

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.03.2020

CORAM

THE HONOURABLE MR. JUSTICE M.M. SUNDRESH
AND
THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

W.P.No.30220 of 2019

S.Sridharan

... Petitioner/
Party in person

Vs.

1.Secretary to Government,
Tourism, Culture and Religious Endowments
Department,
Government of Tamil Nadu,
Secretariat, Chennai - 600 009.

2.The Commissioner,
HR & CE Department,
119, Uthamar Gandhi Salai,
Nungambakkam,
Chennai - 600 034

.... Respondents

Prayer : Writ Petition filed under 226 of the Constitution of India to issue a writ of mandamus directing the respondent no.1 to remove the respondent no.2 and other authorities mentioned under Section 8 of the Hindu Religious and Charitable Endowments Act, 1956 from the posts they are holding in the HR & CE Department and consequently declare the actions executed by all of them are null and void.

For Petitioner : Mr.S.Sridharan
Party-in-person

For Respondents : Mr.M.Karthikeyan, Spl. G.P.

ORDER

(Order of the Court was made by M.M.SUNDRESH,J)

The petitioner has raised the question of law in this writ petition while seeking the relief sought for.

2. The sum and substance of the contention of the petitioner, who appears as party-in-person, is that on a combined reading of Section 10 of the Tamil Nadu Hindu Religious and Endowments Act, 1959 (for short 'the Act') and the Rules governing "The Manner of Proof of Professing Hindu Religious Rules", a pledge is required for all the officials working in the Department starting from the hierarchy of the Commissioner.

3. The petitioner further submitted that the information obtained under the Right to Information Act would clearly show that no such procedure has been adopted. Section 10 of the Act read with Rules 2 and 3, being mandatory in nature, have to be strictly adhered to. Therefore, non-compliance of the same would dis-entitle the persons concerned from continuing to discharge their functions in the Department.

4. The learned Special Government Pleader appearing for respondents 1 and 2 tried to justify the procedure followed by stating that the Rules governing are not applicable to the case of Commissioner, Additional Commissioner, Joint, Deputy or Assistant Commissioners, as the case may be. In other words, it is submitted that they can be made applicable only to those who are working with the direct management of the Temple or under it.

5. On a query, the learned Special Government Pleader appearing for respondents 1 and 2 submitted that in the event of this Court coming to the conclusion that pledge is required even for the aforesaid officials, the same shall be done by issuing appropriate directions to them and the provisions of the said Act and the Rules shall be followed in letter and spirit.

6. Considering the submission, we deem it appropriate to appositely refer to Section 10 of the Act and the Rules governing:-

"10. The Commissioner, the [Additional Commissioner], every Joint, Deputy or Assistant Commissioners and every other officer or servant appointed to carry out the purposes of this Act, by whomsoever appointed, shall be a person professing the Hindu religion, and shall cease to hold office as such when he ceases to profess that religion.

"2. Pledge to be in the form prescribed.- Every person appointed or deemed to be appointed under the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959(Tamil Nadu Act 22 of 1959), shall sign a pledge in the form appended to these rules.

3. When the pledge should be taken. - The pledge referred to in rule 2 may be caused to be taken by the appointee in the immediate presence of the Executive Officer or Chairman, Board of Trustees of the religious institution before the presiding deity in the nearest Hindu Religious Institution selected for the purpose and two witnesses and the fact of having done so shall be reduced to writing and placed before the head of the office, who shall record the same and keep it as a permanent record along with the service register of the person concerned."

7. There is no difficulty in holding that Section 10 is mandatory. This is being followed by the respondents and, therefore, we are not inclined to go into the same. Rule 2 of the Manner of Proof of Professing Hindu Religion Rules speaks of the pledge to be in the form appended to the Rules. We may note that this Rule start with the words 'Every person appointed or deemed to be appointed'. Therefore, Rule 2 does not make any distinction or differentiation with the hierarchy of the officials. What is applicable to the lower grade employees will have to be made applicable to the higher cadre also. After all, both are involved in the same process. In fact, this should be applied with more rigour to the person working in the higher capacity. Secondly, such a pledge is required at the time of appointment than when an employee is promoted. Therefore, the submission made by the learned Special Government Pleader, cannot be countenanced.

