
(2014) 11 KL CK 0243
In the High Court Of Kerala
Case No : W.P.(C) Nos. 24270 and 26348 of 2013

Bhavadas

APPELLANT

Vs

Guruvayoor Devaswom Managing Committee

RESPONDENT

Date of Decision : 20-11-2014

Acts Referred:

Citation : (2015) 1 KLT 337

Hon'ble Judges : P.B. Suresh Kumar, J

Bench : Single Bench

Advocate : K. Mohanakannan, A.R. Pravitha and D.S. Thushara, Advocates for the Appellant; T. Sethumadhavan, Pushparajan Kodoth, K. Jayesh Mohankumar, Vandana Menon, S. Abhilash, P. Pratheesh and P. Gopal, Advocates for the Respondent

Judgement

P.B. Suresh Kumar, J.—These Writ Petitions relate to the creation of the post of a Store Keeper in the service of Guruvayur Devaswom and consequent appointment to that post. The parties and Exhibits are referred to in this judgment as they appear in W.P.(C) No. 24270 of 2013. The petitioner in W.P.(C) No. 24270 of 2013 is an employee of Guruvayur Devaswom. On 17.8.2012, the Managing Committee of the Devaswom decided to create one post of Store Keeper. Creation of an additional post in the establishment of the Devaswom needs the approval of the Commissioner appointed under the Guruvayoor Devaswom Act, hereinafter referred to as "the Act" for short. The Managing Committee of the Devaswom, therefore, sought approval of the Commissioner for creating the said post. Pursuant to the request made by the Managing Committee, the Commissioner issued Ext. P2 order. As per Ext. P2 order, though the approval sought for by the Managing Committee for creating the post was granted, the qualification prescribed by the Managing Committee for the post was altered by the Commissioner. The Managing Committee of the Devaswom had not fixed any experience for the candidates aspiring appointment to the post of Store Keeper, but the Commissioner directed that only candidates with three years experience in the cadre of Overseer Grade II need be considered for

appointment to the post According to the Managing Committee, there were no candidates in the feeder categories who were eligible to be considered for appointment as Store Keeper as per the qualification prescribed by the Commissioner. Consequently, the Managing Committee gave charge of the Store Keeper to the fifth respondent who is the senior most among the incumbents in the feeder categories. Ext. P6 is the decision taken by the Managing Committee in this connection. Ext. P6 decision is under challenge in W.P.(C) No. 24270 of 2013. According to the petitioner, he is an employee in the feeder category who is qualified as per Ext. P2 order of the Commissioner and the fifth respondent has been given charge of the Store Keeper ignoring his claim. He, therefore, seeks directions in the Writ Petition to the Devaswom to promote him as the Store keeper.

2. As per the interim order dated 10.10.2013, this Court stayed Ext. P6 decision of the Managing Committee. Consequently, the fifth respondent was not given charge of the Store Keeper as decided in Ext. P6. Even though it was made clear in the said interim order that the same will not stand in the way of the Devaswom in filling up the vacancy of Store Keeper in accordance with Ext. P2 decision, in view of the pendency of the Writ Petition, the Devaswom has not appointed anybody else as Store Keeper.

3. W.P.(C) No. 26348 of 2013 is filed by the fifth respondent challenging Ext. P2 proceedings of the Commissioner to the extent it modifies the decision of the Managing Committee as regards the qualification prescribed for appointment as Store Keeper. According to the fifth respondent, the Commissioner has no authority to modify the decision of the Managing Committee as regards the qualification prescribed for any post. According to him, had there not been any modification of the qualification by the Commissioner, he being the senior most among the qualified persons, would have been promoted to the post of Store Keeper.

4. Section 39 of the Act confers authority on the Managing Committee of the Devaswom to make regulations to provide for the conditions of service of the Administrator and the other officers and employees of the Devaswom. S. 39 of the Act reads as follows:

"39. Regulations.--(1) The Committee may, subject to the approval of the Government, make regulations not inconsistent with the provisions of this Act and the rules made thereunder, to provide for the manner in which the duties imposed on it under this Act and its functions thereunder shall be discharged.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for-

(a) the conditions of service of the Administrator and the other officers and employees of the Devaswom;

(b) enforcement of the observance of the rites and ceremonies and other usages

in the Temple and the Temples subordinate thereto;

(c) any other matter for which regulations are required to be made for the purposes of this Act."

