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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 24.02.2023

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THE HON'BLE MR.JUSTICE G.R.SWAMINATHAN

WP(MD)Nos.21738 & 21739 of 2022

and

WMP(MD)No.15901, 15903, 15907, 15908, 15909, 15911, 19115 & 19135 of 2022

K.Karthick

... Petitioner in
WP(MD)No.21738 of 2022

S.Parameswaran

...Petitioner in
WP(MD)No.21739 of 2022

Vs.

1.The State of Tamil Nadu,
Rep.by Secretary to Government,
Tourism, Culture and Religious
Endowments Department,
Fort St.George, Chennai – 600 009.

2.The Commissioner,
Hindu Religious and Charitable
Endowments Department,
119, Uthamar Gandhi Salai,
Nungambakka, Chennai – 600 034.

3.The Joint Commissioner,
Hindu Religious and Charitable
Endowments Department,
Trichy - 620 006.



4.Arulmighu Subramaniya Swamy
Thirukoil,

Rep.by its Fit Person/Assistant Commissioner,
Kumaravayalur, Srirangam Taluk,
Trichy – 620 102.

...Respondents 1 to 4
in both writ petitions

5.S.Jayabalan

...5th respondent
in WP(MD)No.21738 of 2022

6.S.Prabu

...5th respondent
in WP(MD)No.21739 of 2022

Common Prayer : Writ petitions filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records of the 4th respondent temple dated 12.08.2021 resulting in the appointment of the 5th respondents as Archakas in the 4th respondent temple and quash the same and consequently direct the respondents 1 to 4 to confirm petitioners' services as Archakas in the 4th respondent Temple.

For Petitioners

in both cases : Mr.P.Valliappan

for M/s.PV Law Associates

For R1 to R3

in both cases : Mr.Veera Kathiravan
Additional Advocate General
assisted by Mr.P.Subbaraj,
Special Government Pleader

For R4

in both cases : Mr.ARL.Sundaresan, Senior Counsel
for Mr.V.Chandrasekar



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For R5
in both cases

: Mr.Ajmalkhan, Senior Counsel
for Mr.S.Vanchinathan

* * *

COMMON ORDER

The proceedings dated 12.08.2021 issued by the Fit Person of Arulmighu Subramaniya Swamy Thirukoil, Kumaravayalur, Srirangam Taluk, Trichy is under challenge in both these writ petitions. Vide impugned proceedings, the Fit Person had appointed Thiru.K.Kailash, S.Prabu and S.Jayabalan to the post of Archakar in the said temple. The appointments of S.Prabu and S.Jayabalan have been questioned by the petitioners herein. Notification dated 06.07.2021 was issued calling for applications from eligible persons for filling up the vacancies that had arisen in various posts including the three posts of Archakar. The petitioners herein applied in response thereto. However, they were not selected. In the meanwhile, the impugned appointment order came to be issued on 12.08.2021.

2.The learned counsel appearing for the petitioners reiterated all the contentions set out in the affidavit filed in support of the writ petitions and called upon this Court to quash the impugned order and grant relief as



prayed for. Interim order was granted at the time of admission. To vacate

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the same, petitions had been filed by the Government. The learned Additional Advocate General took me through its contents. Shri.Prabu as well as Shri.Jayabalan who are figuring as respondents have also filed counter affidavits and the learned Senior Counsel appearing for them submitted that the writ petitions deserve to be dismissed.

3.I carefully considered the rival contentions and went through the materials on record. The respondents have raised two preliminary objections. They pointed out that these writ petitions have been filed only in September 2022 while the impugned order was issued on 12.08.2021. They argue that this Court ought not to entertain a belated challenge in service matters. The second contention is that the petitioners having taken part in the selection process are estopped from challenging the parameters and norms that governed the selection process. They relied on a host of case-laws in support of the aforesaid contentions.

