
(2004) 12 MAD CK 0012

In the Madras High Court

Case No : Writ Appeal No's. 1596 and 1597 of 1999

Arulmighu Sivaganga Samasthanam Devasthanam

APPELLANT

Vs

The Commissioner, Hindu Religious and Charitable
Endowments, Administration Department and Others

RESPONDENT

Date of Decision : 08-12-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 92

Tamil Nadu General Clauses Act, 1891 — Section 18, 8

Tamil Nadu Hindu Religious and Charitable Endowments (Amendment) Act, 1951 —
Section 11(2)

Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 — Section 118, 21

Tamil Nadu Hindu Religious Institutions (Officers and Servants) Service Rules, 1964 —
Rule 22, 24, 33, 5

Citation : (2004) 12 MAD CK 0012

Hon'ble Judges : P.D. Dinakaran, J;F.M. Ibrahim Kalifulla, J

Bench : Division Bench

Advocate : M. Venkatachalapathy for M. Sriram, for the Appellant; G. Sukumar,
Spl. Govt. Pleader for RR 1 and 2, R. Sivaraman, for R3 and S. Ayyathurai, for R4
in WA No. 1597 of 1999, for the Respondent

Final Decision : Allowed

Judgement

P.D. Dinakaran, J.—The short question that arises for our consideration in these writ appeals is as to the age of retirement of the

Assistants/Clerks working in the Appellant Devasthanam.

2. The third Respondent in each of the appeals were appointed as Assistant and Clerk respectively in the year 1953. The Appellant Devasthanam,

by notices dated 7.10.1988 and 22.11.1988, intimated the third Respondent in each of the appeals that they would retire from services from the

afternoon of 25.11.1988 and 12.12.1988 respectively on their completion of 60 years. Aggrieved by the said notices of retirement, the third

Respondent in each of the writ appeals, preferred petitions u/s 21 of the Hindu Religious and Charitable Endowments Act (hereinafter referred to

as "the Act") before the second Respondent/Deputy Commissioner of H.R.&C.E.. Department in R.P. Nos. 9 and 7 of 1988 respectively, but the

same were dismissed by a proceedings dated 6.7.1989, which were subsequently reversed by the first Respondent, Commissioner of H.R & C.E.

Department, in R.P. Nos. 44 and 39 of 1989, by an order dated 18.9.1990, directing the Appellants herein to reinstate the third Respondent in

each of the writ appeals. Hence, the Appellants filed W.P. Nos. 17489 and 17490 of 1990, challenging the proceedings dated 18.9.1990 made in

R.P. Nos. 44 and 39 of 1989, passed by the first Respondent in each of the writ appeals. The learned single Judge, satisfied with the reasons given

by the first Respondent in the order dated 18.9.1990 in R.P. Nos. 44 and 39 of 1989. dismissed the writ petitions by an order dated 16.10.1998.

Hence, the above writ appeals.

3. While Mr. M. Venkatachalapathy, learned Senior Counsel appearing on behalf of the Appellant Devasthanam reiterated the submissions that

were made before the learned single Judge, challenging the impugned order dated 18.9.1990 as well as the reasons that weighed the learned single

Judge in the order dated 16.10.1998 upholding the impugned order dated 18.9.1990, Mr. Sukumar, learned Counsel for the first and second

Respondents and Mr. R. Sivaraman, learned Counsel for the third Respondent and Mr. S. Ayyathurai appearing for the fourth Respondent

reiterated the submissions made on behalf of the respective parties supporting the impugned order and justifying the reasons that weighed-the

learned single Judge in the order dated 16.10.1998.

4. We have given careful consideration to the submissions made on behalf of both sides.

5. Concededly, the Appellant Devasthanam is covered by the provisions of the Hindu Religious and Charitable Endowments Act. Invoking the rule

making power under the Act, the State framed Tamil Nadu Hindu Religious Institutions (Officers and Servants) Service Rules, 1964 (hereinafter

referred to as "Service Rules, 1964"). Rules 5 and 33 of the said Rules reads as follows.

Rule 5: AGE:

No person shall be appointed to a non-hereditary office unless he has completed twenty-five years of age but has not completed forty-five years of

age on the first day of July of the year in which the selection for appointment is made and every person appointed to such office shall retire from

such office on completing sixty years of age.

