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W.P.(MD).Nos.6515 of 2017 and 9692 and 16426 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 17.10.2022

DELIVERED ON : 12.12.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).Nos.6515 of 2017 and 9692 and 16426 of 2018

and

W.M.P.(MD).No.5106 of 2017, 8943 and 8944 of 2018

W.P.(MD).No.6515 of 2017

A.Ajikumar

... Petitioner

Vs

1.The Commissioner,
Hindu Religious and Charitable
Endowments Department,
Nungambakkam,
Chennai.

2.The Joint Commissioner,
Kanyakumari District Temples,
Hindu Religious and Charitable
Endowments Department,
Suchindram,
Kanyakumari District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records pertaining to the impugned order, passed by the second respondent in his proceedings in Na.Ka.No. 190/2017/A2, dated 28.03.2017, which was served on the petitioner on 05.04.2017 and quash the same as illegal.



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For Petitioner : Mr.C.Kishore
For R-1 : Mr.C.Baskaran,
Government Advocate (Civil Side).
For R-2 : Mr.K.Sathiya Singh,
Standing Counsel.

W.P.(MD).No.9692 of 2018

N.Chandran

... Petitioner

Vs

- 1.The Commissioner,
Hindu Religious and Charitable
Endowments Department,
Nungambakkam, Chennai.
- 2.The Joint Commissioner,
Kanyakumari District Temples,
Hindu Religious and Charitable
Endowments Department,
Suchindram, Kanyakumari District.
- 3.The Superintendent
Kanyakumari District Temples,
Hindu Religious and Charitable
Endowments Department,
Kuzhithurai Group of Temples,
Kuzhithurai, Kanyakumari District.
- 4.Sreekariyam,
Palugal Sub Group Temples,
Kanyakumari District Temples,
Hindu Religious and Charitable
Endowments Department,
Arulmigu Krishnaswamy Temple,
Puliyoor Salai, Mangodu Post, Kanyakumari District.

... Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records pertaining to the impugned order passed by the second respondent in his proceedings in Che.Mu.Na.Ka.No. 2386/2014/A2, dated -.01.2018, which was signed on 25.01.2018 and quash the same as illegal.

For Petitioner : Mr.C.Kishore

For R-1 : Mr.C.Baskaran,
Government Advocate (Civil Side).

For R-2 to R-4 : Mr.K.Sathiya Singh,
Standing Counsel.

W.P.(MD).No.16426 of 2018

V.Sree Krishna Sarma

... Petitioner

Vs

1.The Commissioner,
Hindu Religious and Charitable
Endowments Department,
Nungambakkam,
Chennai.

2.The Joint Commissioner,
Kanyakumari District Temples,
Hindu Religious and Charitable
Endowments Department,
Suchindram,
Kanyakumari District.



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3.The Superintendent

Kanyakumari District Temples,
Hindu Religious and Charitable
Endowments Department,
Kuzhithurai Group of Temples,
Kuzhithurai,
Kanyakumari District.

4.Sreekariyam,

Palugal Sub Group Temples,
Kanyakumari District Temples,
Hindu Religious and Charitable
Endowments Department,
Arulmigu Krishnaswamy Temple,
Puliyoor Salai, Mangodu Post,
Kanyakumari District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, directing the respondents to permit the petitioner to discharge his duties continuously without any interference as “Mel Shanthi” at Arulmigu Sri Krishnaswamy Temple at Puliyoor Salai, Kanyakumari District after handing over the keys of the Sanctum of Arulmighu Sri Krishnaswamy Temple at Puliyoor Salai, Kanyakumari District to the petitioner.

For Petitioner : Mr.C.Kishore

For R-1 : Mr.C.Baskaran,
Government Advocate (Civil Side).

For R-2 to R-4 : Mr.K.Sathiya Singh,
Standing Counsel.



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COMMON ORDER

The Writ Petition in W.P.(MD)No.6515 of 2017 is filed by A.Ajikumar to quash the transfer order dated 28.03.2017.

