



2024/KER/11706

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE ANIL K. NARENDRAN

&

THE HONOURABLE MR.JUSTICE G. GIRISH

WEDNESDAY, THE 31ST DAY OF JANUARY 2024 / 11TH MAGHA, 1945

W.P. (C) NO.43139 OF 2023

PETITIONER/S:

R.G. RADHAKRISHNAN
AGED 58 YEARS
S/O R.GOPALAN NAIR, ARDRAM, AERA-35, ARAYALLOOR,
ELLUVILA NAGAR, THIRUMALA-P.O, THIRUVANANTHAPURAM,,
PIN - 695006
BY ADV D.AJITHKUMAR

RESPONDENT/S:

- 1 STATE OF KERALA
REPRESENTED BY THE PRINCIPAL SECRETARY TO GOVERNMENT,
REVENUE (DEVASWOM) DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM, PIN - 695001
- 2 JOINT DIRECTOR
KERALA STATE AUDIT DEPARTMENT, TRAVANCORE DEVASWOM
BOARD AUDIT, NANTHANCODE, KOWDIAR POST,
THIRUVANANTHAPURAM, PIN - 695003
- 3 TRAVANCORE DEVASWOM BOARD
TRAVANCORE DEVASWOM BOARD HEADQUARTERS, NANTHANCODE,
KAWDIAR POST, THIRUVANANTHAPURAM REPRESENTED BY ITS
SECRETARY, PIN - 695003
- 4 DEVASWOM COMMISSIONER
TRAVANCORE DEVASWOM BOARD, TRAVANCORE DEVASWOM BOARD
HEADQUARTERS, NANTHANCODE, KAWDIAR POST,
THIRUVANANTHAPURAM, PIN - 695003
- 5 CHIEF VIGILANCE OFFICER
(SUPERINTENDENT OF POLICE-VIGILANCE), TRAVANCORE



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- DEVASWOM BOARD, TRAVANCORE DEVASWOM BOARD
HEADQUARTERS, NANTHANCODE, KAWDIAR POST,
THIRUVANANTHAPURAM, PIN - 695003
- 6 FINANCE AND ACCOUNTS OFFICER
TRAVANCORE DEVASWOM BOARD, TRAVANCORE DEVASWOM BOARD
HEADQUARTERS, NANTHANCODE, KAWDIAR POST,
THIRUVANANTHAPURAM, PIN - 695003
- 7 DIRECTOR
VIGILANCE AND ANTI-CORRUPTION BUREAU, PMG, VIKAS
BHAVAN.P.O., THIRUVANANTHAPURAM, PIN - 695033
- 8 C.N.RAMAN
DEVASWOM COMMISSIONER, TRAVANCORE DEVASWOM BOARD,
TRAVANCORE DEVASWOM BOARD HEADQUARTERS, NANTHANCODE,
KAWDIAR POST, THIRUVANANTHAPURAM, PIN - 695003
- 9 DEPARTMENT PROMOTION COMMITTEE
TRAVANCORE DEVASWOM BOARD, TRAVANCORE DEVASWOM BOARD
HEADQUARTERS, NANTHANCODE, KAWDIAR POST,
THIRUVANANTHAPURAM (REPRESENTED BY ITS CHAIRMAN)., PIN
- 695003
BY ADVS.

SRI.S.RAJMOHAN, SR. GOVT.PLEADER FOR R1, R2 & R7
G.BIJU, SC TDB, R3 TO R6
SANTHEEP ANKARATH FOR R8
P.K.SURESH KUMAR (SR.) (S-793) FOR R8
P.ANIRUDHAN(K/002306/2021)FOR R8
PARVATHY SRIKUMAR(K/001674/2023) FOR R8
Nandagopal Nambiar V.V, FOR R9

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
31.01.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**JUDGMENT****C.R.****Anil K. Narendran, J.**

The petitioner has filed this writ petition under Article 226 of the Constitution of India, seeking a writ of certiorari or any other appropriate writ, order or direction to call for the entire records leading to Ext.P8 proceedings dated 10.05.2023 and Ext.P23 order dated 12.12.2023 of the 3rd respondent Board and quash the same; a writ of quo warranto or any other appropriate writ, order or direction to remove the 8th respondent from the post of Devaswom Commissioner, Travancore Devaswom Board; a writ of mandamus or any other appropriate writ, order or direction to the 3rd respondent Board to recover the liability found against the 8th respondent in Ext.P2 draft audit note of Thiruvallam Devaswom; a writ of mandamus or any other appropriate writ, order or direction directing the State Vigilance to conduct an investigation regarding the corruption and misappropriation of Devaswom funds by the 8th respondent; and a writ of mandamus or any other appropriate writ, order or direction directing the 1st respondent State and the 3rd respondent Board to strictly follow the Travancore Devaswom Board Officers' and Servants' Service Rules, 2022 in the appointment of the Devaswom Commissioner.

1.1. In the writ petition, it is stated that the petitioner is a



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Hindu by birth and a devotee, who retired from service on 31.01.2021 while working as Finance Commissioner in the 3rd respondent Board. In the writ petition, the petitioner has pointed out the directions contained in the order of this Court dated 19.07.2022 in DBP No.22 of 2022, Ext.P4 judgment of this Court dated 01.08.2023 in W.P(C) No.31159 of 2022 and also the pendency of DBP No.40 of 2023.

1.2. On 21.12.2023, when this writ petition came up for admission, the learned Senior Government Pleader took notice on admission for respondents 1, 2 and 7, the learned Standing Counsel for Travancore Devaswom Board for respondents 3 to 6 and the learned Standing Counsel for Kerala Devaswom Recruitment Board for the 9th respondent. Notice on admission by special messenger was ordered to the 8th respondent. The learned Standing Counsel for Travancore Devaswom Board was directed to make available for the perusal of this Court, the files relating to Ext.P23 order dated 12.12.2023 and the learned Standing Counsel for Devaswom Recruitment Board, the files relating to Ext.P13 minutes of the meeting of the Department Promotion Committee held on 24.08.2023.

1.3. On 21.12.2023, the learned Standing Counsel for Travancore Devaswom Board has made available for the perusal



of this Court, the files relating to Ext.P23 order dated 12.12.2023. On 22.12.2023, the learned Standing Counsel for Devaswom Recruitment Board, who took notice for the 9th respondent Departmental Promotion Committee, made available for the perusal of this Court the files relating to Ext.P13 minutes of the meeting of the Departmental Promotion Committee held on 24.08.2023. After perusal, the files handed over by the learned Standing Counsel for the Devaswom Board and the learned Standing Counsel for Devaswom Recruitment Board were returned to the respective counsel.

1.4. The 8th respondent has filed a counter affidavit dated 02.01.2024, opposing the reliefs sought for in this writ petition, producing therewith Exts.R8(a) to R8(e) documents. The 3rd respondent Devaswom Board has filed a counter affidavit dated 03.01.2024 and the 9th respondent Departmental Promotion Committee has filed a counter affidavit dated 30.12.2023, opposing the reliefs sought for in the writ petition.

1.5. By the order dated 22.01.2024, the learned Standing Counsel for Travancore Devaswom Board was directed to make available for the perusal of this Court, the files relating to the report dated 18.05.2023 of the Finance and Accounts Officer (Report No.FIO/319/23/IAD), the relevant files maintained in the



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office of the Finance and Accounts Officer, the office of the Devaswom Commissioner and also the Board office, relating to Ext.R7(f) proceedings dated 11.07.2023 in W.P.(C)No.26259 of 2023 and proceedings No.ROC 14291/22/OAD dated 11.07.2023, etc., of the Devaswom Commissioner.

2. W.P.(C)No.26259 of 2023 referred to hereinbefore is one filed by another Hindu by birth and a devotee, who retired from service on 31.05.2010, while working as Deputy Devaswom Commissioner (Inspection) in Travancore Devaswom Board. He has filed that writ petition seeking a writ of certiorari or any other appropriate writ, order or direction to call for the entire records leading to Ext.P7 statement regarding refixation of liability in Thiruvallam Devaswom, in respect of respondents 7 to 11 therein [the 7th respondent in W.P.(C)No.26259 of 2023 is the 8th respondent in W.P.(C)No.43139 of 2023] and quash the same; a writ of certiorari or any other appropriate writ, order or direction to call for the entire records leading Ext.P12 proceedings dated 25.08.2023 of the Travancore Devaswom Board, whereby the select list prepared by the Devaswom Recruitment Board for the post of Devaswom Commissioner in the Travancore Devaswom Board, was approved. That select list contains the name of the 8th respondent in W.P.(C)No.43139 of 2023. The petitioner has also



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sought for other consequential reliefs in W.P.(C)No.26259 of 2023 and also a writ of mandamus or any other appropriate writ, order or direction directing the State Vigilance to conduct an investigation regarding the corruption and misappropriation of Devaswom funds by respondents 7 to 11.

2.1. During the course of arguments, it is brought to the notice of this Court by the learned Senior Counsel for respondents 8 to 10 in W.P.(C)No.26259 of 2023 that there is an order of stay in W.P.(C)No.19412 of 2022 filed by those respondents. In that writ petition, a learned Single Judge of this Court granted a stay of the operation of the order dated 05.04.2022 of the Travancore Devaswom Board [Ext.P11 order in W.P.(C)No.26259 of 2023] and the order dated 18.04.2022. In view of the order of stay granted by the learned Single Judge in W.P.(C)No.19412 of 2022, which is still in force, we find that the final disposal of W.P.(C)No.26259 of 2023 has to be deferred, for the time being.

