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**(2012) 08 KL CK 0028**

**In the High Court Of Kerala**

**Case No : Writ Petition (C) No. 26187 of 2011**

M. Aneesh Kumar

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

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**Date of Decision : 21-08-2012**

**Acts Referred:**

Constitution of India, 1950 — Article 226, 25, 26, 311(2)  
Guruvayoor Devaswom Act, 1978 — Section 14, 14(1), 15, 16, 16(1)

**Citation : (2012) 4 ILR (Ker) 953**

**Hon'ble Judges :** Thottathil B. Radhakrishnan, J;C.T. Ravikumar, J

**Bench :** Division Bench

**Advocate :** M. Ramesh Chander and Smt. K.A. Sanjeetha, for the Appellant;  
C.S. Manilal, (Government Pleader), Sri K. Jaju Babu, Sri V.M. Kurian, Sri Mathew B. Kurian and Sri K.T. Thomas, for the Respondent

**Final Decision :** Allowed

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## **Judgement**

Thottathil B. Radhakrishnan, J.—This Writ Petition is filed challenging the appointment of the third respondent as the Administrator u/s 14 of the Guruvayur Devaswom Act, 1978, for short, the "Act". The specific ground of challenge is that though only an officer of Government not below the rank of Deputy Collector could be appointed as the Administrator, third respondent who is not an officer of Government has been appointed as the Administrator. The question whether he is one below the rank of Deputy Collector would be relevant only if he is an officer of Government, it is contended and argued. The defence set up by the Government and the third respondent and supported by the Guruvayoor Devaswom Managing Committee is that the third respondent was appointed by the Devaswom from among the panel forwarded by the Government and he, who was working as Deputy Registrar (Administration) of Kerala Forest Research Institute, Peechi which is one of the institutions under the Kerala State Council for Science, Technology and Environment, was drawing pay in the pay scale of Rs. 16650-23200 which is above the scale of pay of a Deputy Collector and the salary and other emoluments to officers of the Kerala State

Council for Science, Technology and Environment, including Kerala Forest Research Institute are disbursed from the Consolidated Fund of the State of Kerala. It is argued on behalf of the respondents that the third respondent is eligible to be held as one who was working as an officer of Government not below the rank of Deputy Collector. It is further pleaded and argued that though the petitioner has described himself as a devotee, interested in the affairs of the Guruvayoor Temple, the writ petition is essentially in the nature of a Public Interest Litigation and such an action is not maintainable in realm of service laws.

2. Though the Act does not, in terms, say that "Government" means the Government of Kerala, we cannot but take it to be so, having regard to the context and setting of the Act and the manner in which the secular control is sought to be provided over the affairs of the Sree Krishna Temple at Guruvayoor through the mechanism of the legislation in hand.

3. Sub-section 1 of Section 14 of the Act reads as follows:

The Committee shall appoint an officer of Government not below the rank of Deputy Collector to be the Administrator for the Devaswom, from among a panel of names furnished by the Government.

(emphasis supplied)

4. Contextually, we need to note that Section 16(1) of the Act provides that notwithstanding Sections 14 and 15, which provide for appointment of Administrator and the conditions of service of the Administrator, it shall be competent for the Government to appoint an officer of the Government not below the rank of Deputy Collector to be in additional charge of the office of the Administrator, pending appointment of the Administrator u/s 14 or when that office is temporarily vacant.

5. To examine the aforesaid legislative provisions, it is not out of place, but profitable, to note Section 2(b) which defines "Commissioner" to mean an officer not below the rank of Secretary to Government. The appointment of the Commissioner is to be made by the Government, by notification in the Gazette.

6. We see that a nice distinction is being sought to be made out by the contesting respondents by stating that the use of the word "rank" in Section 14(1) of the Act, instead of the word "cadre" is indicative of the fact that the legislature never intended the field of choice to be confined to the Government servants and the statutory rules governing Government service uses the term "cadre" and not "rank". The scale of pay in which the third respondent was drawing emoluments in the Forest Research Institute is also shown to be above that of Deputy Collectors in the State Government Service.

