

(2010) 09 MAD CK 0339
In the Madras High Court
Case No : A.S. No. 598 of 2002

Periyapattam S. Sadasiva Gurukkal (died) and S. Ravikumar
Gurukkal

APPELLANT

Vs

The Commissioner, H.R. and C.E. and The Assistant
Commissioner/Executive Officer

RESPONDENT

Date of Decision : 16-09-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 26
Constitution of India, 1950 — Article 25
Tamil Nadu Hindu Religious and Charitable Endowments (Amendment) Act, 1971 —
Section 5
Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 — Section 2A
Tamil Nadu Hindu Religious Institutions (Officers and Servants) Service Rules, 1964 —
Rule 12

Citation : (2010) 09 MAD CK 0339

Hon'ble Judges : M. Venugopal, J

Bench : Single Bench

Advocate : T.R. Mani and T.M. Hariharan, for the Appellant; M.R. Murugesan,
Special Govt. Pleader (HR and CE) for Respondent 1 and A.K. Sriram and A.S.
Kailasam and Associates for Respondent 2, for the Respondent

Final Decision : Dismissed

Judgement

M. Venugopal, J.—The Deceased Appellant/Plaintiff (during his life time) has preferred the present Appeal as against the judgment and Decree dated 24.04.2000 in O.S. No. 293 of 1995 on the file of the Learned Principal Subordinate Judge, Thiruvannamalai.

2. After the demise of the Appellant/Plaintiff, his son, being the Legal Representative of the Deceased Appellant/Plaintiff, has been added as his Legal Representative and brought on record as Appellant before this Court.

The short summation of the facts of the case of Appellant/Plaintiff (since deceased) are as follows:

3. The deceased Appellant/Plaintiff, viz., the father of the present Appellant, was popularly known as "Paria Pattam" Sadasiva Gurukkal and was serving in Arulmighu Arunachaleswarar Temple for the last 50 years and succeeded to this post of his father Pattam Maniyam Sojiadhri Gurukkal, who performed the services without break.

4. The Appellant/Plaintiff (since deceased) was not only "Archaka" of the temple, but performed the following duties as prerogative:

- i) The plaintiff is entitled to be in charge of the first key of "karuvoolam";
- ii) The Plaintiff is the person to fix the dates for the performance of the festivals of the temple;
- iii) The Plaintiff is in charge of "Ulthurai pattam maniyam" in the temple;
- iv) The Plaintiff is the chief of other gurukkals of the temple;
- v) The Plaintiff is entitled to certain honours in the temple as that of he being carried in a palanquin before the deity on festival occasion and that he has to be accompanied by a torch light daily while going from his house to the temple and while returning from the temple to his house.
- vi) The Plaintiff was also entitled to an annual allowance apart from his salary.

5. Thus, the Appellant/Plaintiff (since deceased) could not be considered or equated to that of other "Archakas" of the temple. To establish the aforesaid rights, the deceased Appellant's/Plaintiff's father Pattam Maniyam Sonadhri Gurukkal had filed a suit in O.S. No. 899 of 1916 on the file of the Learned District Munsif, Thiruvannamalai wherein the right of the Appellant/Plaintiff (since deceased) to the office of "Pattam Maniyam" was declared and his right to the special allowance of Rs. 6-4-0 during karthigai festivals were recognised. After the demise of his father, the Appellant/Plaintiff (since deceased) was appointed to the post and he continued to serve in that post without any remarks pertaining to Breach of Trust, incapacity, disobedience or orders, neglect of duty or misconduct.

6. The Appellant/Plaintiff (since deceased) was performing the aforesaid office even now and still possessed the key of "Karuvoalam" and was consulted for fixation of the dates for the performance of the festivals. Even last year in Tamil Year "Bava" during the karthigai month, there were two "karthigai" star and as such, there was a doubt whether to hold the annual karthigai festival in the first star or in the last karthigai star and the deceased Appellant/Plaintiff was able to fix the festival in the first karthigai star itself and this was approved by eminent persons and the festival was also performed on that date. The notices dated 03.02.1988 and 11.07.1994 issued by the Devasthanam to fix the dates for festivals were produced. The deceased Appellant/Plaintiff was rendering separate services and was receiving remuneration for all the services rendered in the temple and therefore, these services could not attract Act 2 of 1972.

7. The 2nd Respondent/2nd Defendant served a notice in Na. Ka. No. 219/92 dated 08.11.1993 terminating the services of the deceased Appellant/Plaintiff on the ground that he could be superannuated at the age of 65. There was no legal bar for the deceased Appellant/Plaintiff to serve in the temple till his death and the notice indicated that as though he was paid servant of the temple and as such, his service was liable to be terminated at the age of 65.

8. The case of the Appellant/Plaintiff (since deceased) could not be equated in the same fashion as that of other servants of the temple and that it was to be looked into with all the other special services which he was rendering as that of his father. He was entitled to perform the services on the basis of usage and custom till his death and therefore, the impugned order was not correct and to set aside the said order. The Appellant/Plaintiff (since deceased) preferred Revision with the 1st Respondent/1st Defendant in R.P. No. 4 of 1994.

9. The 1st Respondent/1st Defendant, through a letter dated 27.10.1994 (but served to the deceased Appellant/Plaintiff's counsel on 17.03.1995), confirmed that order and therefore, the deceased Appellant/Plaintiff had filed the present suit for setting aside the order passed by the 1st Respondent/1st Defendant. The suit was not barred by limitation, as it was projected within 90 days from the date of communication of the order of the 1st Respondent/1st Defendant dated 27.10.1994 and 17.03.1995. Hence, the Appellant/Plaintiff (since deceased) had laid the suit praying to set aside the order of the Respondents/Defendants thereby restoring the title of the deceased Appellant/Plaintiff "Pattam Maniyam" and consequently to direct the 2nd Respondent/2nd Defendant to pay the salary and other allowances to that post and also to direct the Respondents/Defendants to pay the costs of the suit.

The Written Statement averments of the 1st Respondent/1st Defendant are set out below:

10. The suit was not maintainable and was barred u/s 108 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (Act 22 of 1959) because of the fact that the deceased Appellant/Plaintiff had not availed the further remedy available to him as per Section 114 of the said Act by way of further revision to the Government. That apart, the present suit was not maintainable as per the provisions of Amended Act 2/1971 and as per the decision of Honourable Supreme Court in Seshammal and Others, Vs. State of Tamil Nadu, .

11. The deceased Appellant/Plaintiff served as "Archakar" and retired as "Archakar" by means of his succession to his father. There was no such right that could devolve as a temple servant and there was no Hereditary Right devolved on the Plaintiff. The deceased Appellant/Plaintiff was only a paid servant of the temple and he retired as such.

12. There was no post as "Chief Archakar" and no honour of prerequisite was attached to the office of Archakar. Share in tickets were paid to the Archakar, who performed that service. Hence, no such honour was shown or given to the

Deceased Appellant/Plaintiff in the schedule of establishment approved by the Deputy Commissioner, HR and CE, Madras in L.Dis. No. 7637/85 dated 03.06.1985, the Appellant/Plaintiff was designated as Archakas only. The Ulthurai Pattam Maniyam was being occupied by any temple servant and one K.G. Vadivelan was acting as Ulthurai Maniyam and presently C. Jayarama Gurukkal was acting as Ulthurai Maniyam. The Deceased Appellant/Plaintiff was not entitled to any special honours such as being carried in Palanquin before the Deity and torch light while he was proceeding to his house. No exclusive right was granted to the Deceased Appellant/Plaintiff's father in O.S. No. 899 of 1916 on the file of the District Munsif Court, Thiruivannamalai. As against the judgment and Decree in O.S. No. 899 of 1916, the Deceased Appellant/Plaintiff's father filed A.S. No. 6 of 1918 on the file of the Sub Court, Vellore and the same was also dismissed. During that time, the H.R. and C.E. Board had no control over the suit temple. Subsequently, Act 2/1925 was brought into force, which was replaced by Act 19/1951 and Act 22/1959. Later, Amendment Act 2/71 came into force by which the Hereditary Rights in the temple were taken away and the rights, any ceased to exist. It was wrong to aver that after the demise of Deceased Appellant/Plaintiff's father, the Plaintiff was appointed to the post.

