



W.P.(MD).No.22347 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 25.09.2023

PRONOUNCED ON : 28.11.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No.22347 of 2023

and

W.M.P.(MD)Nos.18624 to 18626 of 2023

1.Sri Subramaniaswami,
Thirukovil Sundhanthirai Paribalana
Sthalatharkal Sabha,
Reg No.12/96,
Represented by the President,
Veerabahumoorthi,
No.77/34, South CAR Street,
Thiruchendhur – 628 215.

2.R.Hariharasubramanian

... Petitioners

Vs.

1.The Commissioner,
Hindu Religious and Charitable
Endowments Department,
119, Gandhi Salai,
Nungambakkam, Chennai-600 034.



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2.The Executive Officer/Joint Commissioner,
Arulmigu Subramaniya Swamy Temple,
Thiruchendur, Tuticorin District.

3.The Secretary to Government,
Hindu Religious and Charitable Endowments
Department,
No.119, Uthamar Gandhi Salai,
Chennai-34.

... Respondents

***(R3 is impleaded, vide Court order, dated
20.09.2023, in WMP(MD)No.19056 of 2023
in WP(MD)No.22347 of 2023)***

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a ***Writ of Certiorari***, to call for the records on the file of the 1st respondent in connection with the order passed by the 1st respondent in his proceedings Na.Ka.No.25339/2023 W.2, dated 28.08.2023 enclosing a Government order in G.O.Ms.No.285, Tourism, Culture and Charitable Department, dated 27.07.2023 and to quash the both.

For Petitioner : Mr.RSingaravelan
Senior Counsel
for Mr.R.Selvanayagam
For R1 : Mr.R.Shanmuga Sundaram
Advocate General
assisted by Mr.N.R.R.Arun Natarajan
Special Government Pleader,



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For R2

Mr.S.P.Maharajan
Special Government Pleader
and Ms.A.G.Shakeena
Government Advocate
: Mr.Veera Kathiravan
Additional Advocate General
assisted by Mr.M.Muthugeethayan

ORDER

This writ petition is filed for writ of *Certiorari*, to quash the order dated 28.08.2023 passed by the 1st respondent in Na.Ka.No.25339/2023 W.2 and G.O.Ms.No.285, Tourism, Culture and Charitable Department, dated 27.07.2023.

2. The 1st petitioner is the President, Thirukovil Sudhanthira Paribalana Sthalatharkal Sabha and the 2nd petitioner is the Joint Secretary of the Sabha. The Sabha is a Registered Society under the Tamil Nadu Societies Registration Act 1975 and was established in the year 1924 then renewed in the year 1996.



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3. The contention of the Sabha is that they are affected by the impugned notification issued by the 1st respondent temple since it is paving the way for appointment of Archakar without prescribing the nature and syllabus of Agama followed in various temples and the tenure of the course. The said notification is not only illegal but also contemptuous, since the Agamas and the rituals to be performed for the temple are neither prescribed nor published along with the notification which is mandatory as per the judgment of Hon'ble Division Bench rendered in Adhi Saiva Sivacharyargal Seva Sangam. Moreover the Rules 7 and 9 of the Tamil Nadu Hindu Religious Institutions Employees (Conditions of Service) Rules 2020 (hereinafter referred as Rules 2020) are declared to be inapplicable to the appointment in Agama temples. In such circumstances, the old rules namely Tamil Nadu, Hindu Religious Institution, Officers and Servants Service Rules, 1964 (hereinafter referred to as Rules 1964) alone have to be followed and Rule 12 of the said Rule states the certificate of fitness ought to be issued by the Head of the institution imparting instructions of Agamas and ritualistic matters. As per the judgment of the Hon'ble Division



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Bench, custom and practice alone have to be followed and as per the customs, Thirusudhandharars have to perform and hence, in view of the direction of the Hon'ble Division Bench, the second respondent should not have issued the impugned notification paving way for appointment of Archakar to Thiruchendur Temple. Article 13 of the Constitution of India supports the custom and usage and supports the case of the petitioners. Above all as per law laid down by Hon'ble Apex Court in *Seshammal's* case reported in (1972) 2 SCC 11 followed by *Adhi Saiva Sivachariayargal* case reported in (2016) 2 SCC 725 appointment has to be made in accordance to Rule 12 of Rules 1964 and as per Rule 12 the candidate should have get the certificate from the reputed Mutt recognised by the Commissioner of HR & CE. But no such condition is notified. The impugned proceeding states "knowledge with training under Chief Priest for appointment" which is totally illegal. Moreover atleast 6 to 14 years is required for a person to get trained in Agamas, Vedas, Upanishads and other necessary rituals. This is required even to assist the Chief Priest. The respondents under the guise of training to acquire basic knowledge cannot



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dispense with or ignore the essential qualifications which is required. The training is meant for the methods to be followed in a particular temple but not for inculcating the knowledge on various mantras, Vedas and Upanishads. The notification states one year course education as basic qualification and training under the experienced Archakars, but the respondents knowing fully well that at least 5 to 6 years are required to make a person well acquaintance with the Vedas, Upanishad and Rituals. The notification is not stating the syllabus with regard to which agama the knowledge is required. The petitioner further submitted that already thousands of persons are available with full knowledge of two Agamas, Vedas and rituals for regular appointment and it is totally unnecessary to go for fresh appointment. Moreover there are two Agamas, one for Moolavar Thandrasamuchiyam and another for Shanmugar and other deities Kumarathanthiram in Thiruchendur Temple. There is a Chief for the Thiruchendur Temple and the post is Vidyahar or Vidyaharthartha who alone has to tell the rituals to be adopted for the temple. The petitioner further submitted that inspite of judgments in *Seshammal* case and *Adhi Saiva Sivacharyal* case



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the respondents are attempting to deviate from the Agamas. Even a slight deviation is against the dictum laid down by the Hon'ble Supreme Court and it is also contemptuous. It is reliably learnt that the appointment order are likely to be issued on 13.09.2023 at the end of 10th day Utsavam. Hence the petitioner has filed this writ petition to quash the impugned orders.

