IN THE HIGH COURT OF JUDICATURE AT HYDERABAD

FOR THE STATE OF TELENGANA AND THE STATE OF ANDHARA PRADESH

***

W.P.No.38118 of 2018

Between:

1. A.B.Seshadri, S/o.Sri A.B.Gopalachary, Aged 66 years, Occupation: Hereditary Archaka, Sri Padmavathi Ammavari Temple, Tiruchanoor, Tirupati, Chittoor District, AP, Resident of H.No.8/95, Sannidi Street, Tiruchanoor Village & Post, Tiruchanoor, Chittoor District and another

……… Petitioners.

And

1. The State of Andhra Pradesh, Represented by its Secretary, Endowments Department, Secretariat Buildings, Velagapudi, Guntur District and others.

…… Respondents.

Date of Judgment pronounced on : 12-12-2018

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

1. Whether Reporters of Local newspapers May be allowed to see the judgments? : Yes/No

2. Whether the copies of judgment may be marked to Law Reporters/Journals: : **Yes**

3. Whether The Lordship wishes to see the fair copy Of the Judgment? : Yes/No

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

W.P.No.38118 of 2018

%12-12-2018

#1. A.B.Seshadri, S/o.Sri A.B.Gopalachary, Aged 66 years, Occupation: Hereditary Archaka, Sri Padmavathi Ammavari Temple, Tiruchanoor, Tirupati, Chittoor District, AP, Resident of H.No.8/95, Sannidi Street, Tiruchanoor Village & Post, Tiruchanoor, Chittoor District and another

……… Petitioners.

Versus

$1. The State of Andhra Pradesh, Represented by its Secretary, Endowments Department, Secretariat Buildings, Velagapudi, Guntur District and others.

…….Respondents.

< GIST:

> HEAD NOTE:

!Counsel for the Petitioners : Sri P. Venugopal, learned Senior Counsel for Sri T. Balaji.

^Counsel for respondent-1 : Learned Government Pleader for Endowments.

^Counsel for respondents-2&3 : Smt.K.Lalitha, Standing Counsel

? Cases referred

1. AIR 1996 SC 1765
2. (1997) 6 SCC 189
3. 1997 Supp(1) SCR 328
4. (2004) 4 S.C.C. 661
5. (1997) 5 SCC 388

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

W.P.No.38118 of 2018

ORDER :

This Writ Petition has been filed by petitioners assailing proceedings No.TS3/18528/AEO(G)/2010 dt.27-06-2018 issued by the Tirumala Tirupathi Devasthanam (for short "TTD/2nd respondent").

2. Archakatvam in the Sri Padmavathi Ammavari Temple, Tiruchanoor was being done for generations together by members of four families i.e. (1) M.G.Chari family, (2) A.B.Govindachari family, (3) A.C.Chakravarthi and his son A.V.V.Srinivasan family and (4) N.V.Krishnaswamy family in accordance with the custom, usage and tradition and they would perform daily rituals and other kainkaryams in the Temple.

3. Late A.B.Gopalacharyulu and late M.G.Chari were admittedly hereditary Archakas/Mirasidars of the above Temple prior to 1987 and had been working till 1997.

4. The 1st petitioner is the son of late A.B.Gopalacharyulu and member of A.B.Govindachari family and the 2nd petitioner is the son of late M.G.Chari. They are aged 66 years and 68 years respectively. So petitioners belong to the families of erstwhile hereditary Archakas/ Mirasidar Archakas.

5. The petitioners were appointed as Sambhavana Archakas in Sri Padmavathi Ammavari Temple, Tiruchanoor vide proceedings

Roc.No.TS3/28151/AEO(G)/1987 dt.10-02-2006 of the Executive Order of the TTD.

6. By the impugned order, the Executive Officer of the TTD, following Rule 12(2) of T.T.D. Employees Service Rules,1989, which were framed vide G.O.Ms.No.1060 Revenue (Endts.I) Department dt.24-10-1989 and a Trust Board Resolution of the 2nd respondent No.50 dt.16-05-2018, directed that petitioners had attained 65 years of age, and they should be retired from service as Sambhavana Archakas in the above Temple with immediate effect.

7. This action of the TTD in treating petitioners as employees of the TTD and applying to them the Service Rules of it's employees which provide superannuation at 65 years of age, is assailed in this Writ Petition.

BACKGROUND FACTS

POSITION OF HEREDITARY ARCHAKAS PRIOR TO 1966 TILL 1987

8. It is pertinent to note that the erstwhile Madras Charitable and Hindu Religious Institutions and Endowments Act,1951 or the A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1966 (Act 17 of 1966) had maintained the custom, usage and honours that hereditary archakas were entitled to.

9. Initially, their services were governed by Tirumala Tirupathi Devasthanams Hereditary Servants Rules, 1956 notified vide G.O.Ms.No.2035, Education and Endowments dt.01-09-1956 framed under the Madras Charitable and Hindu Religious Institutions and Endowments Act, 1951 which prescribed that every hereditary servant shall be a married person more than 25 *but less than 65 years of age* who is physically fit and not bodily disabled or maimed.

POSITION OF HEREDITARY ARCHAKAS AFTER ACT 30 OF 1987 TILL 1997

10. But the A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1987 (Act 30 of 1987) abolished hereditary rights of Mirasidars, Archakas and other Office holders and servants in Section 34 of the Act. It stated :

> *"**34. Abolition of hereditary rights in Mirasidars, Archakas, and other office holders and servants** : -*
>
> *(1) (a) Notwithstanding anything in any compromise or agreement entered into or scheme framed or sanad or grant made or judgment, decree or order passed by any Court, Tribunal or other authorities prior to the commencement of this Act and in force on such commencement, all rights, whether hereditary, contractual or otherwise of a person holding any office of the Peddajeeyanagar, Chinna Jeeyangar, a Mirasidar or an Archaka or Pujari or any other office or service or post by whatever name it is called in any religious institution or endowment shall on the commencement of this Act stand abolished.*
>
> *(b) Any usage or practice relating to the succession to any office or service or post mentioned in clause (a) shall be void :*
>
> *(c) All rights and emoluments of any nature in cash or kind or both accrued to and appertaining to any office or service or post mentioned in clause (a) and subsisting on the date of commencement of this Act shall on such commencement stand extinguished.*

> (2) *Every office holder and servant mentioned in Clause (1) of sub-section (1) holding office as such on the date of commencement of this Act shall notwithstanding the abolition of the hereditary rights, continue to hold such office or post on payment of only such emoluments and subject to such conditions of service referred to in sub-sections (3) and (4) of Section 35."*

11. The A.P. Charitable and Hindu Religious Institutions and Endowments Archakas and other Office Holders and Servants Qualifications and Emoluments Rules, 1987 were framed by the State Government vide G.O.Ms.No.1171, Revenue (Endts.I) dt.16-12-1987. Part-I thereof dealt with Archakas and other Office Holders and Servants of Charitable Religious Institutions *other than* the TTD and Part-II thereof dealt with those employed in TTD *mentioned in Schedule-III and IV*. Para-8 of Part-II stated that every person holding the post mentioned in the Schedule-III shall retire on attaining the age of 65 years. Schedule-III mentioned 28 posts such as Archakam Supervisor, Archaka Grade-I, Archaka Grade-II, Archaka Grade-III etc.

12. Later the TTD Employees Service Rules, 1989 were also framed vide G.O.Ms.No.1060, revenue (Endowments-I) department dt.24.10.1989. These rules provided for pay and allowances, appointment, method of recruitment, fixation of strength of establishment and superannuation of employees of TTD (Rule 12). The Rule 12 stated:

> *"12. Superannuation – The age of superannuation of every employee of Tirumala Tirupathi Devasthanams shall be regulated by*

> *the provisions of the Andhra Pradesh Public Employment (Regulations of Superannuation) Act, 1984 (Act 23 of 1984) amended from time to time."*

In the Temple Administration Service created under the above Rules, posts of Archaka Grade-I, Archaka Grade-II, Archaka Grade-III etc were created and mode of recruitment and qualifications to be possessed were prescribed.