A reading of S. 39 of the Act would indicate that the Managing Committee of the Devaswom is the authority to prescribe the qualifications and methods of appointment to various posts in the service of the Devaswom and the only restriction on the exercise of that power is that the prescriptions in the Rules will be subject to the approval of the Government it is not disputed that in exercise of the powers conferred under S. 39 of the Act, the Managing Committee had issued, with the approval of the Government, the Guruvayur Devaswom Employees Regulations, 1983, prescribing qualifications and methods of appointment to various posts in the service of the Devaswom.

5. Section 18, of the Act dealing with the establishment of the temple reads thus:

"18. Establishment schedule--(1) The Administrator may, as soon as may be after the commencement of this Act, prepare, and submit to the Committee a schedule setting forth the duties, designations and grades of the officers and employees who may in his opinion constitute the establishment of the Temple and embodying his proposals with regard to the salaries and allowances payable to them.

(2) The Committee shall forward the schedule submitted to it under sub-section (1) with its recommendations thereon to the Commissioner for approval.

(3) The Commissioner shall, after considering the recommendations of the Committee, approve such schedule either without modifications or with such modifications as he deems necessary, and thereupon such schedule as approved by the Commissioner shall come into force.

(4) No change shall be effected in the schedule except with the approval of the Commissioner.

(5) Subject to such exceptions as the Committee may by general or special order direct, the officers and employees of the Devaswom in the service of the Devaswom immediately before the commencement of this Act shall continue as such, and the conditions of their service shall be such as may be prescribed by regulations made under this Act.

(6) A person who does not profess the Hindu Religion or believe in temple worship shall be disqualified for being appointed as, or for being, an officer or employee of the Devaswom."

As seen from the Section, sub-section (4) of S. 18 of the Act mandates that no change shall be effected in the establishment of the temple without the approval of the Commissioner. Section 20 of the Act provides that the Committee of the Devaswom shall, from time to time, submit to the Commissioner, proposals for fixing the scale of expenditure in the Devaswom, and the amounts which should

be allotted to the various objects connected with the Devaswom or the proportions in which the income or other property of the Devaswom may be applied to such objects. S. 20 also confers authority on the Commissioner to modify the scale of expenditure of the Devaswom, after considering the objections and after hearing the Managing Committee. S. 21 of the Act provides that the Committee shall submit to the Commissioner the budget estimate of the receipts and expenditure of the Devaswom. S. 21 confers authority on the Commissioner to make alterations, omissions or additions in the budget estimate of the Devaswom. Further, S. 24 of the Act mandates that the audit report of the Devaswom shall be sent to the Commissioner. S. 26 of the Act empowers the Commissioner to initiate based on audit reports, surcharge proceedings against officers and employees, who are guilty of misappropriation, wilful waste of the funds of the Devaswom or gross neglect resulting in loss to the Devaswom. It is thus evident that going by the scheme of the Act, the role of the Commissioner is only to keep a check on the finance management of the Devaswom. As such, it cannot be held that Section 18 of the Act confers any authority on the Commissioner to prescribe qualification for a particular post or alter the qualification prescribed by the Managing Committee for a post. The said fact is further evident from S. 18(5) of the Act, which provides that the officers and employees of the Devaswom in the service of the Devaswom immediately before the commencement of this Act shall continue as such, and the conditions of their service shall be such as may be prescribed by regulations made under this Act. It is thus evident that Ext. P2 order of the Commissioner to the extent it modifies the decision of the Managing Committee as to the qualification prescribed for the post of Store Keeper, is without jurisdiction.

In the circumstances, Ext. P2 order is quashed and the Commissioner is directed to consider the issue of approval of the decision of the Managing Committee to create the post of Store Keeper afresh, in accordance with the provisions of the Act, within three months from the date of receipt of a copy of this judgment. All other issues are left open.

The Writ Petitions are disposed of as above.