4. The first respondent has filed counter denying the allegation stated in the affidavit and stated that the writ petition came up for hearing on 14.09.2023, written submissions was filed by the respondent. The writ petition is filed by the first petitioner Sabha, is an association espousing the cause of its members challenging a government order meant to give practical training to the candidates for the purpose of gaining experience in Agamas to enable them to get appointed to the post of Archaka in a regular selection. It is a settled law that an association cannot maintain a writ petition in service matter, which has been held in a judgement dated 28.03.2018 in W.A.No.1792 of 2017 and



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another judgement dated 28.04.2022 in W.P.No.10465 of 2020. The further contention of the respondent is that their petition filed by the first petitioner Sabha consist of members who are called Thirusundhandharas or Mukkani Brahmans. The case of the 1st petitioner Sabha is that by the impugned government order under the guise of providing training, the persons who have completed certificate course from the Archaka Training School, will be automatically given appointment as Archaka there by depriving the chances of Thirusundhandharas, getting appointment as Archaka. The contention is liable to be rejected, since the Thirusundhandharas are Idainali which means they do not enter Garbha Griha for the purpose of doing Archaka service to the God. They provide services other than doing pujas which is recorded in the judgment of the Hon'ble Full Bench dated 03.08.2022 in W.P.(MD)No.11817 of 2018. Therefore, when the rights of the petitioner is not affected they cannot maintain the writ petition. It is further stated the government order was issued by the Principal Secretary but the said authority was not arrayed respondent. Hence the writ petition is liable to be dismissed for non-joinder of necessary party.



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The above writ petition was heard on 14.09.2023. After hearing the arguments the Hon'ble court reserved for orders. The petitioners as an afterthought filed an application to implead the Government of Tamil Nadu but no plea was raised against the government in the said writ petition. It is further submitted the impugned G.O.Ms.No.285 Tourism, Culture and Religious Endowment Department dated 27.07.2023 mentions that candidates who have completed certificate course from the Archakar Training Schools run by the temples under the control of the HR&CE Department will be sent for one year training under the senior Archakas/ Gurukals for the purpose of gaining practical knowledge in Agamas. Further the G.O. also provides stipend of Rs.8000/- for the trainees. Also it prescribes the following conditions:

- "i. The training will be for a period of one year.*
- ii. The persons who apply for training should have completed the certificate course from the Archakas Training Schools run by the temples coming under the control of the HR&CE Department.*
- iii. The candidates who have completed course in Siva Agama will be allowed for training in the Shiva Temples and the candidates who have*



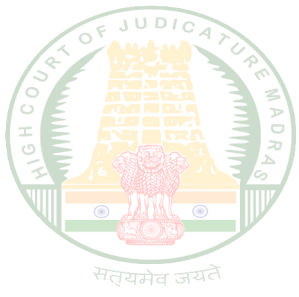
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completed course in Vaishnava Agama and Pancharathara Agama, will be allowed for training in Vaishnava temples.

iv. The trainees who have enrolled for the training programme cannot claim any preferential right for appointment as Archakas in the temples.”

The above government order has been issued only for the purpose of imparting practical training and to gain experience for candidates who have completed the course from the Archakar Training Schools run by the temples under the control of the HR&CE Department. The above G.O. has been issued for the purpose of practical training of Archakas in the relevant Agamas in compliance with the orders of the Hon'ble Supreme Court in Seshammal case. It is further submitted that G.O.Ms.No.118 Tamil Development, Culture and Religious Endowments Department dated 23.05.2006 was issued wherein it was stated that all Hindus irrespective of caste and creed who are trained and qualified may be appointed as Archakas in the temples under the control of HR&CE Department. Thereafter a High Level Committee headed by Justice A.K. Rajan was



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constituted for the purpose of suggesting the period of training and syllabus for the purpose of appointment of trained and qualified Hindus as Archakas irrespective of caste in the temples under the control of Hindu Religious & Charitable Endowments Department. Thereafter G.O.Ms.No.1 Tamil Development, Culture and Religious Endowments Department dated 21.01.2007 was issued by the Department wherein the report dated 23.11.2006 of the High Level Committee was accepted. The Committee had recommended the minimum age as fourteen years and maximum age is fixed as 24 years. Syllabus was fixed and practical training was recommended. The report of the High Level Committee was published in Tamil Nadu Gazette vide G.O.Ms.No. 398 Tamil Development, Religious Endowment and Information Department dated 01.12.2008 wherein it is states that any amount of education based on book will not be equal to the practical training, hence the committee suggested that practical training should be made compulsory. This committee is also of the view that two months practical training shall be given at the end of the year to those undergoing training for one year and two months practical training at the