13. It was true that as an Archaka of the temple, the Deceased Appellant/Plaintiff was consulted to determine the dates for the festival. This sort of service was attached to the post of Archaka and no special remuneration was given to him for such services.

14. The impugned order passed by the Respondents/Defendants was in consonance with the rules and they were valid in law. There was no cause of action for filing of the suit and that suit was not properly valued. Moreover, pre-suit notice was not issued as per Section 80 of the CPC by the Deceased Appellant/Plaintiff.

The Written Statement averments of the 2nd Respondent/2nd Defendant are set out below:

15. The Deceased Appellant/Plaintiff served as "Archakar" and retired as "Archakar" of the temple. There was no Hereditary Right devolved upon the Deceased Appellant/Plaintiff. There was no post of Chief Archakar and no honour or prerequisite was attached to the office of Archakar.

16. The Deceased Appellant/Plaintiff was just a temple servant known by his designation as "Archakar" or "Gurukkal" who as to do poojas to the Deity and perform other duties which were attached to the said post. These duties were not devolved upon him as if any rights were there. The order passed in R.C. No. 219/92 dated 08.11.1993 was in consonance with the rules framed as per Section 116(2) of the H.R. and C.E. Act of 19159 and they were valid in law. The Deceased Appellant/Plaintiff had not produced any record to show that he enjoined special privileges as claimed by him. No ground was made out in the present suit to set aside order in R.C.219/92 dated 08.11.1993. There was no

cause of action for the Deceased Appellant/Plaintiff to file the suit and also that the suit was barred by time.

17. The trial Court framed 1 to 5 issues for trial in the main case. Before the trial Court, on the side of Deceased Appellant/Plaintiff, witness P.W. 1 was examined and Exs. A. 1 to A.14 were marked. On the side of the Respondents/Defendants, witness D.W. 1 was examined and Ex. B. 1 was marked.

18. On an appreciation of oral and available documentary evidence on record, the trial Court had come to the resultant conclusion that the Deceased Appellant/Plaintiff was not entitled to any special allowance amount and further notice u/s 80 CPC was not given to the Respondents/Defendants and resultantly, dismissed the suit leaving the parties to bear their own costs.

19. The Points that arise for consideration in this Appeal are:

1) Whether the 2nd Respondeht/2nd Defendant's order dated 08.11.1993 in terminating the services of the Appellant/Plaintiff (deceased) and the order of the 1st Respondent/1st Defendant are liable to be set aside?

2) Whether the Appellant/Plaintiff (deceased) is entitled to get restoration of title of "Pattam Maniyam" and consequently to derive the benefits of salary and Other allowances to that post?

3) Consequent to the death of Appellant/Plaintiff (deceased), whether the post of "Pattam Maniyam" has devolved upon the present Appellant automatically [being the son of the Appellant/Plaintiff(deceased)]?

The Contentions, Discussions and Findings on Point Nos. 1 to 3:

20. The Learned Senior Counsel for the Appellant submits that the judgment and Decree of the trial Court in the main suit are contrary to law, the weight of evidence and probabilities of the case and in fact, the trial Court should have seen that either Section 55 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 or the decision of Honourable Supreme Court in Seshammal and Others, Vs. State of Tamil Nadu, does not in any event operate against the claim of the Appellant/Plaintiff (since deceased). The Learned Senior Counsel for the Appellant contends that the Appellant/Plaintiff (since deceased) had not based his claim as an "Archaka" or "Pujari" in the temple, but as a "Periya Pattam" was entitled to perform specific religious duties not attached with the office of Archaka or Pujari and as such entitled to specific honours and allowances, again not attached to the office of Archaka or Pujari, but this aspect of the matter was not taken into account by the trial Court.

21. Expatiating his arguments, the Learned Senior Counsel for the Appellant submits that the father of the Appellant/Plaintiff (deceased) and after him, the Appellant are holding the honour of Periya Pattam which carries with the specific religious duties and performances and corresponding benefits and honours and indeed, the Appellant/Plaintiff (deceased) could not be considered as an

"Archaka" or "Pujari" being a paid servant of the Institution.

22. The Learned Senior Counsel for the Appellant projects an argument that P.W. 1 and D.W. 1 in their evidences have clearly stated that the Appellant/Plaintiff (since deceased) was the Pariya Pattam of the temple with defined religious duties and practices to perform with corresponding benefits and obligations.

23. Proceeding further, it is the contention of the Learned Senior Counsel for the Appellant that the trial Court committed an error while appreciating Ex. A. 2 Copy of judgment dated 24.9.1917 in O.S. No. 899 of 1916 on the file of District Munsif Court, Thiruvannamalai, Ex. A. 3 Judgment dated 14.9.1920 of Honourable High Court in S.A. No. 1350 of 1919 which point out that the father of! the Appellant/Plaintiff (deceased) was entitled to perform certain religious duties and practices apart from that of an Archaka and this would form part of the usage envisaged u/s 28 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 and even after the enactment of the H.R. and C.E. Act, the said rights and corresponding benefits are saved under the specific provisions of Section 28, but this had not been appreciated by the trial Court in a real perspective.

24. Another contention put forward by the Learned Senior Counsel for the Appellant is that the Appellant/Plaintiff (since deceased) was to establish that he was the holder of "Periya Pattam" had hereditary right which specific religious duties to perform which forms part of the usage of the religious institution and therefore, the order of the Respondents/Defendants removing the Appellant/Plaintiff (since deceased) from services as if he was a paid servant u/s 55 of the Act was clearly illegal and violative of Section 28 of the Act.

25. Apart from the above, it is the submission of the Learned Senior Counsel for the Appellant that there was no need for the Appellant/Plaintiff (since deceased) to issue notice u/s 80 of the CPC and the contra reasoning of the trial Court in this Regard was not a correct one.

26. Advancing his arguments, the Learned Senior Counsel for the Appellant submits that the Appellant/Plaintiff (deceased) was in service from the year 1945 and on attaining the age of 65, he was superannuated and as per T.N. H.R. and C.E. Act, 1959, the Hereditary right was preserved and Periya Pattam viz., the Head Archaka and as a matter of fact, the Head Priest was not only priest but was holding office of consultant by performing customary practice and an Archaka-service holder, was a servant but a consultant was not a servant.

27. The Learned Senior Counsel for the Appellant advances a plea that for daily poojas the Appellant/Plaintiff (deceased) must decide and by consultant the office was hereditary and the customary right was not terminated by the order of removing the Appellant/Plaintiff (since deceased) in respect of the office of the Archaka.

28. According to the Learned Senior Counsel for the Appellant, he accepted the

order of the 2nd Respondent/2nd Defendant dated 08.11.1993 terminating his service on the ground that he was superannuated at the age of 65, but that will not preclude him to put end to the consultancy work and further, the Appellant/Plaintiff (since deceased) filed Revision Petition questioning the office of consultant but not challenged the Archaka's termination and later filed a suit as per Section 70(1) of the H.R. and C.E. Act in O.S. No. 293 of 1995 and that the Revision Petition was dismissed and the claim of Periya Pattam was a customary right based on usage and the Government had no authority to terminate the said customary right.

