



W.P(MD)No.7716 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.06.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.7716 of 2023
and
W.M.P(MD)Nos.7161 & 7162 of 2023

P.Annathurai

... Petitioner

Vs

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

2.The Joint Commissioner /
Executive Officer,
Arulmighu Ramanathasamy Thirukoil,
Rameswaram.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned proceedings in Na.Ka.No.15176/2023/Z4 dated 31.03.2023 of the first respondent herein and quash the same and consequently direct the respondent to promote the petitioner as Bheskar in the second respondent temple with all service and monetary benefits and all attendant benefits.



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For Petitioner : Mr.VR.Shanmuganathan

For Respondent : Mr.C.Baskaran
Government Advocate for R.1

Mr.S.Ramesh for R.2

ORDER

Heard the learned counsel on either side.

2. The petitioner joined the second respondent Temple as Thirumalaikatti on 08.02.1984. He became Sitreluthar and then Junior Assistant. He was promoted as Assistant on 06.10.2007. The petitioner aspires to be promoted as Peshkar. The petitioner's request was rejected by the impugned order dated 31.03.2023 by the first respondent on the ground that the petitioner has not passed one of the departmental tests and therefore he is not even possessing the requisite qualification to hold the post of Assistant. Challenging the said proceedings, the present writ petition has been filed.

3. The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to set aside the impugned order and grant relief as prayed for.



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4. The learned Standing Counsel appearing for the Temple has filed counter affidavit endorsing the stand of the first respondent. He took me through the Tamil Nadu Hindu Religious Institutions Employees (Conditions of Service) Rules, 2020. Annexure II deals with the post of Peshkar. It reads as follows:

Category-III (1) Peshkar	By promotion from among the holders of the post of Assistant (outdoor Employee); (or) Treasury Clerk (outdoor Employee); (or) Cashier (outdoor Employee) (or) Maniam; (or) Assistant Peshkar; (or) Ameena.	Must know the customary procedures in performing festivals, rituals, poojas and to organise the supply of provisions as per approved Dhittam.
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Annexure I Category – V deals with the post of Assistant. It reads as follows:

Category-V (1) Assistant (2) Shroff (3) Treasury Clerk (4) Kolla Nayagam	By promotion from among the holders of the post of Junior Assistant; (or) Typist; (or) Clerk-cum-Surveyor; (or) Store Keeper; (or) Suit Clerk; (or) Collection Clerk; (or) Chathiram Keeper; (or) Collection Clerk; (or) Ticket Sales Clerk; (or) Register Clerk; (or) Inai – uba Kovil Clerk.	A pass in the following tests namely:- 1) Tamil Nadu Hindu Religious and charitable Endowments Act and Rules; 2) Account Test for Subordinate Officers part-I.
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The argument of the learned Standing Counsel appearing for the Temple is two fold. According to him, the petitioner lacks the qualification for holding the post of Assistant. The only person qualified to hold the post of Assistant can be



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considered for being promoted to the post of Peshkar. The petitioner cannot pass even initial threshold. He would also point out that one of the qualifications for being promoted as Peshkar is that the candidate must know the customary procedures in performing festivals, rituals, poojas and to organise the supply of provisions as per approved Dhittam. In this case, the petitioner lacks the said knowledge. On these twin grounds, the learned Standing Counsel wanted this Court to sustain the impugned order and dismiss the writ petition.

5. The learned Government Advocate appearing for the first respondent submitted that the Tamil Nadu Hindu Religious Institutions Employees (Conditions of Service) Rules, 2020 have been upheld by the Hon'ble Division Bench and also by the Hon'ble Supreme Court. Therefore, the writ Court is bound to consider the issue on hand in the light of the said rules. According to him, the petitioner cannot pass muster. He called upon this Court to sustain the impugned order and dismiss the writ petition.

6. I carefully considered the rival contentions and went through the materials on record.



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7. The conditions of service of temple employees were governed by the Tamil Nadu Religious Institutions (Officers and Servants) Service Rules, 1964. The Rules did not provide for any promotion. Only in the year 2010, Rule 7(A) was introduced providing for promotion. The said amendment was struck down by this Court. Therefore, the petitioner cannot fall back on the pre 2020 position. He will have to workout his rights only in terms of 2020 Rules. The post of Peshkar has to be filled up by way of promotion from the feeder grades. The post of Assistant is a feeder grade. The petitioner was appointed as an Assistant in the year 2007 itself as per the earlier Rules. The petitioner's status as an Assistant cannot be tested in the light of 2020 Rules. That would amount to taking away a vested right. The learned counsel appearing for the petitioner draws my attention to Rule 41. It reads as follows:

“41. Saving.- Nothing contained in these rules shall adversely affect the employees, holding any post on the date of publication of these rules in the Tamil Nadu Government Gazette.”

Even if Rule 41 was not inserted in the relevant Rule, still applying the first principles of law, I can hold that the petitioner's vested right to hold the post of Assistant cannot be taken away now. Therefore, I hold that the petitioner should be considered as hailing from the feeder grade for being considered for



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the post of Peshkar. In the counter affidavit, the petitioner's claim that he possesses the knowledge regarding customary procedures has been contested.

In my view, it is not open to the second respondent to take such a position. This is because, the second respondent had already sent proposal to the first respondent recommending the case of the petitioner for promotion to the post of Peshkar. Such a proposal was sent on 08.03.2023. That is well after the promulgation of the new rules. The second respondent must obviously have been aware that the new rules contain such stipulation. The learned counsel for the petitioner also points out that there is vacancy in the post of Peshkar and for the last few years, the petitioner is holding the said post in in-charge capacity.

Section 55 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 is as follows:

“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].”

It is the trustee who will have to take the final call in the matter of appointment as well as promotion. In this case, the fit person had already taken a decision in



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favour of the petitioner. I, therefore, come to the conclusion that the petitioner is not only eligible to be considered for promotion but also fulfils the other qualifications prescribed in 2020 Rules.

8. In this view of the matter, the impugned order is set aside. The first respondent is directed to approve the proposal of the second respondent for being promoted to the post of Peshkar. Such an order shall be issued to the respondent within a period of six weeks from the date of receipt of a copy of this order. The petitioner will be entitled to all the consequential and monetary benefits. The petitioner is attending the age of superannuation on 30th June 2023. Therefore, the first respondent shall issue proceedings promoting the petitioner to the post of Peshkar with effect from 08.03.2023 and issue the necessary salary grant also.

9. This writ petition is allowed accordingly. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

23.06.2023

Index : Yes / No
Internet : Yes / No
NCC : Yes / No
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G.R.SWAMINATHAN, J.

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To

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

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and

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