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end of every year for the first two years and three months practical training at the end of third year for those undergoing three years training course. The G.O.Ms.No.118 Tamil Development, Culture and Religious Endowment Department dated 23.05.2006 was challenged directly before the Hon'ble Supreme Court under article 32 in *Adi Saiva Sivachariyargal Nala Sangam and others Vs Government of Tamil Nadu and another* reported in (2016) 2 SCC 725 and the Hon'ble Supreme Court did not set aside the G.O. but held that the exclusion of some and inclusion of a particular segment or denomination for appointment as Archakas would not violate Article 14 so long such inclusion/exclusion is not based on the criteria of caste, birth or any other constitutionally unacceptable parameter. So long as the prescription(s) under a particular Agama or Agamas is not contrary to any constitutional mandate as discussed above, the G.O.Ms.No.118 where it states that, any person who is a Hindu and possessing the requisite qualification and training can be appointed as a Archaka in Hindu temples has the potential of falling foul of the dictum laid down in Seshammal. The validity of the said G.O. will have to be decided



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in each case of appointment of Archakas whenever and wherever the issue is raised. And reiterated that as held in Seshammal's case the appointments of Archakas will have to be made in accordance with the Agamas.

5. The respondents further stated that subsequently, writ petitions were filed challenging the advertisement issued by the temples calling for applications to fill up the post of Archakar and in the judgement dated 27.06.2022 passed by the Hon'ble Division Bench, the Hon'ble Court in W.P.No.15739 of 2021 filed by *Chellappa Iyer Vs State of Tamil Nadu* and in W.P.No.16287 of 2021 filed by Adi Saiva Sivachriyargal Nala Sangam represented by its General Secretary B.M.S.Muthukumar has held the individual candidate can challenge the individual appointment of the Archakas and the appointment of Archakas shall be as per the judgment rendered in Seshammal's case and Adi Saiva Sivachriyargal Nala Sangam. And the respondents shall adhere to the said two judgments for appointment of the



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Archakas, in particular, their qualification and eligibility, as has been observed by the Hon'ble Apex Court. If any appointment is made offending the provisions of law, or the directions of the Hon'ble Apex Court, individual appointment can be challenged in the manner known to law. Another writ petition in W.P.No.17802 of 2021 batch was filed challenging Rule 2(c), 7(b) 9 of the Tamil Nadu, Hindu Religious Institution, Employees (Conditions of Service) Rules, 2020 issued in pursuance of G.O.Ms.No.114 Tourism, Development, Culture and Religious Endowment Department dated 03.09.2020 reported in **2022 SCC Online Madras 4154** and the Hon'ble Division Bench has held that if any appointment of Archaka is made offending the Agamas, it would be amenable to challenge before this court by the individual aggrieved person. The Hon'ble Division Bench further held that that the judgment would apply only to temples which were constructed as per Agamas, and not for any other temple and had not accepted the challenge to Rules 2(c), 2(g), 7, 9 and 11 to 15 of the Rules of 2020, but had applied the doctrine of reading down to protect the rights guaranteed under Articles 16(5), 25 and 26 of the Constitution



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of India. The Committee would identify the temples which were constructed as per Agamas and identify under which Agama. The Agama temples governed by the custom and practice shall be identified for the deity and also for Archakas. The appointment of Archakas in the said temple shall be governed by the Agamas and not by Rules 7 and 9 of the Rules of 2020, which is confirmed in judgments of *Seshammal's* case and *Adi Saiva Sivachariyargal Nala Sangam's* case. The respondents further submitted that the constitution of the committee was challenged by the Adi Saiva Sivachariyargal Nala Sangam in W.P.No.4531 of 2023 and the Hon'ble Division Bench vide order dated 15.02.2023 had granted interim stay of the constitution of the committee. On reading the orders of the Hon'ble Supreme Court and the Hon'ble Division Bench of Madras High Court it is clear the appointment of Archakar is not made as per the Agamas, then the individual appointments can be challenged and it is also made clear the appointment of an Archaka in an Agama temple will be governed only by Agamas and not by Rule 7 and 9 of Rules 2020. Further the judgement dated 26.06.2023 passed in W.P.No.3997 of 2018 has



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held that the Hon'ble Division Bench has not held that the Trustees / Fit Person cannot appoint Archakas till the Committee finalizes the report. Moreover if there is no dispute to which Agama the temple belongs then the Archaka shall be appointed. Therefore, it is always left open to the trustees / fit person to appoint Archakas in Agama temples, where there is no doubt on the Agama that governs the temple by ensuring that the Archakas are well-versed properly, trained and qualified to perform the puja as per the requirements under the Agama. The judgments stated supra abundantly made clear that caste will have no role in the appointment of Archaka if the person so selected otherwise satisfies the requirements. It is further submitted that W.A.No.1962 of 2023 was filed challenging the order dated 26.06.2023 against the order passed W.P.No. 3997 of 2018 and the Hon'ble Division Bench vide order dated 28.07.2023 declined to stay the judgment and directed the respondents to file counter on 22.09.2023. Aggrieved over S.L.P. No.17636–17637 of 2023 before Hon'ble Supreme Court and by an order dated 22.08.2023 declined to grant stay of the Learned Single Judge order and directed the Hon'ble Division Bench to dispose



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of the W.A.No.1962 of 2023. From the narration of facts it is evident that the Hon'ble Supreme Court and the Madras High Court has held any person irrespective of caste and creed can be appointed as Archaka provided he is properly qualified and trained in the respective Agama, which applies to the said temple. The recent judgement in the above writ petition in W.P.No.3997 of 2018 has made it abundantly clear that caste will have no role in the appointment of Archaka. The impugned G.O. which purpose to give only practical training in the Agama and not intended to make any appointment. It is only an attempt to implement the judgements of the Hon'ble Apex Court and Madras High Court. The appointment of Archaka will be strictly done following the judgement of Hon'ble Apex Court Seshammal's case and Adi Saiva Sivachariyargal Nala Sangam's case. The training now sought to be given is a step taken towards implementing the above judgements. Hence the 3rd respondent prayed to dismiss the writ petition.