29. The Learned Senior Counsel for the Appellant submits that the Legal Representative viz., son of the Appellant/Plaintiff (since deceased) is serving as Archaka and in fact, the Amendment Act 2/1971 does not deal with a customary right and the customary right was preserved by usage.

30. The Learned Senior Counsel for the Appellant contends that an "Archaka" was never recorded as a spiritual Head and a blessing can be given by a Sanyasi and not by an Archaka and the case of the Appellant/Plaintiff (since deceased) was not for Priesthood but the lower Court judgment was to the effect of saying that even Pattam Maniyam was abolished.

31. The Learned Senior Counsel for the Appellant contends that Pattam Ulthurai Maniyam will apply to Archaka and not to the additional responsibility as status to the office.

32. The contention of the Learned Senior Counsel for the Appellant is that for consultancy work one must come to the Appellant/Plaintiff (since deceased) and that by such consultancy his office was Hereditary and the custom was not terminated by an order which relieved the Appellant/Plaintiff (since deceased) from the office of Archaka by means of superannuation.

33. The Learned Senior Counsel for the Appellant submits that the Appellant/Plaintiff (since deceased) was chief of the other Gurukkals of the temple and he had a right of superannuation of other Gurukkal and even when the Appellant/Plaintiff's father died and the Appellant/Plaintiff was in the temple and the Appellant/Plaintiff (since deceased) could not be considered or equated to that of other Archakas of the temple.

34. It is the submission of the Learned Senior Counsel for the Appellant that when the Appellant/Plaintiff (deceased) took office in the year 1945 he succeeded his father.

35. According to the Learned Senior Counsel for the Appellant, the Pattam Maniyam fixes the date for performance of kumbabishekam and he knew Vedas and Astrology and even the temporary offering/Hundial (Money Box), he must fix it based on astrological sanction and every time the Appellant/Plaintiff (since deceased) was addressed as "Ulthurai Maniyam" and the Respondents/Defendants could not close their eyes to the High Court's order and Exs. A. 4,

A. 6 and A. 5 letters were anterior to the present orders passed by the authorities concerned.

36. According to the Learned Senior Counsel for the Appellant, in S.A. No. 1350 of 1919 on the file of this Court the father of the Appellant/Plaintiff (deceased) Sonadhri Gurukkal figured as Appellant and this Court on 14.09.1920 had held that the said Sonadhri Gurukkal (Plaintiff in O.S. No. 899 of 1916 on the file of District Munsif Court, Thiruvannamalai) was declared entitled to the office of Pattam Maniyam and that the Respondents/Defendants therein viz., Bharadwaja Mudaliar, T. Murugappa Chettiar and P.K.A.T.C. Veerappa Chettiar were directed to enter the Plaintiff's name as holder of the office that as such the Pattam Maniyam, the Plaintiff was entitled to and had the duty to supervise the work of puja and ritual by the 16 Gurukkals and to bring to the notice of the trustee any such irregularity or misconduct as may seem to him serious and deserving of notice and that from the date of the Plaintiff offer to do the work of Pattam Maniyam, he was entitled to a salary of Rs. 10/- per month and to an annual value of Rs. 6 and annas four during Karithigai festival and that the Respondents/Defendants were directed to pay the Plaintiff the sum of Rs. 50/- as for general damages and dismisses the Plaintiff's claim for arrears salary etc. and this was before the enactment of H.R. and C.E. Act 2/1971 and the said Act was replaced by Act. 22/1959 and the judgment of this Court in S.A. No. 1350 of 1919 dated 14.09.1920 was obliterated by this two enactments.

37. It is the contention of the Learned Senior Counsel for the Appellant that the abolition of hereditary right came in the year 1951.

38. The Learned Senior Counsel for the Appellant drew the attention of this Court to the Section 28 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 which speaks of the care required of a trustee and his powers and in fact, a trustee must preserve the usage of the Institution and the hereditary Priesthood was one custom which were repealed by Act 47 and later, the expression "Office Holders" or "Servants" included the Archakas and Pujaries by Act 2/1971 the Archaka was abolished and not other customary right or usage as per Section 55(2) of the Act because it was preserved as per Section 28 of the Act and it was not altered.

39. The main contention of the Learned Senior Counsel for the Appellant is that the ingredients of Section 28 of the H.R. and C.E. Act are to be given to by a trustee. The Learned Senior Counsel for the Appellant/Plaintiff submits that there was no legal bar for the Appellant/Plaintiff to serve in the temple till his death.

40. The Learned Senior Counsel for the Appellant relies on the decision of Honourable Supreme Court in Seshammal and Others, Vs. State of Tamil Nadu, in paragraph Nos. 4 to 9 wherein the Honourable Supreme Court has observed as follows:

4. Section 55 of that Act provided for the appointment of office-holders and servants in such temples and Section 56 provided for the punishment of

officeholders and servants. Section 55, broadly speaking, gave the trustee of the temple the power to appoint the office-holders or servants of the temple and also provided that where the office or service is hereditary the person next-in-the-line of succession shall be entitled to succeed. In only exceptional cases the trustee was entitled to depart from the principle of next-in-the-line of succession, but even so, the trustee was under an obligation to appoint a fit person to perform the functions of the office or perform the service after having due regard to the claims of the members of the family.

5. Power to make rules was given to Government by Section 116(2) (xxiii) and it was open to the Government to make rules providing for the qualifications to be possessed by the officers and servants for appointment to non-hereditary offices in religious institutions, the qualifications to be possessed by hereditary servant for succession to office and the conditions of service of all such officers and servants. Under this rule-making power the State Government made the Madras Hindu Religious Institutions (Officers and Servants) Service Rules, 1964. Under these rules an Archak or Pujari of the deity came under the definition of "Ulthurai servant". "Ulthurai servant" is defined as a servant whose duties relate mainly to the performance of rendering assistance in the performance of pujas, rituals and other services to the deity, the recitation of mantras, vedas, prabandams, thevarams and similar invocations and the performance of duties connected with such performance of recitation. Rule 12 provided that every "Ulthurai servant", whether hereditary or non-hereditary whose duty it is to perform pujas and recite mantras, vedas, prabandams, thevarams and other invocations 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 recognised by the Commissioner, by general or special order or from the head of a math recognised by the Commissioner, by general or special order, or such other person as may be designated by the Commissioner, from time to time, for the purpose. By this rule the proper worship, in the temple was secured whether the Archaka or Pujari was a hereditary Archaka or Pujari or not. Section 107 of the Act emphasised, that nothing contained in the Act shall, save as otherwise provided in Section 106 and in Clause (2) of Article 25 of the Constitution, be deemed to confer any power or impose any duty in contravention of the rights conferred on any religious denomination or any section thereof by Article 26 of the Constitution. Section 106 deals with the removal of discrimination in the matter of distribution of prasadam or theertham to the Hindu worshippers. That was a reform in the right direction and there is no challenge to it. The Act as a whole, it is conceded, did not interfere with the religious usages and practices of the temples.