2. The facts as stated in the affidavit are that the petitioner was initially appointed as Watchman on daily wage basis at Arulmigu Sree Krishnaswamy Temple, Puliyoorsalai, for the wages Rs.40/- per day. The petitioner is also associated with Union meant for upliftment of employees working in the Temples under the name and style of “Kanyakumari Maavatta Alaya Uliyargal Sangam”. Subsequently, he was regularized on 29.01.2015 with time scale of pay of Rs.700-3000+GP Rs.550/-. The post of Watchman is categorized as “indoor servant”.

3. The contention of the petitioner is that the Temple Committee members involved in misappropriation of Temple funds. The petitioner and some other employees raised voice against the misappropriation of funds and hence, the Committee members have some enmity with the petitioner. Having political support as well as muscle power, the committee members started threatening the petitioner as well as other employees who raised voice. Hence, the petitioner and



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other employees preferred a complaint to the second respondent on 04.06.2016 and 13.06.2016. In the complaint, it has been specifically stated the Committee Members threatened the petitioner and other members that they would transfer the petitioners to some other place. Without looking into the complaint, the second respondent transferred the petitioner on 08.07.2016 to Arulmigu Thanumalaiswamy Temple, Suchindram. In the place of the petitioner, one Kannan was transferred from Suchindram Temple to Puliyoorsalai Temple. Again the petitioner was transferred on 22.08.2016 to Mahadevar Temple, Thirupparappu. Again the petitioner was transferred from Thirupparappu to Puliyoorsalai Temple on 15.03.2017. This transfer order was passed hardly 10 days before the Temple festival at Thirupparappu. The petitioner requested an extension of time to join the place and the same was rejected. Hence, the petitioner joined Puliyoorsalai Temple on 20.03.2017. After joining the place, the petitioner again received the transfer order where he was transferred from Puliyoorsalai to Mahadevar Temple, Ponmalai. The petitioner contended that the impugned order dated 28.03.2017 is passed with malafide intention in order to satisfy the Committee members of Arulmigu Krishnaswamy Temple, Puliyoorsalai. Challenging the said order dated 28.03.2017, the Writ Petition in W.P.(MD).No.6515 of 2017 is filed.



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4. The Writ Petition in W.P.(MD)No.9692 of 2018 is filed by Mr.Chandran challenging the transfer order dated 25.01.2018.

5. The facts as stated in the affidavit are that the writ petitioner Chandran was appointed as Kazhagam on daily wages basis of Rs.40/- per day at Arulmigu Krishnaswamy Temple, Puliyoorsalai. He also belongs to the same Sangam namely “Kanyakumari Maavatta Alaya Uliyargal Sangam”. He was regularized on 29.01.2005 with time scale of pay of Rs.700-3000+G.P.550/-. The said post is categorized as “indoor servant”. The petitioner herein also alleges misappropriation of Temple funds by the Committee members. The petitioner further contended his co-worker namely, Mr.Ajikumar, who had filed Writ Petition in W.P.(MD)No.6515 of 2017, was also transferred. The Committee members taking revenge on Mr.Aji Kumar, frequently transferred and victimized him. After the fourth transfer order, the fourth respondent Sreekariyam took custody of Temple keys and others from the said Ajikumar who was the custodian of the same and handed over to the Private Committee members. The said Ajikumar has challenged the transfer order which is pending before this Court.



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6. The petitioner Chandran further contended that the fourth respondent took custody of the temple keys, office keys, Registers and other articles from Aji Kumar and one Sri Krishna Sharma who is Temple poojari, after issuing fourth transfer order to Aji Kumar. As a part of victimization, the said Sri Krishna Sharma was also thrown out of Temple from 27.03.2017 without passing any orders. Thereafter, private poojaris were engaged by the private committee members. In the case of Aji Kumar, there was an interim stay, since the respondents did not obey the order of this Court, a Contempt Petition in Cont.P.(MD).No.2356 of 2017 was filed. The Hon'ble Court issued oral direction to the respondents to get the keys from the private Committee members and report the same before the Court. When the issue stood there, the petitioner was under medical treatment for disc problem from 01.01.2018 and was under medical leave from 26.01.2018 to 02.02.2018 by submitting a letter on 25.01.2018 seeking medical leave. On receipt of the letter, the third and fourth respondents visited the petitioner's house and asked for written undertaking that the petitioner had received the Temple keys, office keys, Registers etc., The petitioner denied the same, since the Temple keys and others were under the custody of the private Committee members and giving such an undertaking will be a falsehood. When the petitioner denied to give such an undertaking, the petitioner was threatened