7. The provision for a Commissioner, Administrator and other authorities are essentially part of the legislative safeguards to ensure transparency and better management of the Devaswom. Remember, the legislative history would show that the administration, control and management of the Temple and its

properties and endowments were vested in the hereditary trustees, namely, the Zamorin Raja of Calicut and the Karanavan for the time being of the Mallisseri Illom at Guruvayoor. Later, the Guruvayoor Devaswom Act, 1971 was brought in, in the wake of the Legislature noticing that the administration and management of that temple and its properties and endowments had deteriorated and a situation had arisen rendering it expedient to reorganize, in the interests of the general public, the scheme of management of the affairs of that Devaswom. This Court struck down that legislation as violative of Articles 25 and 26 of the Constitution. It was thereafter that the Act now in hand was brought in, in 1973. That withstood judicial review and the statutory provisions as they now stand cannot but be intended to be only for the proper administration of the Guruvayoor Devaswom in accordance with the law laid in Original Petition No. 314 of 1973 (1979 KLT 350 F.B.). [see K.V. Narayanan Namboodiri and Others Vs. State of Kerala and Others, ]. In fact, that the present legislation was intended to be in tune with the law stated by this Court in the aforesaid judgment, as is specifically stated even in the Preamble to the 1978 Act. So much so, we are clear in our mind that the entire scheme and working of the Act has to be understood as aimed at obtaining the proper administration and management of the affairs of the Devaswom.

8. We may straightaway advert to the fact that Section 33 of the Act provides power on the Government to call for and examine the record of the Commissioner or of the Committee in respect of any proceedings, not being a proceeding in respect of which a suit or application to the Court is provided by the Act. It is for the Government to satisfy themselves that the provisions of the Act have not been violated or the interests of the Devaswom have been safeguarded and if, in any case, it appears to the Government that any decision or order passed in such proceeding has violated the provisions of the Act, the Government may modify, annul or reverse such decision or order or remit such decision or order for reconsideration. So much so, the legislative intention in providing that the Administrator shall be appointed from a panel of names necessarily means that the panel shall contain only names of officers of Government meaning thereby, the Government of Kerala and only persons who are not below the rank of Deputy Collector shall be included in such panel. Any other manner of reading Section 14(1) would result in its obliteration.

9. "Officer of Government" not being defined in the Act, has necessarily to be understood in the context in which it is made. It is apposite in this context to recall that in Sukhdev Singh, Oil and Natural Gas Commission, Life Insurance Corporation, Industrial Finance Corporation Employees Associations Vs. Bhagat Ram, Association of Clause II. Officers, Shyam Lal, Industrial Finance Corporation, , the Hon"ble Supreme Court laid down that though the employees of statutory bodies like ONGC, LIC and the IFC have a statutory status and would be entitled to declaration of being in employment when their dismissal or removal is in contravention of the statutory provisions; those employees are not Government servants either of the Union or the State. Similarly, this Court in

Govindan Chengalath Vs. The Cochin Shipyard Ltd. and another, held that employees of Cochin Shipyard are not Government servants or persons appointed to public services or posts. The Full Bench of this Court in State of Kerala Vs. E.C. Elsy and Others, noted that the statutory liability of the Government to pay salary is not the criterion to decide as to whether the employee concerned is a Government servant. That precedent was laid in the context of the teachers appointed by Managers of aided schools. In assimilating the different aspects of the concept of public servant, officer, Government servant, the Hon"ble Supreme Court in G.A. Monterio Vs. The State of Ajmer, held that the true test in order to determine whether a person is an officer of the Government is (1) whether he is in the service or pay of the Government, and (2) whether he is entrusted with the performance of any public duty. If both these requirements are satisfied, he would be an officer of Government notwithstanding whether the duties he is performing are of an exalted character or very humble indeed. As already noted, the intention is to ensure transparency and the requirement of the Government to know the identity of a person who would be appointed as the Administrator. Though the appointing authority is the Committee, the appointment can be made only from out of a panel furnished by the Government. For the Government to satisfy that the name of a particular person has to be included in the panel, it has to be satisfied that he is, firstly, an officer of Government and secondly, one who is not below the rank of a Deputy Collector.

