



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.11.2019

CORAM:

THE HONOURABLE **MS.JUSTICE V.M.VELUMANI**

W.P. (MD) No.2580 of 2017

and

W.M.P. (MD) No.2149 of 2017

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M.Pugalendran

... Petitioner

Vs.

1.The State of Tamil Nadu

Rep by Secretary to Government

Tourism, Culture and Endowments Department,

Secretariat, Chennai-600 009.

2.The Commissioner,

HR & CE Department,

119, Nungambakkam High Road,

Chennai-600 034.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the G.O.(Ms.)No.18, Tourism, Culture and Endowments (A.Ni 2-2) Department, dated 02.02.2017 and quash the same and consequently direct the respondents to permit the petitioner to retire from service with all consequential benefits and monetary benefits.

For Petitioner : Mr.C.Arulvadiyal@Sekar

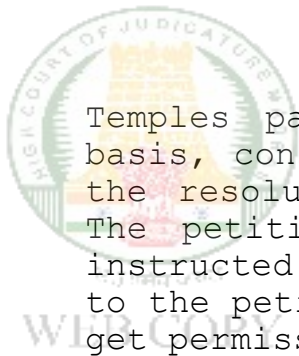
For Respondents : Mr.VR.Shanmuganathan,
Special Government Pleader.

ORDER

This Writ Petition has been filed to quash the proceedings in G.O.(Ms.)No.18, Tourism, Culture and Endowments (A.Ni 2-2) Department, dated 02.02.2017 and to direct the respondents to permit the petitioner to retire from service with all consequential benefits and monetary benefits.

2.The petitioner was appointed as Grade-I Executive Officer in the year 1985. After periodical promotions, he was working as Joint Commissioner from the year 2008. While so, a charge memo, dated 21.03.2014, was issued to the petitioner, containing four charges, alleging that without jurisdiction, he permitted the Executive Officers of the Temples, came under his jurisdiction, to create new temporary posts. The petitioner submitted his explanation, on 07.04.2014, denying charges levelled against him.

3.According to the petitioner, the Fit Persons of respective



Temples passed a resolution for appointing persons on temporary basis, considering the need and administrative necessity. Based on the resolution, the Executive Officers submitted their proposals. The petitioner granted permission to the Executive Officers and instructed them to get the same ratified by Commissioner. According to the petitioner, no new posts were created and there is no need to get permission of the petitioner.

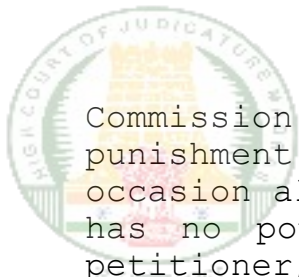
4.A domestic enquiry was conducted and Enquiry Officer submitted his report holding that the charges levelled against the petitioner were proved. The petitioner, submitted his explanation to the second show cause notice. The respondents referred the matter to the Tamil Nadu Public Service Commission to get a opinion with regard to the proposed punishment of removal from service. Tamil Nadu Public Service Commission, by a letter, dated 23.02.2016, gave a opinion that the petitioner may be compulsorily retired from service instead of imposing punishment of removal from service.

5.The petitioner attained the age of superannuation on 30.06.2014 and he was suspended from service, on 02.06.2014 and was not permitted to retire from service on, 30.06.2014. The first respondent, by the impugned G.O.(Ms.)No.18, Tourism, Culture and Endowments (A.Ni 2-2) Department, dated 02.02.2017, removed the petitioner from service. Aggrieved over the same, the petitioner has come out with the present writ petition.