3. DBP No.101 of 2023 is registered *suo motu*, vide proceedings dated 09.10.2023, regarding appointment to the post of Devaswom Commissioner in the Travancore Devaswom Board, based on the complaint dated 01.09.2023 made by T.K. Kumaran Potti, the complaint dated 26.09.2023 by Kumaran Nair K.P. and the complaint dated nil by K.R. Ranjith. Regarding the



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appointment to the post of Devaswom Commissioner, a complaint dated 01.09.2023 has been made by T.K. Kumaran Potti, who is the General Convenor of Devaswom Board Pensioners Coordination Committee, Nandancode, Thiruvananthapuram, enclosing therewith a copy of the liability statement of Thiruvallam Sub-Group for the month of April, 2022 issued by the Assistant Audit Officer, Finance Committee Accounts Office, Travancore Devaswom Board, in which the liability of the 10th respondent therein [the 8th respondent in W.P.(C)No.43139 of 2023] is shown as Rs.10,56,650/-. In the complaint dated 01.09.2023, it is stated that the above liability was reduced to Rs.1,11,872/- by adopting illegal methods, bypassing the Committee constituted by the Board vide Board Order No.ROC.25/21/OAD dated 15.02.2021. Though the 10th respondent has a total service of 29 years in the Travancore Devaswom Board, till date he has not discharged duties as Assistant Devaswom Commissioner or Deputy Devaswom Commissioner or Group Assistant Devaswom Commissioner and he was posted in various posts in the Devaswom Head Quarters with comparatively lesser workload. In the said complaint various allegations have also been levelled against the 10th respondent including the allegation in connection with the construction of an office complex by the Travancore



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Devaswom Employees Confederation State Committee, which was the subject matter in W.P.(C)No.31159 of 2022 filed before this Court, in which the Travancore Devaswom Employees Confederation was arrayed as the 7th respondent. K.P. Kumaran Nair has also submitted a similar complaint dated 26.09.2023 seeking interference of this Court. K.R. Ranjith, General Secretary of Devaswom Employee Federation, has submitted a complaint dated nil (File No.HCKL/3884/2023/D1-4) against the 10th respondent - C.N. Raman. In the complaint made by T.K. Kumaran Potti, it is pointed out that the term of B.S. Prakash, who is presently holding the post of Devaswom Commissioner, will expire on 15.10.2023.

3.1. W.P.(C)No.31159 of 2022 referred to in the complaint made by T.K. Kumaran Potti was disposed of by the judgment dated 01.08.2023, by setting aside the order dated 10.08.2020 of the Travancore Devaswom Board and by directing the Board to reconsider the matter with notice to the writ petitioner, the representatives of the Travancore Devaswom Employees Confederation and also the complainant, who submitted a complaint dated 04.05.2023. In the said judgment this Court found that the decision taken by the Travancore Devaswom Board in the order dated 10.08.2020 to drop further proceedings in that



complaint made by the writ petitioner, despite the recommendation to the contra by the Chief Vigilance and Security Officer, Travancore Devaswom Board warrants interference in view of the law laid down by this Court in **Suo Motu v. State of Kerala [2022 (2) KHC 411]**. In the complaint, the complainant has referred to the said judgment of this Court.

3.2. On 09.10.2023, when DBP No.101 of 2023 came up for consideration, it was pointed out by the learned Standing Counsel for Travancore Devaswom Board and also the learned Senior Government Pleader that the term of appointment of the present incumbent holding the post of Devaswom Commissioner will expire on 15.10.2023. They also pointed out the pendency of SLP(C)Nos.8254-55 of 2019 before the Apex Court, arising out of the order of this Court dated 14.03.2019 in R.P.No.243 of 2019 and the order dated 31.01.2019 in DBP No.11 of 2017. In the order dated 02.12.2019, the Apex Court noticed that the issue raised with regard to the provisions, as contained in Section 13A of the Travancore-Cochin Hindu Religious Institutions Act, 1950, requires detailed consideration and the Apex Court made an interim arrangement clarifying the order of *status quo* passed by that Court. By the order dated 09.10.2023, Registry was directed to list DBP No.101 of 2023 on 11.10.2023, along with W.P.(C)



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No.26259 of 2023. A copy of Ext.P12 order dated 25.08.2023 in W.P.(C)No.26259 of 2023, whereby the Travancore Devaswom Board granted approval for the select list for the post of Devaswom Commissioner including the name of the 10th respondent in DBP No.101 of 2023 [the 8th respondent in W.P.(C)No.43139 of 2023], was directed to be incorporated in the Judge's papers of DBP No.101 of 2023. During the course of arguments, the learned counsel for the 10th respondent in DBP No.101 of 2023 [the 8th respondent in W.P.(C)No.43139 of 2023] would submit that, since the final disposal of W.P.(C)No.26259 of 2023 has been deferred in view of the order of stay granted by the learned Single Judge in W.P.(C)No.19412 of 2022, which is still in force, DBP No.101 of 2023 may be listed along with W.P.(C)No.26259 of 2023. We find that the final disposal of DBP No.101 of 2023 has to be deferred, for the time being, which is ordered to be listed along with W.P.(C)No.26259 of 2023.

4. In the order dated 11.10.2023 in DBP Nos.40 and 101 of 2023 and W.P.(C)No.26259 of 2023 this Court noticed that the Devaswom Commissioner is the Chief Executive Officer in the Travancore Devaswom Board, who is the disciplinary authority of the Devaswom employees. In addition to this, the Devaswom Commissioner is also the Member Secretary of the High Power



Committee for Implementation of the Sabarimala Master Plan, headed by a former Judge of this Court. In W.P.(C)No.26259 of 2023, which is one filed seeking various reliefs against respondents 7 to 11 therein, a challenge against the order dated 25.08.2023 of the Travancore Devaswom Board [Ext.P11 order in W.P.(C)No.43139 of 2023] is also made by way of amendment. The learned Standing Counsel for Travancore Devaswom Board submitted that after the issuance of Ext.P12 Board order, vigilance clearance from the State Vigilance for clearing the name of the 10th respondent [the 8th respondent in W.P.(C)No.43139 of 2023] is pending. The learned Senior Government Pleader submitted that since the term of appointment of B.S. Prakash, the present incumbent holding the post of Devaswom Commissioner, will expire by 18.10.2023, the State Government proposes to file an application in SLP(C)Nos.8254-55 of 2019 pending before the Apex Court seeking appropriate orders.

5. Along with a memo dated 21.10.2023 of the learned Senior Government Pleader a copy of the Government Order dated 19.10.2023 is placed on record. The 10th respondent has filed an affidavit dated 20.11.2023, producing therewith Annexure R10(a) and R10(b) documents.

6. Heard learned Senior Government Pleader for



respondents 1, 2 and 7, the learned Standing Counsel for Travancore Devaswom Board for respondents 3 to 6, the learned Senior Counsel for the 8th respondent and the learned Standing Counsel for Kerala Devaswom Recruitment Board for the 9th respondent.

7. Travancore-Cochin Hindu Religious Institutions Act, 1950 enacted by the State Legislature makes provision for the administration, supervision and control of incorporated and unincorporated Devaswoms and of other Hindu Religious Endowments and Funds. As per sub-section (3) of Section 1 of the Act, substituted by the Kerala Adaptation of Laws Order, 1956, Part I of the Act shall extend to Travancore, Part II of the Act shall extend to Cochin and Part III of the Act shall extend to the whole of the State of Kerala, excluding the Malabar District. Clause (a) of Section 2 of the Act defines the term 'Board' to mean the Travancore Devaswom Board constituted under Chapter II of the Act in accordance with the covenant. Clause (c) of Section 2 defines the term 'incorporated Devaswoms' to mean the Devaswoms mentioned in Schedule I, and 'unincorporated Devaswoms' to mean those Devaswoms including Hindu Religious Endowments whether in or outside Travancore which were under the management of the Ruler of Travancore and which have



separate accounts of income and expenditure and are separately dealt with.

7.1. Chapter II of the Act deals with the Travancore Devaswom. Section 3 of the Act deals with the vesting of administration in the Board. As per Section 3, the administration of incorporated and unincorporated Devaswoms and of Hindu Religious Endowments and all their properties and funds as well as the fund constituted under the Devaswom Proclamation, 1097 M.E. and the surplus fund constituted under the Devaswom (Amendment) Proclamation, 1122 M.E. which were under the management of the Ruler of Travancore prior to the first day of July, 1949, except the Sree Padmanabhaswamy Temple, Sree Pandaravaka properties and all other properties and funds of the said temple, and the management of all institutions which were under the Devaswom Department shall vest in the Travancore Devaswom Board.

7.2. Section 15 of the Act deals with vesting of jurisdiction in the Board. As per sub-section (1) of Section 15, subject to the provisions of Chapter III of Part I, all rights, authority and jurisdiction belonging to or exercised by the Ruler of Travancore prior to the first day of July, 1949, in respect of Devaswoms and Hindu Religious Endowments shall vest in and be exercised by the



Board in accordance with the provisions of this Act. As per sub-section (2) of Section 15, the Board shall exercise all powers of direction, control and supervision over the incorporated and unincorporated Devaswoms and Hindu Religious Endowments under their jurisdiction.

7.3. Section 15A of the Act, inserted by Act 5 of 2007, with effect from 12.04.2007, deals with the duties of the Board. As per Section 15A, it shall be the duty of the Board to perform the following functions, namely, (i) to see that the regular traditional rites and ceremonies according to the practice prevalent in the religious institutions are performed promptly; (ii) to monitor whether the administrative officials and employees and also the employees connected with religious rites are functioning properly; (iii) to ensure proper maintenance and upliftment of the Hindu religious institutions; (iv) to establish and maintain proper facilities in the temples for the devotees. Section 16 of the Act deals with supervision and control by the Board. As per Section 16, the Board shall, subject to the provisions of Part I of the Act, exercise supervision and control over the acts and proceedings of all officers and servants of the Board and of the Devaswom Department.

