IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 28.04.2022
CORAM :
THE HON'BLE MR.MUNISHWAR NATH BHANDARI, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.(MD)Nos.2288 and 2289 of 2022

and

W.M.P.(MD) Nos.2001, 2002, 2003 and 2004 of 2022

S.Sudharsanam ..Petitioner
In W.P.(MD)No.2288 of 2022

S.Shaji ..Petitioner
In W.P.(MD)No.2289 of 2022

Vs.

1. The State of Tamilnadu,
Through its Principal Secretary to Government,
Tourism, Culture and Religious Endowments Department,
Fort St. George,
Chennai - 600 009.

2. The Commissioner,
Hindu Religious and Charitable Endowments Department,
Nungambakkam High Road,
Chennai. ..Respondents in Both W.Ps

Common Prayer: Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Declaration or any other appropriate Writ or order or direction in the nature of Writ of declaration, declaring that Impugned G.O.Ms.No.132 Tourism, Culture and Religious Endowments [RE 4-2] Department dated 26/10/2021, in so far it amends Sub Rule 3 of Rule 17 of Tamilnadu Hindu Religious Institutions Employees [Conditions of Service] Rules 2020 issued by the first respondent herein and the consequential guidelines issued by the second respondent herein Na.Ka.No.6759/2015/D5 dated 25/01/2022 as Ultra Vires the Tamilnadu Hindu Religious and Charitable Endowments Act 1959 Act [Act XXII of 1959], illegal and violative of the Constitution of India.

For the Petitioners In both W.Ps : Mr. VR Shanmuganathan

For the Respondents In both W.Ps : Mr.R.Shunmugasundaram Advocate General Asstd. by Mr.NRR Arun Natarajan Special Government Pleader

O R D E R
(Order of the Court was made by D.BHARATHA CHAKRAVARTHY. J.,)

Thiru.S.Sudharsanam, General Secretary, Tamil Nadu Senior Grade Temple Staff Association, Madurai and Thiru.S.Shaji, president of the same Association have filed W.P.(MD)Nos.2288 of 2022 and 2289 of 2022 respectively, challenging the Constitutional validity of G.O.Ms.No.132 Tourism, Culture and Religious Endowments [RE 4-2] Department dated 26.10.2021, whereby, Rule 17 of the Tamil Nadu Hindu Religious Institutions Employees (Conditions of Service) Rules, 2020 is amended and the Circular issued by the Commissioner, Hindu Religious and Charitable Endowments Department, dated 25.01.2022 bearing reference Na.Ka.No.6759/2015/D5, thereby framing consequential guidelines for transfer.

2. The case of the petitioners is that they are the office bearers of the Association as well as the employees of the Temple. It is their contention that, originally, the Tamil Nadu Hindu Religious Institutions Employees (Conditions of Service) Rules, 2020, (herein after referred to as "Rules"), were framed in exercise of the powers under Section 116 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (herein after referred to as "Act").

3. Rule 17 of the said Rules provided for transfers and postings from one religious institution to another, with the approval of the Commissioner, viz., the second respondent and with the consent of the Executive Authorities of the religious institutions, after considering the objections of the employees. Now by the impugned amendment, apart from inserting the words "by the appointing authority" after the word transfer in Rule 17 (1), a new Sub-Rule (4) to Rule 17 is inserted, whereby, power is conferred on the Commissioner to transfer the employees of the religious institutions to other religious institutions having Executive Officer of the same Grade, in the interest of administration.

4. Pursuant to the newly amended Sub-Rule (4) to Rule 17, the second respondent had issued the consequential circular dated 25.01.2022, which is also impugned in the Writ Petitions, making provisions for general transfers upon completion of every three years of service, etc.,

