

(2009) 10 KL CK 0094

In the High Court Of Kerala

Case No : Writ Petition (C) . No. 25699 of 2009 (F)

M.D. Venu Namboodiri

APPELLANT

Vs

The Travancore Devaswom Board and The Commissioner

RESPONDENT

Date of Decision : 01-10-2009

Acts Referred:

Citation : (2009) 10 KL CK 0094

Hon'ble Judges : T.R. Ramachandran Nair, J;P.R. Raman, J

Bench : Division Bench

Advocate : V. Chitambaresh, for the Appellant; V. Krishna Menon, for the Respondent

Final Decision : Dismissed

Judgement

Ramachandran Nair, J.—These writ petitions are filed by the applicants to the post of Melsanthi in Sabarimala/Malikapuram Temples for one year starting from Thulam 30th of 1185 M.E. (one year from 15th of November, 2009). Since common issues arise for consideration, they are disposed of by a common judgment.

2. The notification in question inviting applications for the post of Melsanthi of Sabarimala/Malikapuram Temples is produced as Ext.P10 in W.P.(C) No. 25699/2009. The last date for receipt of applications was by 5 p.m. on 18.8.2009. The detailed procedures for selection are specified in the notification itself.

3. The petitioners mainly contended that they are having more than 10 years of service as Melsanthi as specified in the notification, in various major Temples. It is the apprehension of the petitioners that their applications will be rejected on the ground that they are not having 10 years of continuous service immediately preceding the date of application. It is contended that 10 years of continuous service at any point of time will be sufficient, going by the notification.

4. In W.P.(C) No. 25699/2009, the petitioner claims that he had functioned as

the Melsanthi of Kannampuzha Sreekrishna Kshethram, Palissery, Thrissur for over 10 years during the period from 10.2.1987 to 10.3.1998. He is now functioning as Melsanthi of Mandalakkode Sree Dharma Sastha Kshethram, Kottayi, Palakkad ever since 15.2.2009. In W.P.(C) No. 27410/2009, the petitioner is having a hereditary right to perform as "Othikkan" at Guruvayur Sree Krishna Temple. He is claiming that he has studied pooja vidhies and is well-versed in them. He was selected to hold the post of Melsanthi of Guruvayur Sree Krishna Temple on two occasions, i.e. from 1.10.1998 to 31.3.1999 and from 1.4.2002 to 30.9.2002. From October, 2008 onwards he is functioning as Melsanthi of Manappullykavu Bhagavathi Temple at Palakkad. In W.P.(C) No. 27411/2009, the petitioner had worked in various Temples like Sree Krishnaswamy Temple, Muttam, Aluva and Pallikkara Sree Mahadeva Temple. Going by Ext.P1 certificate, he was the Melsanthi of Muttam Sree Krishna Swamy Temple from January, 1964 to December, 1975 and going by Ext.P2, he was the Melsanthi of Pallikkara Sree Mahadeva Temple from 14.4.1990 to 30.4.2000.

5. Heard Shri V. Chitambaresh, learned Senior Counsel appearing for the petitioner in W.P.(C) No. 25699/2009 and Shri Binoy Vasudevan, learned Counsel appearing for the petitioners in other writ petitions, Shri V. Krishna Menon, learned Standing Counsel appearing for the Travancore Devaswom Board and Shri R. Lakshmi Narayan, learned Govt. Pleader.

6. Shri V. Chitambaresh, learned Senior Counsel contended that even going by the notification, what is prescribed is only 10 years of continuous service as Melsanthi in any major temple and it is not the requirement that the said service should be 10 years immediately preceding the date of submission of the application. It is submitted by referring to the findings contained in the order dated 24.6.2009 in Report No. 67 in O.P. No. 3821/1990 also that even in the guidelines prescribed by this Court in the said order for the purpose of selection of Melsanthies in Sabarimala and Malikapuram Temples, it is not specified that 10 years service should be one which precedes the date of application. This argument is adopted by the learned Counsel appearing for the petitioners in the other writ petitions. The above argument is opposed by the learned Standing Counsel appearing for the Travancore Devaswom Board as well as the learned Govt. Pleader.

7. In fact, the issue regarding the prescription of guidelines was elaborately considered by us in our order dated 24.6.2009 in Report No. 67 in O.P. No. 3821/1990. During the selection of Melsanthies for the last year in the renowned Sabarimala and Malikapuram Temples, we had passed orders in Report No. 67 in O.P. No. 3821/1990 filed by the learned Ombudsman, Justice R. Bhaskaran (Retd.). During the process of selection, we had appointed Justice K. Padmanabhan Nair (Retd.) as Observer to oversee the selection process. We have passed the final order after considering various suggestions contained in the reports submitted by the learned Observer, the recommendations of Justice K.S. Paripoornan High Power Commission report and after hearing various parties.