10. Examining the provisions of the Act, it is conspicuous that there is no mechanism whereby a person aspiring to be the Administrator of the Guruvayoor Devaswom can apply to the State Government for being considered to be included in the panel of names that the Government may furnish to the Committee, from out of which the choice could be made. Without inviting applications or nominations in the common course of Governmental business, the Government cannot identify any person who is not a Government servant for the purpose of being included in that panel. There is no provision in the Act or Rules which enjoins invitation of applications and selection by the Government by consideration of relative merit or otherwise. There is also no provision for any "search committee" as is understood in modern parlance of administration. To our specific query as to whether there was any invitation of applications or nominations, the answer from the respondents was in the negative. Not only that, if the power of the Government to make a choice even without any application, that too, from a field of choice more wider than "Government servants", is to be conceded, that would, essentially, open up a wide and uncertain arena from where there can be a "pick and choose" without any discernible yardstick. Obviously, such an exercise would be that of unbridled power. That would never be in the interest of the institution concerned, namely, Guruvayoor Devaswom and the object sought to be achieved by the Act.

11. The most important relevant indicator in this regard is that sub-section (4) of Section 15 provides for withdrawal of the Administrator from his office by the

Government if the conditions therein are satisfied. Can the Government "withdraw" a person to somewhere else, except to its own service? The word used in sub-section (4) of Section 15 is "withdraw" and not "remove". The word "withdraw" means "to take back". This invariably suggests that when the removal has to be of the concerned Government employee, that can be done only to the Government service. If he belongs to any other service (other than Government), he can only be "sent back" and cannot be "taken back". Words in legislations necessarily carry the meaning intended by the legislature. Such usage by the legislature can also be used as an effective tool to interpret the provisions which are operationally adjunct to such provisions which contain such a term. Sections 14 and 15 fall under Chapter III of the Act which deals with "Administration and Establishment". Similarly, section 16 in that Chapter provides that the Government can appoint an Officer of the Government not below the rank of Deputy Collector to be in additional charge of the office of the Administrator pending appointment of the Administrator. This means that a Government servant, who is an officer not below the rank of Deputy Collector while continuing to work in such capacity, could be put in additional charge of the office of the Administrator. Any other way of reading Section 16 would defeat that provision. In our view, nothing more is required to hold that by the clear terms of the Act, it is only a Government servant, that too, a servant of the Government of Kerala, who is not below the rank of Deputy Collector, who can be appointed as the Administrator of Guruvayoor Devaswom.

12. Now, as already noted, the contesting respondents have attempted to point out that the term "cadre" is not used and that the scale of pay is relevant. The scale of pay may differ from institution to institution and from service to service. What is used in the Act is the term "rank". The expression "rank" can be and has been used in different senses in different contexts. The expression "rank" in Article 311(2) of the Constitution has reference to a person's classification and not to his particular place in the same cadre in the hierarchy of the service to which he belongs. This is how it has been understood in the realm of service laws, in particular, governing Government servants. [See The High Court, Calcutta Vs. Amal Kumar Roy, and Shitla Sahai Srivastava Vs. General Manager, North Eastern Railway, ]. Deputy Collector is a rank among Government servants. Therefore, the said classification and description with reference to rank as noted above applies to the provisions of the Act, which is under consideration. The duties and responsibilities of the Administrator u/s 17 would have prompted the Legislature to insist that the choice of Administrator should be from officers of Government not below the rank of Deputy Collector. The duties and responsibilities of Deputy Collectors in Government servant are matters within the knowledge of the Legislature. We cannot, therefore, hold that the Legislature has not made a specific prescription in identifying the field of choice from which the Committee could appoint the Administrator.