4.Both the objections are utterly bereft of merit. It is a fact that following the promulgation of the Tamil Nadu Hindu Religious Institutions Employees (Conditions of Service) Rules, 2020 and the appointments of



temple priests, petitions were filed before the Hon'ble First Bench. All

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India Adi Saiva Sivacharyargal Seva Sangam represented by its General Secretary filed WP No.16287 of 2021. One individual also filed WP No. 15739 of 2021. An interim order was even granted as early as on 05.08.2021 in WP No.16287 of 2021. The writ petitions were disposed of on 27.06.2022 by the Hon'ble First Bench by reserving the right of the individual candidate to challenge the individual appointment of Archaka. The Hon'ble First Bench reiterated that the authorities are obliged to follow the judgment of the Hon'ble Apex Court in the case of *Seshammal v. State of Tamil Nadu (1972) 2 SCC 11* and *Adi Saiva Sivachariyargal Nala Sangam v. State of Tamil Nadu (AIR 2016 SC 209)* in the matter of appointment of Archakas. It was categorically observed that if any appointment has been made offending the directions of the Hon'ble Apex Court, the individual appointment can be challenged in the manner known to law. On 22.08.2022, WP Nos.17802 of 2021 filed by the said Sangam was disposed of by holding that if any appointment of Archaka is made offending the Agamas, it would be amenable to challenge before the Court by the individual aggrieved person.



5. When liberty has been granted by the Hon'ble First Bench in such unambiguous terms, it is not open to the respondents to call upon this court to non-suit the petitioners on the ground of estoppel and laches.

6. To be fair to the learned Additional Advocate General as well as the learned Senior Counsel appearing for the private respondents, very elaborate arguments were advanced and the stand set out in the counter affidavits was reiterated. It is however not necessary for me to cover the entire ground. That would be “*reinventing the wheel*”. It is not as if the issue raised in these writ petitions will have to be adjudicated for the first time. The Hon'ble Apex court in *Seshammal's* case took note of Section 28(1) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 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 and held that it would control the appointment of Archakas to be made under Section 55 of the Act. It was categorically held that failure to appoint Archaka from a specified denomination, sect or group in accordance with the directions of the Agamas governing the temple would not only be contrary to Section 28(1) of the Act but also interfere with a religious practice. Holding that appointment of Archaka is secular function of the



trustee and that the hereditary principle can be departed from did not in any

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7.The Government of Tamil Nadu issued G.O Ms No.118 dated 23.05.2006 to the effect that any person who is a Hindu and possessing requisite qualification and training can be appointed as Archaka in Hindu temples. It was followed by Tamil Nadu Act 15 of 2006 amending Section 55(2) of the Act. The issue was once again considered by the Hon'ble Supreme Court in the decision reported in ***AIR 2016 SC 209 (Sivacharyargal Nala Sangam vs. Government of Tamil Nadu)***. What was laid down in *Seshammal*'s case was reiterated. The only qualification that was added was that the prescription under a particular Agama or Agamas should not be contrary to any constitutional mandate. It was also noted that the aforesaid G.O has the potential of falling foul of the dictum laid down in ***Seshammal***. The Hon'ble Apex Court also drew the attention of one and all to Article 16(5) and held that a plain reading of the provision protects the appointment of Archakas from a particular denomination if so required to be made by the Agamas holding the field.



8.The aforesaid decisions were extensively relied on by the

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Hon'ble First Bench when it disposed of the writ petitions filed by the Adi Saiva Sivacharyargal Seva Sangam. The authorities were mandated to follow the said judgments in the matter of appointment of Archakas. While examining the challenge to Rules 7 and 9 of the Tamil Nadu Hindu Religious Institutions Employees (Conditions of Services) Rules, 2020, the Hon'ble First Bench read down the provisions in regard to the appointment of Archakas in the temple or group of temples which were constructed as per Agamas. Paragraph Nos.34, 44, 45, 46, 47 and 49 of the judgment made in WP No.17802 of 2021 read as follows :

“34.The ratio propounded by the Apex Court in the case of Seshammal and others, supra, and Adi Saiva Sivachariyargal Nala Sangam and others, supra, would apply for the appointment of Archakas in the temples, which were constructed as per Agamas. Rules 7 and 9 of the Rules of 2020 under challenge would not apply for the appointment of Archakas/Poojaris.

44.However, for the sake of clarity, we would state that necessary protection given under Article 26 of the Constitution of India would be maintained and thereby the transfer of the Archakas would not be permissible unless it is a case of transfer of Archaka of the temple governed by a particular Agama to a temple governed by same Agama.