8. The argument raised by the learned Counsel for the petitioners that 10 years continuous service at any point of time alone is sufficient, has to be tested in the light of the specific recommendation made by the Observer in the final report and which was accepted in our order dated 24.6.2009. In fact, in the final report dated 22.10.2008, the learned Observer had made various recommendations in regard to the prescription of qualification in the light of the various anomalies reflected in the selection process. We quote para 24 of the report wherein it is specified that the 10 years continuous service must be immediately preceding the date of application:

At present the applicant need only produce a certificate to the effect that he had 10 years" continuous service as a Santhikkaran. It need not have any nexus to the date of application. It should be specified that the applicant must have ten years" continuous service as Santhikkaran immediately preceding the date of application.

This recommendation was accepted by us while pronouncing the final order. In fact, in the final order, we had noticed the anomalies pointed out by the learned Observer that persons who are not working as full time Santhies and are having other avocations, are submitting applications for appointment as Melsanthi at Sabarimala and Malikapuram Temples. The thrust of the recommendation was that the person who is an applicant and who will be selected as Melsanthi of Sabarimala and Malikapuram Temples, should have been working as a full time Melsanthi of a major Temple, for the required period, preceding the date of application. The requirement to produce proper experience certificate from the Thanthri of the Temple wherein he had been working as Melsanthi, has also been specified in the said report. In our order dated 24.6.2009, we have held in para 25 as follows:

We are of the view that the recommendations made by the learned Observer regarding these aspects are really important and should therefore be included among the guidelines framed by the Devaswom Board. Presently, even though 10 years service is stipulated as experience qualification, it is not specified that the same should be 10 years prior to the last date fixed to submit application. This is a lacuna as far as the guidelines are concerned.

Therefore, there is no scope for any argument as now raised by the learned Counsel for the petitioners that 10 years" continuous service at any point of time will be sufficient. We have clearly held that experience should relate to 10 years immediately prior to the last date of submission of application. In fact, the existing guidelines which were in force at that point of time had been made available by the Travancore Devaswom Board as Annexure C along with their counter affidavit. Therein, the specification in Clause (4) read like this:

Ten years continuous service as Santhi in any of the important temples in Kerala is compulsory.

This clause was ordered to be modified in the final order by us.

9. In para 36 of the order dated 24.6.2009, we directed the Travancore Devaswom Board to incorporate among the guidelines, Clauses (1) to (6) specified therein. The relevant portion of the said clause which is relevant for deciding the dispute herein, reads as follows:

1. Clause (4) will be substituted as follows: The candidate who seeks appointment as Melsanthi of Sabarimala and Malikappuram Temples, should have at least 10 years of continuous service as on the last date of application as a Melsanthi in any major temples wherein poojas are held thrice daily and the temples are open in the morning and in the evening. The candidate should produce the certificate of the Thanthri of the Temple/Temples where he is working, along with the application.

Therefore, there cannot be any room for doubt that there should be 10 years continuous service as Melsanthi as on the date of submission of the application, which means that the continuous service should be one preceding the date of application.

10. In the present notification, it has been clearly specified that the applicant should have 10 years of continuous service as a Melsanthi in any major temples having poojas thrice daily and which are open in the morning and evening, as on the date of submission of the application. Therefore, as the petitioners do not satisfy this requirement, they cannot seek for a direction to the Travancore Devaswom Board to accept their application in these proceedings. Admittedly, the petitioners do not fulfill the said criteria as on the date of submission of the application.

11. Learned Senior Counsel Shri V. Chitambaresh submitted that as the parties herein have all been engaged in the conduct of poojas, the requirement to have 10 years of continuous service preceding the date of submission of application, will put them in acute hardship. It is submitted that suitable modifications may be directed to be done in the guidelines to avoid the difficulties experienced by such applicants. It is also submitted that since these applicants have been remaining in the profession as Santhies, Othikkan, etc., they are entitled to have a separate treatment.

12. We are afraid that the said contention cannot be accepted. The guidelines are uniformly applicable as far as the applicants are concerned. There cannot be an exception towards any particular category as the same will clearly interfere with the prescriptions of the notification. This Court cannot in these proceedings, prescribe any new modalities to vary the prescriptions made in the present notification. Further, it is well settled that individual hardships cannot be a matter for consideration by this Court while considering the qualifications for selection and appointment in various posts.

Therefore, we find no reason to grant the reliefs sought for in these writ petitions and they are accordingly dismissed. No costs.