the direction and passed the impugned order. In fact, the Hereditary Trustee implemented the directions issued by the Commissioner vide order dated 24.8.2005 and passed the

Resolution calling for applications to fill up the posts on daily wages.

11. In these circumstances, the learned single Judge has also rejected the third contention put forth by the appellants. The learned single Judge has finally held that the appellants have not made out any case for interference of the orders impugned therein and it is open to them to apply for the posts, if the same is advertised and such applications shall be considered on merits and in accordance with law.

12. The learned counsel for the appellants has submitted that the learned single Judge has erred in rejecting the plea of the appellants on the ground that the proceedings of the first respondent dated 24.08.2005 granting permission to the Assistant Commissioner / Executive Officer to fill up the posts of Assistant Poojari following due process of recruitment has not been challenged by the appellants. On the other hand, the proceedings dated 24.08.2005 relates to sanctioning of posts based on the proposal forwarded by the first respondent dated 03.05.2005 as per which the Government issued orders in G.O.Ms.No.197 dated 16.08.2005 in favour of the appellants. He also submitted that the learned single Judge ought not to have diluted or overwritten the orders passed in W.P.No.625 of 2012 dated 10.08.2012 on the premise that the proposals dated 18.04.2002 is no longer pending in view of the orders passed by the State Government dated 16.08.2005. He also submitted that the learned single Judge has erred in stating that there is no positive direction to accommodate the appellants in the post and it was only a direction to consider the proposal. It is also stated that a sum of Rs.71,817.40 was actually paid as salary to the first appellant, while he was working as in-charge Poojari, during the regular Poojari was kept under suspension and the said amount was actually remitted in the bank account of the first appellant by the temple itself. Subsequently, when the money was demanded, the first appellant submitted that he would be in a position to pay back the same after regularisation of service and it cannot be recovered from his salary. When things stand so, it has been wrongly projected in the impugned order as though the first appellant threatened the authorities.

13. Thus, the learned counsel for the appellants prayed for quashing the impugned order and for a direction to regularise the services of the appellants as prayed for in the writ petition.

14. The learned Special Government Pleader appearing for the respondents 1 to 3 as well as the learned counsel for the fourth respondent temple, have submitted that the learned single Judge has considered the matter in proper perspective and has passed

the impugned order and hence the same does not require any interference in the hands of this Court.

15.Now, the present appeal has been filed only challenging the order passed in W.P.No.14236 of 2013. The prayer made in the said writ petition was to quash the Advertisement / Notification jointly issued by the third and fourth respondents in Na.Ka.No.78/2012/A2 dated 22.04.2013 insofar it relates to the notification of vacancies to the post of Assistant Poojari is concerned and to regularise the services of the appellants herein.

16.In respect of the prayer sought for in W.P.No.14236 of 2013 to quash the Advertisement / Notification jointly issued by the third and fourth respondents in Na.Ka.No.78/2012/A2 dated 22.04.2013 insofar it relates to the notification of vacancies to the post of Assistant Poojari is concerned, it has to be pointed out that the appellants should have challenged the order dated 27.03.2013 issued by the Commissioner, holding that the vacancies have to be filled up by calling for applications giving wide publicity by way of advertisement in the newspapers, against which the appellants were also permitted to apply for the post and if found eligible, it was observed that they will be considered. The said order was passed pursuant to the order passed by a Division Bench of this Court in W.A.No.107 of 2013 on 18.01.2013 dismissing the claim of the Hereditary Trustee, holding that it is premature. But instead of challenging the said order dated 27.03.2013, the appellants have questioned the Notification dated 22.04.2013, which is, in our considered opinion, is not correct.

17.As rightly held by the learned single Judge, as on the date when W.P.No.625 of 2012 was filed by the appellants, the proposal of the second respondent dated 18.04.2002 was considered, which culminated in the passing of proceedings dated 24.08.2005, granting permission to the Assistant Commissioner / Executive Officer of the Temple to communicate the service of persons in the said post on daily wage of Rs.50/- by calling for applications giving wide publicity. In this regard, the Government passed an order vide Letter No.197 dated 16.08.2005, sanctioning the posts on daily wages basis. The appellants have neither challenged the said order nor the consequential proceedings issued thereto.