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with dire consequences for such denial by the Committee members that is the third and fourth respondents. The petitioner submitted a complaint on the next day i.e. 26.01.2018 to the second respondent. In the meanwhile, the petitioner was transferred through the impugned order dated 25.01.2018. The petitioner further contended that the transfer order was not issued till the date of filing the Writ Petition and the petitioner was able to get only the photo copy of the transfer order. In the meanwhile, one Sasidharan Nair who was working as “Aanai Paagan”, was transferred to the present Temple as Watchman. The petitioner specifically alleges the said Sasidharan Nair has given an undertaking to the respondents 3 and 4 with regard to the Temple keys and on 29.01.2018, the said Sasidharan Nair had received the keys, which was produced before the Court while hearing Contempt Petition. But actually in letter and spirit, the Temple keys are with the private committee members only. Since the petitioner did not receive any transfer order, the petitioner was under impression that he was continuing as Kazhagam in the Temple and he joined the duty on 04.02.2018 by giving proper representation. But the petitioner was not provided with any salary for the month of February and on enquiry, it was informed that it will be disbursed next month and he was informed about the transfer also. Narrating these facts, the petitioner submitted representations to the second respondent



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requesting to disburse the pending salary. In the meanwhile, the petitioner received the copy of the reply sent under Right to Information Act indicating the list of employees but the petitioner's name was not in the present. On 20.04.2018, the petitioner received the transfer order dated 25.01.2018. Challenging the same, the Writ Petition in W.P.(MD).No.9692 of 2018 is filed.

7. The Writ Petition in W.P.(MD)No.16426 of 2018 is filed by one Sree Krishna Sarma for Mandamus directing the respondents to permit the petitioner to discharge his duties continuously without any interference as “Mel Santhi” at Arulmigu Krishnaswamy Temple, Puliyoorsalai by handing over the keys of Sanctum.

8. The contentions raised in this Writ Petition are that the private Committee members have enmity with the petitioner and threatened the petitioner. The contents raised in other Writ Petitions were raised in this Writ Petition also. The petitioner preferred Police complaint on 27.03.2017 alleging misappropriation. Immediately after this complaint, the respondents have transferred the said Aji Kumar on 28.03.2017. Likewise, the co-worker Chandran was also transferred. All the three employees who were preferred complaint



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against the private Committee members were victimized. Interestingly, the petitioner salary was not stopped and the petitioner was put to embarrassment for receiving salary without any work. Hence, the petitioner submitted detailed representation dated 07.06.2018 seeking direction to direct the respondents to allow the writ petitioner to continue his work as “Mel Shanthi”. Hence the Writ Petition in W.P.(MD).No.16426 of 2018 is filed.

9. The Joint Commissioner/second respondent has filed counter in all the writ petitions and it is more or less similar to the counter filed in Chandran case. In W.P. (MD)No.9692 of 2018 the second respondent had submitted that it was alleged that in some of the Temples in Kanyakumari District, some persons gathered together and created Sangam or Committee in the name of the Temple or Deity and involved in improper collection of money with or without the help of the employees. Likewise, in Puliyoorsalai Sri Krishnaswamy Temple, the petitioners also have involvement with the unauthorized Sangam and subsequently they have got some enmity with the public and worshippers. Hence, the second respondent issued circular to all the Sree Kariyams to inform about the illegal money collections by the Sangam or any other individuals for the Temple.