13. The validity of Section 34 of Act 30 of 1987 was challenged in the Supreme Court, but the same was upheld by the Supreme Court in **A.S.Narayana Deekshitulu Vs. State of A.P.**[1]. The Supreme Court however directed the State to determine *service conditions* of Archakas and other office holders, their scale of pay and other emoluments according to the grade of the Temple in which they work and to regulate the period of duty and of service. It directed the State Government to constitute a Committee consisting of Additional Commissioner, Endowments Department, a Joint Secretary/Deputy Secretary (Endowments) Revenue Department, two representatives of the Archakas to be nominated by their associations and one representative of other officer/servants of the Temples. The Committee was to consider the views and material placed before it by the Archakas before the formulation of the scheme and was to undertake an in-depth study into the schemes and formulate it; and the Government would take a decision on the said scheme so formulated and would place the same for approval by the Supreme Court within 6 months.

[1] AIR 1996 SC 1765

14. Thereafter such a scheme was formulated by a Committee constituted by the Government which was also approved by the Supreme Court on 09-05-1997 in **Sri Divi Kodandarama Saram and others Vs. State of A.P. and others**[2] and in another order in **A.S.Narayana Deekshitulu v. State of Andhra Pradesh**[3]**.** This scheme was notified by the State Government in G.O.Ms.No.855 Revenue (Endts.I) Department dt.08-10-1997. The said G.O. rationalized the pay scales of Archakas and Mirasidars of TTD *but contained no reference to age of retirement of hereditary Archakas who were to be employed as Archakas.*

15. The correctness of the judgment in **A.S.Narayana Deekshutulu** (1 supra) was questioned in Review petitions filed in the Supreme Court and a two-Judge Bench of the Supreme Court in **A. Ramaswamy Dikshitulu and others vs. Government of Andhra Pradesh and others**[4] referred the matter to a larger Bench.

16. Admittedly, the erstwhile Archaka Mirasidars in TTD Temples were continuing on Sambhavana basis and even after the abolition of the Mirasi system w.e.f. 22-03-1996, and Sri M.G. Chari, Sri A.B. Gopalacharyulu, Sri A.B.Bhaktavatsalam, Sri A.V.Srinivasan and Sri A.B. Krishnaswamy had worked as Sambhavana Archakas.

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[2] (1997) 6 SCC 189
[3] 1997 Supp(1) SCR 328
[4] (2004) 4 S.C.C. 661

POSITION OF MEMBERS OF HEREDITARY ARCHAKA FAMILIES AFTER 1997 UPTO 2006

17. But the above referred persons, who are members of hereditary Archaka families, were suddenly stopped by the TTD from discharging their duties as hereditary Archakas in 1997.

18. So, I.A. No.4 of 1997 was filed by Sri M.G.Chary, father of the 2nd petitioner, and others before the Supreme Court contending that after the judgment of the Supreme Court in **A.S.Narayana Deekshitulu** (1 supra), they were suddenly dispossessed of all their religious duties and other custodial responsibilities, and are not being even permitted to enter the Temple, and a scheme may be framed with similar directions in their regard too which would be applicable to the TTD.

19. On 09-05-1997 the Supreme Court decided the said I.A. in **M.G.Chari and others Vs. Government of A.P. and others**[5] and held that in spite of such abolition of hereditary Mirasidar rights, the Mirasidar's honours which they are entitled to as per custom, are not affected and the performance of religious ceremonies, poojas and worship in religious institutions according to Sampradayams and Agamas followed therein is protected, and that the secular administration shall vest in the TTD which does not interfere with religious or spiritual functions including those relating to performance of religious worship, ceremonies etc. therein and *they are required to be conducted through the Archakas who have been rendering service*

[5] (1997) 5 SCC 388

prior to the abolition. The Court directed that if the Archakas/Mirasidars are desirous of continuing performance of poojas and rituals in their capacity as Archakas, in terms of gradation of Archakas like the one approved in respect of the TTD employees, they may be appointed in the respective gradations by being treated as employees of the Ammavaru Devasthanam and they can perform pooja and religious ceremonies in the said Temple; and the Court directed former Archaka Mirasidars to make representations to the TTD and the Government which were directed to look into the matter and resolve the problem.

20. But the request of the Mirasidars had not been considered by the TTD then.

21. Later A.B.Kesari Kumar and A.B.Maruthi Prasad, two members of the four families of hereditary Archaka families in Sri Padmavathi Ammavaru temple, Tiruchanoor filed W.P.Nos.7311 of 2001 and 8118 of 2001 in this Court seeking implementation of the judgment in **M.G.Chari and others** (5 supra). It is stated in the counter of the respondents that in C.C.No.1004 of 2004, the High Court directed petitioners therein to submit detailed representation to the TTD and directed the latter to examine their cases.

POSITION AFTER 2006

22. The TTD then took a decision in 2006 to engage erstwhile Mirasidars who had worked previously during their Vanthu (turn) periods and so the petitioners were appointed on 10-02-2006 on Sambhavana basis as mentioned above.

AMENDMENT ACT 33 OF 2007 TO ACT 30 OF 1987

23. In 2007, sub-Section (3) of Section 34 was introduced by way of amendment to Act 30 of 1987 by Act 33 of 2007 w.e.f. 03-01-2008 enabling qualified members of erstwhile hereditary Archaka families to continue to have the right of Archakatvam. It states:

> *"(3) Nothwithstanding anything contained in sub-sections (1) and (2) of this section, the qualified members of those Archaka families which were continuing in archakatvam service under the provisions of the repealed the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1966 and recognized as such by the competent authority shall continue to have the right to archakatvam without having any right to emoluments such families used to receive earlier under Act 17 of 1966. However, they shall receive emoluments in accordance with the scheme under Section 144."*

24. Section 144 was also amended by Act 33 of 2007 w.e.f. 03.01.2008 introducing two provisos. While the main part of Section 144 abolished shares in Hundi and other rusums, the 2nd Proviso empowered the Commissioner to frame a separate scheme stipulating conditions of service and payments of emoluments to the Archakas, Office holders and servants of the Institution.

25. Thus, notwithstanding the abolition of hereditary rights in Mirasidar Archakas, if an Archaka was a member of an Archaka family, and was qualified to be an Archaka and was continued as an Archaka under Act 17 of 1966, and was also recognized as Archaka by competent authority, he was held entitled to have the right of Archakatvam but not to the emoluments which he had received earlier under Act 17 of 1966. He would get only those emoluments laid down in a scheme to be framed by the Commissioner of Endowments under Section 144.

STATEMENT OF THE POSITION AFTER ACT 33/2007 BY THE SUPREME COURT ON 19.2.2013

26. After these amendments were made to Section 34 and to Section 144 of the Act 30 of 1987 by Act 33 of 2007, some of the review petitions seeking review of the decision in **A.S. Narayana Dikshitulu** (1 supra) were dismissed as infructuous / withdrawn on 19.02.2013 by a Three-Judge Bench of the Supreme Court observing that during the pendency of the review petitions, the State of Andhra Pradesh, by making such amendments to the principal Act (introducing sub-section(3) to Sec34 and adding 2nd proviso to Sec.144 by Act 33 of 2007) had *restored the status of Archakas as was obtained prior to the enactment of Act 30 of 1987*. However, it was made clear that the said order will not affect the reference to the larger Bench made in **A. Ramaswamy Dikshitulu** (4 supra). This order copy has been filed by the petitioners as Ex.P.11 along with the Writ Petition.

27. In 2012, G.O.Ms.No.611 Revenue (Endowments.III) Department dt.16.10.2012 was issued by the Government of Andhra Pradesh amending Tirumala Tirupathi Devasthanams Employees'

Service Rules, 1989. Under the said G.O., posts of Potu Supervisor, Potu Worker (Junior) in T.T.D. Employees' Service Rules were included. In addition, in Rule 12 of G.O.Ms.No.1060, Revenue (Endts.I) department dt.24.10.1989, the original rule was numbered as sub-rule (1) and a sub-rule numbered as sub-rule (2) was added which stated "*In respect of religious staff working in T.T.D. temples covered in G.O.Ms.No.1171, Revenue (ENDTS.I) Department, dt.16.12.1987, the age of retirement is 65 years*".

