



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.10.2019

CORAM :

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.(MD)No.3585 of 2018

and

W.M.P.(MD)Nos.3724 and 3725 of 2018

R.Ganapathy Murugan

... Petitioner

vs.

1.The Secretary to Government,
Tourism, Culture and Hindu Religious &
Charitable Endowment Department,
Government of Tamil Nadu,
Fort St. George, Chennai - 600 009.

2.The Commissioner,
Hindu Religious & Charitable Endowment
Department, Chennai - 600 0034.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, seeking for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order of the first respondent in G.O.(Pa)No.12, Tourism, Culture & Charitable Institutions (A.Ni.2-1) Department, dated 30.01.2018, confirming the impugned proceedings of the second respondent in Na.Ka.No.62284/2015/L1, dated 26.05.2017, quash the same and consequently, direct the respondents to consider the promotion of the petitioner as Assistant Commissioner, Hindu Religious & Charitable Endowment Department, on par with his junior with all monetary and attendant benefits.

For Petitioner : Mr.Veerakathiravan
Senior Counsel
for M/s.Veera Associates

For Respondents : Mr.VR.Shanmuganathan
Special Government Pleader

ORDER

This Writ Petition has been filed seeking to quash the impugned order of the first respondent in G.O.(Pa)No.12, Tourism, Culture & Charitable Institutions (A.Ni.2-1) Department, dated 30.01.2018, confirming the impugned proceedings of the second respondent in Na.Ka.No.62284/2015/L1, dated 26.05.2017, and a consequential



direction to the respondents to consider the petitioner for promotion to the post of Assistant Commissioner, Hindu Religious & Charitable Endowment Department, on par with his junior with all monetary and attendant benefits.

2. According to the petitioner, while he was working as Executive Officer of Arulmighu Kasi Viswanathar Temple, Tenkasi, he was given additional charge as Executive Officer from 22.10.2012 to 20.07.2013 in Palayanjalal Kumarasamy Thirukoil, Sinthupoonthurai, Tirunelveli Town. When he was working in the present Station, a charge memo dated 26.11.2015, was issued to the petitioner by the Joint Commissioner of HR & CE Department, under Rule 17(b) of the Tamil Nadu Government Servant (Discipline and Appeal) Rules, containing three charges. The first charge is that the petitioner appointed one P.Mariappan in the post of Maniam on consolidated pay. The second charge is that the said P.Mariappan was paid with Rs.1,500/- per month as consolidated pay. The third charge is that the petitioner disobeyed the regulations and other executive directions issued by the higher officials in the Department.

3. An Enquiry Officer was appointed. After enquiry, the Enquiry Officer held that the charges 2 and 3 were not proved and the first charge was proved. Based on the said report, vide proceedings dated 26.05.2017, the second respondent imposed a punishment of stoppage of increment without cumulative effect for three months as and when it falls due, on the petitioner. Thus, the said punishment was implemented on the petitioner with effect from 01.04.2017 to 30.06.2017. Subsequently, his increment was fixed from 01.07.2017. Against which, the petitioner filed an appeal before the Government and the Government has not passed any orders. Hence, the petitioner filed W.P. (MD) No. 12870 of 2017 before this Court seeking a direction to the respondent to dispose of the appeal. This Court, by order dated 12.07.2017, disposed of the writ petition directing the first respondent to dispose of the appeal within three months. Pursuant to the said order, the first respondent has passed an order rejecting the appeal filed by the petitioner. The crucial date for promotion to the next higher post is 01.10.2017. Before 01.10.2017, the punishment imposed on the petitioner came to end and therefore, the petitioner is entitled to be considered for promotion. Further, the petitioner has stated that the Fit Person created the post of Maniam and based on the resolution of the Fit Person, the petitioner appointed P.Mariappan as Maniam. The petitioner has appointed the said P.Mariappan in the sanctioned post.

4. The learned Senior Counsel appearing for the petitioner relied on the judgment of this Court, dated 19.03.2015, made in W.A. Nos. 1441 and 1448 of 2014 and submitted that the Trustee of the Temple have absolute power to make appointments to Office Holders and Servants under Section 55 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. The State Government has no power



