

(2013) 02 MAD CK 0159
In the Madras High Court
Case No : Writ Petition No. 20708 of 2005

Natarja Gurukkal

APPELLANT

Vs

Commissioner, Hindu Religious and Charitable Endowment,
Administrative Department and Another

RESPONDENT

Date of Decision : 12-02-2013

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2013) 4 MLJ 176

Hon'ble Judges : T. Raja, J

Bench : Single Bench

Advocate : C. Uma, for the Appellant; R. Kannan, Govt. Advocate and K. Sridhar, for the Respondent

Final Decision : Dismissed

Judgement

T. Raja, J.—The petitioner herein seeks for issuance of a writ of certiorarified mandamus to call for the records of the 1st respondent having Ref. D. DIS. R.P. No. 44 of 2002 D2, dated 7.8.2004, quash the same and consequently direct the 2nd respondent to reinstate the petitioner as archakar in the Arumigu Suyambulingasami temple, Uvari, Radhapuram Taluk, Tirunelveli District (in short "temple"). Learned counsel appearing for the petitioner would submit that the petitioner/Nataraja Gurukkal along with 22 other archakars was working, for about 25 years, as one of the Gurukkal in the temple managed by the 2nd respondent/Hereditary Trustee. The archakars used to collect charges from the devotees directly, and from such amount, they purchase articles for archana to the deity and its consort. They have the right to perform two poojas daily out of their own money and they make a nominal profit of about 10% of the collection which is their only remuneration. Neither the trustee nor the temple pay any remuneration to the archakars. If any one of the archakars is, by reason of physical infirmity, is unable to perform pooja, he has to make alternate arrangement to perform pooja service. Further, no usual prior permission from

the trustee is required.

While so, when the petitioner fell ill on 20.4.1989 while performing pooja, he deputed, on his own, his brother-in-law by name Chockalingam to perform the pooja. All of a sudden, the arrangement made by the petitioner was objected to by the previous trustee by name P.T. Thangasamy Rajan, who was the hereditary trustee and father of the 2nd respondent, resulting in issuance of a show cause notice dated 26.9.1989, calling upon the petitioner to submit his explanation with regard to the arrangement made by the petitioner in deputing his brother-in-law to preform pooja service. Though the petitioner sent a reply, dated 12.11.1989, by registered post, the hereditary trustee without considering the explanation given by the petitioner, prevented him from performing the pooja services in the temple from 26.1.1990 onwards with the aid of local police. When the father of the 2nd respondent issued another show cause notice dated 1.11.1989 alleging that, without getting any prior permission from the Trustee, the petitioner permitted his brother-in-law who does not have any qualification to perform pooja services in the temple, and further, the petitioner is not a proper and fit person to perform pooja as he did not have any qualification to preform pooja, the petitioner sent a reply by way of lawyer's notice, dated 12.11.1989, clearly explaining that only due to unavoidable reasons and in order to make immediate alternative arrangements to preform pooja, without getting any prior permission from the trustees, his brother-in-law was permitted to do the pooja service. In such circumstances, according to the learned counsel, the disciplinary action initiated against the petitioner by the Hereditary Trustee and the subsequent passing of the final order of removal will not stand to any logic or reason.

It was further submitted that-when the petitioner was removed without his reply being considered, an Appeal was filed in A.P. No. 1 of 1990 before the Deputy Commissioner, HR & CE Department, and the said authority also dismissed the appeal by order dated 10.12.1990. As against that, when Revision petition in R.P. No. 10 of 1991 was filed before the Ist respondent, the said authority found that the petitioner was not given fair opportunity, set aside the order passed by the Deputy Commissioner and remanded the matter back for fresh enquiry. In the meanwhile, the father of the 2nd respondent died and there were no proper trustees, whereupon, the HR & CE Department appointed a fit person in the place of the Hereditary Trustee. The Deputy Commissioner to whom the matter was remanded back and taken up as A.P. No. 3 of 1992, conducted an enquiry and submitted his report that the petitioner has been already reinstated in service. In view of such reinstatement, the Deputy Commissioner, by order dated 24.5.1993, allowed the appeal filed by the petitioner. But, subsequently, the 2nd respondent filed W.P. No. 10008 of 1995 before this Court challenging the appointment of fit person and another writ petition in W.P. No. 4162 of 1994, questioning the order of the Deputy Commissioner passed in A.P. No. 3 of 1992, allowing the appeal filed by the petitioner and ultimately, the appointment of fit person was set aside and also the order of the Deputy Commissioner passed in AP No. 3 of 1992 was also set aside by remanding the appeal to the Deputy

Commissioner for fresh disposal. Aggrieved by the order passed in W.P. No. 4162 of 1994, the petitioner preferred an appeal in W.A. No. 2198 of 2001 and, by order dated 20.11.2001, the writ appeal came to be dismissed. Finally, the Joint Commissioner took up the appeal after renumbering it as A.P. No. 2 of 2001. After holding an enquiry in the appeal, he confirmed the earlier order of removal of the petitioner from service as archakars. As against that, when further revision was filed before the first respondent in R.P. No. 44 of 2002 D2, the first respondent dismissed the petitioner's revision by the present impugned order, holding that the petitioner showed disrespect and disobedience towards the trustees and such act of the petitioner amounts to gross misconduct. According to the learned counsel, the approach adopted by the first respondent is completely unjust and unfair and also arbitrary and violative of Article 14 of the Constitution of India. It is ultimately submitted that when the petitioner allowed his own brother in law to perform the daily pooja only on the exigency that there was sudden deterioration in his health, the order of removal passed by the 2nd respondent, as affirmed by the first respondent, is wholly unjust and hence, the same is liable to be set aside.