7.4. Section 24 of the Act deals with the maintenance of



Devaswoms, etc., out of the Devaswom Fund. As per Section 24, the Board shall, out of the Devaswom Fund constituted under Section 25, maintain the Devaswoms mentioned in Schedule I [i.e. incorporated Devaswoms], keep in a state of good repair the temples, buildings, and other appurtenances thereto, administer the said Devaswoms in accordance with recognised usages, make contributions to other Devaswoms in or outside the State and meet the expenditure for the customary religious ceremonies and may provide for the educational upliftment, social and cultural advancement and economic betterment of the Hindu community.

7.5. Section 27 of the Act deals with Devaswom properties. As per Section 27, immovable properties entered or classed in the revenue records as Devaswom Vaga or Devaswom Poramboke and such other Pandaravaga lands as are in the possession or enjoyment of the Devaswoms mentioned in Schedule I after the 30th Meenam, 1097 corresponding to the 12th April, 1922, shall be dealt with as Devaswom properties. The provisions of the Land Conservancy Act of 1091 (IV of 1091) shall be applicable to Devaswom lands as in the case of Government lands. Section 31 of the Act deals with the management of Devaswoms. As per Section 31, subject to the provisions of Part I and the rules made thereunder, the Board shall manage the properties and affairs of



the Devaswoms, both incorporated and unincorporated as heretofore, and arrange for the conduct of the daily worship and ceremonies and of the festivals in every temple according to its usage.

8. In **Ram Mohan Das v. Travancore Devaswom Board and others [1975 KLT 55]** a learned Single Judge of this Court held that under Section 31 of the Travancore-Cochin Hindu Religious Institutions Act, the Travancore Devaswom Board shall manage the properties and affairs of the Devaswoms, both incorporated and unincorporated and arrange for the conduct of the daily worship and ceremonies and of the festivals in every temple according to its usage. The position of the Board in regard to the Devaswoms - incorporated and unincorporated - is analogous to that of trustees. Any improper act of the Trustees could be questioned by a worshipper.

8.1. In **M.V. Ramasubbiar v. Manicka Narasimachara [(1979) 2 SCC 65]**, in the context of Sections 49, 51 and 52 of the Trusts Act, 1882, the Apex Court explained the nature of the fiduciary position of the trustee and his duties and obligations. It is the duty of the trustees of the property to be faithful to the Trust and execute any document with reasonable diligence in the manner of an ordinary prudent man of business would conduct his



own affairs. A trustee could not therefore, occasion any loss to the Trust and it is his duty to sell the property, if at all that was necessary, to best advantage. Paragraph 4 of that decision reads thus;

"4. There is some controversy on the question whether Defendant 1 made an outright purchase of the suit property for and on behalf of the trust for Rs 21,500 on April 19, 1959, or whether he intended to purchase it for himself and then decided to pass it on to the trust, for defendants have led their evidence to show that the property was allowed to be sold for Rs 21,500, which was less than its market value, as it was meant for use by the trust and that Defendant 1 was not acting honestly when he palmed off the property to his son soon after by the aforesaid sale deed Ext.B13 dated July 14, 1960. The fact, however, remains that Defendant 1 was the trustee of the property, and it was his duty to be faithful to the trust and to execute it with reasonable diligence in the manner an ordinary prudent man of business would conduct his own affairs. He could not therefore occasion any loss to the trust and it was his duty to sell the property, if at all that was necessary, to best advantage. It has in fact been well recognised as an inflexible rule that a person in a fiduciary position like a trustee is not entitled to make a profit for himself or a member of his family. It can also not be gainsaid that he is not allowed to put himself in any such position in which a conflict may arise between his duty and personal interest, and so the control of the trustee's discretionary power prescribed by Section 49 of the Act and the prohibition contained in Section 51 that the trustee may not use or deal with the trust property for his own profit or for any other purpose unconnected with the trust, and the equally important prohibition in Section 52 that the trustee may not, directly or indirectly, buy the trust property on his own account or as an agent for a third person, cast a heavy



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responsibility upon him in the matter of discharge of his duties as the trustee. It does not require much argument to proceed to the inevitable further conclusion that the Rule prescribed by the aforesaid sections of the Act cannot be evaded by making a sale in the name of the trustee's partner or son, for that would, in fact and substance, indirectly benefit the trustee. Where therefore a trustee makes the sale of a property belonging to the trust, without any compelling reason, in favour of his son, without obtaining the permission of the court concerned, it is the duty of the court, in which the sale is challenged, to examine whether the trustee has acted reasonably and in good faith or whether he has committed a breach of the trust by benefitting himself from the transaction in an indirect manner. The sale in question has therefore to be viewed with suspicion and the High Court committed an error of law in ignoring this important aspect of the law although it had a direct bearing on the controversy before it."

(underline supplied)

8.2. In **A.A. Gopalakrishnan v. Cochin Devaswom Board [(2007) 7 SCC 482]** a Three-Judge Bench of the Apex Court held that the properties of deities, temples and Devaswom Boards are required to be protected and safeguarded by their trustees/archakas/shebaites/employees. Instances are many where persons entrusted with the duty of managing and safeguarding the properties of temples, deities and Devaswom Boards have usurped and misappropriated such properties by setting up false claims of ownership or tenancy, or adverse possession. This is possible only with the passive or active collusion of the authorities concerned. Such acts of 'fences eating



the crops' should be dealt with sternly. The Government, members or trustees of boards/trusts, and devotees should be vigilant to prevent any such usurpation or encroachment. It is also the duty of courts to protect and safeguard the properties of religious and charitable institutions from wrongful claims or misappropriation.

8.3. In **Travancore Devaswom Board v. Mohanan Nair [2013 (3) KLT 132]** a Division Bench of this Court noticed that in **A.A. Gopalakrishnan [(2007) 7 SCC 482]** the Apex Court emphasised that it is the duty of the courts to protect and safeguard the interest and properties of the religious and charitable institutions. The relevant principles under the Hindu law will show that the deity is always treated similar to that of a minor and there are some points of similarity between a minor and a Hindu idol. The High Court therefore is the guardian of the deity and apart from the jurisdiction under Section 103 of the Land Reforms Act, 1957 viz. the powers of revision, the High Court is having inherent jurisdiction and the doctrine of parens patriae will also apply in exercising the jurisdiction. Therefore, when a complaint has been raised by the Temple Advisory Committee, which was formed by the devotees of the Temple, about the loss of properties of the Temple itself, the truth of the same can be gone into by the High Court in these proceedings.



8.4. In **Rajani P. Kuttan and another v. State of Kerala and others [2021 (6) KHC 513]** a Division Bench of this Court noticed that among the 1250 Temples managed by the Travancore Devaswom Board, only 60 major Temples are self-sufficient and the rest are being managed utilising the surplus income from Sabarimala Devaswom. The total number of sanctioned posts in various categories in the Travancore Devaswom Board is 5692 and the total number of pensioners is 5749. The major source of revenue of the Travancore Devaswom Board is the income received by way of offering by the devotees, the amount received from vazhipadu and the revenue generated through the auction of temple premises for various activities in connection with rituals and festivals in the Temples. Paragraph 59 of the said decision reads thus;

"59. The Financial position of the Devaswom Board:- The competent officer of the Devaswom Board filed an affidavit dated 14.06.2021 stating its financial position. It is submitted that there are 1250 temples under the Administrative Control of the Devaswom Board. The total number of sanctioned posts in various categories in the Devaswom Board is 5692, and the total number of pensioners is 5749. It is further submitted that the major sources of revenue of the Devaswom Board are the income received by way of offerings from devotees, the amount received from vazhipadu, and the revenue generated



through the auction of the temple premises for various activities in connection with rituals and festivals in the temples. Besides this, the Devaswom Board gets an approximate sum of 14 crores per annum by way of the rent of the buildings owned by it. The annual contribution from the State Government under Article 290A of the Constitution of India is Rs.80 lakhs. It is further submitted that among the 1250 temples managed by the Devaswom Board, only 60 major temples are self-sufficient, and the rest are being managed utilising the surplus income from Sabarimala Devaswom. Now, due to the spread of the Covid-19 pandemic, the temples remain closed, and the major source of income has come down. The Devaswom Board is finding it difficult even to pay the salary of the existing employees. The pleadings regarding the financial position of the Devaswom Board in the affidavit dated 14.06.2021 have not been controverted by the petitioners.”

(underline supplied)

8.5. In **Suo Motu v. State of Kerala and others [2022 (2) KHC 411]** this Court held that, in view of the provisions under the Travancore-Cochin Hindu Religious Institutions Act and also the law laid down in the decisions referred to supra, the Travancore Devaswom Board is duty bound to ensure proper administration, supervision and control of Sabarimala Devaswom, which is an incorporated Devaswom mentioned in Schedule I of the said Act, under the Chengannur Group. The Board has a statutory duty to monitor whether its administrative officials and



employees and also the employees connected with religious rites are functioning properly. The Board is duty bound to exercise proper supervision and control over the acts and proceedings of all officers and servants and to manage the properties and affairs of Sabarimala Devaswom and conduct daily worships and ceremonies and also festivals in the temple according to its usage. Position of the Board in this regard is analogous to that of trustees, as held by this Court in **Ram Mohan Das [1975 KLT 55]**. Any improper act of the trustees could be questioned by a worshiper. The Board and those entrusted with the duty of managing the properties and affairs of Sabarimala Devaswom are duty bound to protect the properties of the deity from any wrongful claims, theft or misappropriation. Any such wrongful claims, theft or misappropriation with the passive or active collusion of the authorities concerned, which are acts of 'fences eating the crops' should be dealt with sternly. Since the deity being a perpetual minor, this Court is having inherent jurisdiction to protect and safeguard the interest and properties of the deity and the doctrine of *parens patriae* will also apply in the exercise of such jurisdiction.