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6. The second respondent has filed counter and has stated the implead petition was served only on 15.09.2023 and the same was received with objection, since after elaborate hearing this Court had reserved for orders on 14.09.2023 itself. Then the impleading petition filed by the petitioner Sabha was listed on 20.09.2023 and the same was allowed on 20.09.2023 itself. The averments made in the impleading petition is nothing but reproduction of the pleadings filed in the writ affidavit. The second respondent further submitted the present writ petition is not maintainable since the petitioner Sabha is in association registered under the Tamil Nadu Societies Registration Act, it is an settled law that association shall not maintain writ petition and has no locus standi to maintain writ petition and hence it is liable to be dismissed on maintainability. The petitioners have not filed this writ petition on their individual capacity, and they have filed as president and secretary of Sabha. Moreover the second respondent was suspended to perform puja in the second respondent temple from 27.07.2023 and the communication of the order of suspension was challenged in W.P.(MD)No.19620 of 2023 and this court was



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pleased to grant interim order dated 11.08.2023 against which the second respondent Temple preferred Writ Appeal in W.A.(MD)No.1504 of 2023 and the Hon'ble Division Bench was pleased to grant interim stay on 05.09.2023 the above said material facts was not disclosed in the affidavit and hence the present writ petition is abuse of process of court. The allegation of the petitioners that the notification issued by the second respondent is paving the way for appointment to the post of Archaka is incorrect and untrue for the reason that the proceedings dated 28.08.2023 has been issued by the first respondent in pursuance of G.O.Ms.No.285 has been issued by government, but the petitioner had stated in the affidavit that the notification has been issued by the second respondent which is incorrect. The petition has been filed under wrong assumption that the persons who have completed certified course will be automatically given appointment as Archaka which is incorrect. Moreover, the Thirusdhandharar are not doing Archakar service which is already held by Hon'ble Full Bench of this Court in W.P.(MD)No.11817 of 2018 dated 30.8.2022. Therefore, the petitioner Sabha cannot challenged the G.O. issued



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by the 3rd respondent who was impleaded as party on 20.09.2023 by an order of this Court when the case was listed under the caption for clarification that too after the orders were reserved but there is no pleadings as against the said G.O. and no relief was sought against the third respondent. The G.O.Ms.No.285 was issued by the State Government to provide one-year training to the persons who have exercised the option for the Agama training and the said persons have already completed their one-year certified course from the Agama Training School run by the religious institution the beneficiaries will be paid a sum of Rs.8000 as stipend subject to the satisfaction of other conditions. The petitioner Sabha have challenged the said G.O. and the consequential proceedings and pleaded to the effect that the above G.O. contemplates for appointment of Archaka. Even without understanding the purpose and the intention of the above G.O. the petitioner Sabha in the affidavit has stated incorrect facts. The above said G.O. categorically mentioned that it is a training for the persons who have completed one year training course, the second respondent further submitted in earlier round of litigation filed by Chellappa Iyer case had



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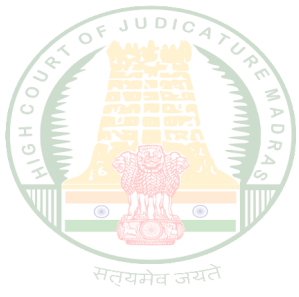
challenged the Notification dated 07.07.2021 published for inviting applications for the post of Assistant Archakas in the second respondent temple. Wherein the above said Chellappa Iyer has filed affidavit stating that the Thirusdhandharars are neither Archakar nor Pujari and averred that they should be treated as religious denomination and cannot be compared with Archaka or Poojaris. Therefore the petitioner Sabha cannot take different stand pleadings as and when it requires. The petitioner has not approached this court with clean hands. The second respondent further submitted that with regard to the amendment made in section 55(2) of HR&CE Act and the validity of the amendment has been challenged before the Hon'ble Supreme Court in Seshammal's case and the said amendment was held to be valid which is reported in (1972) 2 SCC page 11. The said judgement has held the appointment of Archakar is a secular act and further held that the above abolition of hereditary principle in the appointment of Archakar is also valid. The second respondent further submitted the present appointment of Archakar has been made by the State Government by way of rule-making power



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contemplated under section 116 of the Act. And with regard to the qualification to be possessed by the officers and servants for appointment to officers in religious institution on the conditions of service of all such officers and servants, particularly contemplated under section 116. Moreover, the said rule give authority to the State Government to formulate conditions of service and the same rule has been made pursuant to the direction of the Hon'ble Court. The qualifications for the appointment of Archakas is no longer res integra and the same is settled in Seshammal's case and Adi Saiva Sivachariyargal Nala Sangam's case and the validity of Section 55 was upheld and the power to regulate the appointment prescribing qualification to be possessed by the officer and servants in the religious institutions and their conditions of service is also contemplated under section 116. Now rules have been framed, namely Tamil Nadu Hindu Religious Institutions, Employees (Conditions of Service) Rules, 2020 which prescribes the qualification for the appointment of office holders and servants, including Pujari's and Archakar's. The said rules were challenged in W.P.No.17802 of 2021, wherein the validity of rules was upheld



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by the Hon'ble Division Bench in Adi Saiva Sivachariyargal Nala Sangam Case.