<u>Contentions of petitioners</u> :

28. Senior Counsel Sri P. Venugopal, appearing for Sri T. Balaji, counsel for the petitioners, raised the following contentions :

(a) The impugned order passed by 2nd respondent asking the petitioners to retire at the age of 65 years as per the T.T.D. Board Resolution No.50 dt.16.05.2018 is arbitrary, unconstitutional, without any jurisdiction and violative of rights of Archakas guaranteed by Articles 14 and 26 of the Constitution of India;

(b) There are no service rules governing hereditary Archakas and there can never ever be such rules since right to Archakatvam is a property right and cannot be deprived, save by authority of law. So, there can be no superannuation to the hereditary Archaka on the basis of age, and as long as one is physically fit he can continue performing Archakatvam duties; and on such retirement due to old-age or other health reasons, he shall nominate his successor, who shall then continue as Archaka;

(c) Hereditary Archakas were never appointed by anybody including the T.T.D. and there is no employer – employee relationship between the Archakas and the T.T.D. and in a resolution No.02 dt.17.07.2010 passed by the Trust Board of the T.T.D., it had approved the proposal of payment of remuneration to hereditary and non-hereditary Archakas wherein it was recorded that *there will be no employer – employee relationship*; and Archakas are not recognized as employees and no scales of pay were made applicable to them.

(d) That while passing impugned Resolution no.50 dt.16.05.2018, the Trust Board of the T.T.D. had made no reference to Resolution No.2 dt.17.07.2010, and on the basis of Resolution no.50 dt.16.05.2018, the impugned order has been passed by the 2nd respondent;

(e) That in G.O.Ms.No.295 Revenue (ENDTS.III) Department dt.06.06.2018, while regularizing the services of certain non-mirasi Archakas of the Sri Tirumala Temple and also Sri Padmavathi Ammavari Temple, it was recorded in para no.5 thereof that "*former Mirasi archakas are not keen on joining as regular employees against the sanctioned post of Archakas*", and in para no.3 it was also recorded that in spite of several notices issued to erstwhile Mirasidars to open their service registers to appoint them against posts sanctioned under G.O.Ms.No.855, Revenue (ENDTS.I) Department, dt.08.10.1997, "*no one came forward to join in T.T.D. on regular time scale of pay and they are continuing on Sambhavana basis*". So it is contended that the Trust Board of the T.T.D., which is subservient to the Government, is bound by the said view of the Government and cannot take a contrary view. Counsel contends that the view of the Government in G.O.Ms.No.295 Revenue (ENDTS.III) Department dt.06.06.2018 supports stand of the petitioners that 'there is no employer-employee relationship' between the T.T.D. and the petitioners;

(f) Petitioners contend that G.O.Ms.No.1171 dt.16.12.1987 was superseded by G.O.Ms.No.855 dt.08.10.1997 and since the petitioners did not join against the posts sanctioned under G.O.Ms.No.855 dt.08.10.1997 and were not being given regular time scale of pay and are continuing only on Sambhavana basis, they cannot be treated as employees of the T.T.D., and consequently any age of superannuation prescribed for employees of T.T.D., more particularly by sub-Rule (2) of Rule 12 in G.O.Ms.No.1060, Revenue (ENDTS.I) Department dt.24.10.1989, will not apply to the petitioners;

(g) G.O.Ms.No.611 dt.16.10.2012 has no relevance to persons performing Archakatvam Services and only deals with Potu

Workers and not to Archakas and the said G.O. introducing Sub-Rule (2) of Rule 12 in G.O.Ms.No.1060, Revenue (ENDTS.I) Department dt.24.10.1989, could not have been applied by respondents to the petitioners;

(h) In 2013, when one of the Archakas Sri A.B. Bhakthavatsala, S/o.Late A.B. Govindachari was sought to be retired on the ground of age, he approached this Court and filed WP.No.6326 of 2013; and in WPMP.No.7904 of 2013 therein, on 4.3.2013 this Court permitted him to render Archakatvam Service in Sri Padmavathi Ammavari Temple, Tiruchanur without claiming any emoluments including Sambhavana; and the T.T.D. had issued proceedings ROC.No.TS3/18528/2010 dt.20.03.2013 accepting the said order and permitted him to render such services; and that he died subsequently; and

(i) That if T.T.D. is allowed to retire hereditary Archakas on the ground that they attained the age of 65 years, in a span of about 4 or 5 years, there will be no hereditary Archakas, and it would amount to the T.T.D. overruling the law made by the State Legislature in Act 33 of 2007.

<u>Contentions of the counsel for T.T.D.</u>:

29. In the counter of the T.T.D. (2nd respondent) it was admitted that four Mirasi families rendered Archakatvam in Sri Padmavathi Ammavari Temple, T.T.D., Tiruchanur; those persons were aware of the customs, usage and tradition with regard to performance of daily rituals and other kainkaryams of the said Temple.

30. After referring to the judgment in **A.S. Narayana Deekshithulu** (1 supra), it is stated in para no.5 that G.O.Ms.No.855 Revenue (ENDTS.I) Department dt.08.10.1997 was issued creating posts of Archakas and pay scales to T.T.D. Temples, *but* the erstwhile Archaka Mirasidars in T.T.D. Temples are continuing on Sambhavana basis.

31. It is stated that consequent upon the abolition of the Mirasi system w.e.f. 22.03.1996, Sri M.G. Chary, Sri A.B. Gopalacharyulu, Sri A.B. Bhakthavatsalam, Sri A.V. Srinivasan and Sri A.B. Krishnaswamy were working as Sambhavana Archakas in the Sri Padmavathi Ammavari Temple, Tiruchanur; and though there was a direction in **M.G. Chary and others** (5 supra) to consider their request for continuance, it was not considered, but after orders in C.C. No.1004 of 2004, petitioners were appointed on 10.02.2006.

32. It is stated that after issuance of G.O.Ms.No.855 Revenue (ENDTS.I) Department dt.08.10.1997, *no additional posts of Archaka were sanctioned to Sri Padmavathi Ammavari Temple.*

33. It is contended that Rules framed under G.O.Ms.No.1171 dt.16.12.1987 would apply to hereditary Archakas belonging to the above families including the petitioners and the age of retirement prescribed therein would apply to them also.

34. It is contended that even under Act 33 of 2007, the Mirasi system has not been restored in respect of Archakas.

35. It is contended that in accordance with Section 144 as amended by Act 33 of 2007, Resolution No.02 dt.17.07.2010 was issued resolving to extend package under Section 144 to erstwhile Mirasi Archakas and their male progenies also, that this was approved by the A.P. Dharmika Parishad also as mandated by Section 144.

36. It is also contended that as per G.O.Ms.No.611 dt.16.12.2012, method of recruitment and qualifications for the post of Potu Worker (Junior), Potu Worker (Senior) and Potu Supervisor were prescribed and age of retirement was fixed as 65 years in respect of all religious staff working in T.T.D. covered by G.O.Ms.No.1171 dt.16.12.1987 and so the petitioners were rightly retired on attaining the age of 65 years pursuant to Resolution No.50 dt.16.05.2018, and in their place other persons were appointed on 06.08.2018.

37. It is admitted in para no.9 that engagement of the petitioners by T.T.D. in Sri Padmavathi Ammavari Temple in 2006 vide proceedings dt.10.02.2006 is not on regular basis but on payment of Sambhavana.

38. Reference is also made to the T.T.D. Hereditary Servant Rules, 1956 framed under the Madras Charitable and Hindu Religious Institutions and Endowments Act, prescribing that they should not be more than 65 years of age.

39. It is stated that WP.No.6326 of 2013 filed by Sri A.B. Bhakthavatsalam, an erstwhile Archaka Mirasidar of Sri Padmavathi Ammavari Temple, Tiruchanur became infructuous on his death on 19.02.2015, though he had an interim order to permit him to render Archakatvam service even after he completed 65 years without claiming any emoluments including Sambhavana.