9. DBP No.22 of 2022 was registered *suo motu*, vide proceedings dated 15.06.2022, based on a complaint dated 13.06.2022 made by a devotee of Lord Ayyappa alleging serious



irregularities in the posting of Devaswom Staff at Sabarimala and in Sreekandeshwaram Temple, Kottarakkara Temple, etc. That DBP was disposed of by the order dated 19.07.2022 – **Suo motu v. State of Kerala and others [2022:KER:37818]** - whereby the Travancore Devaswom Board was directed to take necessary steps to ensure that, before posting any Administrative Officer/Executive Officer in major temples like Ettumanoor Sree Mahadeva Temple, Vaikom Sree Mahadeva Temple, Chettikulangara Sree Bhagavathi Temple, P.D.Manikanteswaram Temple, Kottarakkara, Thiruvallam Sree Parasurama Swami Temple, Sreekanteswaram Mahadeva Temple, Malayalappuzha Devi Temple and Valliyam Kavu Devi Temple, the credentials of the officer concerned are ascertained through the report of the Superintendent of Police, Vigilance and Security Wing. It was ordered that, while ordering transfers and postings, the Board shall ensure that only efficient and upright officers are posted as Administrative Officers/Executive Officers in major temples under its management. Paragraph 19 of that order in DBP No.22 of 2022 reads thus;

“19. Having considered the pleadings and materials on record and also the submissions made at the Bar, we find that no interference is warranted in the posting of Sri.H. Krishnakumar as the Executive Officer, Sabarimala and Sri.N. Sreedhara Sharma as the



Administrative Officer, Erumeli Devaswom, for the reasons noticed hereinbefore at paragraph 5 of this order. In view of the provisions under Section 15A of the Act, it is the duty of the Board to monitor whether the Administrative officials and the employees and also the employees connected with religious rites are functioning properly. The position of the Board in this regard is analogues to that of Trustees, as held by this Court in **Ram Mohan Das [1975 KLT 55]**. Any improper act of the Trustees could be questioned by a worshiper. The Board is duty bound to protect the properties of the deity from any wrongful claims, theft or misappropriation. In such circumstances, we deem it appropriate to direct the 2nd respondent Travancore Devaswom Board to take necessary steps to ensure that, before posting any Administrative Officer/Executive Officer in major temples like Ettumanoor Sree Mahadeva Temple, Vaikom Sree Mahadeva Temple, Chettikulangara Sree Bhagavathi Temple, P.D. Manikanteswaram, Kottarakkara, Thiruvallam Sree Parasurama Swami Temple, Sreekanteswaram Mahadeva temple, Malayalappuzha Devi Temple and Valliyam Kavu Devi Temple, the credentials of the officer concerned are ascertained through the report of the 4th respondent Superintendent of Police, Vigilance and Security Wing. The said report shall be placed before the Board, which shall consider that report before ordering the transfer and posting of the Administrative Officer/Executive Officer in major temples. While ordering transfers and postings, the Board shall ensure that, only efficient and upright officers are posted as Administrative Officer/Executive Officer in major temples under its management. The Board is directed to review the transfer and postings of Administrative Officer/Executive Officer in major temples, after obtaining the report of the 4th respondent on the credentials of such officers. The exercise in this regard shall be completed within a period of three months from the date of receipt of a certified copy of this order.” (underline supplied)

9.1. By an earlier order dated 13.07.2022 – **Suo Motu v.**



State of Kerala and others [2022:KER:36060] - DBP No.21 of 2022, which was registered *suo motu*, based on the order of this Court dated 09.06.2023 in DBA No.4 of 2022, was disposed of by directing the Travancore Devaswom Board to ensure that before posting any officer/staff in the Vigilance Wing of the Travancore Devaswom Board having offices at Thiruvananthapuram, Mavelikkara and Vaikom, the credentials of the officer/staff concerned are ascertained through the report of the Superintendent of Police, Vigilance and Security Wing of the Board. The said report shall be placed before the Board, which shall consider that report before ordering the transfer and posting of any officer/staff in the Vigilance Wing of the Board having offices at Thiruvananthapuram, Mavelikkara and Vaikom. While ordering transfers and postings, the Board shall ensure that, only efficient and upright officers/staff are posted in the Vigilance Wing of the Board.

9.2. The directions in the order dated 13.07.2022 in DBP No.21 of 2022 and that contained in the order dated 19.07.2022 in DBP No.22 of 2022 were issued so as to ensure that only efficient and upright officers/staff are posted in the Vigilance Wing of the Travancore Devaswom Board and also in major temples under its management.



10. DBP No.40 of 2023 was registered *suo motu*, vide proceedings dated 05.06.2023, in the matter of credentials of Devaswom staff posted at various temples, since various complaints are being received from the devotees, office bearers of Employees' Federation, etc., pointing out various issues regarding the transfer and posting of Devaswom staff in the Vigilance Wing of the Travancore Devaswom Board having offices at Thiruvananthapuram, Mavelikkara and Vaikom and the order dated 19.07.2022 in DBP No.22 of 2022, regarding the posting of Administrative Officer/Executive Officer in major temples.

10.1. In the order dated 07.06.2023 in DBP No.40 of 2023, this Court noticed that, even after the issuance of the directions in DBP Nos.21 and 22 of 2022, the devotees, office bearers of Employees' Federation, etc., are submitting various complaints before this Court. Five of such complaints are marked in DBP No.40 of 2023 as Annexures A1 to A5. Annexure A5 is a complaint dated nil, made by K.R. Ranjith against the 8th respondent herein in W.P.(C)No.43139 of 2023, who was the Administrative Officer of Thiruvallam Devaswom. On 07.06.2023, two more complaints were marked as Annexures A6 and A7. On 23.06.2023, eight more complaints were marked as Annexures A8 to A15. On 25.09.2023, one more complaint was marked as Annexure A16.



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By the order dated 23.08.2023 in I.A.No.1 of 2023, the petitioner in W.P.(C)No.26259 of 2023 was impleaded as additional 6th respondent in DBP No.40 of 2023.

11. The learned Senior Counsel for the 8th respondent would rely on the decision of the Apex Court in **R.K. Jain v. Union of India [(1993) 4 SCC 119]** to contend that this Court, in the exercise of the writ jurisdiction under Article 226 of the Constitution of India, cannot sit in judgment over the wisdom of the 3rd respondent Travancore Devaswom Board in the choice of a person to be promoted as Devaswom Commissioner. Further, the legality or otherwise of the order of promotion granted to the 8th respondent cannot be decided in a writ petition filed by a person other than an aggrieved person.

11.1. In **R.K. Jain [(1993) 4 SCC 119]**, the Apex Court was considering the question of appointment of the 3rd respondent therein as the President of Customs, Excise and Gold (Control) Appellate Tribunal (CEGAT). The Apex Court held that the Court cannot sit in judgment over the wisdom of the Central Government in the choice of the person to be appointed as a President of CEGAT so long as the person chosen possesses the prescribed qualification and is otherwise eligible for appointment. The Court cannot interfere with the appointment of the 3rd respondent on the



ground that his track record was poor or because of adverse reports on which account his appointment as a High Court Judge had not materialised. In paragraph 73, the Apex Court noticed that in **Shrikumar Padma Prasad v. Union of India [(1992) 2 SCC 428]** K.N. Srivastava did not possess the requisite qualifications for appointment as a Judge of the High Court prescribed under Article 217 of the Constitution, namely, that he was not a District Judge for 10 years in State Higher Judicial Service, which is a mandatory requirement for a valid appointment. Therefore, the Apex Court declared that he was not qualified to be appointed as a Judge of the High Court and quashed his appointment accordingly. In paragraph 74, the Apex Court noticed that the evaluation of comparative merits of the applicants for appointment as President of CEGAT cannot be gone into in a public interest litigation, which can be considered only in proceedings initiated by an aggrieved person. The Apex Court noticed that the writ petition is not a writ of quo warranto. Paragraphs 6, 73 and 74 of that decision read thus;

“6. Shri Harish Chandra was a Senior Vice-President when the question of filling up the vacancy of the President came up for consideration. He was fully qualified for the post under the Rules. No challenge is made on that count. Under Rule 10(1) the Central Government is conferred the power



to appoint one of the members to be the President. Since the validity of the Rule is not questioned there can be no doubt that the Central Government was entitled to appoint respondent 3 as the President. But it was said that the track record of respondent 3 was poor and he was hardly fit to hold the post of the President of the CEGAT. It has been averred that respondent 3 had been in the past proposed for appointment as a Judge of the Delhi High Court but his appointment did not materialise due to certain adverse reports. Assuming for the sake of argument that these allegations are factually accurate, this Court cannot sit in judgment over the choice of the person made by the Central Government for appointment as a President if the person chosen is qualified and eligible for appointment under the Rules. We, therefore, agree with our learned Brother that this Court cannot sit in judgment over the wisdom of the Central Government in the choice of the person to be appointed as a President so long as the person chosen possesses the prescribed qualification and is otherwise eligible for appointment. We, therefore, cannot interfere with the appointment of respondent 3 on the ground that his track record was poor or because of adverse reports on which account his appointment as a High Court Judge had not materialised.