7. The notification published by the second respondent on 07.07.2021 was challenged by the above said Chellappa Iyer and the same is held against him. The above said notification and G.O.Ms.No.285 are enabling the concerned religious institution to provide training with stipend of Rs.8000/-. The petitioner Sabha has not made any averments how they are aggrieved over the said notification and G.O. Moreover, the Hon'ble Division Bench has already held only individuals can challenge in case any appointment of Archakar is made. Therefore the present writ petition filed by this Sabha cannot be entertained and the same is not maintainable. The averments made by the petitioner Sabha is already appreciated and considered in W.P.No.3997 of 2018 and the present averments is nothing but replica. Further one Chellappa Iyer had filed a writ petition in W.P.(MD)No15739 of 2021 raising the same issue



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and the said writ petition was disposed of with certain directions. In the said order it is held that the individual whose right is offended then the said individual alone is entitled to challenge the same. In the present case the petitioner had not raised that their rights are affected, since the petitioners are neither Archakas nor Poojaris, their rights are not affected. Therefore the claim of the petitioner Sabha raised in the affidavit are legally not sustainable. The second respondent submitted that he adopt the written submissions and the counter affidavit filed by the first respondent and prayed to dismiss the writ petition.

8. Heard Mr.RSingaravelan, the Learned Senior Advocate for Mr.R.Selvanayagam appearing for the petitioner, Mr.R.Shanmuga Sundaram, the Learned Advocate General assisted by Mr.N.R.R.Arun Natarajan, the Learned Special Government Pleader, Mr.S.P.Maharajan, the Special Government Pleader and Ms.A.G.Shakeena, the Government Advocate



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appearing for 1st respondent and Mr.Veera Kathiravan, the Learned Additional Advocate General assisted by the Learned Counsel Mr.M.Muthugeethayan appearing for the 2nd respondent.

9. The present writ petition came up for admission on 13.09.2023 and the case was adjourned to 14.09.2023 for the response from the respondents. The Learned Advocate General appearing for the first respondent stated the writ petition is not maintainable, since the present writ petition is filed challenging the Government Order, but has not impleaded the government as a party. After hearing the arguments, this Court reserved the case for orders. But during the course of the day the Learned Counsel appearing for the petitioner sought permission to implead the Government as a party and this Court directed to serve the copy of the impleading petition to the respondents and the respondents were granted time to file their objections, if any and then the case was posted for hearing the impleading petition on 20.09.2023. The Learned



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Advocate General had submitted that they do not have any objection to the impleading petition, but sought time to file counter for their response on merits of the case. Therefore the case was posted for filing counter by the respondents to the averments challenging the G.O. and the consequential impugned order. Then the respondents had filed counter on 22.09.2023, then the case was posted for hearing on 25.09.2023 for further arguments. After hearing the case on merits on 25.09.2023, the case was reserved for orders.

10. The Learned Advocate General had submitted that they do not have objection to the impleading petition, hence the impleading petition is allowed. Having allowed the impleading petition, the maintainability issue raised by the respondent that the writ petitioner had not impleaded the Government as a party but challenged the G.O., no longer exists.



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11. As far as the contention of Association maintaining writ petition in service matter is concerned, the Learned Advocate General submitted that the issue in this case is “service matter” and hence the Association cannot maintain the writ petition and relied on the judgement dated 28.03.2018 rendered in W.A.No.1792 of 2017 and another judgement dated 28.04.2022 rendered in W.P.No.10465 of 2020. However the Learned Senior Counsel appearing for the petitioner submitted that the issue raised in this writ petition is not service matter, but it is the issue whether the training can be imparted without stating which Agama the candidates had underwent training, whether training can be allowed inside the temple which is against the Agamas, whether the candidates were trained as per Agamas, if so as per which Agama, training was imparted and various other issues. The substance of the objection relating to maintainability of the writ petition is that an association of employees cannot challenge in a writ petition under Article 226, any matter which is a service matter. In other words, the contention is that, it is up to the individual



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employees who are affected by the subject matter in dispute who should come to court and not the association.

12. In order to decide the issue raised by the parties it is necessary to analyse the expression “service matter”. It is seen that the expression “service matter” is defined in section 3(q) of the Administration Tribunal Act, 1985 as follows:

“(q) “service matters”, in relation to a person, means all matters relating to the conditions of his service in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India, or, as the case may be, of any corporation 5 [or society] owned or controlled by the Government, as respects—

(i) remuneration (including allowances), pension and other retirement benefits;

(ii) tenure including confirmation, seniority, promotion, reversion, premature retirement and superannuation;



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- (iii) leave of any kind;*
- (iv) disciplinary matters; or*
- (v) any other matter whatsoever;”*

13. Therefore, to be a service matter, the subject matter in dispute should either relate to recruitment, seniority, service condition, pay fixation, retirement, punishment and so on and so forth. In this case, the association of persons who are the petitioners before me are not an association of persons directly employed by the HR&CE Department as government servants. The members of the petitioners Association are not even seeking appointments against any post, to which some people have been selected for training. The objection of the petitioner Association is not to the recruitment of some people and the direction to give them training. The objection of the petitioner Association is only with respect to the ineligibility of those persons to undergo training in Agama temples. To put differently the petitioner Association in this writ petition is not advocating or advancing the service rights of the individual



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members. On the other hand, the petitioner Association is advocating the Shastric Rites to which the deity of the temple governed by Agama Sastras is entitled. Hence the above contention of the Learned Advocate General that it is service matter is thoroughly misconstrued.