5. The petitioners individually and also collectively as an Association, are aggrieved by the same and therefore, they are challenging the Constitutional validity of the said amendment, as well as the consequential guidelines, by the present Writ Petitions. The grounds of challenge are:

a) Each religious institution is a separate entity and therefore, Sections 55 to 58 of the Act empowers only the Trustees of the institutions to administer the Temple including making appointments, taking disciplinary action and fixing appropriate scales of expenditure, etc., and therefore, the employees, being the employees of the particular religious institution, cannot be transferred outside the religious institution;

b) Any such transfer from one religious institution to another, is bound to violate the service conditions, such as seniority, promotion, etc., and therefore, the impugned amendment and the guidelines are bad in law;

c) By virtue of the impugned amendment and the guidelines, even indoor employees such as Poojaris and Maniams are also liable to be transferred. First they are well versed in the religious practices, prevailing customs, Agamas, Deities and the nature of devotees and their needs on particular Temple and if they are transferred from one Temple to another, then their entire experience and learning goes in vain. Second, they may not know the prevailing customs, Agamas, religious practices, etc., in the transferred Temple, more particularly, if they are transferred to different types of Temple, that would go to the root of the matter, affecting the very worship and rituals in the Temple and therefore, the impugned provisions are liable to be declared as unconstitutional.

6. The respondents are resisting the Writ Petitions by filing a common counter affidavit. According to them, though it is correct to state that each religious institution is a separate entity and the Trustees are the appointing authorities of the Temple employees, it is submitted that Section 55 of the

Act confers only the power of appointment of the employees with the Trustees. However, Section 116 of the Act empowers the Government to prescribe the conditions of Service. This apart, as per Section 23 of the Act, all the religious institutions are subject to the general superintendence and control of the Commissioner and for the said purpose, the Commissioner is conferred with the powers to pass orders which may be deemed necessary to ensure that such Temples and Endowments are properly administered and that their income is duly appropriated for the purpose for which they were founded or exists. Therefore, in order to enable the Commissioner to have effective control as envisaged under Section 23 of the Act, the Government, in exercise of its power under Section 116 of the Act, had already framed the Rules. Even as per existing Rule 17, the employees are liable to be transferred from one religious institution to another, provided, with the consent of the Executive Officers and the approval of the Commissioner. Therefore, transfer from one religious institution to another religious institution is not a new phenomenon.

7. It is the contention of respondents that the following orders have been passed by this Court:

(i) This Court by order dated 12.02.2018 in W.P.(MD)No.14428 of 2017, after considering the state of affairs of the Temple lands, had issued series of directions to safeguard and gain control of the Temple lands.

(ii) By another order dated 12.02.2018 in W.P.(MD)No.16833 of 2017, had passed comprehensive direction in respect of the collection of rents, lease on Temple properties and utilization of the amounts for proper maintenance of the Temples.

(iii) By another order dated 01.02.2018 in W.P.(MD)No.1057 of 2018, directions were given in respect of lease and licenses of the Mutts and Adhinams and their properties.

(iv) By order dated 31.10.2018 in W.P.No.5021 of 2013, while issuing the directions regarding safeguarding of Temple properties, Special Committees were directed to be constituted to conduct enquiries against erring officials and also to initiate disciplinary proceedings.

(v) By order dated 22.10.2018 in W.P.(MD)No.11817 of 2018, this Court directed that, if any of the Temple official is found in collusion with the illegal encroachers of the Temple properties, stringent action should be taken against him.

(vi) Similarly, by order dated 28.06.2018 in W.P.No.11081 of 2013 and order dated 14.03.2018 in W.P.(MD)Nos.4428 of 2018, etc., batch and order dated 22.10.2018 in W.P.(MD)No.11817 of 2018, consolidated directions were given and the Government was also directed to issue consolidated guidelines touching upon various aspects of the Administration of Temples. By the same order in W.P.(MD)No.11817 of 2018, installation of bio-metric devices for the entries of the staff, issue of ID Cards, etc., was also directed.

(vii) By order dated 28.06.2018 in W.P.(MD)No.11081 of 2013, directions were given to the Vigilance and Anti Corruption Department to enquire into the aspects regarding collusion between the officials and those who are in unauthorized occupation of the Temple properties. By the same order, directions to the Registering Authority to conduct an enquiry and to refuse unauthorized transfers on Temple properties was also given.

(viii) Directions with reference to Registration was also granted by the Order in W.P.Nos.30589 of 2013, etc., batch.