40. It is stated that by a Resolution No.277 dt.24.07.2018 the Board of the T.T.D. had resolved to pay 48 months Sambhavana with a ceiling limit of Rs.20 lakhs as one time financial assistance to the retired Archakas including petitioners and the same was remitted to their bank accounts after deducting T.D.S.

41. It is contended that Resolution No.2 dt.17.07.2010 did not apply to the petitioners.

42. Smt. K. Lalitha, the counsel for T.T.D. reiterated the above contentions.

<u>The consideration by this Court :</u>

43. I have already set out the background facts and the contentions of the parties.

44. On consideration of the material on record, I am of the opinion that there is a clear distinction between Archakas from the hereditary families of the temples managed by the TTD *and* other Archakas who do not belong to the said category/other employees of the TTD; that the four families of hereditary Archakas were not treated as employees of the TTD; and there is no relationship of master and servant between the TTD and persons like the petitioners. Hence Rules applicable regarding superannuation of TTD employees cannot apply to them. I shall give my detailed reasons as under.

45. It is not in dispute that the petitioners belong to the four families of Archaka Mirasidars (hereditary Archakas) and they had been appointed as Archakas in Sri Padmavathi Ammavari Temple, Tiruchanur on 10.02.2006 on Sambhavana basis and they had completed the age of 65 years. By the impugned order dt.27-6-2018, they have been retired by the 2nd respondent/TTD on the ground that they completed 65 years of age.

46. The question to be considered is "*whether this action of the TTD is valid in law?*"

(a) G.O.Ms.NO.2035, Education and endowments dt.1-9-1956 notifying the TTD Hereditary Servants Rules ,1956 cannot apply to petitioners

47. G.O.Ms.NO.2035, Education and Endowments dt.1-9-1956 notifying the TTD Hereditary Servants Rules,1956 no doubt stated that every hereditary servant shall be less than 65 years of age. But the said rules cannot be applied to petitioners because:

(a) These Rules had been framed under the Madras Hindu Religious and Charitable Endowments Act,1951 which statute ceased to apply to the TTD after the A.P. Hindu Religious and Charitable Endowments Act,1966 and the Tirumala Tirupathi Devasthanams Act,1979 came to be enacted.

(b) In any event, once Sec.34 (1) came into operation after Act 30/1987 was enacted, abolishing hereditary rights of Archakas and other office holders, they would no longer operate.

(c) Also, if the said rules applied to erstwhile Archakas like the petitioners who hail from hereditary Archaka families, the Supreme Court in its order in 1996 in **A.S. Narayana Deekshitulu** (1 supra) would not have directed the State Government to formulate a scheme for 'erstwhile' hereditary Archakas in regard to their 'service conditions, scale of pay and other emoluments'.

(d) It is not as if the Supreme Court was not aware of G.O.Ms.NO.2035, Education and Endowments dt.1-9-1956 notifying the TTD Hereditary Servants Rules,1956. Therefore, the said G.O. would not apply to persons like the petitioners who hail from families of hereditary Archakas in the T.T.D. Temples.

So contention of the counsel for respondents that G.O.Ms.No.2035, Education and Endowments dt.1-9-1956 notifying the TTD Hereditary Servants Rules, 1956 would apply to petitioners, has no force and is rejected.

(b) G.O.Ms.No.1171, Revenue (ENDTS.I) Department dt.16.12.1987 and G.O.Ms.No.1060, Revnue (Endts.I) department dt.24.10.1989 relied upon by TTD inapplicable to petitioners :

48. It is no doubt true that para no.8 in Part-II of G.O.Ms.No.1171, Revenue (ENDTS.I) Department dt.16.12.1987 framing the A.P. Charitable and Hindu Religious Institutions and Endowments Archakas and other Office Holders and Servants Qualifications and Emoluments Rules, 1987 prescribes age of retirement for persons mentioned in Schedule-III as 65 years.

49. Likewise Rule 12 of TTD Employees Service Rules,1989 framed vide G.O.Ms.No.1060, Revenue (Endts.I) department dt.24.10.1989 states that age of superannuation of every employee of the TTD shall be regulated by the provisions of the A.P.Public Employment (Regulations of Superannuation) Act, 1984 amended from time to time(prior to addition of sub-Rule (2) of rule 12 by G.O.Ms.No.611 Revenue (Endts.III) Department dt.16.10.2012, which will be discussed below separately.)

50. In my opinion,

(a) G.O.Ms.No.1171, Revenue (ENDTS.I) Department dt.16.12.1987 or G.O.Ms.No.1060, Revenue (Endts.I) department dt.24.10.1989 cannot be applied to the petitioners since it is not the case of the T.T.D. that members of the four hereditary Archaka families were appointed as per the said G.Os. The said G.Os have only prospective operation and have no retrospective operation.

(b) Also, part-II of the G.O. Ms.No.1171, Revenue (ENDTS.I) Department dt.16.12.1987 states "*(1) The Rules in this part shall apply to all Archakas and other office holders and servants of Tirumala Tirupathi Devasthanams* *mentioned in Schedule-III & IV to this part*". In Schedule-III a total of 28 posts were mentioned including posts of Archakam Supervisor, Archaka Grade-I, Archaka Grade-II and Archaka Grade-III. So the said G.O would deal with Archakas appointed for the first time under the said rules only as it is prospective and not to persons like the petitioners.

(c) Again the posts of Archaka Grade-I, Archaka Grade-II and Archaka Grade-III were created by G.O.Ms.No.327 Revenue (Endowments.III) Department dt.30.3.1996 in the Temple Administration Service by amending G.O.Ms.No.1060, Revenue (Endts.I) department dt.24.10.1989. So the said G.O.Ms.No.1060, Revenue (Endts.I) department dt.24.10.1989 had not dealt with Archakas at all from 1989 – 30.3.1996 and would deal with Archakas appointed under the said rules after 30.3.1996 only as it is prospective and cannot also apply to petitioners.

(d) If the rules contained in the said G.Os applied to erstwhile Archakas like the petitioners who hail from hereditary Archaka families, there would not have been any necessity for the State Legislature to introduce a 2nd proviso to Sec.144 by Act 33 of 2007 empowering the Commissioner to frame a *separate* scheme stipulating the conditions of service and payment of emoluments to the Archakas, office holders and servants of the institution.

(e) The Supreme Court in its order in 1996 in **A.S. Narayana Deekshitulu** (1 supra) also would not have directed the State Government to formulate a scheme for 'erstwhile' hereditary Archakas, whose hereditary right were abolished by Sec.34(1) of Act 30 of 1987 in regard to their '*service conditions*, scale of pay and other emoluments', if it felt that the above rules applied to Archakas of hereditary Archakas families. It is not as if the Supreme Court in 1996 when it decided the **A.S. Narayana Deekshitulu** (1 supra), was not aware of G.O.Ms.No.1171, Revenue (ENDTS.I) Department dt.16.12.1987 or G.O.Ms.No.1060, Revenue (Endts.I) department dt.24.10.1989.

51. Therefore, in my opinion, the said G.Os. would apply only prospectively to persons appointed thereunder afresh after 16.12.1987 and 30.3.1996 respectively and not to erstwhile Archaka family members like the petitioners who hail from families of hereditary Archakas in the T.T.D. Temples.

(c) G.O.Ms.No.855 dt.08.10.1997 relied upon by the TTD does not deal with age of superannuation of erstwhile hereditary archakas like petitioners :

52. Admittedly, the judgment in **A.S. Narayana Dikshitulu** (1 supra) directed the Government of A.P. to frame a scheme for hereditary Archakas whose hereditary rights were abolished, by constituting a Committee. The Court observed :

> *"As indicated earlier, the State is required to determine his service conditions, scale of pay and other emoluments according to the Grade of the temple in which he works and to regulate the period of duty and of service. …"*

53. Thereafter, such a Committee was constituted vide G.O.Rt.No.688 Revenue (ENDTS.I) Department dt.17.05.1996 consisting of the Joint Secretary to the Government, Revenue (ENDTS.I) Department, Dy.Secretary, Finance and Planning Department and Joint Commissioner, Endowments Department.