18.Further, it is seen from the records that the first appellant A.Anandakumar was found unsuitable on account of his conduct and having arrears of huge sums of money to the Temple, the third appellant K.Chandran was found to be ineligible on account of over age and the second appellant S.Sivakumar was alone found to be eligible to be considered, while filling up of

the posts on daily wages by the Hereditary Trustee implementing the directions issued by the Commissioner, in the year 2005.

19.The learned single Judge, on a detailed analysis of the matter, has passed the impugned order rejecting the claim of the appellants, which we are not inclined to interfere.

20.Today, it is submitted by the learned counsel for the appellants that the first appellant is ready to pay the arrears due to the Temple by him.

21.In view of the above stated circumstances, while not interfering with the impugned order, we hereby direct the appellants to appear before the Controlling Authority, ie., the Commissioner of Hindu Religious and Charitable Endowments Department, Chennai, the first respondent herein, and submit a representation raising all contentions, for considering them for regularisation in the post of Assistant Pujari along with other persons, who shall forward the papers to the Government, and it is ultimately the Government to consider the issue and take a decision in accordance with law, as to the manner in which they may be regularised, or otherwise, as per the provisions contained in the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959.

22.The writ petition is disposed of accordingly. No costs. Consequently the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-ii)

//True Copy//

Sub Assistant Registrar

KM

To

- 1.The Commissioner,
Hindu Religious and Charitable Endowments Department,
Nungambakkam,
Chennai-600 034.
- 2.The Joint Commissioner,
Hindu Religious and Charitable Endowments Department,
Coimbatore-641 018.

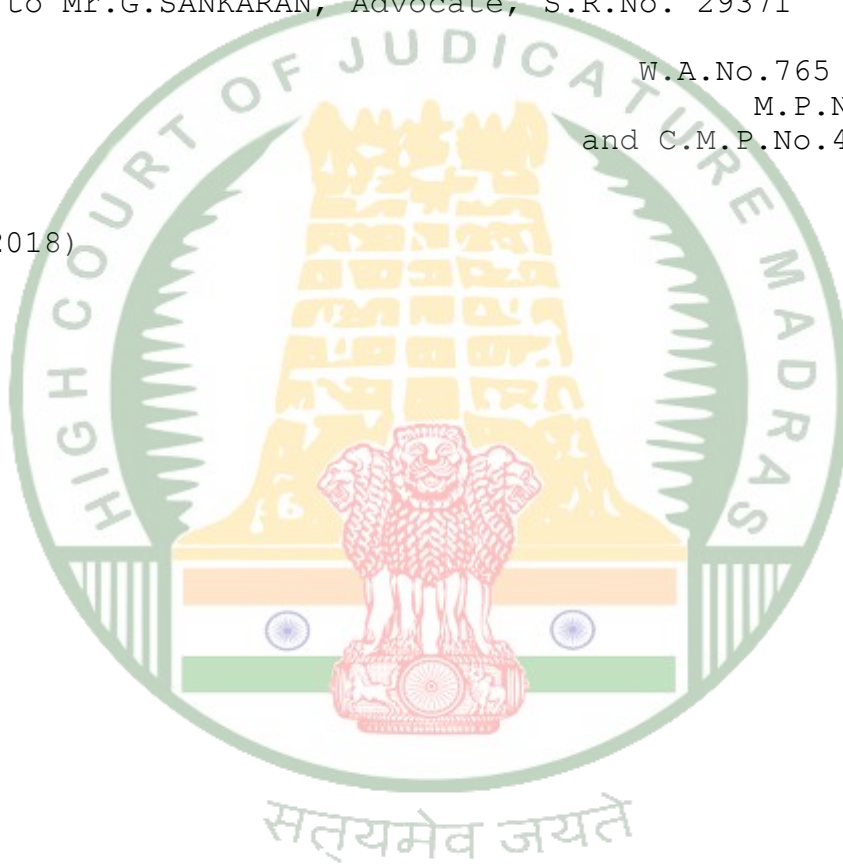
3.The Assistant Commissioner / Executive Officer,
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Thekkampatty, Mettupalayam Taluk,
Coimbatore District.

4.The Hereditary Trustee,
Arulmighu Vanapathra Kaliyamman Thirukovil,
Thekkampatty, Mettupalayam Taluk,
Coimbatore District.

+1cc to Mr.G.SANKARAN, Advocate, S.R.No. 29371

W.A.No.765 of 2015 and
M.P.No.1 of 2015
and C.M.P.No.4610 of 2016

GJ(CO)
TR(17/05/2018)



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