



W.P.(MD).No.21264 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 13.09.2022

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No.21264 of 2022

S.Ashok Kumar

... Petitioner

Vs.

1.The Secretary to Government,
Tourism, Culture and Religious
Endowments Department,
Fort St. George,
Chennai – 600 009.

2.The Commissioner,
Hindu Religious and Charitable Endowments Department,
119, Uthamar Gandhi Salai,
Chennai – 600 034.

3.The Joint Commissioner/Executive Officer,
Arulmigu Mariamman Temple,
Samayapuram,
Manachanallur Taluk,
Trichy District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the respondents to consider the representation of the petitioner dated 01.08.2022 within a period may be stipulated by this Court.



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For Petitioner : Mr.C.Guhaseelarupan

For R-1 and R-2 : Mr.P.Thilak Kumar,
Government Pleader,
Assisted by,
Mr.M.Siddharthan,
Additional Government Pleader.

ORDER

This Writ Petition has been filed for Writ of Mandamus, directing the respondents to consider the petitioner's representation dated 01.08.2022.

2. Even though this Writ Petition seems to be a simple prayer for Mandamus to consider and pass orders, this is the second round of litigation.

3. The brief facts of the case are that the temple namely, Arulmigu Mariamman Temple situated at Samayapuram, Manachanallur Taluk, Trichy District is a Senior Grade Temple under the administrative and supervisory control of Hindu Religious and Charitable Endowment Department. The contention of the petitioner is that there are several vacancies in several categories in the said temple. More particularly, several posts like Watchman, Ticket Sellers are available. The second respondent vide proceedings dated



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13.01.2011, has sanctioned new posts like Archakar, Barisarakar, Watchman, Night Watchman and Thiruchutru etc. The petitioner applied to the said post of Watchman / Ticket Seller. The Board of Trust has passed a resolution to appoint the petitioner in consolidated pay of Rs.4500/- per month vide Resolution No. 432 dated 31.01.2011. Based on the resolution, the third respondent submitted a proposal to the second respondent for approval of appointment. The second respondent has passed an order dated 24.02.2011 approving the said appointment. Thereafter third respondent issued the appointment order on 25.02.2011 and subsequently duty allotment order passed on 27.02.2011. Thereafter, the Joint Commissioner who was holding additional charge of the aforesaid temple prevented the petitioner and the similarly placed persons to sign the attendance register. The contention of the petitioner is that the petitioner was appointed as per Section 55 (1) of Hindu Religious and Charitable Endowment Act. Once a person is appointed by the competent authority in religious institution, he cannot be thrown out from the post of Temple. The respondents ought to have issued Show Cause Notice, thereafter, conduct an enquiry and then pass order. The respondents cannot unilaterally oust the petitioners from the employment. Aggrieved over, the petitioner and other similarly affected persons had filed W.P.(MD).Nos.7744 to 7748 of 2011



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and W.P.(MD).No.9490 of 2011 with a prayer to direct the third respondent therein to permit the petitioner and others to sign the attendance register and permit them to continue the duty. This Court vide Common Order dated 27.06.2012 had held that the petitioners could not ask for a direction to permit them to sign in the attendance register, unless the termination is declared as illegal and a direction for restoration of the petitioners in service. Aggrieved over, the petitioners and other temple servants had preferred Writ Appeal in W.A.(MD).Nos.759 of 2012 batch and the said Writ Appeal was dismissed on 10.02.2021, by referring to an earlier order dated 26.04.2017 passed in W.A.(MD).Nos.94 and 95 of 2014. In the Writ Appeal, W.A.(MD).Nos.94 and 95 of 2014, the Hon'ble Division Bench has held that when the Writ Petitions were dismissed on the ground that unless the termination is declared as illegal, a direction cannot be given for restoration of the appellants in service. Also the Hon'ble Division Bench had categorically held that the respondents had taken a specific stand that without calling for applications from the Employment Exchange and without any advertisement and without conducting any interview, the appellants claimed to have been appointed and such appointment is wholly illegal. Following this Division Bench order, the subsequent Division Bench in W.A.(MD).Nos.759 to 764 of 2012 had dismissed the Writ Appeal



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vide order dated 10.02.2021. Again another batch of Writ Petitions were filed in W.P.(MD).Nos.11182 of 2021 batch by the petitioner and some similarly affected persons. The learned Single Judge has concurred with the Hon'ble Division Bench but has observed that the petitioner seeking Mandamus without any representation. Based on such observation the petitioners had filed writ petitions without any representation, now has submitted representation dated 01.08.2022 and have come up with the plea that now the writ petitioner has submitted a representation and the respondents are duty bound to consider the representation and thus, seeking a prayer for Mandamus.

4. Heard Mr.C.Guhaseelarupan, the learned counsel for the petitioner and Mr.P.Thilak Kumar, the learned Government Pleader assisted by Mr.M.Siddharthan, Additional Government Pleader for the first and second respondents and perused the records.

5. On perusing the documents, especially the order passed in the Writ Appeal in W.A.(MD).Nos.94 and 95 of 2012, wherein, the Hon'ble Division Bench has categorically held that the appointment of the writ petitioner was issued without calling for the application from the employment exchange,



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without any advertisement and without conducting interview and the Hon'ble Division Bench has categorically held such appointment is “wholly illegal”.

When the writ petitioner had suffered an order by a categorical finding that the appointment is illegal, then the prayer seeking Mandamus cannot be entertained. It will amount to direct the respondents to grant appointment when the appointment itself is wholly illegal. Therefore, this Court is not inclined to entertain this Writ Petition.

6. In view of the above, this Writ Petition is dismissed. There shall be no order as to costs.

13.09.2022

Index : Yes / No
Internet : Yes/ No
Nsr



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S.SRIMATHY, J.

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