IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.02.2022

CORAM :

THE HON'BLE MR.MUNISHWAR NATH BHANDARI, CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.NO.23070 OF 2021

T.R.Ramesh ... Petitioner

.Vs.

1. The State of Tamil Nadu,
   Rep. by its Secretary,
   The Department of Tourism,
   The Culture and Religious
   Endowments Department,
   Secretariat,
   Fort St. George,
   Chennai - 600 009.

2. The Commissioner,
   The Hindu Religious and Charitable
   Endowments Department,
   119, Mahatma Gandhi Road,
   Nungambakkam,
   Chennai - 600 034. ... Respondents

PRAYER:-

Petition filed under Article 226 of the Constitution of India praying for a writ of certiorarified mandamus to call for the records in R.C.No.46299/2020-I/B2, dated 12.6.2021 issued by the second respondent Commissioner, quash the same and consequently forbear the respondents from appointing government servants in the administration of temples and order refund of the salaries, allowances and other perquisites paid from the temple funds to such government servants deputed to Hindu Religious Institutions on or after 1.1.1991.

For the Petitioner : Mr.T.R.Ramesh
Party-in-person

For the Respondents : Mr.R.Shunmugasundaram
Advocate General
Assisted by
Mr.Arun Natarajan
Special Government Pleader
(HR & CE)

ORDER

(Order of the Court was made by the Hon'ble Chief Justice)

The public interest litigation has been filed to seek a writ of mandamus forbearing the respondents from appointing government servants for the administration of temples and, at the same time, to refund the salaries, allowances and perquisites paid from the temple funds. A challenge to the order dated 12.6.2021 passed by the second respondent has also been made.

2. The petitioner, appearing in person, submits that as per the provisions of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 [for brevity, "the Act of 1959"], the trustees alone are having competence to appoint employees for the administration of the temple. A reference has been given to Section 55(1) of the Act of 1959 to buttress the argument. In the instant case, the government employees are being transferred by the Commissioner, Hindu Religious and Charitable Endowments Department, to look after the administration of the temple. No power vests with the Commissioner, Hindu Religious and Charitable Endowments Department, to transfer any government employee for the administration of the temple and, that too, for years together. The power of appointment against the vacancies, whether temporary or permanent, lies only with the trustees.

3. The petitioner, appearing in person, further submitted that the fit person also cannot appoint employees in temples and otherwise, the fit person cannot continue beyond the period of ninety days or in any case beyond the tenure of the trustees. However, in many temples the fit person is continuing to administer the temple beyond the tenure of the trustees.

4. The petitioner, appearing in person, further submits that the trustees have not been appointed in around 19000 non-

hereditary temples in the State of Tamil Nadu for the last many years. It is more so when for a temple having revenue of more than Rs.10 lakh, the trustees can be appointed/nominated by the Government. For those temples having revenue of less than Rs.10 lakh, the process of selection has to be adopted. The litigation regarding non-appointment of trustees is pending consideration before a Coordinate Bench of this court.

5. In any case, if the trustees have not been appointed/ nominated, the appointment of the employees on different posts could not have been made by the Commissioner and if at all such appointments are made, it should be with persons having requisite qualification. It is alleged that government servants not possessing the required qualification have been transferred and posted to administer various temples. In any event, as an illustration it is submitted that such appointments should have been made after inviting applications from and amongst eligible candidates, though the petitioner would not be approving the aforesaid arrangement also, as appointments can be made only by the trustees as per Section 55(1) of the Act of 1959.

6. In view of the above, a direction is sought to revert all the government employees working in the administration of the non-hereditary temples and to refund of the salaries, allowances and other perquisites paid from the temple funds to government servants.

7. Learned Advocate General submits that the appointment of the trustees and delay therein is subject-matter pending consideration before the Coordinate Bench and pursuant to the directions given from time to time, the process of selection for appointment of trustees has already been commenced. The recommendation is to be made initially at the level of the district and for that applications have already been invited for appointment of trustees and matter is under process. It is due to the intervening urban local body elections that the process of appointment of trustees could not be completed. In the past, there may have been default, but the government is now taking all earnest efforts to appoint the trustees at the earliest.

8. Coming to the main issue, learned Advocate General submitted that in the absence of the trustees to administer the temple, the administrators have been appointed coupled with the transfer of government employees on deputation to look after the administration of the temple. The arrangement aforesaid is permissible and otherwise, in the absence of employees to administer the temples, there would have been a chaos. Therefore, it was in the interest of the temple that the government employees were sent on deputation to look after the administration of the non-hereditary temples. It is also

submitted that the moment the trustees are appointed, followed by the process of appointment of office-holders and servants by the trustees, the government employees deputed to temples would be reverted to their parent departments. Accordingly, a prayer is made not to grant the relief sought by the petitioner, as otherwise in the absence of employees, there would be total chaos in the administration of the temple.