54. The terms of reference of the said Committee were framed in G.O.Rt.No.1023 Revenue (ENDTS.I) Department dt.10.07.1996. They were: (1) to rationalize the pay scales of all the archakas in different temples; (2) to specify the modality for paying the salary to them; and (3) to fix cadre strength of archakas and indicate guidelines for any increase or decrease of cadre strength linked to the financial status of the Institutions; and (4) to advise on such other relevant matters germane to the issues involved.

55. It is important to note that the term '*service conditions*' would include '*age of superannuation*' as well, but *in the terms of reference to the Committee, the Committee was not directed by the Government to fix the* age *of superannuation* and G.O.Ms.No.855 Revenue (ENDTS.I) Department dt.08.10.1997 issued by the Government, on the basis of the recommendations of the Committee after those recommendations were accepted by the Supreme Court, does not lay down the age of superannuation of erstwhile hereditary

Archakas. This appears to be a deliberate omission by the State Government and a significant one too.

(d) The admission in the Counter affidavit of respondents

56. Counsel for respondent sought to rely on passages in the order dt.9.5.1997 in **A.S.Narayana Deekshitulu (3 Supra)** wherein the Supreme Court approved the recommendations of the Committee constituted by it in **A.S.Narayana Deekshitulu** (1 supra) with regard to pay scales of Archakas etc of the Archakas (which have later been notified in G.O.Ms. No.855 dt.08.10.1997), to contend that there is employee employer relationship between the petitioners and the TTD. In the said passages it is stated :

> " *Shri Thakur contended that the classification of archakas into four categories is without any basis and is arbitrary. We find no force in the contention. It is stated in that behalf by Shri P.P.Rao, learned senior Counsel appearing for the State Government and the TTD that the hereditary Archakas have been designated in the first category and rest of them have been treated as based upon the length of service, seniority etc. We find that the classification made by the Committee and accepted by the Government is accordingly valid…The Committee further recommends that 'as and when the present incumbent in the religious staff retires or demits the office or otherwise, the person in their family should be considered on priority basis for filling of that post r allowing him to do the service to preserve the custom and usage taking into consideration suitably in rendering services apart from the qualifications required.' The Government accepted the recommendation subject to all other things being equal in competitive recruitment…."*

57. But in para no.5 of the counter-affidavit filed by the T.T.D. it is stated that Government of A.P. created posts along with pay scales to

T.T.D. Temples vide G.O.Ms.No.855 Revenue (ENDTS.I) Department dt.08.10.1997, "*but the erstwhile Archaka Mirasidars in T.T.D. Temples are continuing on Sambhavana basis*". In para no.9 of the counter also it is stated that petitioners are engaged by T.T.D. in the Sri Padmavathi Ammavari Temple in the year 2006 vide proceedings dt.10.02.2006 and it is further stated "*as they are not on regular basis, the respondent Devasthanam has paid Sambhavana to the petitioners*".

58. The above statements of the 2nd respondent is an admission by the 2nd respondent that the petitioners are not regular employees of the T.T.D. and that they have not been appointed under G.O.Ms.No.855 Revenue (Endts-I) Department dt.08.10.1997.

59. As stated above, even in G.O.Ms.No.295 Revenue (ENDTS.III) Department dt.06.06.2018 issued by the State Government, while regularizing the services of certain non-mirasi Archakas of the Sri Tirumala Temple and also Sri Padmavathi Ammavari Temple, it was recorded in para no.5 thereof that "*former Mirasi archakas are not keen on joining as regular employees against the sanctioned post of Archakas*", and in para no.3 it was recorded that as per the Executive Officer of the TTD, in spite of several notices issued by TTD to erstwhile Mirasidars to open their service registers to appoint them against posts sanctioned under G.O.Ms.No.855, Revenue (ENDTS.I) Department, dt.08.10.1997, "*no one came forward to join in T.T.D. on* *regular time scale of pay and they are continuing on Sambhavana basis*".

60. No explanation is coming forth from the TTD on the above recitals/stand of the State Government.

61. So notwithstanding the statements in the Supreme Court order in **A.S.Narayana Deekshitulu** (3 supra), petitioners had never been appointed under G.O.Ms.NO.855 dt.8.10.1997 and they were not appointed in first category of Archakas mentioned therein. So there is no employer-employee relationship between the TTD and the petitioners and the TTD cannot apply Rule of superannuation applicable to it's other employees.

(d) Sub-section (3) of Section 34 introduced by Act 33 of 2007 does not prescribe age of superannuation of erstwhile hereditary Archaka family members who are to be re-employed :

62. Sub-Section (1) of Section 34 of Act 30 of 1987 abolished hereditary rights of Mirasidars, Archakas and others office holders and servants, but sub-Section (3) was introduced by Act 33 of 2007 in Section 34, and it states :

> "*(3) Notwithstanding anything contained in sub-sections (1) and (2) of this section, the qualified members of those Archaka families which were continuing in archakatvam service under the provisions of the repealed the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1966 and recognized as such by the competent authority shall continue to have the right to archakatvam without having any right to emoluments such families used to receive earlier under Act 17 of 1966. However, they shall receive emoluments in accordance with the scheme under Section 144.*"

63. The Statements of Objects and Reasons for Act 33 of 2007 insofar as the above amendment is concerned states that after Act 30 of 1987 was enacted abolishing hereditary rights and share in Hundis and other offerings given by the devotees to the temple, position of Archakas had become difficult; the assumption that Archakas would be able to get salaries and lead a decent life was not borne out by experience over the previous two decades; as a result, neither the Government is in a position to pay salaries nor has it been able to allow Archakas to manage the temples and have shares in Hundi, Plate or any other Rusum in Archana or Seva ticket or any offering made by the devotees; they were not also able to continue enjoyment of the lands allotted or allowed to be in their possession; as a result, *many traditional archaka families have become impoverished and temples have virtually been shut down*; in addition, there were complaints that *traditional temple rituals were not being performed strictly as per particular sastra governing the temple and the sanctity of the religious rituals as per the custom and usage is not being preserved*; that the Supreme Court appreciated the need to preserve the customs and usage with a view to protect the sanctity of religious rituals in its judgment in I.A.No.7 in WP.(C).No.638 of 1987 and I.A.No.3 in Tr.C.No.170 of 1987; that a Committee recommended that *as and when the present incumbent in the religious staff retires or demits the office or otherwise, the person in their family should be considered on priority basis for filling of that post or allowing him to do service to preserve the custom and usage taking into consideration* *suitably in rendering services apart from the qualifications required;* the Government has accepted the recommendation with the main concern to preserve the customs and usage with a view to protect the sanctity of the religious rituals; and so, to remedy the situation, the Government intended to amend the Act in order to revive the village temple system, preserve the sanctity of traditional rituals, customs and usage and provide livelihood to the Archaka families; and amendments to Section 34 and 144 are intended to achieve the said purpose.

64. Thus, as per the Statements of Objects and reasons of Act 33/2007, the purpose of amending Section 34 by introducing sub-Section (3) was to utilize the services of qualified members of those Archaka families, which were continuing in Archakatvam service under the provisions of the repealed Act 17 of 1966, and recognized as such by the competent authority, and to continue to them the right to Archakatvam, without having any right to emoluments such as which the families used to receive earlier under Act 17 of 1966. In this way, the State Legislature proposed to preserve the customs and usage and protect the sanctity of religious rituals.

65. Importantly, it is not mentioned in sub-Section (3) of Section 34 that there would be an age of superannuation of such Archakas who would be continued with the right of Archakatvam.

66. It was not as if the Legislature could not have fixed such age of superannuation if it intended to do so.

67. In my considered opinion, this is also a deliberate omission by the Legislature which intended *not to fix any age of superannuation* to persons who are continued pursuant to sub-Section (3) of Section 34 like members of the petitioners' families.

