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**(2012) 09 MP CK 0318**  
**In the Madhya Pradesh High Court**  
**Case No : Writ Appeal No. 212 of 2012**

Suyog Aafle

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

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**Date of Decision :** 18-09-2012

**Acts Referred:**

**Citation :** (2012) 09 MP CK 0318

**Hon'ble Judges :** Sujoy Paul, J;Sheel Nagu, J

**Bench :** Division Bench

**Advocate :** K.N. Gupta, with Mr. Anmol Khedkar, for the Appellant; Pravin Newaskar, Deputy Government Advocate for the State and Shri Dharmendra Naik, Advocate for the Respondent No. 4, for the Respondent

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## Judgement

Sujoy Paul, J.

In this writ appeal, the appellant has challenged the order dated 23.2.2012 passed in Writ Petition No. 911/2011.

Brief facts necessary for adjudication of this matter are as under:-

1. The case of the appellant is that a "Parwana" was issued in favour of forefather of petitioner appointing him as "Pujari" in Mandir Shri Omkareshwar Mahadev and Shri Harihareshwar Mahadev, situated in Tahsil Isagarh district Ashok Nagar. After the death of forefather Late Govind Guru, the appellant's father became Pujari. Thereafter the appellant's father was selected and appointed in Government service and, therefore, he preferred an application to mutate the name of the appellant in place of his father. Consequently, by order dated 14.9.2006 the appellant was appointed as Pujari. Respondent No. 4 preferred an appeal against the appointment of appellant and took objection that neither the father of appellant nor the appellant is in a position to do "Seva-Puja" in the temple. It is also prayed by respondent No. 4 that he be appointed as Pujari in place of the appellant. The appellate authority/Collector decided the matter by order dated 10.2.2010. The Collector opined that the appellant has a

hereditary right to continue as Pujari as per the "Parwana" and he was rightly appointed as Pujari. The appeal of respondent No. 4 was rejected. He then filed second appeal before Additional Commissioner, which was registered as Case No. 149/2009-10/Appeal. In the second appeal it is stated that the present appellant's father was appointed as Pujari but the father of present appellant was posted in a Government service at a far of place and it was humanly impossible for him to look after the affairs of the temple. Consequently, "Puja-Aradhna, Bhog, Arti" etc. of the temple were not taken care of by present appellant's father. The temple was in a dilapidated condition in absence of proper care. It is further stated in the appeal that for the purpose of appointment of Pujari there were two applications pending before the authorities. One application was preferred by respondent No. 4 seeking his own appointment whereas another application was preferred by the father of present appellant. It was stated that in the fitness of things both the applications should have been heard analogously by the authorities. The appointment of present appellant was assailed on the ground that he was studying in Madhav Engineering College in B.E. (Electronics) (Last Year) and he never even visited the temple. It is further alleged that the present appellant always remained out of Isagarh in relation to his studies and, therefore, he is not fit to be appointed as Pujari.

2. The respondent No. 4 herein further stated that the father of present appellant was working as Stenographer in Ashok Nagar but continued to enjoy the benefits arising out of the land adjacent to the temple and other financial benefits for quite sometime. Learned Additional Commissioner after hearing the parties, passed the order dated 4.1.2011 and after detailed discussion partly allowed the appeal and set aside the order dated 10.2.2010 passed by the Collector and the order dated 14.9.2006 passed by the S.D.O., whereby the present appellant was appointed. After quashing these orders, he remitted the matter back to the SDO to hear both the cases analogously, enquire the matter at his level and after hearing both the parties, decide the matter within 60 days.

This order became subject matter of challenge in Writ Petition No. 911/2011. Learned Single Judge considered the submissions of the parties and confirmed the order passed by the Commissioner. Present appeal is preferred against the said order of the writ court.

3. Shri K.N. Gupta, learned senior counsel has advanced two fold submissions:-

(i) The appeal was not tenable before the authorities below and, therefore, those orders are without authority, jurisdiction and competence.

(ii) As per "Parwana" and (for brevity, "1991 Act"), the appellant alone has a right to be appointed as Pujari. Respondent No. 4 cannot be appointed as "Pujari".

4. Per Contra, Shri Pravin Newaskar, learned Dy. Government Advocate for State and Shri Dharmendra Naik, learned counsel appearing for the respondent No. 4 supported the order passed by the writ court.

5. We have heard learned counsel for the parties and perused the record.

Point No. (i)

6. On perusal of record it is clear that the appellant submitted to the jurisdiction of the authorities below in both the appeals. There is nothing on record to show that the appellant took any objection regarding competence/jurisdiction of the appellate authorities. When he suffered an adverse order by the second appellate authority, he filed the writ petition. From the record of writ petition also it is clear that the petitioner never raised the objection of competence of appellate authorities. In this writ appeal also the appellant has not raised the question of competence of the appellate authorities. Only during the course of argument Shri K.N. Gupta, learned senior counsel has raised this argument regarding competence of the appellate authorities. We are of the opinion that this issue was neither raised before the appellate authorities nor raised before the writ court. Before the appellate court also there is no pleading in this regard. Thus, an issue not raised cannot be permitted to be raised in argument at any stage.