But the employees of the Temple administration had not informed the improper



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collection of money and existence of Sangam or Trust in the name of Deity or the Temple. At the same time, the three writ petitioners have submitted representations on 13.06.2016. The second respondent gave an opportunity to explain their grievances and the second respondent conducted an enquiry on the complaint. During the course of enquiry, the public in that locality submitted their explanations and also the wrongful act of the writ petitioners. The second respondent further submitted that the allegations against the other persons were not taken into consideration by the second respondent, because of the previous enmity between the petitioners and the public. The respondents also denied the allegations that the second respondent has not considered the complaint of the writ petitioners. The second respondent conducted enquiry on the complaint of the writ petitioners and also conducted enquiry on the allegations made by the public against the writ petitioners. Moreover, based on the repeated request of the writ petitioner, he was transferred to Arulmigu Chaamudeeswari Amman Thirukovil, Kulithurai. But the petitioner did not join duty till date. The petitioner Chandran made several oral requests. After considering his past history, the second respondent was inclined to consider his request, but while pending for consideration, the petitioner had submitted representation to the Hon'ble Minister of HR and CE Department on 29.03.2017. The petitioners have not approached



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this Court with clean hands. The petitioner alleges that he was not aware of the transfer till 05.04.2017 but has submitted a representation on 29.03.2017 itself and the same would show the petitioner is aware of the transfer, but has approached this Court with a view to disturb the Temple Administration and the petitioner obtained interim order on misrepresentation and fraud. The second respondent has no obligation to satisfy any Committee or any malafide intention to pass the transfer order. The petitioner deluding himself that the Temple administration would recognize him as forerunner of the employee Association of the Temple and the petitioner would be placed in the key post under the administration of Kanyakumari Temple. Hence, there is no merits and the second respondent prayed to dismiss these Writ Petitions.

10. Heard Mr.C.Kishore the Learned Counsel appearing for the petitioner, Mr.C.Baskaran, the Learned Government Advocate (Civil Side) appearing for the second respondent and Mr.K.Sathiya Singh the Learned Counsel appearing for the second respondent and perused the records.

11. The learned counsel appearing for the petitioners submitted a detailed written argument, the first ground that was raised is under Section 6(12) of Tamil



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Nadu Hindu Religious and Charitable Endowments Act, 1959 which defines “Incorporated Devasoms” as Devasoms mentioned in Schedule-1 and where the Puliyoorsalai Temple is listed in Serial No.308 as minor Temple and is administered by the second respondent who is functioning as Executive Officer of all 490 Temples. All the categories of employees like, Mel Shanthi, Kazhagam, Poojaris are defined as indoor employees. For such employees, Rule 5 (D) of Tamil Nadu Hindu Religious Institutions (Officers and Servants) Service Rules, 1964 deals with transfers and posting. But the said Rule is applicable only to outdoor servants and not the indoor servants. So, the indoor servants are not transferable post. Moreover, as far as the writ petitioner Ajikumar is concerned, it is the fourth transfer with a malafide intention that too within a short period of time. The learned counsel appearing for the respondents submitted that the Rule was subsequently amended in the Tamil Nadu Hindu Religious Institutions Employees (Conditions of Service), Rules 2020 and under Rule 17 deals with the transfer and posting, hence the petitioners are liable to be transferred. However, the learned counsel appearing for the petitioner refuted such submission by stating even Rule 2020 speaks about the outdoor servants and not indoor servants. Even in the direction issued by this Court in the judgment rendered in W.P.(MD).No.17198 of 2020, directions were issued to transfer the outdoor



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servants and not the indoor servants. Even it is considered as applicable, the subsequent Rule cannot have retrospective effect.

12. The next contention is that the impugned transfer order is punitive in nature. On perusal of the impugned order, it is seen that the transfer order is passed on administrative grounds. Hence on bare perusal the impugned order, it cannot be stated as punitive in nature.

13. The next contention that is raised is that the respondents had passed frequent transfer orders. Moreover, the committee had forcefully taken away the keys and other properties from the custody of the petitioner. When there was stay before this court, the committee had committed perjury before this Court by submitted that the keys were handed over and several other allegations were made. In turn, the respondents submitted that there are allegations against the petitioner from the general public and produced some photos to show that the petitioner Ajikumar was misbehaving with the devotees and general public. This Court after hearing the allegations and the counter allegations, is of the considered opinion that the basic duty of running the temple peacefully was not carried out by any of the concerned parties.