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73. Judicial review is concerned with whether the incumbent possessed of qualification for appointment and the manner in which the appointment came to be made or the procedure adopted whether fair, just and reasonable. The exercise of judicial review is to protect the citizen from the abuse of the power etc. by an appropriate Government or department



etc. In our considered view granting the compliance of the above power of appointment was conferred on the executive and confided to be exercised wisely. When a candidate was found qualified and eligible and was accordingly appointed by the executive to hold an office as a Member or Vice-President or President of a Tribunal, we cannot sit over the choice of the selection, but it be left to the executive to select the personnel as per law or procedure in this behalf. In **Shrikumar Padma Prasad v. Union of India [(1992) 2 SCC 428]** K.N. Srivastava, M.J.S., Legal Remembrancer, Secretary of Law and Justice, Government of Mizoram did not possess the requisite qualifications for appointment as a Judge of the High Court prescribed under Article 217 of the Constitution, namely, that he was not a District Judge for 10 years in State Higher Judicial Service, which is a mandatory requirement for a valid appointment. Therefore, this Court declared that he was not qualified to be appointed as a Judge of the High Court and quashed his appointment accordingly. The facts therein are clearly glaring and so the ratio is distinguishable.

74. Shri Harish Chander, admittedly was the Senior Vice-President at the relevant time. The contention of Shri Thakur of the need to evaluate the comparative merits of Mr Harish Chander and Mr Kalyansundaram a seniormost member for appointment as President would not be gone into in a public interest litigation. Only in a proceedings initiated by an aggrieved person it may be open to be considered. This writ petition is also not a writ of quo warranto. In service jurisprudence it is settled law that it is for the aggrieved person i.e. non-appointee to assail the legality of the offending action. Third party has no locus standi to canvass



the legality or correctness of the action. Only public law declaration would be made at the behest of the petitioner, a public-spirited person.” (underline supplied)

11.2. The law laid down by the Apex Court in **R.K. Jain [(1993) 4 SCC 119]** is to the effect that so long as the person chosen possesses prescribed qualification and if he is otherwise eligible for appointment as per the rules, the Writ Court cannot sit in judgment over the wisdom of the employer in the choice of the person to be appointed. The evaluation of comparative merits of the applicants for appointment cannot be gone into in a public interest litigation, which can be considered only in proceedings initiated by an aggrieved person. The exception to this principle is a writ petition seeking writ of quo warranto.

11.3. The learned Senior Counsel for the 8th respondent would rely on the decision in **Hari Bansh Lal v. Sahodar Prasad Mahto [(2010) 9 SCC 655]**, wherein the Apex Court reiterated that in service matters Public Interest Litigations should not be entertained. The Apex Court noticed that except for a writ of quo warranto, public interest litigation is not maintainable in service matters. A writ of quo warranto lies only when the appointment is contrary to a statutory provision. Paragraphs 12 to 19 of that decision read thus;

“12. We have already pointed out that the person who



approached the High Court by way of a public interest litigation is not a competitor or eligible to be considered as a member or Chairman of the Board but according to him, he is a Vidyut Shramik leader. Either before the High Court or in this Court, he has not placed any material or highlighted in what way he is suitable and eligible for that post.

13. In **Duryodhan Sahu (Dr.) v. Jitendra Kumar Mishra [(1998) 7 SCC 273]** a Three-Judge Bench of this Court held: (SCC p. 281, para 18)

“18. ... If public interest litigations at the instance of strangers are allowed to be entertained by the Tribunal, the very object of speedy disposal of service matters would get defeated.”

In para 21, this Court reiterated as under: (SCC p. 283)

“21. In the result, we answer the first question in the negative and hold that the Administrative Tribunal constituted under the Act cannot entertain a public interest litigation at the instance of a total stranger.”

14. In **Ashok Kumar Pandey v. State of W.B. [(2004) 3 SCC 349]** this Court held thus: (SCC pp. 358-59, para 16)

“16. As noted supra, a time has come to weed out the petitions, which though titled as public interest litigations are in essence something else. It is shocking to note that courts are flooded with a large number of so-called public interest litigations where even a minuscule percentage can legitimately be called public interest litigations. Though the parameters of



public interest litigation have been indicated by this Court in a large number of cases, yet unmindful of the real intentions and objectives, courts are entertaining such petitions and wasting valuable judicial time which, as noted above, could be otherwise utilised for disposal of genuine cases. Though in **Duryodhan Sahu (Dr.) v. Jitendra Kumar Mishra [(1998) 7 SCC 273]** this Court held that in service matters PILs should not be entertained, the inflow of so-called PILs involving service matters continues unabated in the courts and strangely are entertained. The least the High Courts could do is to throw them out on the basis of the said decision. The other interesting aspect is that in the PILs, official documents are being annexed without even indicating as to how the petitioner came to possess them. In one case, it was noticed that an interesting answer was given as to its possession. It was stated that a packet was lying on the road and when out of curiosity the petitioner opened it, he found copies of the official documents. Whenever such frivolous pleas are taken to explain possession, the courts should do well not only to dismiss the petitions but also to impose exemplary costs. It would be desirable for the courts to filter out the frivolous petitions and dismiss them with costs as aforestated so that the message goes in the right direction that petitions filed with oblique motive do not have the approval of the courts.”



The same principles have been reiterated in the subsequent decisions, namely, **B. Singh (Dr.) v. Union of India [(2004) 3 SCC 363]**, **Dattaraj Nathuji Thaware v. State of Maharashtra [(2005) 1 SCC 590]** and **Gurpal Singh v. State of Punjab [(2005) 5 SCC 136]**.

15. The above principles make it clear that except for a writ of quo warranto, public interest litigation is not maintainable in service matters.

Writ of quo warranto

16. A writ of quo warranto lies only when appointment is contrary to a statutory provision. In **High Court of Gujarat v. Gujarat Kishan Mazdoor Panchayat [(2003) 4 SCC 712]** (Three-Judge Bench) Hon'ble S.B. Sinha, J. concurring with the majority view held: (SCC pp. 730-31, paras 22-23)

“22. The High Court in exercise of its writ jurisdiction in a matter of this nature is required to determine at the outset as to whether a case has been made out for issuance of a writ of certiorari or a writ of quo warranto. The jurisdiction of the High Court to issue a writ of quo warranto is a limited one. While issuing such a writ, the Court merely makes a public declaration but will not consider the respective impact of the candidates or other factors which may be relevant for the issuance of a writ of certiorari. See: **R.K. Jain v. Union of India [(1993) 4 SCC 119]**, SCC para 74.

23. A writ of quo warranto can only be issued when the appointment is contrary to the statutory rules. See: **Mor Modern Coop.**



Transport Society Ltd. v. Govt. of Haryana [(2002) 6 SCC 269]."

17. In **Mor Modern Coop. Transport Society Ltd. v. Govt. of Haryana [(2002) 6 SCC 269]** the following conclusion in para 11 is relevant: (SCC p. 275)

"11. ... The High Court did not exercise its writ jurisdiction in the absence of any averment to the effect that the aforesaid officers had misused their authority and acted in a manner prejudicial to the interest of the appellants. In our view the High Court should have considered the challenge to the appointment of the officials concerned as members of the Regional Transport Authority on the ground of breach of statutory provisions. The mere fact that they had not acted in a manner prejudicial to the interest of the appellant could not lend validity to their appointment, if otherwise, the appointment was in breach of statutory provisions of a mandatory nature. It has, therefore, become necessary for us to consider the validity of the impugned notification said to have been issued in breach of statutory provision."

18. In **B. Srinivasa Reddy v. Karnataka Urban Water Supply & Drainage Board Employees' Assn. [(2006) 11 SCC 731 (2)]** this Court held: (SCC p. 754, para 49)

"49. The law is well settled. The High Court in exercise of its writ jurisdiction in a matter of this nature is required to determine, at the outset, as to whether a case has been made out for



issuance of a writ of quo warranto. The jurisdiction of the High Court to issue a writ of quo warranto is a limited one which can only be issued when the appointment is contrary to the statutory rules.”

19. It is clear from the above decisions that even for issuance of a writ of quo warranto, the High Court has to satisfy that the appointment is contrary to the statutory rules. In the latter part of our judgment, we would discuss how the appellant herein was considered and appointed as Chairman and whether he satisfied the relevant statutory provisions.”

11.4. In **Neetu v. State of Punjab [(2007) 10 SCC 614]**, another decision relied on by the learned Senior Counsel for the 8th respondent, the Apex Court noticed that the scope of entertaining a petition styled as a Public Interest litigation, the locus standi of the petitioner, particularly in matters involving service of an employee, has been examined by the Apex Court in various cases.

11.5. In **Guruvayur Devaswom Managing Committee v. C.K. Rajan [(2003) 7 SCC 546]**, another decision relied on by the learned Senior Counsel for the 8th respondent, the Apex Court noticed that administration of a temple by entertaining complaints does not lead to a happy state of affairs. Roving enquiry is not contemplated. Principles of natural justice and fair play ought to



be followed even in the *pro bono publico* proceedings. The courts, undoubtedly, would be a *parens patriae* in relation to idols, but when the statute governs the field and the State takes over the management, ordinarily, the courts would not step in. A Reading of paragraphs 66 and 76 of that decision would make it explicitly clear that the observations made by the Apex Court were in the context of an order passed by a Division Bench of this Court in appointing a Commissioner in the matter of administration of Guruvayur Temple, which is under the management of Guruvayur Devaswom Managing Committee.