Rule 33 of the Service Rules provides that,

Rule 33.-SAVINGS

Nothing contained in these rules shall adversely affect any hereditary or non-hereditary office-holder or servant, who has been holding any post

immediately before the date of the commencement of these rules.

6. As there is no dispute that the Service Rules, 1964 are applicable to the non-hereditary office holders and servants of the Devasthanam, what

remains for us to test is whether the third Respondent in each of the writ appeals are adversely affected by the said Rules.

7. 1. In this regard, Section 118 of the H.R.&C.E. Act, 1959 which deals with the Repeal and Savings is also required to be referred to as

follows.

Section 118: Repeal and Savings: (1) The Tamil Nadu Hindu Religious and Charitable Endowments Act, 1951 (Tamil Nadu Act, XIX of 1951)

(hereinafter in this section referred to as the said Act) is hereby repealed.

(2) Notwithstanding the repeal of the said Act by Sub-section (1)

(a) all rules made or deemed to have been made, notifications or certificates issued or deemed to have been issued, orders passed or deemed to

have been passed, decisions made or deemed to have been made, proceedings or action taken or deemed to have been taken, schemes settled or

deemed to have been settled and things done or deemed to have been done by the Government, the Commissioner, a Deputy Commissioner, an

Area Committee or an Assistant Commissioner under the said Act, shall, In so far as they are not Inconsistent with this Act, be deemed to have

been made, Issued, passed, taken, settled, or done by the appropriate authority under the corresponding provisions of this Act, and shall have

effect accordingly;

(b)(i) if any provision contained in any scheme settled or deemed to have been settled under the Tamil Nadu Hindu Religious and Charitable

Endowments Act, 1926 (Tamil Nadu Act II of 1927) including a scheme settled u/s 92 of the Code of Civil Procedure, 1908 (Central Act V of

1908), and in force immediately before the 30th September, 1951 Is repugnant to any provision contained in this Act or the rules made

thereunder, the latter provisions shall prevail, and the former provision shall, to the extent of the repugnancy, be void;

(ii) all powers conferred and all duties imposed by such scheme or any Court or Judge or any other person or body of persons not being a trustee

or trustees or an honorary officer or servant of the religious institution or endowment, shall be exercised and discharged by the Commissioner, the

(Joint Commissioner or Deputy Commissioner) or the Assistant Commissioner as the case may be, in accordance with the provisions of this Act;

(c) all orders made u/s 67 of the (Tamil Nadu Hindu) Religious Endowments Act, 1926 (Tamil Nadu) Act II of 1927, shall notwithstanding that

they are inconsistent with this Act, continue in force, but any such order may at any time be modified or cancelled by the (Joint Commissioner or

the Deputy Commissioner, as the case may be), if it is an order made under Sub-section (1) or Sub-section (3) of that section and by the

Commissioner if it is an order made under Sub-section (4) or Sub-section (5) of that section; and any person aggrieved by any modification or

cancellation made by the (Joint Commissioner, or the Deputy Commissioner, as the case may be), may prefer an appeal to the Commissioner

within such time as may be prescribed.

(3) The mention of particular matters in this section shall not be held to prejudice or affect the general application of Sections 8 and 18 of the

(Tamil Nadu) General Clauses Act, 1891 (Tamil Nadu) Act I of 1891 with regard to the effect of repeals.

7.2. A harmonious reading of Section 118 of the Act and Rule 33 of the Service Rules 1964 requires us to find whether the third Respondent in

each of the appeals, who are the servants of the Devasthanam, are adversely affected by Rule 5 of the Service Rules, 1964 and to find out as to

whether the rules framed under the scheme and the scheme themselves, which are framed prior to the framing of the Service Rules, 1964 are

repugnant to the provisions of the Service Rules, 1964 and the provisions of the H.R.& C.E. Act, 1959, and we have to, therefore necessarily

refer to the rules, which were in force prior to the framing of Service Rules, 1964.

7.3. Concededly, the administration of the Devasthanam is covered by the scheme framed by this Court by a decree dated 26.3.1956 in A.S. No.

158 of 1952, framed under the provisions of the earlier Act (H.R. & C.E. Act, 1951). Pursuant to the scheme framed by this Court by a decree

dated 26.3.1956, The Sivaganga Devasthanam Administrative Staff Service Rules (hereinafter referred to as the "Scheme Service Rules") were

framed and they were approved by the Board.