14. It is seen that there are more than one lakh temples in Tamil Nadu. But according to the website of the HR&CE Department only 46,105 Hindu Religious and Jain Temples are under the control of the Hindu Religious and Charitable Endowment Department. Of which only 43,575 are Hindu Temples, 22 Jain Temples, 46 Mutts, 69 Temples attached to Mutts, 1265 Charitable Endowments and 1128 Specific Endowments are under the control of HR&CE Department. Deliberately the HR&CE Department website does not disclose how many of those temples are Agama temples, but estimate show that there are approximately 3600 temples which are Agama temples. The respondents have no right to interfere in Agamas of the Temples as already held by the Hon'ble Supreme Court in Seshammal's case reported in (1972) 2 SCC 11, wherein it is held that "the rule making power conferred on the Government by Section 116



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of HR&CE Act is only intended with a view to carry out the purposes of the Act which are essentially secular and the Act nowhere gives the indication that one of the purposes of the Act is to effect change in the rituals and ceremonies followed in the temples. On the other hand, section 107 of the Principal Act emphasizes 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. 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”. Further it is seen that the very same issue is pending before Hon'ble Supreme Court and an interim orders has been passed and the same is discussed in the subsequent paragraphs of this order. Therefore this Court is of the considered opinion that the issue raised in the present case is not service matter. Hence the question of non-maintainability does not arise as it is not a service matter.



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15. The next contention raised by the respondent is that through the impugned order the government is imparting training to the persons who had completed one year course and hence it is not affecting the rights of the petitioner and hence the petitioner is not having locus standi and on this ground also the writ petition is not maintainable. The Learned Senior Counsel appearing for the petitioner relied on Seshammal's case, wherein it is held "that 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 the present case since the respondents are trying to interfere with the Agama under the guise of training, hence the petitioner submitted the same is against the interest of the temple worship. After hearing the submissions on the either side this Court is of the considered opinion that the issue need elaborate hearing, only then it can be considered whether the petitioner's rights are affected. Hence this Court proceeds to deal with the issues raised by the petitioner.



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16. On merits the Learned Advocate General submitted that the impugned G.O.Ms.No.285 dated 27.07.2023 and the impugned Notification dated 28.08.2023 only prescribes training under the Senior Archaka. Under Clause (ix) states that the said training will not give any right to appointment. The training is also given as per the G.O.Ms.No.398 Tamil Development, Religious Endowments and Information (RE4-2) dated 01.12.2008. Therefore there is no violation of any Government Orders. But the Learned Senior Counsel appearing for the petitioner submitted that in the Agama temples the persons trained in the particular agama alone should be allowed inside the temple. In the present case the circular or the G.O. is not stating in which Agama the proposed trainees had undergone. It is seen that the Arulmigu Sri Subramaniya Swamy temple is in existence from time immemorial and it is considered one of the “Padai Vedu” of Lord Murugan. For the Moolavar “Subramaniya Swamy” the “Pothis” are having right to perform poojas and they are following “Tantrik Method”. For the Urchavar “Shanmughar” the “Sivachariyars” are performing poojas by following “Kumara Tantra” from



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“Lalithagama”. The G.O.Ms.No.285 states training would be imparted to candidates who had completed one year Archaka course along with stipend and the same is extracted hereunder:

“Department of Tourism, Culture and Religious Institutions (Aa Ni. 4-1)

*G.O.Ms.No.285
27.7.2023*

Dated

*Read: Letter No. 25339/2023 W 2 dated 30.6.2023 of the Commissioner,
Hindu Religions and Charitable Endowments Department*

ORDER:

During the discussion for the grant for the year 2022-2023, the Hon’ble Minister for Hindu Religious and Charitable Endowments Department made the following announcements

I. A monthly stipend of Rs.6,000/- would be given to the students who have undergone course for Archakas in the government training schools to undergo practical work experience for one year under Senior Archakas.

II. In the above mentioned letter, the persons who have completed studies for Archakas in the schools under the control and management of Hindu Religious and Charitable Endowment Department, during their training for work experience under Senior Archakas, in terms of the suggestions made in the meeting of the management of the schools and teachers under the chairmanship of the Hon’ble Minister on 24.08.2023 to increase the monthly stipend by Rs.4,000/- from Rs. 6,000/- to Rs.10,000/- and therefore, the Joint Commissioners are



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requested to issue orders for payment of monthly stipend of Rs.10,000/- to the Archakas who undergo training of for one year from the senior Archakas who studied Archaka course in the temples run by Hindu Religious and Charitable Endowments Department to Rs.10,000/- subject to the following conditions.