9. We have considered the rival submission of the parties and perused the records.

10. The writ petition has been filed to challenge the order dated 12.6.2021 with a prayer that the respondents be restrained to appoint government servants for the administration of temple, because the right to appoint lies with the trustees only. Section 55(1) of the Act of 1959 has been referred and is quoted hereunder for ready reference:

> "Section 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 in all cases.
>
> Explanation.- The expression 'office-holders or servants' shall include archakas and pujaries."
>
> [emphasis supplied]

11. The provision aforesaid authorizes trustees to make appointment against the vacancies, whether temporary or permanent. Accordingly, the trustees are competent to appoint the employees and fill the vacancies. That is the ideal situation which was thought by the legislature without expecting that there would be a situation where trustees would not be appointed for years together. In the instant case and as stated by the petitioner, appearing in person, for more than ten years, in many of the temples no trustees have been appointed. The issue aforesaid is pending consideration with the Coordinate Bench.

12. The question for our consideration is, if, for good or bad reasons, trustees could not be appointed as per the provisions of the Act of 1959, whether the temple should be left without the employees for administration or in the given circumstances, the Commissioner should exercise power to transfer the employees to administer the temple. If we go hyper-technically, employees in the temple can be appointed only by

the trustees and in the absence of trustees, no employee could have been appointed in any of the temples, thereby creating a chaos in the administration of temples. The Commissioner is otherwise clothed with various powers and duties as per Section 23 of the Act of 1959 in respect of administration of all temples. In the instant case, the act of the Commissioner to transfer government employees on deputation to administer the temple is in the larger interest of the temples, as there were no regular appointments, in the absence of trustees. The transfer of employee in a given circumstance can not be considered to be an appointment.

13. At this juncture, it would be gainful to refer to certain provisions contained in Part V of the Fundamental Rules of the Tamil Nadu Government Act. Rule 110(xx) of the Fundamental Rules is relevant and is quoted hereunder for ready reference:

> "110 (a) ...
>
> (b) A transfer to foreign service shall be sanctioned by Government in consultation with the Personnel and Administrative Reforms Department, provided that—
>
> (i) to (xix) ....
>
> (xx) The Commissioner, Hindu Religious and Charitable Endowments (Administration) Department shall be competent to sanction the deputation of Executive Officers Grade-I belonging to the Hindu Religious and Charitable Endowments Subordinate Service and the Superintendents (including Inspectors, Manager and Head Clerks) belonging to the Tamil Nadu Ministerial Service working under the control of the Commissioner, Hindu Religious and Charitable Endowments (Administration) Department, on foreign service to any religious institutions, within the State, subject to the norms laid down by the Government from time to time".

14. It is stated by the petitioner that the Rule aforesaid allows transfer of employees on deputation. However, Rule 111 of the Fundamental Rules stipulates the limitation of such transfer. Rule 111 of the Fundamental Rules is also quoted hereinunder:

"111. A transfer to foreign service shall not be admissible unless—

(a) the duties to be performed after the transfer are such as should, for public reasons, be rendered by a Government servant, and

(b) the Government servant transferred holds, at the time of transfer, a post paid from the Consolidated Fund of the State.

Explanation.—The loan of a Government servant to a private undertaking shall be regarded as a very exceptional measures requiring special justification on a rigorous application of the principle enunciated in clause (a) of this rule."

15. The petitioner, appearing in person, submits that without assigning any public reasons, the transfer of government servants has been made and, therefore, even Rule 111 coupled with Rule 110(xx) of the Fundamental Rules have been violated.

16. We are unable to accept the argument aforesaid, rather it supports the action of the respondents. The Commissioner has been empowered to sanction the deputation of the Executive Officer Grade-I to the Hindu Religious and Charitable Endowments. It is apart from Subordinate Service and also Superintendents, including Inspectors, Manager and Head Clerks, belonging to the Tamil Nadu Ministerial Service. It is true that Rule 111 of the Fundamental Rules permits such transfers only in exceptional circumstances. We find a special justification in the present matter. The deputation of government servants was made as the posts of trustees were vacant and the administration of the temples was in chaos. As per Rule 110(xx) coupled with Rule 111 of the Fundamental Rules, the Commissioner has power to transfer the government servants stipulated in the said provisions. The transfers were made accordingly subject to the condition that as and when the vacancies would be filled by the trustees, the transferred government servants would be reverted to their parent departments or the departments concerned would pass appropriate orders for them, but, in any case, they will not be continued in same manner indefinitely.

17. Taking into consideration the peculiar circumstances, we do not find action of the respondents in transferring the government servants for the administration of the temple to be illegal.

In view of the discussion made above, the writ petition is dismissed finding no merit in it. There will be no order as to costs. Consequently, W.M.P.No.24275, 24278, 24281 and 24282 of 2021 are closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary,
The State of Tamil Nadu,
The Department of Tourism,
The Culture and Religious
Endowments Department,
Secretariat, Fort St. George,
Chennai - 600 009.

2. The Commissioner,
The Hindu Religious and Charitable
Endowments Department,
119, Mahatma Gandhi Road,
Nungambakkam,
Chennai - 600 034.

+1cc to Mr.T.R.Ramesh, Advocate, S.R.No.11475
+1cc to the Government Pleader, S.R.No.12140 (02/03/2022)

W.P.NO.23070 OF 2021

MG(CO)
PBS/01/03/2022