7.4. Rule 22 of the said Scheme Service Rules deals with the age of retirement, which were in force prior to the Service Rules, 1964. Rule 22 of

the Scheme Service Rules framed reads as follows,

Rule 22: The age of retirement shall be completion of 55 years In age of all categories of the posts, but the appointing authority may at his

discretion retain any person in service upto the age of 60 if he Is found physically fit and otherwise useful for the service of the Devasthanam. But

such superannuated persons shall be reappointed on a temporary basis for a period not exceeding one year at a time terminable without notice.

The Hereditary Trustee shall have power to retain an employee even after he attains the age of 60 years for; exceptional reasons to be recorded In

writing. But no one shall be retained in service after he completes the age of 65 years.

7.5. Rule 24 of the Scheme Service Rules framed under the scheme provides that nothing contained in the Scheme Service Rules shall adversely

affect the members of the staff who are in service of the Devasthanam prior to the date on which the Scheme Service Rules came into force.

Therefore, it is inevitable to search for the provision dealing with the age of retirement, which was in force prior to the framing of the Scheme

Service Rules.

7.6. Prior to the framing of the Scheme Service Rules, the Government, in G.O. Ms. No. 584, Rural Welfare, dated 29th May, 1952, exercising

powers conferred by Section 11(2)(y) of the Madras Hindu Religious and Charitable Endowments Act, 1951 (Madras Act XIX of 1951), framed

the rules (hereinafter referred to as "the Service Rules, 1951"). Rule 4(2) of the said Service Rules, 1951 reads as follows.

Rule 4(2): Except In the case of a hereditary officer or servant, no person may

be appointed to or hold any office unless he is not less than twenty-five and not more than sixty-five years of age.

8. The third Respondents in each of the appeals, placing reliance on the said Service Rules, 1951 made in G.O. Ms. No. 585, Rural Welfare

dated 29.5.1952, contend that the Respondents are entitled to serve till the age of 65 years. In our opinion, the said Rule 4(2) of the Service

Rules, 1951 would not be, strictly speaking, saved under Rule 24 of the Scheme Service Rules, inasmuch as Rule 4(2) of the Service Rules, 1951

would not be construed as adversely affecting the interest of the staff within the meaning of Rule 22 of the Scheme Service Rules, for the simple

reason that Rule 4(2) of the 1951 Rules only provides that no person may be appointed to hold any post unless he is not less than twenty-five and

not more than sixty-five years of age, thus prescribing only the age qualification for the appointment, but not the age of retirement, as specifically

provided under Rule 22 of the Scheme Service Rules and Rule 5 of the Service Rules, 1964.

9. Rule 22 of the Scheme Service Rules, therefore, would not be construed as adverse to Rule 4(2) of the Service Rules 1951. Similarly, a

conjunct reading of Rule 22 of the Scheme Service Rules and Section 5 of the Service Rules, 1964 would again go to show that there is no

repugnancy in order to adversely affect the interest of the contesting third Respondents in each of the appeals, because both Rule 22 of the

Scheme Service Rules as well as Rule 5 of the Service Rules, 1964 prescribes the age of retirement only as 60 years and over and above 60 years

it was only the discretion conferred on the Devasthanam to reappoint the staff of the Devasthanam on a temporary basis for a period not exceeding

one year at a time terminable without notice and the hereditary trustees were further empowered to retain an employee even after he attains the age

of sixty for exceptional reasons to be recorded in writing and no one shall be retained in service after he attains over and above sixty years. This

power provided for the Devasthanam for reappointing any staff of the Devasthanam after the age of retirement viz., sixty years will not in any way

give right to the third Respondents in each of the appeals to claim that their age of retirement is only sixty five years. The reason that weighed the

first Respondent, as confirmed by the learned single Judge, in our considered

opinion, is therefore contrary not only to Rule 5 of the Service Rules 1964, but also to Rule 22 of the Scheme Service Rules. As we do not see any repugnancy attracting Section 118 of the H.R.&C.E. Act. 1959 or Rule 33 of the Service Rules 1964, the impugned order of the learned single judge dated 16.10.1998 made in W.P. Nos. 17490 and 17489 of 1990 as well as the order passed by the first Respondent dated 18.9.1990 made in R.P. Nos. 44 and 39 of 1989 are set aside, allowing the writ petitions as prayed for and the writ appeals are accordingly allowed. No costs.