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14. The next contention is that the Committee is misappropriating the funds, which was questioned by the petitioner. Subsequently, all the writ petitioners have preferred a complaint before the second respondent. The second respondent has filed a counter stating that an enquiry was conducted regarding the complaints and thereafter only the transfer orders were passed. The allegations of misappropriation is levelled against both the private Committee members as well as the petitioners, who claims to have a Sangam. Therefore, this Court is of the considered opinion that the allegations of misappropriation ought to be dealt with separately and issue of transfer ought to be dealt with separately.

15. The next contention that was raised by the petitioner is that the Committee has not obeyed the interim order of transfer passed by this Court and has committed perjury. The Committee has submitted an undertaking before the Contempt Court that the keys will be handed over to the petitioners but the same was not handed over to the petitioners. In order to appear as if the keys are handed over, the Committee has submitted a memo before this Court signed by one Sasidharan Nair. According to the petitioners, the Sasidharan Nair was transferred and to be posted in the place of Writ petitioner Chandran.



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16. After hearing the rival submissions, this Court is of the considered opinion admittedly there is some dispute between the petitioners and the committee members. There are allegations against the writ petitioners by the public, for which the respondents submitted photos. There are rival allegations of misappropriation between three petitioners on one side and Committee members of the Temple on the other side. The petitioners claim they are associated with Union meant for upliftment for employees working in the Temples under the name and style of “Kanyakumari Maavatta Alaya Uliyargal Sangam”. If the petitioners had raised issues based on the upliftment of the employees and if the respondents had not considered, then this Court would come to its rescue. But the petitioners seem to have acted like “Public Interest Litigator” and throws allegations of misappropriation against the committee members. In turn, the same allegations along with one more allegation of misbehaving were thrown on the petitioners. From this narration, it is evident that there is no smooth functioning of the Temple and in the interest of the Temple some action ought to be initiated. The plea of the petitioners that it is not a transferable service cannot be entertained, since in the Rules there is no specific prohibition from transferring the employees, moreover transfer is incidence of service. Since the temple needs smooth and conducive administration of the, hence, the second respondent had



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passed the transfer orders and therefore this Court is not inclined to interfere with the transfer orders.

17. As far as the transfer of the writ petitioner Aji Kumar is concerned, it is the fourth transfer in short period. But this writ petition is filed in the year 2017, due to efflux of time, the transfers orders have lost its sanctity. However, in order to bring in smooth and conducive administration of the Temple, this Court is passed the following orders:

a. The writ petitioner Aji Kumar shall be posted in the second transferred place that is to Arulmigu Mahadevar Temple, Thirupparappur.

b. The writ petitioner Chandran shall be posted in Arulmigu Chaamudeeswari Amman Thirukovil, Kulithurai.

c. The writ petitioner Sree Krishna Sarma has filed only for Mandamus. The second respondent shall consider his representation and pass orders. If the petitioner is otherwise entitled to continue in the Puliyoorsalai Temple itself, the same shall be ordered. If the second respondent is intended to pass any transfer order for smooth running of the Temple administration, then a transfer order shall be passed.

d. The entire exercise shall be completed within a period of four (4) weeks from the date of receipt of a copy of this order.

e. The writ petitioner N.Chandran has not received any salary during this period. The second respondent shall consider the same and pay salary in accordance to law.



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f. As far as the allegations of misappropriation of Temple funds by the committee members, the government shall appoint any person not below the rank of Deputy Commissioner and is directed to conduct an enquiry and take appropriate steps, if the allegations of misappropriation are true. The enquiry shall be completed with a period of 12 weeks from the date of receipt of the copy of the order.

18. With the above direction, these Writ Petitions are disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

12.12.2022

Index : Yes / No
Internet : Yes

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To

<https://www.mhc.tn.gov.in/judis>
1. The Commissioner,



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Hindu Religious and Charitable
Endowments Department,
Nungambakkam,
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2. The Joint Commissioner,
Kanyakumari District Temples,
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Nsr

Pre-delivery Order made in
W.P.(MD).Nos.6515 of 2017 and 9692 and 16426 of 2018

12.12.2022