- 1. The training period shall be for one year.*
- 2. The applicant who applies for work experience should have undergone and completed the courses for Archakas in the schools run by the holy temple.*
- 3. The applicants who want to undergo training near their place of residence, have to make necessary arrangements for their work experience near the temple.*
- 4. During the training for their work experience, the stipend should be released from the funds of the holy temple. When there is no sufficient fund available in the holy temples, which are given permission for giving such work experience training for paying the monthly stipend, such funds shall be released from the general fund of the Commissioner.*
- 5. The persons who apply for work experience training and if they have completed courses in Saiva Agama courses and they should have undergone courses in Shiva holy temples and if they have undergone courses in Vaishnavite Agama they should be allowed to undergo work experience training in Vishnu temples respectively.*
- 6. The Archakas who undergone training during the Poojas of the temples, have to learn the entire training given by 'the Senior Archakas at the time of Poojas of the temple. They have to discharge their duties without any complaint and undergo training.*
- 7. If they require any leave during the work experience training period, they have to go with prior permission of the Executive Officer of the holy temple.*



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8. *The Executive Officers should ensure that the Archakas training period in proper manner from the Senior Archakas.*

9. *The Archakas who undergo work experience training shall not claim a priority rights in the appointment in the holy temples where they undergo training.*

10. *After the work experience training is completed, the necessary certificate should be issued by the management of the holy temple.*

11. *During the work experience training period when any vacancy arises in the holy temple where such persons are undergoing training inviting applications, they have to apply through the temples where they are undergo training.*

III. The procedural memorandum of the Hindu Religious and Charitable Endowments Department Commissioner was considered seriously and to enable the Archakas who have undergone course in the schools run by the holy temple and enable them get work experience training under Senior Archakas, the government has decided to grant permission to the Commissioner to pay monthly stipend of Rs.8,000/- to the persons who undergo training for work experience under Senior Archakas subject to conditions prescribed in paragraph 2 above.

This Order is accordingly issued.

[by order of the Governor]

K. Manivasagan

Chief Secretary to the Government”



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17. Based on the aforesaid G.O.Ms.No.285, the Commissioner had issued Notification dated 28.08.2023 and the same is extracted hereunder:

“Na.Ka.No.25339/2023/W2 dated 28.8.2023

Sub: Notices - 2023-2024 – Notice No. 41 -Government Order is issued for getting a monthly stipend of Rs.8,000/- for getting work experience from senior grade Archakas of Senior Grade Temples - Regarding.

Ref: 1. Grant Request No. 47, Notice No. 41 dated 19.4.2023.

2. Government Order (stage) No. 285, Department of Tourism, Culture and Religious Institutions (Aa Ni. 4-1) dated 27.7.2023

To enable the students who have undergone studies and completed course for Archakas in the schools run under the control of this department and to gain work experience, an opportunity is being given to them to undergo training under Senior Archakas. A monthly stipend would be given as per Notice No. 41 and grant request No. 41 has been issued.

To enable the students who have undergone studies and completed course for Archakas in the schools run under the control of this department and to gain work experience under senior Archakas for one year, the students who have undergone training for the same, a monthly



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stipend of Rs. 8,000/- be given to them from the temple fund and a Government is order is being issued under Reference 2 above.

The list of the students who have given their consent for undergoing work experience in terms of government order is annexed herewith. Therefore, the Subordinate Officers are requested to take necessary action for giving practical work experience to the students who have undergone training in government training schools in terms of the guidelines given in the government for giving work experience to the students who have undergone training in government training schools. Subordinate Officers are requested to execute the statement assembly notification in continuation of the above mentioned notification and send the information to the concerned Officials.

Sd. K.V. Muralidaran

Commissioner

Annexure

Government Order and List

/True Copy/'



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18. Along with the said notification of the Commissioner a list of candidates is attached indicating the names of the candidates who had completed one year Archaka course. It indicates the name of the temple in which the candidates had given their option to undergo training under senior Archaka. On perusing the list of candidates, the respondents have not mentioned under which Agama the said candidates had undergone training. As rightly pointed out by the Learned Counsel appearing for the petitioner the impugned orders only state to impart training to the candidates who had completed one year Archaka course, but it is not stating in which Agama the candidates had undergone training. The candidates are supposed to undergo training in particular agama from day one of the Archaka Training Course and there cannot be any shifting from one agama to another agama. Hence without mentioning under which Agama the candidates had undergone training, but posting them in a temple by simply taking the option to undergo training under senior Archaka from the candidates is totally against the G.O.Ms.No.1 Tamil Development, Culture and Religious Endowments (RE 4-2) dated 02.01.2007.



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19. It is seen that the said G.O.Ms.No.1 is prescribing separate training centres to be established by the government for Siva Agama and Vaishnava Agama and it is not stating “Temples” as training centres. Under Clause 5 in the said G.O. the following places has been prescribed as training centre:

“5) The places for Training Centre

i. The training centres for the Saivait Archakas may be established at Chennai, Madurai, Palani, Thiruchendur, Kumbakonam, Thiruvannamalai and Perur

ii. The training centres for the Vaishnavits Archakas may be established at Chennai, Srirangam, Kancheepuram, Madurai, Alagarkoil and Srivilliputhur

iii. The training centre for the persons above 24 years may be located at Thiruchirapalli”

When the G.O.Ms.No.1 prescribes “Training Center” for imparting training, the impugned orders prescribing “Temples” as center for training is total against G.O.Ms.No.1.



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20. Even the Private Agama Training Centres like that of the Pillayarpatti, Thiruparankundram will not conduct training inside the “Temple”. Therefore the prescribed training inside the temple under the Senior Archaka (chief priest) is against the Agamas. The temples are Abodes of the deities and devotees visits temples to worship the deities. Hence temples cannot be treated as training centres or laboratories.

21. The government had passed G.O. for training in “training centres” and after training appointment would be given in the temple based on the which Agama the candidate had trained. But now an intermediate training is being introduced which is clearly interfering in the regular practice followed in the Agamic temple.