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45. *The aforesaid direction would take care of Article 26 of the Constitution of India and the issue raised by the petitioners herein. We would not hold Rule 17 of the Rules of 2020 to be unconstitutional, however, necessary protection has been given to the Archakas who are appointed taking into consideration the particular Agama under which a temple was constructed.*

47. *The issue that remains is in regard to challenge to the appointment of Archaka. The issue aforesaid would also be governed by the judgment of the Apex Court in the case of Adi Saiva Sivachariyargal Nala Sangam and others, supra. If the appointment of Archaka is not made as per the Agamas, the individual would be at liberty to challenge it, however with a clarification that the appointment of Archaka would be made by the trustees or a fit person and not by the HR & CE Department, as it would otherwise offend the provisions of the Act of 1959.*

49. *The only grey area is about the identification of the temples constructed as per the Agamas. It is for the reason that while the Apex Court recognized the right of a doctrine or belief guaranteed under Article 26 of the Constitution of India, it left it open for the individual to challenge the appointment of Archakas in the temples which were constructed as per Agamas. It has been held that the Archakas have to be appointed keeping in mind temple constructed as per the Agamas and therefore, there is a need for a direction to identify the temples constructed as*



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per the Agamas and, that too, with further bifurcation as to under which Agama it was constructed. It is informed that there are as many as 28 Shaiva Agamas under which temples were constructed, apart from Vaishnava Agamas, etc. Thus, we are in agreement with the parties to the litigation to issue a direction on the State Government to constitute a Committee presided over by a Retired High Court Judge, apart from eminent persons having deep knowledge of the subject, so that with the constitution and submission of the report by identifying all the temples constructed under Agamas, the appointment of Archakas may be governed by the usage and practice, thereby it may not offend the Agamas.”

9.The only point that has to be considered is whether the temple in question is an agamic temple or a non-agamic temple. There is no dispute about this. Arulmighu Subramaniya Swamy Thirukoil, Kumaravayalur, Srirangam Taluk, Trichy is admittedly governed by Kamika Agama. The direct implication is that only Adi Saivars/Sivachariyars/Gurukkals who have gained knowledge in the Agamas alone are eligible and qualified to be appointed as Archakas for the said temple. That there is no breach of Article 17 of the Constitution of India can be demonstrated by pointing out that a Smartha Brahmin is not



eligible to be appointed as Archaka as per the aforesaid agamas. A

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Smartha Brahmin cannot enter the sanctum-sanctorum. If persons belonging to Scheduled Caste community alone have been disqualified, then such an agama will have to be ignored as unconstitutional. Such is not the case here. On the other hand, this is a question of upholding the fundamental rights of a denomination. The private respondents do not belong to the denomination of Adi Saivars/Sivachariyars/Gurukkals and therefore they are ineligible to be appointed as Archakas in Arulmighu Subramaniya Swamy Thirukoil, Kumaravayalur, Srirangam Taluk, Trichy which is governed by Kamika Agama. The impugned order is set aside to this extent.

10.The petitioners have been working as Archakas in the said temple for several years for more than a decade. It is true that they were not formally appointed by the trustee or the fit person. But that will not make any difference. In hundreds of temples in Tamil Nadu, Archakas are performing their religious duties even without getting any salary. They were never appointed in the first place. These are matters of tradition, custom and usage. The trustee/fit person of Arulmighu Subramaniya Swamy Thirukoil, Kumaravayalur, Srirangam Taluk, Trichy is directed to



consider appointing the petitioners herein to the post of Archaka. The

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petitioners belong to the denomination in question. They have been discharging the duties of a temple priest for all these years. There is no justification in not considering their case. If there are other candidates hailing from the said denomination, then there can be selection among them. That is not the case here. A decision shall be taken by the trustee/fit person of the temple for appointing the petitioners as Archakas within a period of eight weeks from the date of receipt of copy of this order.

11. These writ petitions are disposed of accordingly. No costs.

Connected miscellaneous petitions are closed.

24.02.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

1. The Secretary to Government,
Tourism, Culture and Religious
Endowments Department,
Fort St. George, Chennai – 600 009.



2. The Commissioner,
Hindu Religious and Charitable
Endowments Department,
119, Uthamar Gandhi Salai,
Nungambakka, Chennai – 600 034.

3. The Joint Commissioner,
Hindu Religious and Charitable
Endowments Department,
Trichy - 620 006.

4. The Fit Person/Assistant Commissioner,
Arulmighu Subramaniya Swamy
Thirukoil,
Kumaravayalur, Srirangam Taluk,
Trichy – 620 102.



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G.R.SWAMINATHAN, J.

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