



W.P.(MD).No.19256 of 2023

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.10.2023

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P.(MD).No.19256 of 2023

and

W.M.P(MD)No.15956 of 2023

M.Kamalanathan,
Assistant (Peshkar),
Arulmigu Ramanatha Swamy Temple,
Rameswaram,
Ramanathapuram.

... Petitioner

Vs.

1.The Commissioner,
HR&CE Department,
Chennai.

2.The Joint Commissioner,
Arulmigu Ramanatha Swamy Temple,
Rameswaram,
Ramanathapuram.

3.M.Muniyasamy,
Assistant,
Arulmigu Ramanatha Swamy Temple,
Rameswaram,
Ramanathapuram.

... Respondents



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Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the second respondent in his proceedings Na.Ka.No.615/2014/A2, dated 21.09.2022 and impugned panel prepared by the first respondent in his proceedings Pa.Mu.No.15176/2023/Z4, dated 31.03.2023 in so far as the post of Assistant is concern and to quash the same as illegal and consequently to direct the respondents 1 and 2 to place the petitioner above the third respondent in the panel for promotion to the post of Peshkar based on the representation, dated 04.04.2023.

For Petitioner : Mr.V.P.Rajan
For R-1 : Mr.P.Subbaraj
Special Government Pleader
For R-2 : Mr.S.Ramesh
For R-3 : Mr.M.Thirunavukkarasu

ORDER

The present writ petition has been filed seeking to quash the orders passed by the second respondent herein, dated 21.09.2022 and 31.03.2023, wherein the request of the writ petitioner to place him above the third respondent in the panel for promotion to the post of Peshkar has been rejected.



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2. According to the learned Counsel appearing for the writ petitioner, the petitioner was appointed as a Watchman on temporary basis in the second respondent Temple on 09.06.1999 and he was promoted as a Junior Assistant on 31.12.2007. He was transferred and posted as a Temple Peshkar temporarily by an order, dated 08.07.2011. He had further contended that he had cleared the departmental examinations in May 2012.

3. The learned Counsel for the petitioner has further submitted that the third respondent and three others have not cleared the departmental examinations conducted by the TNPSC but they raised objection for granting promotion to the writ petitioner to the post of Assistant. However, the said panel was not approved by the competent authority. When the panel was pending for approval, the third respondent and others have completed the departmental examinations. Thereafter, the panel was approved and promotion was given to the writ petitioner and the third respondent herein on 06.11.2015. Therefore, according to the learned Counsel appearing for the writ petitioner, both the petitioner as well as the third respondent were promoted as Assistant in the year 2015.



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4. According to the learned Counsel for the petitioner, two posts in the cadre of Peshkar were created under the Tamil Nadu Religious Institutions Employees (Conditions of Service) Rules, 2020. In order to fill up the said newly created posts, the second respondent published a panel by his proceedings, dated 13.08.2022, in which the name of the writ petitioner was placed below the third respondent herein. For the said panel, the writ petitioner has raised an objection that the third respondent had cleared the departmental exams only in the year December 2013, whereas he had passed the departmental examinations in the year May 2012.

5. The petitioner has further contended that at the time of preparation of the panel, the authorities have misconstrued Rule 11 of the above said Rules and have placed the third respondent above the writ petitioner on the ground that he is senior in age to the writ petitioner. The learned Counsel for the petitioner further pointed out that the seniority should be fixed only on the basis of the date on which the concerned candidates have passed the departmental examination. Without considering the said fact, the third respondent has been placed above the name of the writ petitioner in the impugned panel. He further contended that while including the name of the writ petitioner in the Assistant



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panel, though objections were raised by the third respondent and others, the said objections were rejected and the petitioner's name was placed above the third respondent. Hence, he contended that the order impugned in the writ petition has been passed without proper appreciation of Rule 11 of the above said Rules. Hence, he prayed for allowing the writ petition.

6. Per contra, the learned Counsel appearing for the second respondent Temple and the third respondent have contended that on the date when panel was prepared for promotion to the post of Peshkar, the third respondent had already cleared the departmental examinations. The passing of departmental examination has no relevance at all in fixing the *inter se* seniority between the candidates. He further contended that the seniority panel being prepared in the year 2023, naturally the Department is bound to follow Rule 11 of the Tamil Nadu Religious Institutions Employees (Conditions of Service) Rules, 2020 which clearly states that if other things being equal their seniority shall be decided with reference to their age, the elder shall be placed at the top. Hence, he prayed for dismissal of the writ petition.



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7. I have carefully considered the submissions made on either side and perused the materials available on record.

8. The primary contention on the part of the writ petitioner is that while he had passed the departmental examinations in May 2012, the third respondent had cleared the departmental examinations only in December 2013. Considering the above said fact, the seniority should have been fixed and the petitioner's name should have been placed above the third respondent in the panel which was prepared for promoting the Assistant in the cadre of Peshkar in the Temple.

9. This Court has perused the rules stated above to verify whether the contention of the learned Counsel appearing for the writ petitioner is drawing any inspiration from any one of the Rules. However, this Court is not able to find any rule which suggest that the *inter se* seniority between two candidates have to be fixed based upon the date of passing of the departmental examination. Therefore, the said contention of the writ petitioner is not legally sustainable.



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10. On the other hand, there is a specific rule in Rule No.11 which says if other things being equal, their seniority shall be decided with reference to their age, the elder shall be placed at the top. In the present case, admittedly, the third respondent is elder to the writ petitioner herein and therefore, this Court does not find any infirmity or illegality in placing the third respondent above the writ petitioner.

11. It is the case of the writ petitioner that there are two Peshkar posts. Out of the said two Peshkar posts, one Mr.P.Nagarajan has already been appointed to one of the Peshkar posts. For the second Peshkar post, the petitioner as well as the third respondent are competing with each other. It is needless to point out that it is for the first respondent to consider the merits between both the candidates and decide as to who should be appointed as the Peshkar.

12. With the above said observation, this writ petition stands disposed of. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

12.10.2023



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NCC : Yes / No
Index : Yes / No
Internet : Yes
BTR

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- 2.The Joint Commissioner,
Arulmigu Ramanatha Swamy Temple,
Rameswaram,
Ramanathapuram.
- 3.The Assistant,
Arulmigu Ramanatha Swamy Temple,
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R.VIJAYAKUMAR, J.

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