(ix) This Court considering the various aspects of maintenance of the Temple and Heritage sites in Suo-Motu W.P.No.574 of 2015, etc., had issued comprehensive directions by order dated 07.06.2021, and the direction No.53 reads as follows:

> "53. A fixed salary be awarded to the trustees of the temple, which can be arrived at based on the income of the religious institution to ensure participation on a full-time basis by the selected trustee, subject to penal and disciplinary provisions of the Act. In a routine manner, periodical transfer for the staff of the temples must be made."

(x) After considering Rule 17 of the Rules and the state of affairs of various Temples, by order dated 11.12.2020 in W.P.(MD)No.17198 of 2020, the following directions were given:

> "8. Section 17 of Tamil Nadu Hindu Religious Institution Employees (Condition of Service) Rules, 2020, enables the authorities to transfer the temple employees and Rule 17 is usefully extracted as follows:
>
> "17. ...."

Even Government servants are regularly transferred after three years terms. When the employees of the HR & CE are dealing with the money and vast properties of the temples, they should be transferred on regular basis under Rule 17. That will go in a long way to prevent any malpractices and misuse of temple properties."

"11. The grievance of the petitioner are well founded and he has only brought out what is happening in the religious institutions and misdeeds committed in managing the temple properties and endowments. Though the petitioner has given representation on 19.10.2020, highlighting the above points, instead of directing the authorities to consider and pass orders, on the above representation, positive directions have to be given in the interest of the institution, so that this Court will follow up the matter. Therefore, the following directions are given:

(i) The outdoor servants and other employees of the religious institution are to be transferred on regular basis, preferably after three years in the interest of administration, as per Rule 17 of the Tamil Nadu Hindu Religious Institution Employees (Condition of Service) Rule 2020.

(ii) ....

(iii) ....

(iv) ...."

Therefore to implement the said directions, as well as to enable the Commissioner to actually to have effective control over the administration of the Temple, the present amendment in the Rule was brought-forth and circular prescribing the transfer guidelines, was issued.

8. It is the case of the respondents that, as far as the grievance of transfer of indoor employees is concerned, the transfer guidelines themselves clearly provide that indoor employees may be transferred to another religious institution, following the same Agamas as per the above instructions and further it states that when transferring the indoor servants, transfer should be done without violating the customs and usages followed in religious institution concerned and therefore, it is their submission that transfer is made without affecting the religious practices of the Temple. In this regard, it is useful

to extract clauses 1 and 2 of the impugned circular dated 25.01.2022 relating to paragraph 3 of guideline No.3 which are under:

> "(1) Indoor servants may be transferred to another Religious Institution following the same Agama as per the above instructions.
>
> (2) When transferring the indoor servants, the transfer should be done without violating the custom and usage followed in Religious Institution concerned."

9. As far as the contention relating to the transfer resulting in alteration of service of service conditions is concerned, Clause 5, 8, 11 and 13 of the impugned circular relating to paragraph 1 of guideline No.3 are relied upon, which are extracted hereunder:

> "(5) There will be no change in the service conditions of the transferred employee. He is entitled to get the seniority and promotions in the Religious Institution where he was first appointed.
>
> (8) Previous service in the Religious Institution will be taken into the account for sanction of increment.
>
> (11) The salary shall be paid by after getting Last Pay Certificate from the previous Religious Institution.
>
> (13) The EPF contribution of the transferred employee shall be paid from the funds of the transferred Religious Institution."

10. Therefore, it the contention of the respondents that on transfer, status of the employees will not be severed from the parent Temple and their seniority, promotion and pay are protected. They will have lien in the parent Temple. Further, denying about the varying income of each and every Temple, it is stated in the counter affidavit that the Last Pay will be protected and it is mentioned that the Temples have been categorized into ordinary grade and senior grade and outdoor servants are grouped under 7 common cadres and indoor servants are grouped under 37 common cadres and their pay and emoluments are directed to be maintained in tandem and therefore, the Joint

Commissioners are required to identify the employees who are working for more than three years and also the suitable religious institutions and accordingly, the transfers will be made and the entire exercise is only with an object of the betterment of Temple administration, as well as the employees.