6. The principal Act of 1959 was amended in certain respects by the amendment Act of 1970 which came into force on January 8, 1971. Amendments were made to Sections 55, 56 and 116 of the principal Act and some consequential provisions were made in view of those amendments. The Amendment Act was enacted as a step towards social reform on the recommendation of the

Committee on Untouchability, Economic and Educational Development of the Scheduled Castes. The statement of objects and reasons which are reiterated in the counter-affidavit filed on behalf of the State of Tamil Nadu is as follows:

In the year 1969 the Committee on Untouchability, Economic and Educational Development of the Scheduled Castes has suggested in its report that the hereditary priesthood in the Hindu Society should be abolished, that the system can be replaced by an ecclesiastical organization of men possessing the requisite educational qualifications who may be trained in recognised institutions in priesthood and that the line should be open to all candidates irrespective of caste, creed or race. In Tamil Nadu Archakas, Gurukkals and Poojaris are all Ulthurai servants in Hindu temples. The duties of "Ulthurai servants" relate, mainly to the performance of poojas rituals and other services to the deity, the recitation of mantras, vedas, prabandas, thevarams and similar invocations and the performance of duties connected with such performance and recitations. Sections 55 and 56 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (Tamil Nadu Act 22 of 1959), provide for appointment of office-holders and servants in the religious institutions by the trustees by applying the rule of hereditary succession also. As a step towards social reform Hindu temples have already been thrown open to all Hindus irrespective of caste....

7. In the light of the recommendations of the Committee and in view of the decision of this Court in *Gazula Dasaratha Rama Rao Vs. The State of Andhra Pradesh and Others*, and also as a further step towards social reform the Government considered that the hereditary principle of appointment of all officeholders in the Hindu temples should be abolished and accordingly it proposed to amend Sections 55, 56 and 116 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (Tamil Nadu Act 22 of 1959).

8. It is the complaint of the petitioners that by purporting to introduce social reform in the matter of appointment of Archakas and Pujaris, the State has really interfered with the religious practices of Saivite and Vaishnavite temples, and instead of introducing social reform, taken measures which would inevitably lead to defilement and desecration of the temples.

9. To appreciate the effect of the Amendment Act, it would be more convenient to set out the original Sections 55, 56 and 116 of the principal Act and the same sections as they stand after the amendment.

Unamended Section Amended Section

Section 55. Appointment of is not hereditary Section 55. Appointment of in all cases.

(2) In cases where the office to succeed. Explanation.- The expression last holder o office

(3) Where, however, there is a succession. (3) Omitted.

(4) Any person aggrieved Commissioner. (4) Any person aggrieved the Deputy Commissioner.

(4) Section 56. Punishment of or other sufficient cause. (4) Section 56. Punishment of or other sufficient cause.

(2) Any office-holder or to the Deputy Commissioner. (2) Any office-holder or Commissioner.

(3) A hereditary office- such order. (3) Omitted.

Section 116 (xxiii) .-(1) this Act. Section 116 (xxiii) .-

(2) Without prejudice to and servants Section 116 (xxiii).-The such officers and servants.

41. Also, in the aforesaid decision at page 23 and 24 in paragraph Nos. 19 to 25 it is observed as follows:

19. We have found no any difficulty in agreeing with the learned Advocate-General that Section 28 (1) of the principal Act which directs the trustee to administer the affairs of the temple in accordance with the terms of the trust or the usage of the institution, would control the appointment of the Archaka to be made by him under the amended Section 55 of the Act. In a Saivite or a Vaishnavite temple the appointment of the Archaka will have to be made from a specified denomination, sect or group in accordance with the directions of the Agamas governing those temples. Failure to do so would not only be contrary to Section 28(1) which requires the trustee to follow the usage of the temple, but would also interfere with a religious practice the inevitable result of which would be to defile the image. The question, however, remains whether the trustee, while making appointment from the specified denomination, sect or group in accordance with the Agamas, will be bound to follow the hereditary principle as a usage peculiar to the temple. The learned Advocate-General contends that there is no, such invariable usage. It may be that, as a matter of convenience, an Archaka's son being readily available to perform the worship may have been selected for appointment as an Archaka from times immemorial. But that, in his submission, was not a usage. The principle of next-in-line of succession has failed when the successor was a female or had refused to accept the appointment or was under some disability. In all such cases the Archaka was appointed from the particular denomination, sect or group and the worship was carried on with the help of such a substitute. It, however, appears to us that it is now too late in the day to contend that, the hereditary principle in appointment was not a usage. For whatever reasons, whether of convenience or otherwise, this hereditary principle might have been adopted, there can be no doubt that the principle had been accepted from antiquity and had also been fully recognised in the unamended Section 55 of the principal Act. Sub-section (2) of Section 55 provided that where the office or service is hereditary, the person next in the line of succession shall be entitled to succeed and only a limited right

was given under Sub-section (3) to the trustee to appoint a substitute. Even in such case the explanation to Sub-section (3) provided that in making the appointment of the substitute the trustee should have due regard to the claims of the members of the family, if any, entitled to the succession. Therefore, it cannot be denied as a fact that there are several temples in Tamil Nadu where the appointment of an Archaka is governed by the usage of hereditary succession. The real question, therefore, is whether such a usage should be regarded either as a secular usage or a religious usage. If it is a secular usage, it is obvious, legislation would be permissible under Article 25(1)(a) and if it is a religious usage it would be permissible if it falls squarely under Sub-Section 25(1) (b).

20. Mr. Palkhivala on behalf of the Petitioners insisted that the appointment of a person to a religious office in accordance with the hereditary principle is itself a religious usage and amounted to a vital religious practice and hence falls within Articles 25 and 26. In his submission, priests, who are to perform religious ceremonies may be chosen by a temple on such basis as the temple chooses to adopt. It may be election, selection, competition, nomination, or hereditary succession. He, therefore, contended that any law which interferes with the aforesaid basis of appointment would violate religious freedom guaranteed by Articles 25 and 26 of the Constitution. In his submission the right to select a priest has an immediate bearing on religious practice and the right of a denomination to manage its own affairs in matters of religion. The priest is more important than the ritual and nothing could be more vital than choosing the priest. Under the pretext of social reform, he contended, the State cannot reform a religion out of existence and if any denomination has accepted the hereditary principle for choosing its priest that would be a religious practice vital to the religious faith and cannot be changed on the ground that it leads to social reform. Mere substitution of one method of appointment of the priest by another was, in his submission, no social reform.

21. It is true that a priest or an Archaka when appointed has to perform some religious functions but the question is whether the appointment of a priest is by itself a secular function or a religious practice. Mr. Palkhivala gave the illustration of the spiritual head of a math belonging to a denomination of a Hindu sect like the Shankaracharya and expressed horror at the idea that such a spiritual head could be chosen by a method recommended by the State though in conflict with the usage and the traditions of the particular institution. Where, for example, a successor of a Mathadhipati is chosen by the Mathadhipati by giving him mantra-deeksha or where the Mathadhipati is chosen by his immediate disciples, it would be, he contended, extraordinary for the State, to interfere and direct that some other mode of appointment should be followed on the ground of social reform. Indeed this may strike one as an intrusion in the matter of religion. But we are afraid such an illustration is inapt when we are considering the appointment of an Archaka of a temple. The Archaka has never been regarded as a spiritual head of any institution. He may be an accomplished person, well versed in the Agamas