8. However, we find some force in the submission made that Rule 3 is applicable to somebody who is directly involved in the administration of the temple or working under it. However, it does not mean that no pledge is required. Therefore, certainly pledge is required to be signed in the form appended to the Rules. Rule 2 further states that the appointee shall sign the pledge and, therefore, the compliance is mandatory.

9. However, inasmuch as this is only misconceived position of law on the part of the respondents, we are not inclined to hold that either they are continuing without taking pledge or the decision taken by them is one without jurisdiction or authority of law. Admittedly, appointment have been made in accordance with law. It is not their fault in not taking the pledge. There is nothing illegal otherwise in the functioning and the decision making process. In such view of the matter, we direct respondents 1 and 2 to see to it that all the officers up to the cadre of the second respondent are made to undergo the

process of pledging afresh. This has to be done within a period of eight weeks from the date of receipt of a copy of this order.

10. Writ Petition stands ordered accordingly. No Costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ssm

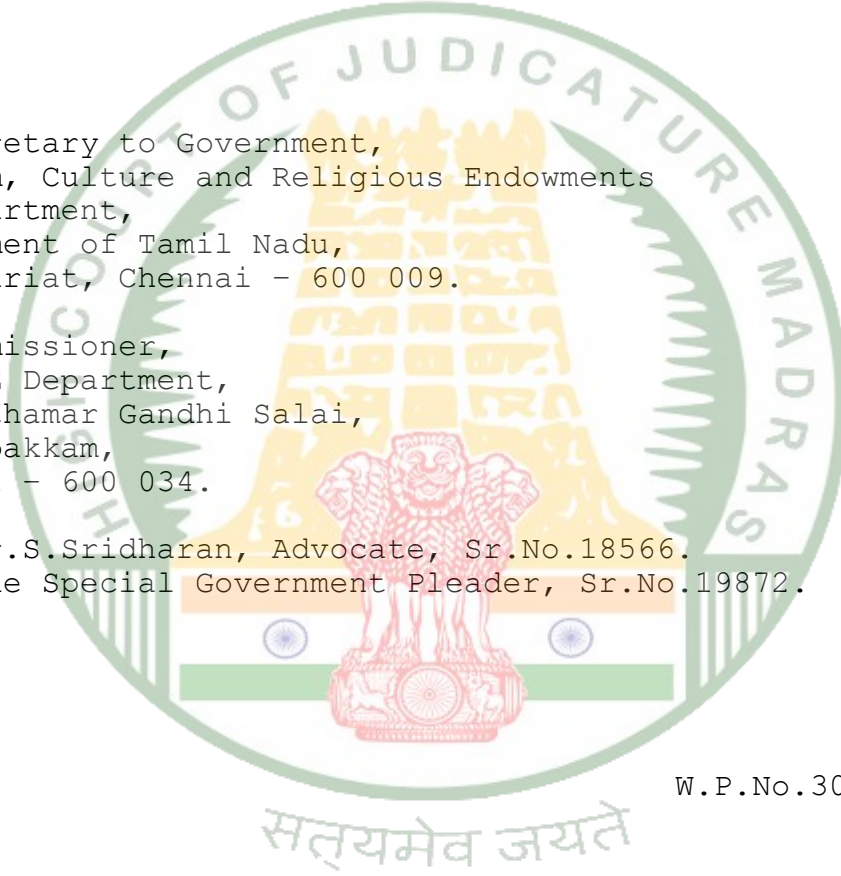
To

1.The Secretary to Government,
Tourism, Culture and Religious Endowments
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2.The Commissioner,
HR & CE Department,
119, Uthamar Gandhi Salai,
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Chennai - 600 034.

+1cc to Mr.S.Sridharan, Advocate, Sr.No.18566.

+1cc to The Special Government Pleader, Sr.No.19872.



W.P.No.30220 of 2019

PP(CO)
klt (22/05/2020)

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