

BEFORE THE COMMISSIONER, H.R.&C.E. ADMN DEPARTMENT, CHENNAI-34

Monday the 21st day of January, Two thousand and Thirteen.

Present : Thiru P. Dhanapal, M.A., B.L.,
Commissioner.

A.P. 54/2011

Between.

1. P.Somasundaram,
2. K.Kuppusamy,
3. K.Ramdoss,
4. K.Jegan,
5. D.Jeganathan,
6. D.Santhanam,
7. D.Swaminathan,
8. D.Muthu,
9. D.Bhoominathan,
10. S.Muniasamy,
11. M.Thavaselvam,
12. G.Rajendran,
13. G.Pandi,
14. G.Meenakshisundaram,
15. G.Subramanian,
16. N.Chellam,
17. S.Gurumoorthy,
18. S.Santhanamari,
19. D.Balaguru,
20. N.Ravi,
21. N.Meenakshisundaram and
22. M.Sankar.

... Appellants.

And

M.K.Mooka Velar.

.. Respondent.

In the matter of Arulmighu Vazhivitta Iyyanar Temple,
Ayyanarkulam Village, Kamuthi Post, Mudhukulathur Taluk,
Ramanathapuram District.

Appeal petition filed under Section 69 (1) of the Tamil Nadu
HR&CE Act, 1959 (Tamil Nadu Act 22 of 1959) against the order

dated 25.08.2009 passed by the Joint Commissioner, HR&CE Admn. Dept., Sivagangai dismissing the O.A.3/2001 filed under Section 63 (e) of the Act.

Annexure to Order in R.Dis.A.P.54/2011(D2)dated: 21.1.2013.

The above appeal petition has been filed against the order dated 25.08.2009 passed by the Joint Commissioner, HR&CE Admn. Dept., Sivagangai dismissing the O.A.3/2001 filed under Section 63 (e) of the Act, claiming honour their customary right of doing tonsure work in the temple.

2. The case of the appellants is that they are barbers by community and from time immemorial doing "Tonsure" in the temple during important festival in the capacity of village barbers and receiving the paltry sum from the devotees. While so, the hereditary trustee of the temple with the guidance of the officials of HR&CE Sivagangai District decided to appoint totally outsider to do the tonsure work during the festival time. Therefore, the appellants felt shock in break of age old custom, depriving their only source of livelihood filed Original Application in O.A.No.3/2001 before the Joint Commissioner to decide the age old custom and honour their customary right of doing tonsure work in the temple and to restrain the Hereditary Trustee from appointing or engaging outsider to do the tonsure work. But, the Joint Commissioner dismissed the O.A. stating that the hereditary right in the temple has been abolished by the Tamil Nadu Act 2/1971.

3. The appellants contended that the hereditary trustee and the hereditary barbers are doing their respective service to the deity and both are not paid servants. The Appellants being barber by community are eking their livelihood by doing 'tonsure' work in the said temple. In the absence of their service, the general public and devotees who go over to the temple to offer 'Mudi Kanikkai' would be put into great hardship, as barber from outside would not be

available except on festival times. The livelihood problem of the petitioners and their families has not been taken into consideration by the Joint Commissioner before passing the impugned order. Therefore, the order of the Joint Commissioner is liable to be set aside.

4. Thiru M.Subramanya Rao appeared for the respondent and vehemently opposed the claim of the appellants. I heard Thiru M.Subramanya Rao, Counsel for the Respondent. At the time of hearing the case, the appellants as well as their counsel having been called absent and remained *ex parte*. Therefore, on the basis of available records, orders are passed on merits.

5. I perused the relevant records. It is seen from the records that the respondent herein has filed a detailed counter affidavit in O.A.3/2001 rebutting that the petitioners have not been employed by the temple and no salary is paid to any of the petitioners, by the temple. The petitioners are not the servants or employees of the temple and as their service has not been recognised by the temple they cannot claim any hereditary right to the barber service. The claim is farfetched and is not maintainable. ..The petitioners cannot claim any exclusive right to the barber service and no such service is attached to the temple... The devotees will pay the barber the remuneration to the barber for his service. Therefore, the petitioners cannot have any right to any service at the temple. The claim made in the petition is baseless, ill founded, untenable, unsustainable, frivolous, and vexatious and is devoid of merits.