6.The learned counsel appearing for the petitioner would submit that the first respondent did not furnish a copy of the opinion of the Tamil Nadu Public Service Commission, before imposing punishment of removal from service and thereby, violated the mandatory provision. As per Section 55 of the Hindu Religious and Charitable Endowments Act, 1959, (herein after referred to as "the Act") the Executive Officer is the competent person to appoint the persons temporarily. The petitioner gave permission, based on the resolution passed by the Fit Person, only for three months on daily wages and on need basis and that they were not continued in work, thereafter. The impugned order is contrary to the provisions of Hindu Religious and Charitable Endowments Act, 1959 and in support of his contention, he relied upon a decision of the Hon'ble Supreme Court reported in **2011 4 SCC 589 (Union of India and others Vs. S.K.Kapoor)** wherein, the Hon'ble Supreme Court held as follows:

"5.It is a settled principle of natural justice that if any material is to be relied upon in departmental proceedings, a copy of the same must be supplied in advance to the charge-sheeted employee so that he may have a chance to rebut the same."

7.Mr.VR.Shanmuganathan, learned Special Government Pleader appearing for the respondents filed a counter and submitted that it is not mandatory that the opinion of the Tamil Nadu Public Service



Commission should be furnished to the petitioner, before imposing punishment of removal from service. The petitioner, on an earlier occasion also, granted permission for appointment in Temple, when he has no power to do so. Despite several warnings given to the petitioner, he continued to commit the same mistake. The judgment relied by the learned counsel appearing for the petitioner is not applicable to the facts of the present case. Further, the respondent has not accepted the opinion of the Tamil Nadu Public Service Commission. As per Section 55 of the Act, the Commissioner is the sanctioning authority and the trustees cannot create new posts and the petitioner created new posts and appointed persons, which is violation of statutory provisions and prayed for dismissal of this writ petition.

8. Heard the learned counsel on either side and perused the materials available on record.

9. Charges levelled against the petitioner is that, without having jurisdiction, he permitted the Executive Officer to appoint persons in the newly created posts. The second respondent only has power to grant such a permission. The said contention is contrary to the Section 55 of the Hindu Religious and Charitable Endowments Act, 1959, which reads as follows:

"55. Appointment of office-holders and servants in religious institutions.-(1) Vacancies, whether permanent or temporary among the office-holders or servants of a religious institution shall be filled up by the trustee 1[in all cases].

[Explanation.-The expression "office-holders or servants" shall include archakas and pujaries.]

(2) No person shall be entitled to appointment to any vacancy referred to in sub-section (1) merely on the ground that he is next in the line of succession to the last holder of the office.

*[(3) * * *] omitted by section 2(3) of the Tamil Nadu HR&CE (Amendment) Act, 1970 (Tamil Nadu Act 2 of 1971)*

(4) Any person aggrieved by an order of the trustee under 5[sub-section (1)] may, within one month from the date of the receipt of the order by him, appeal against the order to 6[the Joint Commissioner or the Deputy Commissioner, as the case may be.]"

10. The Fit Person of the Temple passed a resolution for appointing persons on temporary basis, due to the need and administrative necessity. When a Fit Person, who is the competent to appoint employees in Temple as per Section 55 of the Hindu Religious and Charitable Endowments Act, 1959, there is no necessity



for the Executive Officer to seek permission from the second respondent. When the Fit Person passed a resolution for appointing employees, the approval given by the petitioner for such appointment is redundant and the petitioner cannot be punished for giving such approval, which is unnecessary.

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11. In the judgment reported in **2007 (5) MLJ 289**, a Division Bench of this Court held that Commissioner cannot interfere in the process of appointment of Office Bearers or Servants of Religious Institute and Commissioner cannot insist on prior permission before appointment. In view of well settled judicial pronouncement, the approval of Commissioner is not necessary and the petitioner cannot be penalized for granting such approval when Fit Person passed resolution for appointing persons on temporary basis in Temples in question.

12. For the above reason, this Writ Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS II)

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Sub Assistant Registrar(CS)

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To

1. The Secretary to Government
Tourism, Culture and Endowments Department,
Secretariat, Chennai-600 009.

2. The Commissioner,
HR & CE Department,
119, Nungambakkam High Road,
Chennai-600 034.

+ 1CC TO MR.C.ARUL VADIVEL @ SEKAR, ADVOCATE, SR NO.99643

W.P. (MD) No.2580 of 2017

_KK/SAR/02.12.2019/4P-4C/