11.6. In view of the law laid down by this Court in **Suo Motu v. State of Kerala and others [2022 (2) KHC 411]** in view of the provisions under the Travancore-Cochin Hindu Religious Institutions Act and also the law laid down in **M.V.Ramasubbiar [(1979) 2 SCC 65]**, **A.A.Gopalakrishnan [(2007) 7 SCC 482]**, **Mohanan Nair [2013 (3) KLT 132]**, etc., the Travancore Devaswom Board is duty bound to ensure proper administration, supervision and control of the Devaswoms under its management. The Board has a statutory duty to monitor whether its administrative officials and employees and also the employees connected with religious rites are functioning properly. The Board is duty bound to exercise proper supervision and control over the



acts and proceedings of all officers and servants and to manage the properties and affairs of the Devaswoms under its management and conduct daily worships and ceremonies and also festivals in the temple according to its usage. Position of the Board in this regard is analogous to that of trustees, as held by this Court in **Ram Mohan Das [1975 KLT 55]**. Any improper act of the trustees could be questioned by a worshiper. In terms of the directions issued by this Court in **DBP No.22 of 2022 – Suo Motu v. State of Kerala and others [2022:KER:37818]** and **the order in DBP No.21 of 2022 – Suo Motu v. State of Kerala and others [2022:KER:36060]**, while posting officers in major Devaswoms and also in the Vigilance Wing of the Travancore Devaswom Board, it has to be ensured that only efficient and upright officers/staff are posted at those places.

12. Chapter XV of the Travancore Devaswom Manual Volume - I – Office Manual – deals with organization chart of the Board, which provides the duties and powers of various officers under the Board. As per Chapter XV, the Devaswom Commissioner shall be the Chief Executive Officer of the Department of Devaswoms and the Hindu Religious Endowments. He shall be responsible to carry out all the directions and orders issued by the Board from time to time. He shall supervise and control the



working of the subordinate officers of the Department. He shall regulate the expenditure within the sanctioned 'Pathivus' and estimates. He shall watch and collect the receipts from all sources due to the Devaswom funds and all other institutions under him.

12.1.The powers of the Devaswom Commissioner enumerated in Chapter XV of the Travancore Devaswom Manual Volume - I – Office Manual – includes that as disciplinary authority for all non-gazatted employees of the Devaswom Department, including temple employees. Chapter XV provides the duties and powers of other posts in the Travancore Devaswom Board in the gazetted cadre, which mainly consists of the Devaswom Commissioner, Deputy Devaswom Commissioner and Assistant Devaswom Commissioner.

12.2.In Ext.P14 order dated 14.03.2019 in SSCR No.2 of 2019 and R.P.No.243 of 2019 in DBP No.11 of 2017, this Court noticed that the post of Devaswom Commissioner is of pivotal importance, considering the powers, duties and responsibilities to be exercised by the Commissioner as per the statue and the person requires to be one who will protect the rights and interests of the deity, Devotees and Devaswom in all respects. In paragraph 11 of that order, this Court held that the power of appointment vested with the Devaswom does never get automatically



transferred to the Government, for identifying a person of their choice, even compromising with the rights and interests of the Devaswom, to be appointed as the Commissioner. The Government cannot say or insist that the Devaswom will have to be satisfied with the person identified or nominated by the Government. It is always open for the Devaswom to refuse to appoint the person nominated by the Government, if he has a blemished track record or if he is otherwise not suitable to be appointed for meeting the responsibilities of the Commissioner, to be discharged under the statute protecting the larger interests of the deity and the devotees. In paragraph 13 of Ext.P14 order, this Court noticed that during the annual festival of Sabarimala Temple various tasks and responsibilities have to be met by the Commissioner, by virtue of which the post cannot be left vacant. In paragraph 16 of that order, this Court noticed that the Devaswom Commissioner happens to be the Member Secretary of the High Power Committee appointed by this Court.

12.3.Ext.P14 order of this Court dated 14.03.2019 in SSCR No.2 of 2019 and R.P.No.243 of 2019 in DBP No.11 of 2017 was under challenge before the Apex Court in SLP(C)Nos.8254-55 of 2019. In those special leave petitions, the Apex Court granted an order of status quo, vide Ext.P15 order dated 08.04.2019, which



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was followed by Ext.P16 order dated 09.12.2019 and Ext.P17 order dated 02.03.2021. Seeking permission to appoint the 8th respondent as Devaswom Commissioner by way of promotion, the State filed Ext.P18 interlocutory application before the Apex Court and for approval of a panel of officers for appointment as Devaswom Commissioner by way of deputation, after the date of superannuation of the 8th respondent on 31.01.2024. The Travancore Devaswom Board has also filed Ext.P19 application, seeking modification of Ext.P15 order dated 08.04.2019 and to allow the Board to make the appointment of Devaswom Commissioner. Before the Apex Court, the petitioner herein filed Ext.P20 application for intervention, pointing out various aspects, including the irregularity in the constitution of the Departmental Promotion Committee.

12.4. On 08.12.2023, when those applications came up for consideration, the Apex Court disposed of SLP(C)Nos.8254-55 of 2019, without expressing any opinion on the merits of the case including the fact of the rules, giving liberty to the State, the Travancore Devaswom Board and the petitioner herein, who filed application for intervention, to raise all the contentions before this Court. It is thereafter that the 3rd respondent Travancore Devaswom Board issued Ext.P23 proceedings 12.12.2023,



whereby, the 8th respondent has been promoted to the cadre of Devaswom Commissioner. Ext.P23 order was followed by Ext.P22 order dated 12.12.2023, whereby the deputation of the then Devaswom Commissioner – Sri. B.S. Prakash, Additional Secretary to Government, was terminated and he was relieved from the service of the Travancore Devaswom Board.

12.5. During the course of arguments, the learned counsel for the petitioner, the learned Senior Government Pleader for the State, the learned Standing Counsel for Travancore Devaswom Board and also the learned Senior Counsel for the 8th respondent addressed arguments on the procedure adopted by the 3rd respondent Travancore Devaswom Board in issuing Ext.P23 order, without approaching this Court with an appropriate application.

12.6. It is pertinent to note that the Mandala-Makaravilakku festival season for the year 1199 ME (2023-24) commenced on 16.11.2023. The Special Commissioner, Sabarimala filed SSCR No.31 of 2023, regarding the expiry of tenure and the probable transfer of officers whose services are pivotal to the smooth conduct of the festival, wherein it was pointed out that the District Collector, Pathanamthitta, is likely to be transferred. In that report, it was pointed out that the tenure of the office of the Devaswom Commissioner, Travancore Devaswom Board would



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also expire on 18.11.2023. In that SSCR, this Court passed an order dated 07.11.2023. Paragraphs 3 and 4 of that order read thus;

“3. The new incumbents have already taken charge as the District Collector, Pathanamthitta and the District Police Chief, Pathanamthitta. The term of the Devaswom Commissioner, which expired on 18.10.2023, has already been extended by the State Government. The learned Standing Counsel for Travancore Devaswom Board would point out the pendency of SLP(C)Nos.8254-55 of 2019 before the Apex Court, arising out of the order of this Court dated 14.03.2019 in R.P.No.243 of 2019 and order dated 31.01.2019 in DBP No.11 of 2017.

4. Regarding the expiry of the term of the President and the Member of the Travancore Devaswom Board, the learned Senior Government Pleader would submit that the Government shall take a decision on the said aspect before the expiry of their term of appointment.”

12.7. In terms of Ext.P23 order dated 12.12.2023, the 8th respondent assumed charge as Devaswom Commissioner on 13.12.2023. As noticed by this Court in Ext.P14 order dated 14.03.2019 in SSCR No.2 of 2019 and R.P.No.243 of 2019 in DBP No.11 of 2017, which was under challenge before the Apex Court in SLP(C)Nos.8254-55 of 2019, the post of Devaswom Commissioner is of pivotal importance, considering the powers, duties and responsibilities to be exercised by the Commissioner as



per the statute and the person requires to be one who will protect the rights and interests of the deity, devotees and Devaswom in all respects. In paragraph 13 of Ext.P14 order, the Division Bench noticed that during the annual festival of Sabarimala Temple various tasks and responsibilities have to be met by the Commissioner, by virtue of which the post cannot be left vacant. The change effected in the office of Devaswom Commissioner on 13.12.2023, during Mandala-Makaravilakku festival season was never brought to the notice of this Court. In SSCR No.29 of 2023 and connected matters, this Court has issued various directions on crowd management and pilgrim facilities at Sabarimala and also at various Sabarimala Edathavalams, which includes more than 50 temples under the management of Travancore Devaswom Board, where the pilgrims were provided with facilities like Annadhanam, toilet and Viri. On account of various issues on crowd management at Sabarimala and pilgrim facilities at Sabarimala Edathavalams, this Court had to conduct special sittings on holidays, after obtaining orders from the Honourable the Chief Justice and issue necessary orders to ensure that the pilgrims have a safe and comfortable pilgrimage and darshan during the festival season. On a query made by this Court, the learned Amicus Curiae for Special Commissioner, Sabarimala



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would submit that the change effected in the office of the Devaswom Commissioner on 13.12.2023 was never informed to the Special Commissioner. After taking charge, the 8th respondent personally met the Special Commissioner once at Sabarimala. The conduct of the 3rd respondent Travancore Devaswom Board in effecting a change in the office of the Devaswom Commissioner, during Mandala-Makaravilakku festival season, when the number of footfall in most of the days have crossed one lakh pilgrims, even without intimating this Court about such a change, has to be deprecated in the strongest words and we do so.