68. In fact in it's order dt.19.2.2013, the Supreme Court, while dismissing some of the Review petitions filed seeking review of the decision in **A.S.Narayana Deekshitulu** (1 supra) (See Ex.P11 filed by petitioners), stated that the making of amendments to Sec.34 by introducing sub-section (3) to Sec.34 and adding second proviso to Sec.144 *had restored the status of Archakas as was obtained prior to the enactment of Act 30 of 1987.*

(e) Proceedings dt.10.02.2006 issued by the T.T.D. appointing petitioners as Sambhavana Archakas do not mention any age of superannuation

69. The petitioners, it is not disputed by respondents, fall in the category of persons who belong to the hereditary Archaka families, who were qualified, and were continued in Archakatvam service under the repealed Act 17 of 1966 (admittedly Sri M.G. Chari, father of the 2nd petitioner and others of the four families were continued till 1997) and recognized by the T.T.D. by proceedings dt.10.02.2006.

70. The proceedings ROC.No.TS3/28151/AEO(G)/1987 dt.10.02.2006 appointing the petitioners as Sambhavana Archakas in Sri Padmavathi Ammavari Temple, Tiruchanur refer to the judgment of the Supreme Court in **M.G. Chari** (4 supra) and the direction therein to the Archakas to make representation to the T.T.D. which should be considered by it in consultation with State Government and the Commissioner of Endowments and to take appropriate decision in that behalf. The said proceedings appointing petitioners as Archakas on Sambhavana basis make no reference to any age of superannuation of the petitioners. This omission is also, in my opinion, a deliberate omission.

(f) Resolution No.02 dt.17.07.2010 passed by the Trust Board of the TTD does not say that age of superannuation for TTD employees applies to archakas and accepts that they are not 'employees'

71. The petitioners had filed as Ex.P.8 Resolution No.02 dt.17.07.2010 passed by the Trust Board of the T.T.D. fixing remuneration to certain hereditary Archakas, etc.

72. The note put up to the Board of the T.T.D. (item No.2 page 14) in Temple Section TS.3/10207/2010 states that the State Government in 2007 in Sections 34 and 144, through Act 33 of 2007 amending Act 30 of 1987, *provides employment to qualified hereditary Archakas as well as preparation of a scheme for hereditary Archakas respectively;* these amended provisions had not been implemented for the previous three years and erstwhile Mirasi Archakas were consistently demanding for its implementation; on a representation given by them to the Hon'ble Chief Minister, the issue was examined in detail and *a final proposal* was finalized in consultation with hereditary Archakas as well as other contract and Sambhavana Archakas who are non-hereditary.

73. It stated therein that there are 60 persons from four families who were erstwhile Mirasi Archakas and who are qualified to do Archakatvam under Section 34 and it was decided to accept and record them as having right to hereditary Archakatvam subject to qualifying in terms of knowledge of rituals to be examined by competent authority to be set up by the T.T.D.; other persons, from such families, as and when they attain the age of 16 can make claims with the T.T.D. for recognizing their hereditary rights which will be duly recognized by the T.T.D.

74. It then went on to record that decision was taken to compensate four Pradhana Archakas (hereditary Archakas) for their enormous responsibility of adorning of jewellery and performance of daily rituals by paying them remuneration of Rs.55,000/- p.m *and* for other Archakas from the traditional hereditary families, remuneration should be Rs.30,000/- p.m including mess expenditure of Rs.3,000/- per month apart from making them eligible for medical facilities, laddu cards and educational expenditure reimbursement which is available to T.T.D. employees from time to time, facility for Darshan for their family, etc.

75. Referring to one N.A.K. Sundaravardhan, a Sambhavana Archaka, the Note stated that it was proposed to treat him on par with Pradhan Archaka in view of his erudition and thorough knowledge of rituals and pay him Rs.55,000/- per month. It is stated "*However, no separate scheme would be provided and amounts would be credited to* *their accounts from T.T.D. itself as is being done now and there will be no employer-employee relationship as they are not recognized as employees and no scales of pay have been made applicable to them".*

76. The above proposal was approved by the Trust Board of the T.T.D. in Resolution no.2 dt.17.07.2010.

77. When the said resolution records that "*there is no employer-employee relationship*" between the T.T.D. and the Archakas and they are "*not recognized as employees and no scales of pay have been made applicable to them*", the counter-affidavit filed by the 2nd respondent does not explain how a contrary stand can be taken by the TTD applying Rules relating to superannuation of it's other employees to petitioners. It is therefore not permissible to the TTD to contend that age of superannuation of 65 years prescribed for TTD employees applies to petitioners when it treats them as not it's employees and denied existence of employer-employee relationship.

(g) Rule 12 (2) introduced by G.O.Ms.No.611 Revenue (ENDTS.III) Department dt.16.10.2012 also does not apply :

78. Rule 12 of the T.T.D. Employees' Service Rules, 1989 (framed vide. G.O.Ms.No.1060, Revenue (Endts.I) department dt.24.10.1989) deals with employees of the T.T.D. and their age of superannuation and states :

> *"12. Superannuation – The age of superannuation of every employee of Tirumala Tirupathi Devasthanams shall be regulated by the provisions of the Andhra Pradesh Public Employment (Regulations*

of Superannuation) Act, 1984 (Act 23 of 1984) amended from time to time."

79. The above clause has been made as sub-rule (1) and G.O.Ms.No.611 dt.16.10.2012 added sub-Rule (2) above making age of retirement of religious staff covered by G.O.Ms.No.1171 dt.16.12.1987 working in T.T.D. as 65 years. The said provision states:

> *"(2) In respect of religious staff working in Tirumala Tirupati Devasthanams temples covered in G.O.Ms.No.1171, Revenue (Endts.I) Department, dt.16.12.1987, the age of retirement is 65 years."*

80. Much reliance has been placed by counsel for T.T.D. on Rule 12 (2) to contend that 65 years of age is the age of retirement of petitioners also.

81. As already held by me under heading (b) supra, the said G.O.Ms.No.1171 dt.16.12.1987 would apply only to persons appointed under the said G.O for the first time after 16.12.1987 and not to persons like the petitioners who hail from families of hereditary Archakas in the T.T.D. Temples and who are covered by Resolution No.2 dt.17.07.2010.

82. Also, G.O.Ms.No.611 dt.16.10.2012 principally dealt with inclusion of posts of Potu Supervisor, Potu Worker (Senior) and Potu Worker (Junior) in the T.T.D. Employees' Service Rules, 1989 notified vide G.O.Ms.No.1060, Revenue (ENDTS.I) Department dt.24.10.1989 and deals with the method of recruitment and qualifications for persons who seek appointment to the said posts. So the sub-Rule (2) of Rule 12 might apply to persons appointed to said posts or posts other than those held by qualified members of erstwhile Mirasidar/hereditary Archakas families like the petitioners.

83. Therefore, there is no merit in the contention of the respondents that Rule 12 (2) is applicable to petitioners.

Other additional reasons

84. No counter-affidavit has been filed by the Government of Andhra Pradesh (1st respondent) expressing its stand on the issue raised in the Writ Petition though the G.P. for Endowments took notice on 23.10.2018 and though the matter was subsequently listed on 06.11.2018, 16.11.2018, 23.11.2018 and 27.11.2018. This is no less significant.

85. The Government of Andhra Pradesh had issued **G.O.Ms.No.76 Revenue (ENDTS.I) Department dt.16.02.2017** *proposing* to frame the "Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Hereditary Archakas Qualifications and Emoluments Rules, 2017" and published it in the Andhra Pradesh Gazette. The said G.O. states that this is being done pursuant to the directions of the Supreme Court as well as a consequence of amendment to Act 30 of 1987 by incorporating sub-Section (3) to Section 34 and sub-Section (4) to Section 35 and two provisos to Section 144 as it had become necessary to frame a separate set of rules for hereditary Archakas since services rendered by hereditary Archakas has been recognized.