13. Following the aforesaid conclusion, arrived at on the basis of the statutory provisions, we cannot but hold that though the third respondent attempts to

point out that he has different qualifications and is working in a post where the scale of pay is higher than that of Deputy Collector, he could not have been included in the panel of names furnished by the Government. We reiterate the view expressed earlier that the Government could not have found out anybody other than a servant in the service of the Government of Kerala to be included in the panel.

14. Now, on to the defence of the respondents that the writ petition is not maintainable, it needs to be noted that the amended writ petition stands seeking, among other things, to call for the records leading to the appointment of the third respondent as Administrator of Guruvayoor Devaswom and to quash the same by issuance of a writ of certiorari; to issue a writ of quo warranto setting aside the appointment as such; and, to issue a writ of mandamus directing respondents 1 and 2 to make appointment to the post of Administrator, Guruvayoor Devaswom strictly taking into consideration the qualification prescribed u/s 14 of the Act. Apart from these, the relief to issue a writ of prohibition restraining or forbearing respondents 1 and 2 from appointing the third respondent as Administrator of the Guruvayoor Devaswom was sought for. That does not survive his appointment which led to the amendment of the writ petition. The learned counsel for the respondents, including for the Government, cautioned against public interest litigations in service matters and also the strict approach to be adopted in matters where issuance of quo warranto is sought for.

15. The question that is relevant now is, it having been found that the third respondent was not eligible, in terms of the statutory provisions, to be included in the panel sent by the Government to the Committee, would the High Court be within authority under Article 226 of the Constitution to ensure the removal of the third respondent from such office? It would be apposite in this context to refer to the decision of the Apex Court in Guruvayur Devaswom Managing Commit. and Another Vs. C.K. Rajan and Others, in which various precedents relating to public interest litigations and the manner and nature of exercise of jurisdiction in that regard have been considered. In paragraph 50 of that judgment, Their Lordships summarized the ratio of those precedents and ultimately, said in paragraph 55 that those principles are noted, not intending to lay down any strict rule as to the scope and extent of public interest litigation, as each case has to be judged on its own merits. It was noticed that furthermore, different problems may have to be dealt with differently. It could be immediately recalled that the said judgment was delivered in a matter relating to the same temple with which we are concerned now. As already noted, the fact of the matter remains that the post has been filled up in violation of the clear statutory prescriptions. That office is created by a statutory provision. The matter relates to governance of a temple in which a large group of Hindus, that is to say, the devotees, are vitally interested. As already noticed, the purpose for which the Act was brought is to ensure that there is proper administration of the Devaswom. When a statute has thus been made, it is the duty of the Government to ensure that the recommendation of the panel of persons for the appointment of

Administrator is made only in strict conformity with the particular statutory provision, i.e., Section 14 of the Act. That not having been done, this Court would only be within bounds to interfere and ensure that the person appointed in violation of the statutory provision does not continue in office. In the scheme of section 14 of the Act, the Government had no authority to include the third respondent in the panel sent by it to the Committee. Such inclusion of the third respondent in the panel and his consequential appointment as Administrator is in violation of the mandate of statute law and is plainly unauthorised. His continuance on the strength of such empanelment and appointment in violation of the laws is against the interest of the institution concerned. The devotees are entitled to complain in that regard. The scope of the High Court's authority is wide enough to issue the necessary writ, direction or order to remove the third respondent and thus rectify the wrong committed by the Government and the Committee in violation of the statutory provisions. We see no inhibition to that on any ground referable to locus standi, jurisdiction or maintainability.

For the aforesaid reasons, this writ petition is allowed setting aside the appointment of the third respondent as the Administrator of the Guruvayoor Devaswom. The State Government is directed to forthwith prepare a panel in terms of what is stated above so that the Committee can make appointment of an appropriate person as the Administrator. Till such time, the Government could make arrangements in accordance with Section 16 of the Act by appointing an officer of the Government not below the rank of Deputy Collector to be in additional charge of the office of the Administrator pending appointment of the Administrator u/s 14. Obviously, such appointment shall also be in strict conformity with what is stated herein above as to the scope of the term "an officer of Government not below the rank of Deputy Collector" in the Act. No costs.