13. Section 13B of the Travancore-Cochin Hindu Religious Institutions Act, 1950, inserted by the Amendment Act 26 of 2018, deals with the appointment of Devaswom Commissioner. Section 13B reads thus;

“13B. The Board shall appoint an officer not below the rank of a Deputy Commissioner who is eligible to be promoted as Devaswom Commissioner, and in the absence of such officer an officer not below the rank of an Additional Secretary to Government on deputation as Devaswom Commissioner.”

(underline supplied)

14. In exercise of the powers conferred by clause (e) of sub-section (2) of Section 35 of the Act, the Board made the Travancore Devaswom Servant's Recruitment, Service and Conduct Rules, 1952. Rule 3 defines Devaswom Servants, who are



classified under Class (a) to (d). Class (c) deals with persons recruited afresh by the Board in its administrative establishments. Their recruitment and qualifications were governed by the provisions under Rules 5 to 11. As per Rule 5, recruitment of Class (c) Devaswom servants to the administrative establishments under the Board shall be made in accordance with the rules passed by the Devaswom Board in that behalf. The Board may prescribe from time to time the qualifications required for the posts, if any under them which are not covered by schedule 2, attached to the above rules and notify the same when inviting applicants for such posts. As per Rule 6, officers recruited for specific periods to posts in the higher division may be exempted by the Board from the operation of the rule regarding the passing of departmental test examinations for purposes of appointment, increment, etc. As per Rule 7, persons recruited for permanent appointment in the administrative establishments under the Board shall pass such other departmental tests as the Board may prescribe from time to time for purposes of confirmation, promotion, increment, etc.

14.1. As per Rule 9, for purposes of recruitment and promotion the staff of the Board Office, Law Office and the Offices of the Devaswom Department under the Devaswom Commissioner will be considered as one unit, the staff in the Devaswom Account



Office as another unit and the staff of Maramat Department as still another unit, provided that for vacancies in the Superintendent's grade in the Department under the Devaswom Commissioner the claims of officers in the Devaswom Account Office will also be considered according to the comparative rank of the officers under the Devaswom Commissioner and the Devaswom Account Officer.

15. Service conditions of Devaswom employees in the Travancore Devaswom Board were governed by the provisions contained in the Rules Regarding Service Conditions of Devaswom Employees, 1979, made in exercise of the powers conferred under clause (e) of sub-section (2) of Section 35 of the Act. In the preamble of that Rule, it was stated that in the matter of disciplinary proceedings, the Board has adopted and followed the Rules contained in Kerala Civil Services (Classification, Control and Appeal) Rules, 1960 with effect from 27.10.1971. As per Rule 2, the conditions of service of all Devaswom employees envisaged in the rules shall be deemed to have been governed with effect from 01.04.1963 by the rules contained in the Kerala Service Rules promulgated by the Kerala Government and the Government orders issued from time to time by the Kerala Government from 01.11.1956, insofar as they have been adopted by resolution taken by the Board, and insofar as they are not repugnant to the



context of the services under the Devaswom Board. As per Rule 4, the disciplinary proceedings taken against the Devaswom employees envisaged under these Rules shall be deemed to have been governed with effect from 27.10.1971, by the rules contained in the Kerala Civil Services (Classification, Control & Appeal) Rules, 1960 and shall continue to be governed by the aforesaid Rules insofar as they are not repugnant to the context of the services under the Board.

16. In exercise of the powers conferred under sub-section (5) of Section 29 and clause (e) of sub-section (2) of Section 35 of the Act, the Board made Travancore Devaswom Board Low Paid Employee's Appointment as Clerk/Sub Group Officer Rules, 1990. Rule 5 of the said Rules, which deals with qualifications, reads thus;

"5. Qualification.- Minimum qualification for appointment as Lower Division Clerk/Sub Group Officer Grade II shall be pass in S.S.L.C with Sub Group Officer Test or D.O.T (New Scheme) or M.T as the case may be."

17. In supersession of the aforesaid Rules/Orders on the subject, the Board vide notification dated 01.04.2022 (Ext.P12) made the Travancore Devaswom Board Officers' and Servants' Service Rules, 2022. As per Rule 4(1)(a), the post of Devaswom Commissioner falls under Category 1. Rule 5(1) of the Rules deals



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with the method of appointment to various categories in the Travancore Devaswom Board Devaswom Department. The method of appointment for the category 'Devaswom Commissioner' in Rule 5(1)(a) reads thus;

| | Category | Method of Appointment |
|---|-----------------------|---|
| | (1) | (2) |
| 1 | Devaswom Commissioner | 1. By promotion from among the category of Deputy Devaswom Commissioner specified in category 4 under rule 4(1)(a). 2. In the absence of suitable candidate for promotion so specified above, an officer not below the rank of an Additional Secretary to Government from the Administrative Secretariate on Deputation basis. |

17.1. As per Rule 6(1), which deals with qualifications, no person shall be eligible for appointment to the categories under Rule (4) specified in column I of the table by the method against it in column 2 thereof unless he/she possesses the qualifications specified in the corresponding entry in column 3. The qualifications prescribed in Rule 6(1) for the post of Devaswom Commissioner, Thiruvabharanam Commissioner and Secretary read thus;

| | Category | Method of Appointment | Qualifications |
|---|-----------------------|-----------------------|---|
| | (1) | (2) | (3) |
| 1 | Devaswom Commissioner | 1. By promotion | 1. From among the category of Deputy Devaswom Commissioner specified as in category 4 |



| | | | |
|---|------------------------------|---------------------------------------|--|
| | | 2. Deputation from Government service | <p>under Rule 4(1)(a). Should possess a Bachelor's Degree and a Degree in Law with an unblemished service record in the services of the Board to be appointed from a select list based on seniority and merit and approved by the Departmental Promotion Committee. Vigilance clearance from the State Vigilance is necessary for the appointment.</p> <p>2. In the absence of suitable hands in (1) above, an officer not below the rank of Additional Secretary to Government from the Administrative Secretariat on deputation basis. Vigilance clearance is necessary for the appointment.</p> |
| 2 | Thiruvabharanam Commissioner | By promotion | From the category 4 specified in rule 4 (1)(a) who possesses a Bachelors Degree with good service record in the services of the Board to be appointed from a select list prepared based on seniority and merit and approved by the Departmental Promotion Committee. |
| 3 | Secretary | By promotion | From the category 4 specified in rule 4 (1)(a) who possesses a Bachelor's Degree with good service record in the services of the Board to be appointed from a select list prepared based |



| | | | |
|--|--|--|--|
| | | | on seniority and merit and approved by the Departmental Promotion Committee. |
|--|--|--|--|

17.2. A reading of the provisions under Rule 6(1)(a) of the Travancore Devaswom Board Officers' and Servants' Service Rules, 2022 would make it explicitly clear that in the case of appointment by promotion to the category of Devaswom Commissioner, from the category of Deputy Devaswom Commissioner, the candidate should possess a Bachelor's Degree and a Degree in Law with unblemished service records in the service of the Board. He has to be appointed from a select list based on seniority and merit and approved by the Departmental Promotion Committee. Vigilance clearance from the State Vigilance is necessary for making such an appointment. The provisions contained in Rule 6(1) would show that in case of Thiruvabharanam Commissioner and Secretary, the requirement is 'good service record' in the service of the Board, whereas, for Devaswom Commissioner, the requirement is 'unblemished service record' in the service of the Board.

17.3. Rule 14 of the Rules deals with probation. As per Rule 14, every person appointed to any of the category shall from the date which he/she joins duty, be on probation; (i) if recruited directly or appointed by transfer, for a total period of two years on



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duty within a continuous period of three years; (ii) if appointed by promotion, for a total period of one year on duty within a continuous period of two years; and (iii) if appointed by promotion from a select list under these rules, for a total period of six months on duty within a continuous period of one year.

17.4. Rule 18 of the Rules deals with promotion. As per Rule 18, promotion to the categories specified in categories 1 to 6 in Rule 4(1)(a) and categories 1 to 10 and 12 in Rule 7 shall be made from a select list approved by the Departmental Promotion Committee constituted by the Recruitment Board, in accordance with sub-rule (3) of Rule 3 of Kerala Devaswom Recruitment Board Rules, 2015 and in respect of other posts from an approved final seniority list as specified under these rules.

18. The document marked as Ext.P13 is the minutes of the 9th respondent Departmental Promotion Committee for preparing the select list to the cadre of Devaswom Commissioner by promotion, which met on 24.08.2023. The said minutes reads thus;

“തിരുവിതാംകൂർ ദേവസ്വം ബോർഡിലെ സെലക്ഷൻ വിഭാഗത്തിൽപ്പെട്ട കമ്മീഷണർ കേഡറിലേയ്ക്ക് സ്ഥാനക്കയറ്റം നൽകുന്നതിന് സെലക്ട് ലിസ്റ്റ് തയ്യാറാക്കുന്നതിനായി കേരള ദേവസ്വം റിക്രൂട്ട്മെന്റ് ബോർഡ് ആസ്ഥാനത്ത് 24.08.2023 (വ്യാഴാഴ്ച) 2.30 ന് കൂടിയ അഡ്ഹോക്ക് വകുപ്പ് തല പ്രൊമോഷൻ കമ്മിറ്റിയുടെ മിനിറ്റ്സ്.



months of duty within a continuous period of one year, as provided in clause (iii) of Rule 14 of Ext.P12 Rules, has no application since promotion is to the cadre of the Head of the Department. The Departmental Promotion Committee took such a stand, relying on the provisions under Rule 28(a)(i) of the Kerala State & Subordinate Service Rules (KS&SSR), which is evident from paragraph 8 of the counter affidavit dated 30.12.2023 filed by the 9th respondent, which is one sworn to by its Chairman.