22. Further the G.O.Ms.No.1 under clause 15 provides stipend of Rs. 500/-, but the present G.O.Ms.No.285 states Rs.8000/- as stipend. Further the



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G.O.Ms.No.285 states that the stipend ought to be paid by the concerned temple where the candidates exercised their option to undergo training, thereby the temple funds are being spend for training. Even though the respondents claim that the present G.O. and notification are enabling the candidates for training, on paying a stipend of Rs.8000/- is takes the colour of “Appointment as Archaka”. This is confirmed by the stipend prescribed for training under G.O.Ms.No.1 as Rs.500/- and stipend prescribed for training as Rs.8000/- under G.O.Ms.No.285, thereby indirectly issued appointment orders. But now under the guise of training, the respondents have issued appointment orders dehors of Agamas.

23. It has been repeatedly held in more than one judgment that the Rule 7 and 9 of Rules, 2020 is not applicable to the Agama temples and any appointments to Agama temples should be based on the Tamil Nadu Hindu Religious Institution (Officers and Servants) Service Rules 1964 and the same



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is confirmed more than a judgment. In the case of All India Adi Saiva Sivachariyargal Seva Sangam and others Vs. Government of Tamil Nadu and another reported in 2022 SCC OnLine Mad 4154 has held that the Temples or group of Temples which were constructed as per the Agamas would be governed by the custom and practice not only in respect of the worship of deity, but in all respects, which includes even the appointment of Archakas. The appointment of Archakas in the temple or group of temples constructed under the respective Agama shall accordingly be governed by the Agamas and not by Rules 7 and 9 of the Rules of 2020. The detailed reason for it was earlier given by the Hon'ble Apex Court in the judgments of Seshammal's case (1972) 2 SCC 11 and Adi Saiva Sivachariyargal Nala Sangam reported in (2016) 2 SCC 725. In Seshammal and others Vs State of Tamil Nadu reported in (1972) 2 SCC 11 it has been held as under:

“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



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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



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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.

20...

24. It was, however, submitted before us that the State had taken power under Section 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 rule 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 injunction. For example at present the Ulthurai servant whose duty it, is to,



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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 specialize 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 standardized curriculum for pujas in the several temples ignoring the tradition 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 Art is to effect change in the rituals and ceremonies followed in the terms. On the other hand, section 107 of the Principal Act emphasizes that nothing contained in the Act would be deemed to confer any power

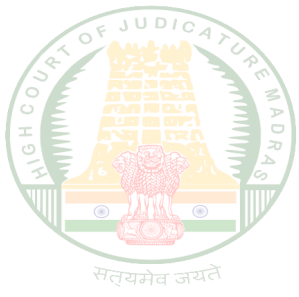


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or impose any duty in contravention of the rights conferred on any religious denomination or any section thereof by Article 26 of the Constitution. Similarly Section 105 provides that nothing contained in the Act shall (a) save as otherwise expressly 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.”

24. This is followed in *Adi Saiva Sivachariyargal Nala Sangam and others Vs. Government of Tamil Nadu* and another reported in (2016) 2 SCC 725. Also followed in W.P.(MD)No.15739 and W.P.(MD)No.16287 of 2021 filed by Chellappa Iyer and other Vs State of Tamil Nadu. Again followed in *Adi Saiva Sivachariyargal Nala Sangam and others Vs. Government of Tamil Nadu and another* reported in 2022 (5) CTC 1. The sum and substance



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that has been held in all the cases cited supra is that any temple is constructed as per Agamas then the appointment of Archakas in those temples would be governed by Agamas and for that the Rules 2020 will not be applicable. If appointed it would offend the Articles 25 and 26 of the Constitution.

25. As stated supra, under the guise of training, the respondents have issued appointment orders dehors of Agamas, hence this Court is of the considered opinion that the impugned orders are against the dictum laid down in the aforesaid judgments.

26. At this juncture it was brought to the notice of this Court that the same impugned order passed in G.O.Ms.No.285, Tourism, Culture and Charitable Department, dated 27.07.2023 and the subsequent proceedings passed by the 1st respondent in Na.Ka.No.25339/2023 W.2, dated 28.08.2023 is put to challenge before Hon'ble Supreme Court in SLP(C)No.19553 of 2023 batch and W.P.(C)No.985 of 2023 and there is an order of interim stay and the stay is extended subsequently.



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27. Therefore this Court is directing the parties to act as per the orders that would be passed in SLP(C)No.19553 of 2023 batch and W.P.(C)No.985 of 2023 and until then the respondents are restrained from conducting any training as per the impugned G.O.Ms.No.285, Tourism, Culture and Charitable Department, dated 27.07.2023 and the subsequent proceedings passed by the 1st respondent in Na.Ka.No.25339/2023 W.2, dated 28.08.2023.

28. For the reasons stated supra, the writ petition is disposed of in above terms. No Costs. Connected Miscellaneous Petitions are closed.

28.11.2023

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

1. The Commissioner,
Hindu Religious and Charitable
Endowments Department,
119, Gandhi Salai,
Nungambakkam, Chennai-600 034.
2. The Executive Officer/Joint Commissioner,
Arulmigu Subramaniya Swamy Temple,
Thiruchendur, Tuticorin District.
3. The Secretary to Government,
Hindu Religious and Charitable Endowments
Department,
No.119, Uthamar Gandhi Salai,
Chennai-34.



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S.SRIMATHY, J.

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