11. Heard Mr. VR Shanmuganathan , learned counsel for the petitioners and learned Advocate General on behalf of the respondents.

12. Mr. VR Shanmuganathan , learned counsel for the petitioners reiterated the contentions and took us through Section 55 of the Act, which permits only the Trustees to fill up the vacancies of the Temple and thereby, he contended that each religious institution is a separate entity on its own.

13. By relying upon Section 56 of the Act, it is contended that it is only the Trustees who have the control on the employees, including the power to suspend, remove or dismiss or to take disciplinary action.

14. According to the learned counsel, Section 23 of the Act, under which the respondents are claiming power of the Commissioner, clearly starts with the phrase that it is subject to the provisions of the Act. Therefore, power of appointment and control of the employees have been specifically given to the Trustees under Sections 55 and 56 of the Act. Then, to that extent, the power of the Commissioner under Section 23 of the Act is curtailed and therefore, the impugned Rules and the guidelines are liable to struck down as directly in contravention of the provisions of the Act.

15. The learned counsel would submit that meddling with the religious practices of the Temples and the powers of the Trustees would impinge upon the Fundamental Rights guaranteed under the Constitution of India and Section 117 of the Act. He would further submit that when a particular employee joins the service of the Temple upon accepting an offer of appointment by the Temple, he has a legitimate expectation to be in the service of the Temple, now by the impugned Rules and the consequential Circular, he will be transferred every three years as in the case of a Government servant and virtually, the Trustees are divested with all powers to administer the Temple and the employees would be put to grave prejudice.

16. Per contra, the learned Advocate General submitted that even though the power of appointment as well as

disciplinary proceedings are entrusted with the Trustees, express powers have been granted under Section 116 (2) (xxiii) to prescribe qualifications to be possessed by the officers and servants for appointment of officers in religious institutions and conditions of service for officers and servants. Transfer being an incident of service, already, while framing the Rules, provisions for transfer from one religious institution to another, exists. Now, for the purposes of implementation of the various directions of this Court as detailed above, an additional provision by way of Sub Rule (4) to Rule 17 is incorporated by the impugned amendment which gives the power to the Commissioner, who is already vested with the overall superintendence and control of the Temples to transfer the employees. The employees have no right to insist on the place of work. Further, considering the need for better administration of the Temple and its properties and the problem arising on account of long continuation of the employee in the same Temple, the impugned circular provides for transfer policy, which is in tune with the object of better administration of the Temples. The circular itself demonstrates that no condition of service will be violated and the employees will retain and have lien over their post in the parent Temple and their seniority and promotion, etc., will be given as per their right in their parent Temple. Therefore, no condition of service will be violated. Care is also taken not to meddle with any of the Agamas or religious practices and the clauses in the Circular, as extracted above, itself renders the apprehension of the petitioners, baseless.

17. We have considered the rival submissions on behalf of both sides and perused the material records of the case.

18. To appreciate the contentions raised on behalf of the petitioners, it is useful to extract the existing Rule 17 of the Rules before amendment:

> "17. Transfers and postings.- (1) The employees of religious institutions may be transferred to the entry level post, from one religious institution to another religious institution having Executive Officer of the same grade based on the mutual consent of the Executive Authorities of the religious institutions, by considering the objections of employees of the said religious institutions and subject to approval by the Commissioner:

Provided that the scale of pay and designation of the post are the same in both the religious institutions.

(2) An employee transferred from one religious institution to another religious institution is entitled for joining time as admissible to Government Servants.

(3) No employee shall be considered for transfer during the period of probation if,

(i) disciplinary action is pending or contemplated against him.

(ii) criminal case is pending or contemplated against him.

(iii) vigilance case is pending or contemplated against him.

(iv) he is undergoing any punishment.

19. The impugned amendment reads as follows:

In the said Rules.-

(a) in sub-rule (1) of rule 17, for the expression "may be transferred" the expression "may be transferred by the appointing authority concerned" shall be substituted.

