



W.A(MD)No.25 of 2020

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.12.2022

CORAM:

**THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN
AND
THE HON'BLE MR JUSTICE SUNDER MOHAN**

**W.A(MD)No.25 of 2020
and
C.M.P(MD)No.307 of 2020**

1.The State of Tamilnadu,
Rep. by Secretary to Government,
Tourism,
Culture and Religious Endowments Departments,
Secretariat,
Chennai-600 009.

2.The Commissioner,
HR & CE Department,
119, Uthamar Gandhi Salai,
Chennai-600 034.

... Appellants/Respondents

.Vs.

M.Pugalendran

... 2nd Respondent/1st Respondent

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent Act, to set aside the judgment dated 20.11.2019 in W.P(MD)No.2580 of 2017 and to allow the writ appeal.



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For Appellants : Mr.T.Vilavankothai
Additional Government Pleader

For Respondent : Mr.C.Arul Vadivel alias Sekar

JUDGMENT

DR.G.JAYACHANDRAN,J.
AND
SUNDER MOHAN,J.

The Writ Appeal is preferred by the State being aggrieved by the order of the learned Single Judge, who has allowed the writ petition filed by the respondent.

2. The brief facts of the case are that:-

(i) The respondent herein while serving as a Joint Commissioner in Hindu Religious and Charitable Endowments Department, Trichirappalli alleged to have appointed temporary staffs on daily wages for the non sanctioned post. Charges were framed under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules and enquiry was conducted. The substance of the charges is that the respondent while working as Joint Commissioner of HR & CE, Trichirappalli



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had made irregular appointments in the temples under his control, which is contrary to Section 55 of the Hindu Religious and Charitable Endowments Act, 1959 (hereinafter referred to as 'HR & CE Act').

(ii) Without being vest with the power to create a new post in the Department, the delinquent has created the new post and also appointed 13 persons and thereby abused his position. Further, having created new post without power had appointed staffs and not informed to the Commissioner, thereby, committed the dereliction of duty and responsibility which is unbecoming to be a member of the service. Opportunity was given to the delinquent and he replied that he has not violated any rule or caused any loss to the institution. He permitted to appoint the persons on daily wages in respective temples based on the resolution passed by the fit person of those temples subject to ratification by the Commissioner. Therefore, he has not unilaterally usurp any power not vested with him as alleged in the charges.

(iii) Further, alleging that malafide in the action for initiating the proceedings being infuriated by his act of approaching the High Court for



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obtaining the Stay on earlier Disciplinary Proceedings initiated under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. He has submitted that the charges are unsustainable and action has been initiated with malafide intention on the eve of retirement. However, the first respondent after considering the enquiry officer's report and the material placed in defence, found the delinquent guilty and ordered for removal from service. The said order, dated 02.02.2017 was challenged by the respondent/delinquent in W.P.(MD)No.2580 of 2017.

3. The learned Single Judge after considering the Service Rules governing the delinquent, extracting Section 55 of the HR & CE Act, which enables the fit person, who is competent to be appointed as employee in the service either permanent or temporary, held that the Commissioner cannot interfere in the process of appointment of office bearers or servants of religious institute and the Commissioner cannot insist on prior permission before appointment.

4. Being aggrieved, the State has preferred the appeal on the ground that the learned Single Judge has not properly appreciated the law on facts. While



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Section 55 of the Tamil Nadu HR & CE Act permits fit person to pass resolution regarding the appointment of staffs, such appointment requires permission from the Commissioner of HR & CE. Though the fit person of the respective temples passed the resolution before permitting them to proceed with the appointment, the delinquent/writ petitioner ought to have obtained prior permission for filling up those posts. Having failed to comply with the requirements under the statute as well as G.O.Ms.No.255, Tamil Development and Religious Endowment and Information (RE 4-2) Department, dated 28.06.2010. In which, Rule 5(A) specifically states that no new posts, permanent or temporary, shall be created or filled up in any Religious Institutions without sanction of the Commissioner. The said rule has been grossly violated by the delinquent. The learned Single Judge, ought to have upheld the order of dismissal from service instead of ignoring the antecedents of the delinquent and his gross violation of the rule, has allowed the writ petition.

5. The learned Additional Government Pleader appearing for the appellants would further submit that several actions were taken against the respondent. Some misconduct of appointing the persons were brought to the notice of the



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Department and action was initiated. However, due to the interim order, no further action was taken. Meanwhile, being embolden, he has again continued the act of violation and had expressed his insubordination and dereliction of duty.

6. The learned counsel appearing for the respondent would submit that there is no deviation or violation of Rule under the statue. The respondent being the Joint Commissioner, Trichirappalli, in-charge of several temples coming under the purview of the HR & CE, has taken cognizance whenever request was made by the fit person of the respective temples for appointment of temporary staffs.

7. It is submitted by the learned counsel for the respondent that the charge is vague and not specified that how many posts were created and who were appointed. In spite of vagueness of the charge, suitable reply was given by the delinquent stating that the temporary appointment was made based on the requirements and such temporary appointment was subject to posts ratification by the Commissioner though the act does not warrant posts ratification of the Commissioner.



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9. A perusal of the order passed by the respondent as Joint Commissioner, Trichirappalli indicates that on receipt of the request of certain temples under his control through the fit person of those temples, he has permitted them to appoint the persons by taking note of the exigency. The said appointment is specifically temporary appointment for daily wage of Rs.200 and the appointments are made subject to post ratification by the Commissioner.

10. Section 55 of the HR & CE Act specifically empowers the Trustee or fit person to make an appointment in their institution whether permanent or temporary. Only G.O.Ms.No.255, Tamil Development and Religious Endowment and Information (RE 4-2) Department, dated 28.06.2010 in deviation of Section



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55 of the HR & CE Act mandates that no new posts permanent or temporary were filled up in the religious institution without the sanction of the Commissioner. This G.O.Ms.No.255, Tamil Development and Religious Endowment and Information (RE 4-2) Department, dated 28.06.2010 had been rightly quashed since it is in contravention to the Act. In the light of the above factual scenario, when there is no statutory power for the fit person to appoint any servant whether temporary or permanent, the said appointment should be ratified by the Commissioner does not fall within the scope of dereliction of duty or misconduct of the public service. After the G.O.Ms.No.255, Tamil Development and Religious Endowment and Information (RE 4-2) Department, dated 28.06.2010 was quashed by the High Court on 05.07.2012 and confirmed in W.A.No.491 of 2013, dated 22.11.2015 the contention of the department that the respondent violated G.O.Ms.No.255, Tamil Development and Religious Endowment and Information (RE 4-2) Department, dated 28.06.2010, is untenable.

11. To ascertain whether at all the appointment mentioned in Annexure-2 to the charge memo was for new post, this Court requested the Additional Government Pleader representing the Appellants to point out who were



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temporarily appointed and when they appointed, why their appointments should be considered as an appointment to newly created posts without authority, for which, we could not get any answer from the learned counsel.

12. So the charge which contended that the respondent created new posts without sanction of the Commissioner and appointed persons to those posts not been substantiated. In the said circumstances, this Court finds no error in the conclusion of the learned Single Judge to interfere in the writ petition. Accordingly, the Writ Appeal is dismissed and the judgment of the learned Single Judge is confirmed. Consequently, connected miscellaneous petition is closed.

[G.J.,J.] [S.M.,J.]
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