

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.06.2021

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THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. No.9894 of 2020

and

WMP. Nos.12029 & 12028 of 2020

Ravichandran

...Petitioner

Vs.

1.Union of India

Represented by its Union Territory of Puducherry

Represented by its Chief Secretary, Puducherry

2.The Secretary,

Hindu Religious Institutions, Puducherry

3.The Commissioner,

Department of Hindu Religious Institutions and Wakf,

Puducherry

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to Writ of Certiorarified mandamus calling for the records on the file of the 3rd respondent in No. 2350 / CHRI / T4 / 2020 / 1115 dated 29.05.2020 and quash the same as illegal incompetent and without jurisdiction and further direct the respondents 1 to 3 not to make any fresh appointments until such time the board of trustees presently holding the office completes the audit in respect to the years 2007 to 2015.

For Petitioners : Mr.V.Raghavachari

For Respondents : Mr.J.Kumaran

Additional Government Pleader

O R D E R

The petitioner is an individual and a devotee in the Shri Arulmigu Drowbathiamman Devasthanamand, Hindu Religious Institution, which manages five temples in Puducherry. The temples are being managed by a panel comprising five members since 1999.

2. The provisions of the Puducherry Hindu Religious Institutions Act, 1972 provide in Section 4 for the constitution of the Board of Trustees and the Provision is extracted below:

4. (1) Every institution shall be administered by a Board of Trustees, which shall consist of five trustees (hereinafter in this section referred to as members), appointed by the Government, by notification in the Official Gazette, out of whom one shall be a person belonging to the Scheduled Castes : Provided that the Government may, pending the constitution of a Board for any institution appoint a Special Officer to perform the functions of the Board.

(1A) The Government shall nominate from amongst the - members a President, Vice-president, Secretary and a Treasurer.

(2) Subject to the provisions of this Act, the President, Vice-President, Secretary, Treasurer and the member shall 4, perform such functions as may be prescribed.

(3) Subject to the provisions of section 5, every member of the Board shall hold office for a term of three years from the date of publication of the notification appointing him as member and the other conditions of his service shall be such as may be prescribed.

(4) Any member may resign his office by giving notice in writing, for such period as may be prescribed, to the Government and, on such resignation being notified in the Official Gazette by the Government, such members shall be deemed to have vacated his office.

(5) A casual vacancy caused by the resignation of a member under sub-section (4) or otherwise may be filled by fresh, appointment and the person so appointed shall hold office for the remaining period for which the member in whose place he is appointed would have held office.

(6) Every Board constituted before the commencement of this Act for the purpose of the administration of any institution and existing at such commencement shall be deemed to be a Board

constituted under the provisions of this Act for the purposes of administration of such institution and the members thereof shall continue to hold office as such for a period of three years from the date of the notification by which they were appointed.

(7) Every member shall, on his ceasing to hold office as such, handover any property, document or cash which was under his control or in his possession by virtue of any of the provisions of the rules made under this Act within such time as may be prescribed, to his successor in office or such other person as the Commissioner may, by order, direct.

3. Section 4(1) states that the board shall comprise of five trustees, of which, one shall be a person belonging to the Scheduled Caste. As an interim arrangement, pending constitution of Board, a Special Officer is to be appointed to perform the functions of the board till such time the constitution is complete. Section 4(1)(A) states that the Government shall nominate officers from among the members of the board. Section 4(2) relates to the functions to be performed by the members. A tenure of three years has been stipulated in Section 4(3) and Section 4(4) deals with the resignation of any of the board members. Section 5 deals with the filling up of vacancies. The constitution of the board is to be done bearing in mind the disqualifications set out in Section 5.

4. In the present case, the challenge is to a communication dated 29.05.2020 whereunder, the Commissioner, Department of Hindu Religious Institutions and Wakf, arrayed as R3, has proposed the constitution of the board naming five persons. The challenge is to the effect that the proposed appointment is at the pretext of the local member of Legislative Assembly, who is aligned to the Bhartiya Janata Party.

5. The counter filed by Mr.J.Kumaran, learned Additional Government Pleader admits to the position that usually, the suggestions of the sitting MLA are taken by the Commissioner who forwards the same to the Government for appointment (para 8 of the counter affidavit).

6. The Board members must be drawn from all sections of the society and it would thus be appropriate for the Commissioner to put in place a proper procedure for selection of persons to serve upon the board. The suggestions for candidates must also be broadbased so as to encompass all sections of society. Having collected the same, he is to then examine whether the persons suggested attract any disqualifications under Section 6,

consolidate the list, and forward the same to the Government for confirmation.

7. Mr.Kumaran assures the Court that the impugned communication is only a proposal and will not be pursued. Let the exercise be commenced afresh bearing in mind the observations made in the preceding paragraphs and a new proposal be formulated and forwarded to the Government within a period of six weeks from today. While consolidating the new list, the Commissioner will ensure that there is due application of mind to the provisions of Section 6 to ensure that none of the members proposed would attract the disqualifications as contained therein. The tenure of the present board has, in fact, expired but the board continues to function as an interim measure.

8. This writ petition is disposed in the above terms. Connected miscellaneous petitions are closed. No costs.

Sd/-

Assistant Registrar (CS IV)

//True Copy//

Sub Assistant Registrar

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To

1.The Chief Secretary, Puducherry
Union of India
Union Territory of Puducherry

2.The Secretary,
Hindu Religious Institutions, Puducherry

3.The Commissioner,
Department of Hindu Religious Institutions and Wakf,
Puducherry

+1cc to M/s.Ragavachari, Advocate SR.No. 28158

+1 cc to Government Pleader Sr.No.27956

W.P. No.9894 of 2020
and

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SRA (CO)

A.SK(13.07.2021)