6. It is not disputed by the appellants that the devotees who throng the temple to tonsure and offer their hair will pay them and they receive only the paltry sum from the devotees. Nowhere in the Original Application or in the Appeal Petition stated that they receive some share from the temple as 'emolument' for

employment of their service. Section 63(e) deals with "Whether any person is entitled, by custom or otherwise, to any honour, emolument or perquisite in any religious institution; and what the established usage of a religious institution is in regard to any other matter." The appellants misconstrued their service to the village as honour in the temple and filed this vexatious petition claiming some hereditary right of service in the temple.

7. It is relevant to point out here that in 1968 I M.L.J. page 105, "Solamalayan poojari Vs. Commissioner, HR&CE, the Hon'ble High Court has held that "The word "emolument" has been defined in the Concise Oxford Dictionary as 'profit from office or employment, salary'. Section 63 (e) of the Act speaks of a person entitled by custom or otherwise to an emolument in any religious institution and he seeks relief in respect of such an emolument under section 63 (e) before the Joint/Deputy Commissioner and if his right to receive the emoluments is disputed because it is urged by the opposite party that he is not the proper person entitled to the office itself, it will be within the jurisdiction of the Joint/Deputy Commissioner to decide that right as a preliminary step before giving him relief which he seeks in respect of the emoluments. When the right to the office and the right to the emoluments are interlinked, the Joint/Deputy Commissioner while exercising jurisdiction regarding the right to the emoluments cannot refused to exercise jurisdiction for deciding the right to the office which is a condition precedent to the applicant being entitled to the emoluments.

8. Further in Chinnathambi Mooppan Vs. Mamundi Mooppan 1966 I M.L.J. page 361, the Hon'ble Court has held that "Where there is no controversy about the office or the emoluments attached to the office, but the dispute is whether the office is vested with Pillai community or 1st Defendant such dispute does not fall

within the scope of Section 63(e) of the Act and the dispute falls within the jurisdiction of Civil Court”.

9. From the facts of the case as averred by the appellants, it seen that the appellants never held and claimed any office and receive any emolument or perquisite in the temple for their service rendered to the devotees to tonsure but receive paltry sum from the devotees as admitted. What was prayed for in the original application is to restrain the Hereditary Trustee from appointing outsiders as barbers to tonsure, which is purely outside the scope of Section 63(e) of the Act.

10. The appellants contended that the Hereditary Trustee and the Hereditary barbers are doing their respective service and both are not paid servants. The contention of the appellant is untenable and unsustainable in law since the servants of religious institutions are under the control of the Trustees who cannot be equated with the servants of the temple. The appellants hailing from the village may be hereditarily rendering their service to the village and to the devotees who attend to the temple, but since they occupy no office in the temple they cannot claim any right to office or emolument or perquisite in the temple. The hereditary right to the office or service in temples was abolished by the Tamil Nadu Act 2/1971. In the O.A., the appellant placed reliance upon the agreement entered between their ancestors in the year 1963. The temple was not a party to that agreement. That agreement will not bind over the temple. As per Section 28 (2) “A trustee shall, subject to the provisions of this Act, be entitled to exercise all powers incidental to the provident and beneficial administration of the religious institution and to do all things necessary for the due performance of the duties imposed on him.” Hence, the trustee has ample power to allow even the outsider to do tonsure work in

the temple with a view to provide necessary amenities and facilities to the worshipping public devotees.

11. Hence, I find no reasons to interfere with the order dated 25.08.2009 passed by the Joint Commissioner, HR&CE Admn. Dept., Sivagangai, dismissing the Original Application, as the petition itself is not maintainable under section 63(e) of the Act. The Joint Commissioner has rightly decided the service rights claimed by the appellants. The impugned order warrants no interference, therefore it is hereby confirmed and appeal petition fails and deserves for dismissal as devoid of merit and accordingly the appeal petition be and is hereby dismissed as devoid of merits.

/typed to dictation/

Sd. P. Dhanapal,
Commissioner.

/true copy/by order/

Superintendent.