and rituals necessary performed in a temple but he does not have the status of a spiritual head. Then again the assumption made that the Archaka may be chosen in a variety of ways is not correct. The Dharam-karta or the Shebait makes the appointment and the Archaka is a servant of the temple. It has been held in *K. Seshadri Aiyangar v. Ranga Bhattar* ILR 35 Mad 631 that even the position of the hereditary Archaka of a temple is that of a servant subject to the disciplinary power of the trustee. The trustee can enquire into the conduct of such a servant and dismiss him for misconduct. As a servant he is subject to the discipline and control of the trustee as recognised by the unamended Section 56 of the principal Act which provides "all office-holders and servants attached to a religious institution or in receipt of any emolument or perquisite therefrom shall, whether the office or service is hereditary or not, be controlled by the trustee and the trustee may, after following the prescribed procedure, if any, fine, suspend, remove or dismiss any of them for breach of trust, incapacity, disobedience of orders, neglect of duty, misconduct or other sufficient cause". That being the position of an Archaka, the act of his appointment by the trustee is essentially secular. He owes his appointment to a secular authority. Any lay founder of a temple may appoint the Archaka. The Shebaits and Managers of temples exercise essentially a secular function in choosing and appointing the Archaka. That the son of an Archaka or the son's son has been continued in the office from generation to generation does not make any difference to the principle of appointment and no such hereditary Archaka can claim any right to the office. See *Kali Krishan Ray v. Makhan Lal Mookerjee* ILR Cal 233, *Nanabhai Narotamdas v. Trimbak Balwant Bhandare* (1878) 4, Unreported printed Judgments of the Bombay High Court P.169 and *Maharanee Indurjeet Kaur v. Chundemun Misser* XVI Weekly Reporter 99. Thus the appointment of an Archaka is a secular act and the fact that in some temples the hereditary principle was followed in making the appointment would not make the successive appointments anything but secular. It would only mean that in making the appointment the trustee is limited in respect of the sources of recruitment. Instead of casting his net wide for selecting a proper candidate, he appoints the next heir of the last holder of the office. That after his appointment the Archaka performs worship is no ground for holding that the appointment is either a religious practice or a matter of religion.

22. In view of Sub-section (2) of Section 55, as it now stands amended, the choice of the trustee in the matter of appointment of an Archaka is no longer limited by the operation of the rule of next-in-line of succession in temples where the usage was to appoint the Archaka on the hereditary principle. The trustee is not bound to make the appointment on the sole ground that the candidate, is the next-in-line of succession to the last holder of office. To that extent, and to that extent alone, the trustee is released from the obligation imposed on him by Section 28 of the principal Act to administer the affairs in accordance with that part of the usage of a temple which enjoined hereditary appointments. The legislation in this respect, as we have shown, does not interfere with any

religious practice or matter of religion and, therefore, is not invalid.

23. We shall now take separately the several amendments which were (sic) challenged as invalid. Section 2 of the Amendment Act amended Section 55 of the principal Act and the important change which was impugned on behalf of the Petitioners related to the abolition of the hereditary principle in the appointment of the Archaka. We have shown for reasons already mentioned that the change effected by the Amendment is not invalid. The other changes effected in the other provisions of the principal Act appear to us to be merely consequential. Since the hereditary principle was done away with the words "whether the office or service is hereditary or not" found in Section 56 of the principal Act have been omitted by Section 3 of the amendment Act. By Section 4 of the latter Act Clause (xxiii) of Sub-section (2) in Section 116 is suitably amended with a view to deleting the reference to the qualifications of hereditary and non-hereditary offices which was there in Clause (xxiii) of the principal Act. The change is only consequential on the amendment of Section 55 of the principal Act. Sections 5 and 6 of the Amendment Act are also consequential on the amendment of Sections 55 and 56. These are all the sections in the Amendment Act and in our view the Amendment Act as a whole must be regarded as valid.

24. It was, however, submitted before us that the State had taken power u/s 116(2), Clause (xxiii) to prescribe qualifications to be possessed by the Archakas and, in view of the avowed object of the State Government to create a class of Archakas irrespective of caste, creed or race, it would be open to the Government to prescribe qualifications for the office of an Archaka which were in conflict with Agamas. Under Rule 12 of the Madras Hindu Religious Institutions (Officers and Servants) Service Rules, 1964 proper provision has been made for qualifications of the Archakas and the Petitioners have no objection to that rule. The rule¹ still continues to be in force. But the Petitioners apprehend that it is open to the Government to substitute any other rule for Rule 12 and prescribe qualifications which were in conflict with Agamic injunctions. For example at present the Ulthurai servant whose duty it is to perform pujas and recite vedic mantras etc, has to obtain the fitness certificate for his office from the head of institutions which impart instructions in Agamas and ritualistic matters. The Government, however, it is submitted, may hereafter change its mind and prescribe qualifications which take no note of Agamas and Agamic rituals and direct that the Archaka candidate should produce a fitness certificate from an institution which does not specialise in teaching Agamas and rituals. It is submitted that the Act does not provide guidelines to the Government in the matter of prescribing qualifications with regard to the fitness of an Archaka for performing the rituals and ceremonies in these temples and it will be open to the Government to prescribe a simple standardised curriculum for pujas in the several temples ignoring the traditional pujas and rituals followed in those temples. In our opinion the apprehensions of the Petitioners are unfounded. Rule, 12 referred to above still holds the field and there is no good reason to think that the State Government wants to revolutionise temple worship by

introducing methods of worship not current in the several temples. The rule-making power conferred on the Government by Section 116 is only intended with a view to carry out the purposes of the Act which are essentially secular. The Act nowhere gives the indication that one of the purposes of the Act is to effect a change in the rituals and ceremonies followed in the temples. On the other hand, Section 107 of the principal Act emphasises that nothing contained in the Act would be deemed to confer any power or impose any duty in contravention of the rights conferred on any religious denomination or any section thereof by Article 26 of the Constitution. Similarly, Section 105 provides that nothing contained in the Act shall (a) save as otherwise expressly provided in the Act or the rules made thereunder, affect any honour, emolument or perquisite to which any person is entitled by custom or otherwise in any religious institution, or its established usage in regard to any other matter. Moreover, if any rule is framed by the Government which purports to interfere with the rituals and ceremonies of the temples the same will be liable to be challenged by those who are interested in the temple worship. In our opinion, therefore, the apprehensions now expressed by the Petitioners are groundless and premature.

25. In the result these petitions fail but in the circumstances of the case there shall be no order as to costs.

42. Further, the Learned Senior Counsel for the Appellant cites the decision of Honourable Supreme Court in Kanta Rani alias Kanti Devi and Another Vs. Rama Rani, wherein it is held that "the right to sue for pre-emption in the present case survived on the death of the original tenant in favour of his legal representative and they were entitled to be brought on record in substitution of the original Plaintiff-tenant under Order 22 Rule 3 Code of Civil Procedure."

43. The learned Senior Counsel for the Appellant relies on yet another decision of Honourable Supreme Court in Dhulabhai and Others Vs. The State of Madhya Pradesh and Another, wherein it is held that "on the facts and in the circumstances of the case that the suit in question for declaration that the provisions of the law relating to assessment under the M.B. Sales Tax Act (30 of 1950) were ultra virus and for refund of the amount of the tax illegality collected was not barred by Section 17 of the Act First Appeals Nos. 68, 69, 71 and 70 of 1961 respectively D/- 5-1-1965 (MP), Reversed."

44. The Learned Senior Counsel for the Appellant seeks in aid of the decision of Honourable Supreme Court in Rameshwar Manjhi (Deceased) through his son Lakhiram Manjhi Vs. Management of Sangramgarh Colliery and others, at page 293 wherein it inter alia held as follows:

The maxim "actio personalis moritur cum persona", though part of English common law, has been subjected to criticism even in England. It has been dubbed as an unjust maxim, obscure in its origin, inaccurate in its expression and uncertain in its application. It has often caused grave injustice. The applicability of the maxim depends upon the "relief claimed" and the facts of

each case. By and large the industrial disputes u/s 2-A of the Act relate to the termination of services of the concerned workman. Section 2-A makes an individual dispute, though not taken up by the union, an industrial dispute within the ambit of the Act. In the event of the death of the workman during pendency of the proceedings, the relief of reinstatement, obviously, cannot be granted. But the final determination of the issues involved in the reference may be relevant for regulating the conditions of service of the other workmen in the industry. Primary object of the Act is to bring industrial peace. The Tribunals and Labour Courts under the Act are the instruments for achieving the same objective. It is, therefore, in conformity with the scheme of the Act that the proceedings in such cases should continue at the instance of the legal heirs/representatives of the deceased workman. Even otherwise there may be a claim for back wages or for monetary relief in any other form. The death of the workman during pendency of the proceedings cannot deprive the heirs or the legal representatives of their right to continue the proceedings and claim the benefits as successors to the deceased workman.