Thus, this point is decided against the appellant.

Point No. (ii)

7. It is profitable to quote Section 13 of 1991 Act, which reads as under:-

Similarly, Section 30(b) reads as under:-

(Emphasis Supplied)

A bare perusal of underlined portion of the provisions makes it crystal clear that the concerned department can discontinue the Pujari if proper care of the temple is not taken by the Pujari and in lieu thereof any other capable person can be appointed. Similar condition is mentioned in "Parwana", which shows that in the event of improper arrangement of temple by existing Pujari any other able person can be appointed. Although in Section 7(a) it is mentioned that the right to continue as Pujari is hereditary, it is always subject to aforesaid sections which make it crystal clear that such continuance would depend upon the performance of the Pujari and more particularly the manner in which he takes care of the temple. Thus, the right to continue as Pujari is not absolute right but is subject to fulfillment of the condition that one has to take care of the temple in all respects.

8. Learned Single Judge has passed the order after considering various judgments passed by this Court wherein it is held that the right to continue as Pujari by way of inheritance is not absolute. The finding given by the learned writ court is based on the judgment passed by Division Bench of this Court in 1971 RN 359 (Panchamsingh vs. Mahant Ramkrishna Das).

9. Another Division Bench of this Court in 1999 RN 25 (State of MP vs. Ghanshayamdas and others) opined as under:-

24. No Pujari or trustee or manager can claim the title of religious property. The property always belongs to the temple i.e. deity.

25. In the case of Ramchand (Dead) by Legal Representatives Vs. Thakur Janki Ballabhji Maharaj and Another, it is held that the Pujari claiming proprietary rights amounts to mismanagement and is not fit to remain in possession or to continue as Pujari. Therefore, the persons claiming title over the property of the deity are not liable to continue as Pujari.

26. The executive instruction issued by the Government is in the interest of the deity and to avoid wastage or misuse of the property of the temple. Even if the name of Pujari is recorded in column No. 12 of the Khasra it will not affect the rights of Pujari so long as he is performing his functions properly and cultivating the land or getting the land cultivated through servants.

27. It is, therefore, held that placing the name of Pujari in column No. 12 of the Khasra does not affect the rights of Pujari. As discussed above and held in the cases of Kanchaniya and Pancham Singh (supra), the Pujaris do not have any right in the property of temple. Therefore, recording of their name in column No. 12 will not affect their rights since their rights are not affected as measures have been taken by the Government for the safety of the temple's property, which cannot be faulted with. The Government have always the right to issue directions or preparing norms for preserving the property of deity. The judgment of the learned single Bench is contrary to the judgment of Kanchaniya's case (supra).

The aforesaid Division Bench judgment is based on the judgment of Supreme Court in Mst. Kanchaniya and others Vs. Shiv Ram and others, . In the said judgment the Apex Court has considered Division Bench judgment of this Court reported in Pancham Singh Vs. Ramkishandas Guru Ramdas and Others, The Division Bench judgment of this Court was approved by the Supreme Court. It was held that the Pujari is at best a Manager of Devasthan. He only holds the lands given to him under "Parwana". He functions under the control and supervision of concerned department because in the event of his failure to properly manage the affairs, he can be removed and "Parwana" issued in his favour can be revoked.

10. In view of the provisions of the 1991 Act, "Parwana" and its interpretation by various courts, it is crystal clear that if temple is not properly managed, it can very well be a ground to discontinue a Pujari or to appoint any other able person as Pujari. Thus, we find no flaw in the order of the writ court wherein it is held that there is no absolute right to be appointed as Pujari and right is subject to a rider as mentioned in the 1991 Act and in the "Parwana". The said finding given by the writ court is in consonance with the object of the Act and "Parwana".

11. In our considered opinion, the order of the learned Additional Commissioner is in consonance with law. He has merely remitted the matter back to the concerned SDO to enquire about suitability of present appellant and respondent No. 4 and then pass an order in accordance with law. It will be open for the

present appellant and respondent No. 4 to prove their suitability before him. We are only inclined to observe that since the matter is remitted, the concerned SDP will deal with the rival claims of the parties on merits and he will not be influenced by the finding of the appellate authorities on merits.

Thus, point No. (ii) is decided accordingly.

Consequently, we find no reason to interfere in this matter. The order passed by the writ court is affirmed with the observation aforesaid. Appeal is disposed of.