

(2009) 09 MAD CK 0082

In the Madras High Court

Case No : Writ Petition No. 1311 of 2002

Gomathi Sankara Battar

APPELLANT

Vs

The Commissioner Hindu Religious and Charitable
Endowments, The Joint Commissioner Hindu Religious and
Charitable and The Executive Officer Arulmighu Swami
Nellaippar

RESPONDENT

Date of Decision : 07-09-2009

Acts Referred:

Constitution of India, 1950 — Article 226

Tamil Nadu Hindu Religious and Charitable Endowments (Amendment) Act, 1951 —
Section 52(2), 55

Tamil Nadu Hindu Religious Institutions (Officers and Servants) Service Rules, 1964 —
Rule 12

Citation : (2009) 09 MAD CK 0082

Hon'ble Judges : M.M. Sundresh, J

Bench : Single Bench

**Advocate : K. Srinivasan, for the Appellant; T. Chandrasekaran, H.R. and C.E.
for R-1 and 2 and P. Gopalan, for R-3, for the Respondent**

Final Decision : Dismissed

Judgement

M.M. Sundresh, J.—The petitioner herein has been working as a Siva Archakar in pursuant to his application dated 21.06.2000. According

to the petitioner that the Board of Trustees of the third respondent temple passed a resolution dated 27.08.2000 appointed the petitioner as a

hereditary Siva Archakar. However, the first respondent herein in and by his proceedings dated 22.12.2000 has directed the second respondent

as to on what basis the respondents 2 and 3 have recommended the case of the petitioner, since under Act 2 of 1971 there is no provision for the

appointment of Archakar on the basis of a hereditary right.

2. Thereafter, the petitioner has made further representation on 03.01.2001 to the third respondent and the third respondent has passed another resolution on 17.01.2001 recommending the case of the petitioner for the appointment as a Siva Archakar. In pursuant to the said letter, another letter was sent on 22.01.2001 by the third respondent enclosing a copy of the resolution passed by the Board of Trustees dated 17.01.2001 in favour of the first respondent seeking the appointment of the petitioner as a Siva Archakar. In view of the fact the petitioner has been working over the years on a temporary basis as a Siva Archakar, the petitioner has chosen to file the present petition seeking the writ of mandamus directing the respondents to regularise the service of the petitioner as a Siva Archakar.

3. The learned Counsel for the petitioner submitted that it is not in dispute that the petitioner's ancestors were performing the duties as Siva Archakars. According to the learned Counsel, it is also not in dispute that the petitioner has been performing the said duty as a Siva Archakar till now. The learned Counsel further submitted that the respondents 2 and 3 do not have any power or authority to have any role in the appointment of Siva Archakar made in pursuant to the resolution of the third respondent. In support of his contention, the learned Counsel for the petitioner replied upon the judgment reported in T. Kumaresan Vs. The Commissioner, Hindu Religious and Endowment Department, Nungambakkam High Road, Chennai - 34 and another, and 2001 (3) CTC 529 [S.J. Balaji v. The Commissioner, H.R.& C.E. Department, Chennai -34 and two Ors.] to contend that the first respondent has no power to insist on a prior approval for the appointment of Archakar since the Board of Trustees is the appointing authority.

4. Per contra, the learned Counsel for the third respondent submitted that the prayer as sought for in the writ petition is not maintainable in law and facts. According to the learned Counsel, the petitioner has not been appointed at all by the third respondent and only a resolution has been passed recommending the case of the petitioner. Hence when there is no appointment, the question of regularisation does not arise for a consideration and in any case this Hon'ble Court sitting under Article 226 of the Constitution of India cannot exercise its discretion in regularising the appointment of the petitioner even assuming the same is true. The learned Counsel further

submitted that after coming into effect of Act 2 of 1971, the power of appointment of the hereditary trust is no longer available since Section 55 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1957 has been amended. The learned Counsel further submitted that is a reason why the first respondent has directed the respondents 2 and 3 to explain as to on what basis such a recommendation has been made for the appointment of the petitioner.

5. The learned Government Advocate has filed counter affidavit and submitted that an Archakar or a Poosari of a temple falls within the definition of ulthurai servant and therefore coming under the purview of Rule 12 of the Tamil Nadu Hindu Religious Institution (Officers and Servants) Service Rules, 1964, a certificate of fitness for performing the pooja from the prescribed authority is required. Hence without the same, the petitioner cannot claim to have been appointed and therefore, there is no question of regularisation of the petitioner. In support of their contentions, the respondent counsels relied upon the judgment reported in (2000) 3 M.L.J. 211 [N. Kumaraswamy Gurukkal v. The Commissioner, Hindu Religious and Charitable Endowments, Madras and Ors.] and submitted that in view of Sub-section (2) of Section 52 there cannot be any appointment based upon a hereditary principle.

6. As contended by the learned Counsels appearing for the respondents, the petitioner has not been appointed at all by the third respondent.

Therefore, the question of regularisation does not arise for a consideration. What has been done by the third respondent and the Board of Trustees is merely recommending the petitioner's case for appointment. That is a reason why the first respondent has directed the respondents 2 and 3 to

explain as to on what basis such a recommendation has been made in view of the Act 2 of 1971 which does not authorise such an appointment. In

so far as the judgments relied upon by the learned Counsel for the petitioner reported in T. Kumaresan Vs. The Commissioner, Hindu Religious

and Endowment Department, Nungambakkam High Road, Chennai - 34 and another, and 2001 (3) CTC 529 [S.J. Balaji v. The Commissioner,

H.R. & C.E. Department, Chennai - 34 and two Ors.] are concerned, the said judgments are not applicable to the present case. In the present

case on hand, there is no appointment made by the respondents 1 to 3

appointing the petitioner as a Siva Archakar. Further in the said judgments, the issue involved was as to whether prior approval is required or not. Moreover Act 2 of 1971 clearly prohibits such an appointment on the basis of Succession based upon hereditary right.

7. The power of this Hon''ble Court to regularise the appointment of a person is very limited. Further the petitioner cannot seek to regularise

himself contrary to the provisions of law. Inasmuch as the petitioner has not at all been appointed the petitioner cannot maintain the present writ

petition. Accordingly, the writ petition is dismissed. No costs. However, it is made clear that it is open to the petitioner to work out his remedy in

the manner known to law.