It invited objections to the Rules proposed therein. One of the proposed rules (Rule 6) states :

> *"6. **Rule of Succession** : In every case where the office or service is hereditary, the person next entitled to succeed, according to the rule of succession laid down by the founder, or where no such rule is laid down, according to the usage or custom applicable to the sect or sampradaya to which the institution or endowment belongs, shall with the permission of the Commissioner assume charge of such service.*
>
> ***Provided that there shall be no superannuation to the Hereditary Archaka on the basis of age, but he shall be physically fit to perform his archakatvam duties**.*
>
> *Provided further that where there is already a Hereditary Archaka and he intends to retire due to old age or other health reasons, he shall nominate his successor and send the name to the Commissioner for approval………..."(emphasis supplied)*

86. The proposed 1st proviso to rule 6 clearly indicates that the Government is of the *prima facie* view that **there should be no superannuation to the hereditary Archaka on the basis of age** though he is required to be physically fit to perform his Archakatvam duties.

87. Subsequently, the State Government had issued G.O.Ms.No.540 Revenue (ENDTS.I) Department dt.25.10.2018 referring to G.O.Ms.No.76 dt.16.02.2017, representation from A.P. Archaka Samakya, and report of Commissioner of Endowments, A.P., Gollapudi, Vijayawada in R.C.No.DP1/25026/62/2018 dt.16.09.2018, and constituted a Committee to examine issues, recommend the way forward to prepare final notification and formulate detailed guidelines on continuation of '*hereditary rights of Archakas*' consisting of the following members: (1) Sri S. Balasubrahmanyam, Retd. I.A.S – Chairman; (2) Chairman, Brahmin Corporation – Member; (3) Commissioner of Endowments – Member and Convener; (4) Secretary to Govt. Law Department-Member; and (5) Chairman, HDPT – Member.

88. G.O.Ms.No.76 dt.16.02.2017 and G.O.Ms.No.540 Revenue (ENDTS.I) Department dt.25.10.2018 are both available on the website of the A.P. Government, though not cited by both parties.

89. Though no final notification has been issued as yet by the State Government, the silence of the 1st respondent (not filing counter-affidavit) and its conduct in issuing the above two G.O.s indicates that its view is different from that of the T.T.D. and that it's intention is that there should be no age of superannuation to persons like the petitioners and only physical fitness would be the criteria.

90. As per Sec.153 of Act 30/1987, power to make rules vests in the State Government and is not within the province of the TTD. So the TTD cannot apply age of superannuation applicable to it's other employees to petitioners and others similarly situated.

91. The T.T.D. ought to have taken note of the fact that the State Government as well as the Supreme Court have time and again treated hereditary Archakas as a special category entitled to special benefits (not on par with other employees of the TTD) notwithstanding the abolition of hereditary rights with a view to preserve customs and usage and sanctity of religious rituals handed to the present generation of Archakas from their ancestors from generation to generation and ensure that traditional temple rituals are performed strictly as per the particular sastra governing the temple. In my considered opinion, the Trust Board of the T.T.D. did not keep in mind the above relevant factors in mind and erroneously came to the conclusion that rules applicable to other employees of T.T.D. including age of superannuation automatically apply to the petitioners as well.

92. I also hold that there is no rule framed as yet by the State Government regarding age of superannuation to persons like the petitioners, who belong to the families of erstwhile hereditary Archakas, and who have been employed as Archakas on 10.02.2006 and continued under sub-section (3) of Section 34 of the Act; that it's intention expressed in G.O.Ms.No.76 dt.16.12.2017 is not to prescribe age of superannuation for persons like the petitioners; and so, the Trust Board of the T.T.D. has no jurisdiction to pass Resolution No.50 dt.16.05.2018 to apply to petitioners rules which apply to TTD's other employees and the 2nd respondent has no jurisdiction to issue proceedings no.TS3/18528/AEO(G)/2010 dt.27.06.2018 retiring the petitioners at the age of 65 years.

Conclusion:

93. For all the aforesaid reasons, I hold that the Resolution no.50 dt.16.05.2018 of the Trust Board of the T.T.D. as well as the proceedings no.TS3/18528/AEO(G)/2010 dt.27.06.2018 issued by the

2[nd] respondent are illegal, unconstitutional and violative of Article 14 and 25 of the Constitution of India and the petitioners cannot be made to retire on attaining 65 years of age; the Resolution no.50 dt.16.05.2018 of the Trust Board of the T.T.D and proceedings no.TS3/18528/AEO(G)/2010 dt.27.06.2018 of 2[nd] respondent are accordingly set aside; and the respondents are directed to forthwith restore the services of petitioners as Sambhavana Archakas in Sri Padmavathi Ammavari Temple, Tiruchanur and allow them to discharge their duties as such as long as they are physically fit.

94. The Writ Petition is accordingly allowed. No costs.

95. As a sequel, miscellaneous applications pending, if any, shall stand closed.

JUSTICE M.S. RAMACHANDRA RAO

Date: 12-12-2018

Note :- L.R. Copy to be marked.

B/o.
Vsv/ndr

Annexures:

(i) G.O.Ms.No.76 Revenue (Endts.I) department dt.16.2.2017

(ii) G.O.Ms.No.540 Revenue (Endts.I) department dt.25.10.2018

ANNEXUERE- (i)

GOVERNMENT OF ANDHRA PRADESH

ABSTRACT

Endowments Department – The Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Hereditary Archakas Qualifications and Emoluments Rules, 2017 – Preliminary Notification - Issued.

REVENUE (ENDOWMENTS-I) DEAPRTMENT

G.O.MS.No. 76 Dated: 16-02-2017

Read:

The A.P.Charitable and Hindu Religious Institutions & Endowments Act, 1987 (Act No.30 of 1987) as amended by Act No.33 of 2007.

** ** **

ORDER:

In pursuance of the directions of the Hon'ble Supreme Court as well as a consequence of the amendment to the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act 1987 (incorporation of sub-section (3) to Section 34 and sub-section (4) to Section 35 and two provisos to Section 144), the services rendered by hereditary archakas has been recognised and framing of a separate set of rules for hereditary archakas has become necessary. As a result of these rules, the traditional Hindu Temple System will be preserved especially in small village temples.

2. Accordingly, the Government of Andhra Pradesh which is a sacred trusty of the temples in the State by virtue of Endowments Act, has decided to frame "The Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Hereditary Archakas Qualifications and Emoluments Rules, 2017".

3. The following notification will be published in an Extra-ordinary issue of the Andhra Pradesh Gazette, Dated: 18-02-2017.

PRELIMINARY NOTIFICATION

The following "The Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Hereditary Archakas Qualifications and Emoluments Rules, 2017" are proposed to be made, in exercise of the powers conferred under sub-section (3) of Section 34 read-with Section 144 and Section 142 with sub-section (1) of Section 153 of the Andhra Pradesh Charitable and Hindu Religious Institutions & Endowments Act, 1987 (Act No.30 of 1987) as amended by Act No.33 of 2007, is hereby published for general information in the Andhra Pradesh Gazette as required under subsection (1) of section 153 of the said Act.

Notice is hereby given that, the aforesaid amendments will be taken into consideration by the Government on or after expiry of Thirty (30) days from the date of publication of this notification in the Andhra Pradesh Gazette and that, any objections or suggestions which may be received from any person, with respect thereto within the aforesaid period may be taken into consideration by the Government of Andhra Pradesh. Objections and suggestions should be addressed to the Principal Secretary to Government, Revenue (Endowments) Department, Andhra Pradesh Secretariat, Amaravathi, Velagapudi, Guntur District, in duplicate.

R U L E S

1. Short title:- These rules may be called the Andhra Pradesh Charitable And Hindu Religious Institutions and Endowments Hereditary Archakas Qualifications and Emoluments Rules,2017.

2. **Application**:-

(1) The Rules in this part shall apply to Hereditary Archakas mentioned in Rule (6) of this part of all Charitable and Religious Institutions other than Tirumala Tirupathi Devasthanams, who are recognized as Hereditary Archakas as per the provisions of Act No.17/1966 and continuing in religious service of any kind.