to issue administrative instruction or make order in respect of appointment of Office Holders and Servants. In the present case, the Fit Person, who is exercising the power of Trustee, has created the post of Maniam and passed resolution to that effect. The petitioner has appointed P.Mariappan as Maniam in the sanctioned post created by the Fit Person. The learned Senior Counsel appearing for the petitioner further submitted that the post of Maniam was in existence from 31.10.1991 as per the proceedings of the Deputy Commissioner, Tirunelveli. There is no Government Order or Circular requiring prior approval. The Division Bench of this Court has already held that power of Fit Person for appointment cannot be taken away by executive orders. G.O.Ms.No.255, Tamil Development and Religious Endowment and Information (RE 4-2) Department, dated 28.06.2010, was set aside by the Division Bench of this Court, by judgment dated 22.01.2015, made in W.A.No.491 of 2013 and the Division Bench of this Court declared G.O.(Ms)No. 255, Tamil Development Religious Endowment & Information (RE.4-2) Department, dated 28.06.2010, as null and void. The petitioner has not committed any misconduct and prayed for setting aside the impugned order and a direction to the respondents to consider the petitioner for promotion.

5.A counter affidavit has been filed on behalf of the second respondent. The learned Special Government Pleader appearing for the respondents submitted that the petitioner has appointed P.Mariappan from 01.05.2013 while the Fit Person has passed the resolution only on 29.05.2013. It is clear from the resolution that P.Mariappan was appointed, not based on the resolution of the Fit Person, but he was appointed before passing of resolution by the Fit Person and the said P.Mariappan was paid with salary from 01.05.2013. As per Rule 14 of the Tamil Nadu Hindu Religious Institutions (Officers and Servants) Service Rules, the Trustee shall not alter the schedule of Establishment without prior permission of the Assistant Commissioner or Joint Commissioner. The petitioner, who was working as Executive Officer, knowing fully well all the procedures for appointment in the Temple, failed to follow the same and appointed one P.Mariappan as Maniam. Hence, the Joint Commissioner has issued a charge memo against the petitioner under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. One Arunchalam, Assistant Commissioner was appointed as Enquiry Officer on 28.12.2015. The Enquiry Officer conducted the enquiry by following the procedures and submitted a report dated 09.09.2016, holding that Charge No.1 is proved and not satisfied with the explanation submitted by the petitioner. The punishment was imposed on the petitioner is for proven charges and the same is valid and legal, therefore, he prayed for dismissal of the Writ Petition.

6.I have heard the learned Senior Counsel appearing for the petitioner and the learned Special Government Pleader appearing for



the respondents and perused the materials on record.

7.The charge levelled against the petitioner is that he appointed one P.Mariappan as Maniam without permission of the Commissioner, HR & CE Department. For the Temple in question, Fit Person was appointed and he is discharging the duties of Trustees. As per Section 55 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, the Trustees have power to appoint Office Holders or Servants of religious Institutions. When such power was tried to taken away by G.O.Ms.No.255, Tamil Development Religious Endowment & Information (RE.4-2) Department, dated 28.06.2010, the Division Bench of this Court, by judgment dated 22.01.2015, made in W.A.No.491 of 2013, quashed the same and the said Government Order has become null and void. The charge against the petitioner is that he appointed one P.Mariappan as Maniam without permission of the Commissioner. In the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 and the Rules framed thereunder, there is no provision for obtaining prior permission from the Commissioner for making appointment. Further, by proceedings dated 31.10.1991, the Deputy Commissioner, Tirunelveli, has fixed the salary of employees of the Temple, which includes the post of Maniam. The Trustees and when a Fit Person is appointed in the place of Trustee, he has power to appoint a person without prior permission of the Commissioner, H.R. & C.E. Department. In the present case, the petitioner appointed one P.Mariappan as Maniam and the same was approved by the Fit Person, by Resolution dated 29.05.2013. The charge against the petitioner is not that without approval of the Fit Person, he appointed the said P.Mariappan as Maniam.

8.For the above reason, the finding of the Enquiry Officer that the first charge levelled against the petitioner was proved is contrary to the provision of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 and the punishment imposed on the petitioner based on the said report is invalid. Similarly, the dismissal of appeal is liable to be set aside, as the order of disciplinary authority itself is invalid and null and void.

9.For the reasons stated above, this Writ Petition is allowed as prayed for. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

Sub Assistant Registrar(CS)

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To

1.The Secretary to Government,
Tourism, Culture and Hindu Religious &
Charitable Endowment Department,
Government of Tamil Nadu,
Fort St. George, Chennai - 600 009.

2.The Commissioner,
Hindu Religious & Charitable Endowment
Department,
Chennai - 600 0034.

+1CC TO MR.VEERA ASSO., Advocate Sr. No.93868

+1CC TO THE SPECIAL GOVERNMENT PLEADER SR.No. 94058

W.P. (MD)No.3585 of 2018
22.10.2019

GRL(CO)

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