45. In response, the Learned Counsel for the 2nd Respondent submits that the Plaintiff¹, in O.S. No. 899 of 1919 on the file of Learned District Munsif, Thiruvannamalai viz., Sonadhri Gurukkal, wanted to establish his right by praying for the relief, that the Defendants therein be directed to pay him a sum of Rs. 616-4-0, being the arrears of pay and damages, with further interest from the date of plaint, and that the Defendants be directed to enter his name, in the list of temple officials maintained by them, as the holder of the office of Pattam Maniyam and for costs and in the said suit, a decree has been passed declaring that the Plaintiff viz., Sonadhri Gurukkal is entitled to enter upon the duties of his office as "Pattam Maniyam" and that from the date on which he so enters upon his duties he will be entitled to a salary of Rs. 10/- a month and an annual allowance of Rs. 6-4-0 during Karthigai festival and moreover, a further direction has been issued that the Defendants should enter the name of Plaintiff as holder of the office from the date on which they receive notice that he has taken charge of his appointment. However, the claim of the Plaintiff in that suit for arrears and damages were dismissed.

46. The Learned Counsel for the 2nd Respondent further contends that the Plaintiff-Sonadhri Gurukkal filed A.S. No. 6 of 1918 on the file of Temporary Subordinate Judge of Vellore as against the judgment and Decree dated 24.09.1997 passed by the Learned District Munsif, Thiruvannamalai and the appeal was dismissed with costs on 31.12.1918.

47. It is brought to the notice of this Court that as against the judgment and Decree in A.S. No. 6 of 1918 passed by the Temporary Subordinate Judge, Vellore dated 31.12.1918, Second Appeal No. 1350 of 1919 has been filed by the Plaintiff-Sonadhri Gurukkal and in the judgment in Second Appeal, the Plaintiff-Sonadhri Gurukkal was declared entitled to the office of Pattam Maniyam and that the Defendants therein do enter his name as holder of the office and as

Pattam Maniyam was entitled to and had the duty to supervise the work of the puja and ritual by the 16 Gurukkals and to bring to the notice of the trustee any such irregularity or misconduct as may seem to him serious and deserving of notice, that from the date the Plaintiff offers to do the work of Pattam Maniyam he was entitled to a salary of Rs. 10/- per month and to an annual allowance of Rs. 6 and annas four during Karthigai festival and that the Defendants were directed to pay him to a sum of Rs. 50/- as and for General Damages and that the Plaintiff's claim for arrears of salary, the same was dismissed etc.

48. The Learned Counsel for the 2nd Respondent urges before this Court that Ex. A. 1 is the order of the 1st Respondent dated 27.10.1994 in R.P. No. 4 of 1994 filed u/s 21 of the Tamil Nadu HR and CE Act, 1959 as against the order dated 8.11.1993 of the 2nd Respondent/Executive Officer of the temple passed in R.C. No. 219 of 1992 in permitting the Appellant/Plaintiff (deceased) Sadasiva Gurukkal to retire from services due to superannuation and the said Revision Petition has been dismissed observing inter alia that ... When once it is accepted that the Petitioner is a paid archaka of the temple in question, he would be governed only by the Service Rules applicable to him under the H.R. and C.E. Act, 1959 as amended by Act 46/91 and no custom or usage could be involved in it and as such, the order permitting the Appellant/Plaintiff (since deceased) to retire from service is in strict consonance with the provisions of the rules framed u/s 116(2) of the Act.

49. The core contention of the Learned Counsel for the 2nd Respondent is that after coming into force of the Act 2/71, the right of Hereditary succession to office holder in the service of temple was taken away and therefore, the Appellant/Plaintiff (since deceased) right to continue in office until his life time was not accepted by the 1st Respondent as per Ex. A. 1 the order dated 27.10.1994.

50. Proceeding further, it is the submission of the Learned Counsel for the 2nd Respondent that the order of the 1st Respondent has been challenged u/s 70 of the H.R. and C.E. Act as per Section 63(e) of the Tamil Nadu H.R. and C.E. Act, 1959 the Joint Commissioner or Deputy Commissioner is to decide certain dispute and matters and except the person mentioned thereto, the power conferred under the said Section cannot be exercised by any other individual even by a Court of Law in view of the bar u/s 108 of the Act which enjoins that "no suit or other legal proceeding in respect of the administration or management of a religious institution or any other matter or dispute for determining or, deciding which provision is made in this Act shall be instituted in any Court of Law except in and in conformity with the provisions of this Act.

51. At this juncture, the Learned Counsel for the 2nd Respondent draws the attention of this Court to the Section 114 of the Tamil Nadu H.R. and C.E. Act, 1959 to the effect that the State Government has the power to call for and examine the record of the Commissioner or the Additional Commissioner etc. in respect of any proceeding, not being a proceeding, in respect of which a suit or

an appeal or application to a Court or an appeal to the Government is provided by this Act, to satisfy themselves as to the regularity of such proceeding or the correctness, legality or propriety of any decision or order passed therein etc. and indeed, Section 114(3) visualised that no application to the Government for the exercise of their power under this Section shall be made in respect of any matter unless an application had already been made in respect of the same matter to the Commissioner u/s 21 and had been disposed of by him.

52. The Learned Counsel for the 2nd Respondent puts forward a plea that if a civil suit is filed, then, it cannot be u/s 70 of the H.R. and C.E. Act and if the suit is not filed u/s 70 of the H.R. and C.E. Act then, notice u/s 80 of the CPC is a must and Appellant/Plaintiff (since deceased) was an office holder and a duty was caused on him and there was nothing to show that his office was hereditary in character and his entitlement to salary was recognised by the High Court and there was no material to show! that there was hereditaryship in office which his father sought to establish in the suit in O.S. No. 899 of 1916 and in fact, even in the evidence of P.W. 1 he had not stated about the custom and usage and further that there was no evidence to prove the title and except Ex. A. 3 decree passed in S.A. No. 1350 of 1919 nothing was pleaded by the Appellant/Plaintiff (since deceased) and there was no post as honorary title.

53. It is the submission of the Learned Counsel for the 2nd Respondent that Archakas are only servants of God and Hereditary Archakaship has been abolished as per Act 2/1971 and there was no proof of custom and usage and there was no plea against custom made by the Appellant/Plaintiff (since deceased) and when once the Appellant/Plaintiff (since deceased) claimed that he was an office holder, he could not claim hereditaryship and even on facts, he had not proved the custom and usage and in fact the copy of the Revision Petition viz., R.P. No. 4 of 1994 was not filed before the trial Court and on that ground alone adverse inference was to be drawn against the Appellant/Plaintiff (since deceased).

54. According to the Learned Counsel for the 2nd Respondent, Exs. A. 8 to A. 12- Urtchava list show that even after the order of the 2nd Respondent, the Appellant/Plaintiff's (since deceased) services were utilised in the field of "Pattam Maniyam" and that would not lead to custom or usage.

55. The Learned Special Government Pleader for 1st Respondent adopts the arguments advanced by the Learned Counsel for the 2nd Respondent.