2. A detailed counter affidavit has been filed by the 1st respondent.

Mr. K. Sridar, learned counsel appearing for the 2nd respondent/temple submitted that the version of the petitioner that he suddenly met with physical illness compelling him to appoint in his place his brother-in-law Chockalingam is nothing but a concocted story. Had he fallen ill, he could have very well obtained prior permission for his absence, but he did not do so. He never informed the Hereditary Trustee about deputing the said Chockalingam to perform the pooja service on his behalf. According to him, if the petitioner's explanation is accepted, then, every archakar would be entitled to engage their own people without any prior permission from the Hereditary Trustee. Moreover, Rule 15 of the Tamil Nadu Hindu Religious Institutions (Officers and Servants) Service Rules, 1964 (in short "Rules"), provides that either hereditary or non-hereditary servants shall not be entitled to any leave other than casual leave as is admissible to Government Servants, from time to time. Sub-clause (6) of the said rule says that leave may be granted to the hereditary and non-hereditary ulthurai servants on their providing proper substitutes to the satisfaction of the appointing authority. Rule-12 envisages that every ulthurai servant whether hereditary or non-hereditary, whose duty is to perform poojas and recite mantras, vedas, etc. shall, before succeeding or appointment to an office, obtain a certificate of fitness for performing his office from the head of an institution imparting instructions in agamas and ritualistic matters and recognized by the commissioner. Moreover, G.O. Ms. No. 2759, Revenue dated 26.11.1964, also shows that it is the duty of every archakar to produce necessary certificate of qualification to perform the duties as and when demanded by the competent authority. Therefore, when the rules are very clear that every archakar should be a qualified person and he should also possess necessary certificate of qualification, the petitioner, without complying with any of the rules and without

any prior permission from the Hereditary trustee, replaced in his place one Chockalingam on the pretext that he fell ill. His unauthorized absence and also his unilateral action in appointing someone to do pooja in his place is violative of Rule 15 (6) framed u/s 116 of the HR & CE Act, hence, exercising the powers u/s 56 of the Act. he was issued with a notice, but, no proper explanation was forthcoming, as a result, he was dismissed from service. The appeal as well as the revision came to be dismissed on valid grounds and the impugned order does not suffer from any flaw or infirmity.

It was finally submitted that as per G.O. Ms. No. 2759, Revenue, dated 26.11.1964 framed u/s 116(2) of the Act, a temple servant should have completed the age of 24 at the time of appointment, but the petitioner was only 17 years old at the time of his engagement, therefore, he had no qualification to hold the post of archakar. Moreover, when he attained the age of 24, he did not come forward to get appointed as archakar by producing necessary certificates. When these vital factual aspects have been properly gone into by the first respondent, there is hardly any scope for interference with the impugned order.

3. When the petitioner fell ill while performing pooja in the temple on 20.4.1989, it appears that, in his place, he deputed his brother-in-law/Chockalingam to perform the service. As there was no written permission obtained by the petitioner from the Hereditary Trustee either to go on leave or for engagement of Chockalingam, a show cause notice dated 26.9.1989 was issued, calling upon the petitioner to submit his explanation. Though the petitioner sent a reply notice, dated 12.11.1989, by registered post, once again, another show cause notice, dated 1.11.1989, was issued by the hereditary trustee/father of the second respondent, seeking explanation as to why, without getting any prior permission from the trustees, the petitioner permitted his brother-in-law, who does not possess any qualification, to perform pooja service in the temple. In the said show cause notice, by making an allegation that the petitioner was not the fit and proper person to perform the pooja, he was called upon to produce fitness certificate from the competent authority for performing pooja in the temple.

4. It could be seen that Rule 12 of G.O. No. 2759 dated 26.11.1964 framed u/s 116(2) of the Act provides that a temple servant should have completed the age of 24 at the time of appointment. The petitioner, aged 37 in the year 1990, was only 17 years old at the time of enactment of the Act. Therefore, he suffered disqualification to hold the post of archakar. Further, after attaining the age of 24 and even now, he did not come forward to get appointment as archakar by producing necessary certificates. Therefore, when Rule 12 of G.O. Ms. No. 2759, revenue, dated 26.11.1964, is specific that a person could be appointed to the post of archakar only if he completes the age of 24 years, the conduct of the petitioner, who himself has not established the fact that he has full qualification to hold the post of archakar, in appointing his own relative under the pretext that he fell ill to do pooja without taking prior permission, has been rightly questioned in the show cause notice issued to him. When the second show cause notice was

issued to produce certificate of qualification as archakar, the petitioner, who is bound to produce the same, till now, has not taken any step to produce the documents. Therefore, rightly, the authorities decided against the petitioner.

5. One another significant aspect to be mentioned herein is that after abolition of hereditary archakars, no archakar can claim as Hereditary archakars in any temple under the control of HR & CE Administration after 1971. As such, when all the archakas of the 2nd respondent/temple are non-hereditary archakas, they are bound to work under the control of the 2nd respondent. The petitioner, being a non-hereditary archakar, should have got appointment order from the Hereditary Trustee by producing all relevant certificates, but, without doing so, he cannot question the right of the hereditary trustee in calling for the certificates of the petitioner's proficiency to perform poojas in the temple even in the middle of the petitioner's service. When the petitioner, till date, has not produced any certificate of qualification, undoubtedly, it goes without saying that he is disqualified from working as archakar in the temple. Therefore, this Court is not able to see any infirmity or error in the impugned order. Consequently, the writ petition fails and is dismissed as devoid of any merit. No costs.