(2) The Rules framed under Section 35 (3) and Section 35 (4) relating to Qualification, Emoluments and Conditions of Service of the NonHereditary Archakas are not applicable to the Hereditary Archakas as they are governed by these rules

(3) Every Archaka in each institution published under Sections 6 (a), 6 (b) and 6 (c), who is already functioning in the approved cadre strength and governed by Rules framed under Section 35 (3) and Section 35 (4) and drawing emoluments as such and who is eligible to be recognized as Hereditary Archakas as per Rule (6) shall be given an option to either be governed by these Rules or to continue to be governed by the Rules framed under Section 35 (3) and Section 35 (4).

3. **Definition**:- The words and expressions used in these rules shall have the same meaning assigned by them in the Andhra Pradesh Charitable And Hindu Religious Institutions and Endowments Act, 1987 (Act No.30/1987), as amended by Act No.33/2007.

4. Hereditary Archaka Scheme:- There shall be a Scheme for Hereditary Archakas called 'Hereditary Archaka Scheme' in respect of those institutions where Hereditary Archakatvam was recognised as per the provisions of Act No.17/1966.

5. **Hereditary Archaka Families**:- In respect of institutions published under Sections 6(a), 6(b) and 6(c), Hereditary Archaka Families whose members have been performing Archakatvam service and recognized as such under the Act No.17 of 1966 shall be identified and recorded in the 'Hereditary Archaka Scheme' to be prepared for each such institution by the Commissioner.

Provided the process of paper notification in a leading daily, production of family members certificate, verification of genealogy map, obtaining affidavits, due and transparent enquiry shall precede before their identification is confirmed.

6. Rule of Succession:- In every case where the office or service is hereditary, the person next entitled to succeed, according to the rule of succession laid down by the founder, or where no such rule is laid down, according to the usage or custom applicable to the sect or sampradaya to which the institution or endowment belongs, shall with the permission of the Commissioner assume charge of such service.

Provided that there shall be no superannuation to the Hereditary Archaka on the basis of age, but he shall be physically fit to perform his archakatvam duties.

Provided further that where there is already a Hereditary Archaka and he intends to retire due to old age or other health reasons, he shall nominate his successor and send the name to the Commissioner for approval.

Provided further that no adoption is final unless it is recognized by the Commissioner.

Provided further that nominee is from the same community and born to legally wedded wife and such person shall have acquired necessary qualifications and free from Sapta-vyasanams.

Provided further that persons who opt to succeed to hereditary archakatvam shall be eligible to be considered as such, only if they are willing to provide religious service on a full time basis in the temple and are proficient in providing such service.

7. Right to Archakatvam:-

(1) All qualified members who are above the age of 16 years belonging to the Hereditary Archaka Families under Rule (5) of these rules and who apply to be included in the ‘Hereditary Archaka Scheme’ will have right to archakatvam.

(2) As and when other members attain the age of 16 years they can file their respective claim with the concerned Authority for inclusion in the Scheme and the same will be recognized and ‘Hereditary Archaka Scheme’ shall be updated.

8. Honours:- In the ‘Hereditary Archaka Scheme’ formulated for each Temple the honours due to the Hereditary Archaka family members under Section 142 has to be recorded.

9. Category of Hereditary Archakas:-

(1)There shall be two categories of Hereditary Archaka in the institutions published under Section 6(a) and 6(b):

Category	Name
I	Pradhana Archaka
II	Archaka

In case of 6(c) institutions, there shall be archakas only.

(2) There shall be one Pradhana Archaka from each of the Hereditary Archaka family identified under Rule (5) in each institution published under Sections 6(a) and 6(b).

(3) Provided further in those cases where the serving Archaka expires without nominating his successor, the Commissioner shall enquire personally and decide the successor. The Commissioner shall take into account such factors like Law of primogeniture, eligibility, willingness work full time in a dedicated manner, prior experience, if any, etc.

(4) The senior most qualified Hereditary Archaka belonging to the Hereditary Archaka family will be Pradhana Archaka of that 6(a) or 6(b) temple and such person shall be entitled to all honours that his service is eligible.

10. Emoluments:-

(1) The Emoluments for the Hereditary Archakas shall be incorporated in the ‘Hereditary Archaka Scheme’ for each institution published under sections 6(a), 6(b) and 6(c).

(2) In respect of the institutions below income of Rs.5.00 Lakhs where Section 144 is not applicable, the Archaka families shall be allowed the same customary emoluments prevalent under the concerned provisions Act No.17 of 1966.

11. Benefits:- The Benefits for the Hereditary Archakas shall be incorporated in the 'Hereditary Archaka Scheme' for each institution published under Sections 6(a), 6(b) and 6(c) as per the guidelines punished by the Dharmika Parishad.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

J.S.V. PRASAD,
PRINCIPAL SECRETARY TO GOVERNMENT.

To
The Commissioner of Printing, Government Regional Press Building, Mutyalampadu, Vijayawada-520 011 (for publishing the Preliminary Notification in the Extra-ordinary issue of the Andhra Pradesh Gazette. He is requested to supply 50 copies to the Government; and 200 copies to the Commissioner, Endowments Department, Govt. of Andhra Pradesh, Gollapudi, Vijayawada, Krishna District).

The Commissioner, Endowments Department, Govt. of Andhra Pradesh, Gollapudi, Vijayawada, Krishna District.

Copy to:

The P.S. to Spl.C.S. to Chief Minister.
The P.S. to Minister (Endowments).
The P.S. to Principal Secretary to Government (Endowments).
Sf/Sc.

// Forwarded :: By Order //

SECTION OFFICER

ANNEXUERE- (ii)

GOVERNMENT OF ANDHRA PRADESH

ABSTRACT

Endowments Department – Formulating detailed guidelines on continuation of Hereditary Rights of Archakas – Constitution of Committee – Orders – Issued.

REVENUE (ENDOWMENTS-I) DEPARTMENT

G.O.MS.No. 540 Dated: 25-10-2018

Read the following:

1) G.O.Ms.No.76, Revenue (Endts.I) Department, Dated:16.02.2017.
2) Representation from A.P. Archaka Samakhya, dt. NIL.
3) Minutes of meetings held on 23.07.2018.
4) From the Commissioner of Endowments, A.P., Gollapudi, Vijayawada Lr. in Rc.No.DP1/25026/62/2018, dt.16.09.2018.

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ORDER:

In the G.O. 1st read above, Government have issued Preliminary Notification for framing "The Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Hereditary Archakas Qualifications and Emoluments Rules, 2017".

2. In the reference 2nd read above, the Archaka Samakhya have requested the Government to issue of final notification in the matter.

3. Government have examined the matter in detail and keeping in view of the report of the Commissioner of Endowments, A.P., Vijayawada in the reference 4th read above, observe that as the issues need to be thoroughly examined with reference to the concerned provisions of the Endowments Act, particularly Sections 34 & 144 of the Act and the Judgment / orders of Hon'ble Supreme Court of India. Therefore, Government hereby constitutes a Committee with the following members for detailed examination of the issues and recommending the way forward to prepare final notification and formulating detailed guidelines on continuation of Hereditary Rights of Archakas:

(1) Sri S. Balasubrahmanyam, Retd. IAS - Chairman
(2) Chairman, Brahmin Corporation - Member
(3) Commissioner of Endowments - Member & Convener
(4) Secretary to Govt., Law Department - Member
(5) Chairman, HDPT - Member

4. The Commissioner of Endowments, A.P., Vijayawada shall take necessary further action in the matter accordingly and submit their report within two months.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

Dr. MANMOHAN SINGH
SPECIAL CHIEF SECRETARY TO GOVERNMENT

To
All the Members of the Committee
through the Commissioner of Endowments, A.P., Vijayawada.
The Commissioner of Endowments, A.P., Gollapudi, Vijayawada.
Copy to: The P.S. to Spl.Chief Secretary to Hon'ble Chief Minister.
The OSD to Hon'ble Dy.Chief Minister (Revenue, R&S and Endowments).
The P.S. to Spl.Chief Secretary to Government (Endowments).
SF/SC.

//FORWARDED::BY ORDER//

SECTION OFFICER