56. It is worth to recall the decision of this Court Ramanatha Gurukkal v. V.V.R. Arunachalam Chettiar and Anr. AIR 1938 Madras 972 at page 973 wherein it is held as follows:

Section 73 of the Act is a clear indication that the provisions of Section 43 setting up a special machinery of appeal and conferring finality on the decisions in appeals by dismissed office-holders was intended to oust the jurisdiction of Civil Courts to question the propriety of an order of dismissal passed under that

Section and communicated to the person dismissed: Kovalakudi Singam Aiyangar and Others Vs. K. Kasturiranga Aiyangar and Others,

57. This Court aptly quotes the decision of this Court K. Chinnaswami Udayar and Ors. v. Narasimha Bhattar and Anr. AIR 1940 Madras 28 wherein it is held as follows:

Where a person having been appointed paricharaka, actually performs the functions of the parocharaka office, which is an office attached to the temple, he is an office-holder attached to the temple and by virtue of Section 43 of the Act the power of punishment and dismissal in respect of that officeholder vests in the trustee. The power of his dismissal given to the archaka by a decree cannot have any force in view of the express statutory provisions of Section 43.

58. In the decision of Honourable Supreme Court Seshammal and Others, Vs. State of Tamil Nadu, in paragraph 21, it is, among other things, laid own as follows:

... The Archaka has never been regarded as a spiritual head of any institution. He may be an accomplished person, well versed in the Agamas and rituals necessary to be performed in a temple but he does not have the status of a spiritual head. Then again the assumption made that the Archaka may be chosen in a variety of ways is not correct. The Dharam-karta or the Shebait makes the appointment and the Archaka is a servant of the temple. It has been held in K. Seshadri Aiyangar v. Ranga Bhattar ILR 35 Mad 631 that even the position of the hereditary Archaka of a temple is that of a servant subject to the disciplinary power of the trustee. The trustee can enquire into the conduct of such a servant and dismiss him for misconduct. As a servant he is subject to the discipline and control of the trustee as recognised by the unamended Section 56 of the principal Act which provides "all office-holders and servants attached to a religious institution or in receipt of any emolument or perquisite there from shall, whether the office or service is hereditary or not, be controlled by the trustee and the trustee may, after following the prescribed procedure, if any, fine, suspend, remove or dismiss any of them for breach of trust, incapacity, disobedience of orders, neglect of duty, misconduct or other sufficient cause". That being the position of art Archaka, the act of his appointment by the trustee is essentially secular. He owes his appointment to a secular authority. Any lay founder of a temple may appoint the Archaka. The She baits and Managers of temples exercise essentially a secular function in choosing and appointing the Archaka. That the son of an Archaka or the son's son has been continued in the office from generation to generation does not make any difference to the principle of appointment and no such hereditary Archaka can claim any right to the office. See Kali Krishan Ray v. Makhan Lal Mookerjee ILR Cal 233, Nanabhai Narotamdas v. Trimhak Balwant Bhandare (1878) Vol. 4, Unreported pointed judgments of the Bombay High Court P. 169 and Maharanee Indurjeet Kaur v. Chundemun Misser XVI Weekly Reporter 99. Thus the appointment of an Archaka is a secular act and the fact that in some temples the hereditary principle was

followed in making the appointment would not make the successive appointments anything but secular. It would only mean that in making the appointment the trustee is limited in respect of the sources of recruitment. Instead of casting his net wide for selecting a proper candidate, he appoints the next heir of the last holder of the office. That after his appointment the Archaka performs worship is no ground for holding that the appointment is either a religious practice or a matter of religion.

59. In the decision *Seshammal and Others, Vs. State of Tamil Nadu*, the Honourable Supreme Court has held thus:

Section 28(1) of the Principal Act which directs the trustee to administer the affairs of the temple in accordance with the terms of the trust or the usage of the institution, would control the appointment of the Archaka to be made by him under the amended Section 55 of the Act. In a Saivite or a Vaishnavite temple the appointment of the Archaka will have to be made from a specified denomination, sect or group in accordance with the directions of the Agamas governing those temples. Failure to do so would not only be contrary to Section 28(1) which requires the trustee to follow the usage of the temple, but would also interfere with a religious practice the inevitable result of which would be to defile the image.

The Archaka has never been regarded as a spiritual head of any institution. He may be an accomplished person, well versed in the Agamas and rituals necessary to be performed in a temple but he does not have the status of a spiritual head. The Dharamakarthha or the Shebait makes the appointment and the Archaka is a servant of the temple. The trustee can enquire into the conduct of such a servant and dismiss him for misconduct. That being the position of an Archaka the act of his appointment by the trustee is essentially secular. The fact that in some temples the hereditary principle is followed in making the appointment will not make the successive appointments anything but secular. That after his appointment the Archaka performs worship is no ground for concluding that the appointment is either a religious practice or a matter of religion.

In view of Section 55(2) as amended, the choice of the trustee in the Matter of appointment of an Archaka is no longer limited by the operation of the rule of next-in-line of succession in temples where the usage was to appoint the Archaka on the hereditary principle. The trustee is not bound to make the appointment on the sole ground that the candidate is the next-in-line of succession to the last holder of Office. To that extent, and to that extent alone, the trustee is released from the obligation imposed on him by Section 28 of the Principal Act to administer the affairs in accordance with that part of the usage of a temple which enjoined hereditary appointments. The section as amended does not interfere with any religious practice or matter of religion and, therefore, is not invalid.

60. In the decision *Sam Ayya also known as Swaminathan and Ors. v. Karupiah*

Ambalam and Ors. 1983 1 MLJ 390 this Court has held as follows:

Normally the jurisdiction of the civil Court will not be excluded unless the dispute specifically comes with the provisions of Section 63(e). The present suit in substance was a representative suit by the villagers and therefore it is not possible to say that the non-impleading of one of the trustees is fatal to the maintainability of the suit. On the facts of the case it cannot be said that the suit was one for establishing a usage and custom. There did not appear to be any dispute as regards usage and custom. The dispute was in substance as to which of the two rival claimants was entitled to the management and conduct of the festival. What the Defendants contended was that they were also entitled to conduct the same festival alongside the Plaintiffs with the assistance of their pujari. When there was no controversy as to the usage and custom referred to by the Plaintiff but the Defendants merely said that they were also entitled to conduct the festival alongside the Plaintiffs in the customary manner, the suit could not be taken to involve a dispute regarding the usage and custom prevalent in the temple. The suit is not barred by the provisions of Section 63(e) and 108 of the Hindu Religious and Charitable Endowments Act.

61. In the decision of Honourable Supreme Court A.S. Narayana Deekshitulu Vs. State of Andhra Pradesh and Others, it is observed that "while performance of religious service is integral part of religion, priest or archaka performing such service is not so and further that the archaka is only a holder of office in the temple and is subject to discipline and control and hereditary succession of archaka is not a religious usage and hence not covered by Article 25(1)(b) of the Constitution of India and that the preservation of customs, usages, performances, ceremonies, poojas etc. u/s 13 r/w. Section 142 of the A.P. Charitable and Hindu Religious Institution and Endowments Act, 1987 would not affect the power to abolish the hereditary office.

62. That apart, this Court cites the following decisions:

(i) In the decision The Commissioner, H.R. and C.E. (A) Department, Madras-34 V.C. Nalla Sivam and Anr. (2001) MLJ 269 it is held that "The onus is heavily on the Plaintiff to prove since it is the Plaintiff who has come forward to institute the suits, either regarding the existence or non-existence of facts. It is upto the Plaintiff to prove positively that the suit Mutt and the temple are the private temples of the family of the Plaintiff.

