

(2004) 04 MAD CK 0117
In the Madras High Court
Case No : W.A No. 2458 of 2001

The Executive Officer

APPELLANT

Vs

A. Sankaran @ Vembu Gurukkal

RESPONDENT

Date of Decision : 01-04-2004

Acts Referred:

Tamil Nadu Hindu Religious Institutions (Officers and Servants) Service Rules, 1964 — Rule 33, 5

Citation : (2004) 2 LW 598

Hon'ble Judges : V.S. Sirpurkar, J;F.M. Ibrahim Kalifulla, J

Bench : Division Bench

Advocate : T. Dhanasekaran, for the Appellant;

Final Decision : Dismissed

Judgement

V.S. Sirpurkar, J.—The appellant / Executive Officer, Arulmighu Kopudai Nayagi Amman Temple comes before us by way of this appeal challenging the judgment of the learned Single Judge in W.P.No.8912 of 1994 which stood allowed.

2. In that writ petition, the respondent herein had challenged G.O.Ms.No.2759, Revenue dated 26.11.1964 by which the respondent / original petitioner was directed to be retired on account of his having attained the age of superannuation in terms of Rule 5 of the Tamil Nadu Hindu Religious Institutions (Officers and Servants) Service Rules (hereinafter referred to as "the Rules"). His contention was that he being a hereditary archaga, which right was already admitted by the temple and in pursuance of which he continued to serve as a hereditary archaga, was saved by Rule 33 of the Tamil Nadu Hindu Religious and Charitable Endowments Rules. He pointed out that the Rules would not affect adversely any hereditary or non-hereditary office-holder or servant, who has been holding any post immediately before the date of the commencement of these Rules.

3. The learned Judge accepted the plea and held that since the petitioner /

respondent herein was already serving as a hereditary archaga, there would be no question of his rights being affected by the Rules and as such, he could not be retired taking recourse to the Rules and more particularly, Rule 5. Rule 5 provided that a person appointed to a non-hereditary office would retire on attaining the age of 60 years. The case of the petitioner was that this Rule did not in any way come in his way or affect him because, he was a hereditary archaga and as such, had a right to be a archaga during his lifetime. This was accepted by the learned Judge and it is this judgment which is challenged before us.

4. Learned counsel for the appellant points out that there would be no question of the respondent herein being a hereditary archaga because, the respondent himself had written a document on 14.9.1983 wherein, the respondent who was a signatory and four other signatories to that document had suggested that they had lost their rights in the Civil Suit.

5. We are not impressed by this document at all for the simple reason that by this document, the respondent cannot be deprived of his rights if he has those rights spelt out earlier and which rights are saved specifically by Rule 33 of the Tamil Nadu Hindu Religious and Charitable Endowments Rules. Rule 33 is very clear. The learned Single Judge has very correctly applied Rule 33 to the matter and has held that since the original petitioner was a hereditary archaga, his rights could not be jeopardised by making Rule 5 of the Rules applicable to him. In short, the learned Judge has held and in our opinion, rightly, that by taking recourse to Rule 5, the said archaga could not be asked to retire. The Judgment is absolutely correct.

6. As if this is not sufficient, there is a document on record dated 8.9.1951 signed by the Executive Officer and Receiver of the temple that the petitioner Sankaran @ Vembu Gurukkal having attained majority was permitted to enter upon his duties and perform the pujas in the temple in his turn and receive the pay, emoluments and perquisites. Now, if even before the Rules came, the concerned petitioner was already working as a archaga, there will be no question of going to any other document and this admission would be sufficient to hold him to be a hereditary archaga.

7. The judgment of the learned Single Judge is absolutely correct. It is confirmed. The appeal is dismissed. No costs.