(b) after sub-rule (3) of the rule 17, the following sub-rule shall be added, namely:-

"(4) Notwithstanding anything contained in this rule, the Commissioner may, in the interest of administration of religious institutions, transfer employees of any religious institution to any other religious institution having Executive Officer of the same grade".

20. Thus it may be seen that it is not for the first time inter-institutional transfer is brought into force. However, the effect of the amendment is that while preserving the power to make inter-institutional transfer to the appointing authorities i.e., the Trustees of the Temple, with the consent of the other Executive Officers and after calling for the objections of the employees, additional power is granted to the Commissioner to make routine administrative transfers in the interest of the institution. Therefore, the petitioners, even before the

amendment, had no right to be placed in the same religious institution and the only right, which was to make an objection at the time of transfer, which is take away by the amendment, which is to be considered.

21. On a perusal of Section 116 (2) (xxiii), it is clear that the Government is entitled to frame Rules regarding the various conditions of the service of the employees. The same is extracted hereunder:

> 116. (2) (xxiii)- the qualifications to be possessed by the officers and servants for appointment to offices in religious institutions and the conditions of service of all such officers and servants;

22. Therefore, the Government has power to prescribe the conditions of service and therefore, prescribing for transfer is well within the powers of the first respondent. Also considering the scope of Section 23 of the Act, which vests the Commissioner to have general control and superintendence over the administration of the religious institutions and while framing Rule 17 (4), care has been taken to grant the power only to the Commissioner which is in consonance with Section 23 of the Act.

23. As far as Sections 55 and 56 of the Act are concerned, the same does not, in any manner, restrict the overall superintendence and control. The power of appointment and consequentially, the power to remove, dismiss, etc., from service is granted to the Trustees and therefore, the powers granted to the Trustees under Sections 55 and 56, operate in that field and do not in any manner come in conflict in Government prescribing the conditions of service or the power of Commissioner to make administrative transfer in the best interest of the Temple. Therefore, there is no infirmity in law or lack of jurisdiction or violation of any provisions of the Act in respect of the impugned amendment or the consequential circular.

24. On the other hand, the contentions raised by the petitioners seem to be that, while so exercising the powers under the amended Rule or the consequential circular, it would be exercised in such a manner that the conditions of service including salary, seniority and promotion will be affected. Similarly, by transferring even indoor employees such as Poojaris and Maniams, from one Temple to another, for example, from the Temple of Shaivite to Vaishnavite, the religious customs will be interfered with.

25. First, the said arguments cannot be relevant for the purpose of testing the Constitutional validity of the impugned amendment as well as the Circular. The possibility of a wrongful exercise of power under an enabling Rule or the Circular cannot be a ground to declare the very Rule or the Circular itself as unconstitutional.

26. Second, from the guidelines extracted above and the categorical statements made under the counter affidavit, it is clear that no condition of service will be affected by the transfer and that, no Agamas or religious practice of any Temple or religious institution will be, in any manner, affected.

27. Further, if and when any employee is transferred, in such a manner, which affected the religious practices or agamas or his salary is affected or promotion which is due is affected on account of transfer, that would give rise to the individual, the cause of action to challenge the transfer and the same cannot be a ground for attacking the Constitutional validity of the Rule/ circular.

28. The impugned amendment and the consequential circular are

(i) very well within the powers of the respondents;

(ii) are not violating any rights of the employees;

(iii) are issued in compliance of the directions of the various orders of this Court referred to above and therefore, absolutely, no illegality whatsoever can be attributed in respect of the same.

29. Therefore, these Writ Petitions fail and the same are accordingly dismissed. However, there will be no orders as to costs. Consequently, the connected Writ Miscellaneous Petitions are closed.

Sd/-
Deputy Registrar (CS)

//True Copy//

Sub Assistant Registrar

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To:

1. The State of Tamilnadu,
   Through its Principal Secretary to Government,
   Tourism, Culture and Religious Endowments Department,
   Fort St. George,
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2. The Commissioner,
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W.P.(MD)Nos.2288 and 2289 of 2022

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