(ii) In the decision¹ Ramani Gurukkal, Manachanallur Post, Trichy District v. Commissioner, Hindu Religious and Charitable Endowments Department, Chennai and Ors. (2007) 2 MLJ 364 it is held that "when the Petitioner and his father had abandoned pooja service at Respondent-Temple and were functioning as Archakars at another Temple, the Petitioner cannot claim right of performing poojas at Respondent-Temple" and further it is observed that "As per Section 55(2) of Tamil Nadu Hindu Religious and Charitable Endowments Act (1959), no person shall be entitled to appointment to any vacancy specified u/s 55(1),

merely on the ground that he is next in line of succession to the last holder of office. When Petitioner's father himself had abandoned pooja service at Respondent-Temple, Petitioner's claim as hereditary poojari, is unsustainable."

(iii) In the decision *S. Murugan @ Sakkarai Poosari and S. Dharmalingam Poosari Vs. The Joint Commissioner, Hindu Religious and Charitable Endowment Board, The Assistant Commissioner/Executive Officer and S.A. Rajendran Poosari*, this Court has held that "The entitlement of any person from any religious institution has to be decided by the Joint Commissioner or Deputy Commissioner as the case may be and without exhausting all the available remedy, under the HR and CE Act it is not open to a person to invoke Article 226 of Constitution of India, 1950."

(iv) In the decision *Muthamil Selvam and 3 Ors. V.A. Manickam and 8 Ors.* 2009 (4) CTC 377 this Court has held that "If dispute arises with regard to honour, deciding authority is Joint or Deputy Commissioner of Hindu Religious and Charitable Endowments Board and Civil Court is not competent to settle such issues."

63. It is significant for this Court to make a pertinent reference to Ex. A. 2-judgment in O.S. No. 899 of 1916 (wherein the father of the Appellant/Plaintiff (since deceased) Sonadhri Gurukkal figured as Plaintiff) on the file of the Learned District Munsif, Thiruvannamalai dated 24.11.1917 wherein for the 1st issue "whether there is any office as "Pattam Maniyam" in the Sri Arunachaleswarar Devasthanam at Thiruvannamalai? If so whether it is hereditary to Plaintiff's family" in paragraph 7, it is observed by the trial Court as follows:

The first question raised is whether the Plaintiff has, as the holder of the office of "Pattam Maniam", any hereditary right. In the joint statement filed by both the vakils on the date of the commencement of the trial, both the parties agreed that the Plaintiff may be declared to be the "Pattam Maniam" gurukkal of the temple. Having regard to the Defendants' admission that the Plaintiff is entitled to hold office of "Pattam Maniam" at present, if he is prepared to perform the duties appertaining thereto, I think the question whether the office is hereditary in Plaintiff's family or not is more or, less of an academical nature. I do not therefore propose to discuss the question whether the office is hereditary. I find that the Plaintiff is entitled to hold office of "Pattern Maniam" in the temple at present provided he is prepared to perform its duties.

64. However, in the present case before us, there is no proof that the title "Pattam Maniyam" was conferred on the Appellant/Plaintiff (since deceased). Moreover, the title "Pattam Maniyam" will not devolve upon a person Hereditarily. During the period of proceedings in O.S. No. 899 of 1916 and A.S. No. 6 of 1918 and at the time of passing of judgment in S.A. No. 1350 of 1919 dated 14.09.1920 in respect of the suit temple, there was no control by the H.R. and C.E. Board. Subsequently, Act 2/1925 which came into operation, was replaced by Act, 19/1951 and Act 22/1959. Later, by means of an Amendment Act

2/1971, the Hereditary right of Archaka in the temple has been abolished.

65. As a matter of fact, the Appellant/ Plaintiff (since deceased) was an office holder and he was receiving salary as Archaka to the post and as per schedule of the establishment approved by the Deputy Commissioner, H.R. and C.E., Madras in Letter Dis. No. 7637/85 dated 3.6.1985, the Appellant/Plaintiff (since deceased) was designated as Archaka only. Merely because Exs. A. 8 to A. 13 point out that even after the order of the Executive Officer of retiring the Appellant/Plaintiff (since deceased) from the service of Archaka in the temple, his services were utilised in connection with the Urtchava list etc. that would not lead to establish that there was custom or usage involved in the office of Archaka during his life time. In fact, fact the Appellant/Plaintiff (since deceased) and later his son, the present Appellant was not conferred with the title of "Pattam Maniyam". When the Appellant/Plaintiff (since deceased) was not entitled to "Pattam Maniyam", then, as his son the present Appellant was not entitled to claim the same. Further, no "Pattam Maniyam" was conferred on the Appellant/Plaintiff (since deceased). Only if a Hereditary right had passed on as a matter of succession, then only one could lay a claim for "Pattam Maniyam". In view of the Amending Act 2/1971 abolishing the Hereditary Right in the temple, the rights if any ceased to exist, as opined by this Court. In the instant case on hand, there was no official conferment of "Pattam Maniyam" on the Appellant/Plaintiff (since deceased). At best, Exs. A. 8 to A. 12 documents may be one of the pieces of Evidence to show that he was described of Ulthurai and Pattam Maniyam, but the same itself would not amount to conclusive proof, in the considered opinion of this Court.

66. That apart, the Appellant/Plaintiff (since deceased) was only an Archaka of temple and merely because he was consulted to fix the dates for the performance of festivals, this kind of act was attached to the post of Archaka and no special remuneration was paid to him for such services. Also, no records were produced by the Appellant/Plaintiff (since deceased) to establish that he enjoyed the special privileges. Since the Plaintiff as an Archaka was governed by Service Rules as per Act 46/91, there was no custom or usage involved in it and he was also allowed to retire from service as per the Rules framed u/s 116(2) of the H.R. and C.E. Act, 1959. Even though as per Section 114 of the Act, the Appellant/Plaintiff (since deceased) had not filed a Revision before the Government, this Court is of the considered view that the Appellant/Plaintiff (since deceased) need not exhaust his remedy as per Section 114 of the Act and even in the absence of filing of the Revision Petition before the Government, the statutory suit filed u/s 26, Order 7, Rule 1 of CPC read with Section 70 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 is maintainable before the trial Court, in the considered opinion of this Court.

67. Since the Appellant/Plaintiff (since deceased) filed the suit before the trial Court as per Section 70 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, notice u/s 80 of the CPC was not required to be issued,

in the considered opinion of this Court and the contra plea taken on the side of the Respondent is negated by this Court.

68. In the light of qualitative and quantitative discussions mentioned supra and on a careful consideration of respective contentions and also bearing relevant attendant facts and circumstances of the case in a conspectus fashion and in a proper perspective, this Court comes to an inevitable conclusion that (i) the order of the 2nd Respondent dated 08.11.1993 in terminating the services of the Appellant/Plaintiff (since deceased) and the order of the 1st Respondent dated 27.10.1994 in confirming the order of the 2nd Respondent/2nd Defendant are not to be interfered with; (ii) the Appellant/Plaintiff (since deceased) is not entitled to get the conferment of title of "Pattam Maniyam" or its restoration as the case, may be; and (iii) that the present Appellant, being the son of the Appellant/Plaintiff (since deceased), is not entitled to claim the title of "Pattam Maniyam", consequent upon his father's death and accordingly, the substantial questions 1 to 3 are answered and consequently, the Appeal fails.

69. In the result, the Appeal is dismissed, leaving the parties to bear their own costs. Consequently, the judgment and Decree of the trial Court in dismissing the suit in O.S. No. 293 of 1995 dated 24.04.2000 are affirmed by this Court for the reasons assigned in this Appeal.