20. Rule 28(a) of KS&SSR deals with promotion. As per Rule 28(a)(i), except in the case of appointment to the posts of Heads of Departments no member of a service or class of a service shall be eligible for promotion from the category in which he was appointed to the service unless he has satisfactorily completed his probation in that category.

20.1. As per the first proviso to Rule 28(a)(i), a probationer in a class, category or grade shall not be superseded for promotion to a higher class, category or grade by his junior, if the vacancy in the higher class, category or grade arises within the period specified in the Special Rules for completion of probation in the class, category or grade in which he is probationer and if he has passed the test or tests prescribed for successful completion of probation and is otherwise eligible and suitable for such



promotion; but his promotion shall be subject to the condition that he satisfactorily completes the probation in the class, category or grade from which he was promoted within the period prescribed therefor, and for this purpose the period of service put in by him in the higher class, category or grade shall be reckoned towards probation in the class, category or grade from which he was promoted and also in the class, category or grade to which he was promoted.

20.2. As per the second proviso to Rule 28(a)(i), if a probationer promoted in pursuance of the first proviso fails to complete his probation in the class, category or grade from which he was promoted within the period prescribed therefor, his probation in the higher class, category or grade shall be terminated and he shall be reverted to the class, category or grade from which he was promoted, and any subsequent promotion of such person to the higher class, category or grade shall not also entitle such person to claim seniority in the higher class, category or grade by reason only of his previous promotion in pursuance of the preceding proviso and he shall commence probation afresh in that class, category or grade from the date of such subsequent promotion.

20.3. As per Rule 28(a)(ii), where the Special Rules for a



service provide for appointment by promotion to any class or category from a specified class or category of such service, no member shall be eligible for such appointment unless he is a full member or an approved probationer in the class or category so specified. As per the proviso to Rule 28(a)(ii), if he is the holder of a post in any service for which no probation has been prescribed, he shall not be eligible for promotion unless he has put in satisfactory service in that post for a period of one year on duty within a continuous period of two years.

21. During the course of arguments, the specific stand taken by the learned Standing Counsel for Travancore Devaswom Board and the learned Standing Counsel for the Kerala Devaswom Recruitment Board, representing the 9th respondent Departmental Promotion Committee, is that in the matter of promotion to the post of Devaswom Commissioner, the provisions under Rule 28(a)(i) of the KS&SSR have application and as such, the Departmental Promotion Committee rightly found the 8th respondent suitable and qualified for being promoted as Devaswom Commissioner. After referring to the provisions under Rule 18 of the Travancore Devaswom Board Officers' and Servants' Service Rules, which deals with promotion, the learned Standing Counsel for Travancore Devaswom Board would contend that



declaration of satisfactory completion of probation in the cadre of Deputy Commissioner is not necessary for considering the 8th respondent for promotion to the post of Devaswom Commissioner.

22. The learned Senior Counsel for the 8th respondent would contend that the provisions under KS&SSR have no application in the matter of promotion to the post of Devaswom Commissioner. However, as per Rule 18 of the Travancore Devaswom Board Officers' and Servants' Service Rules, 2022 which deals with promotion, declaration of satisfactory completion of probation in the cadre of Deputy Commissioner is not necessary for considering the 8th respondent for promotion to the post of Devaswom Commissioner.

23. On the above aspect, the submission made by the learned counsel for the petitioner is that in view of the provisions under Rule 14(ii) of the Travancore Devaswom Board Officers' and Servants' Service Rules, 2022, the 8th respondent who was promoted as Deputy Devaswom Commissioner only on 14.06.2023, shall be on probation for a total period of one year on duty within a continuous period of two years. The 8th respondent, who was promoted as Deputy Devaswom Commissioner only on 14.06.2023, who is on probation for a total period of one year on duty within a continuous period of two years, cannot be found



eligible by the 9th respondent Departmental Promotion Committee on 24.08.2023 to be included in the select list for promotion to the cadre of Devaswom Commissioner. In view of the provisions under Rule 28(a)(ii) of the KS&SSR, where the Special Rules for a service provide for appointment by promotion to any class or category from a specified class or category of such service, no member shall be eligible for such appointment unless he is a full member or an approved probationer in the class or category so specified.

24. On the applicability of the provisions of the KS&SSR, we notice the law laid down by a learned Single Judge in **Satheesh Kumar v. Travancore Devaswom Board [2009 (2) KLT 828]**, which was rendered in the context of the Rules framed by the Travancore Devaswom Board for fixation of seniority and promotion, as empowered under Travancore-Cochin Hindu Religious Institutions Act, which was brought into force as per Gazette Notification dated 25.12.1979. After referring to the law laid down by the Apex Court in **Nagpur Investment Trust v. Vasantarao [(2002) 7 SCC 657]**, the learned Single Judge held that when there is no incorporation or adoption of the provisions of KS&SSR either expressly or by specific reference in the aforesaid Rules of 1979, the arguments advanced by the petitioner that the principle in Rule 28(bb) of the KS&SSR cannot be adopted



is well founded. Paragraphs 14 to 18 of that decision read thus;

'14. The first question is whether, going by the scheme of the rules provided in Ext.P3, the principles stated in Rule 28(bbb) could be applied. Going by Rule 9(3) of the rules, promotions in a service, or class which depends upon passing of any examination, whether general or departmental, shall ordinarily be made with reference to the condition existing at the time of occurrence of the vacancies and not with reference to those at the time when the question of promotion is taken up. Under Explanation to Rule 28(bbb), the principles in the sub-rule shall apply for the drawal of increments and for promotion not involving change of duties against vacancies remaining unfilled for want of test-qualified persons. As per sub-rule (b) of the said provision, the day following the last day of the whole examination or test in which the person has successfully completed the examination or test by passing one or more subjects, is the relevant criteria. Admittedly, such a provision is not there in Ext.P3 rules. The provisions of KS&SSR have not been incorporated or adopted in Ext.P3. Even by reference the said principles have not been made applicable.

15. Herein, one more thing has to be noticed: Rule 28(bbb) was substituted as per G.O.(P)No.447/1984/GAD dated 10.12.1984, which was published in the Kerala Gazette No.9 dated 26.2.1985. Ext.P3 rules are of the year 1979. As noted already, the Rules of KS&SSR are not incorporated by reference in Ext.P3 rules. Rule 9 of Ext.P3 has not been amended at all, even to adopt the principles engrafted in Rule 28(bbb).

16. A similar question was considered under the Kerala



Education Rules by a Division Bench of this court in **Balakrishnan K.M. v. Assistant Educational Officer, Vadakara [2005 (4) KLT 64]**. While considering the question whether Rule 28(bbb) will apply to aided school teachers, it was held that "Rule 28(bbb) in the KS&SSR had been framed under the Public Service Act, 1961. It is apparently not applicable to the aided school teachers. The service conditions of aided school teachers are as contained in Chapter XIVA KER, which is prescribed in terms of Section 12 of the Kerala Education Act. Therefore, Rule 28(bbb) as such cannot be pressed into their service conditions, as it does not form part of the Chapter XIVA KER"

17. Herein, the rules have been framed as provided under the Travancore Cochin Hindu Religious Institutions Act, 1950 under sub-section (2) of Section 35. The rules are titled as "Rules Regarding Service Conditions of Devaswom Employees." In that view of the matter, as Rule 28(bbb) has not been specifically incorporated in the rules also, there cannot be any applicability of the above rule in the matter of promotion. The provisions of KS&SSR are applicable only to the State and Subordinate Services. The principle of legislation by incorporation by reference is an accepted legislative device. Only if such incorporation is made mention of in the relevant statutory rules, it could be applied. The said position was explained by the Apex Court in **Nagpur Improvement Trust v. Vasantrao and others [(2002) 7 SCC 657]**. In para.31 it was held thus:

"When an earlier Act or certain of its provisions are incorporated by reference into a later Act, the provisions so incorporated become part and parcel of the later Act as if they had been bodily



transposed into it. The incorporation of an earlier Act into a later Act is a legislative device adopted for the sake of convenience in order to avoid verbatim reproduction of the provisions of the earlier Act into the later. But this must be distinguished from a referential legislation which merely contains a reference or citation of the provisions of an earlier statute. In a case where a statute is incorporated, by reference, into a second statute, the repeal of the first statute by a third does not affect the second. The later Act along with the incorporated provisions of the earlier Act constitutes an independent legislation which is not modified or repealed by a modification or repeal of the earlier Act. However, where in a later Act there is a mere reference to an earlier Act, the modification, repeal or amendment of the statute that is referred, will also have an effect on the statute in which it is referred. It is equally well settled that the question whether a former statute is merely referred to or cited in a later statute, or whether it is wholly or partially incorporated therein, is a question of construction.”

18. Admittedly, herein there is no incorporation or adoption of the provisions of KS&SSR either expressly or by specific reference in Ext.P3. Therefore, the argument raised by the petitioners that the said principle cannot be adopted, is well founded.’ (underline supplied)

25. The preparation of select lists for the appointment of



candidates in various posts, except hereditary posts, coming under various Devaswom Boards and Managing Committees are governed by the provisions under Rule 3 of the Kerala Devaswom Recruitment Board Rules, 2015, which is one framed in exercise of the powers under Section 18 of the Kerala Devaswom Recruitment Board Act, 2015. As per sub-rule (1) of Rule 3, the Kerala Devaswom Recruitment Board shall have the power to prepare select lists for the appointment of candidates in various posts except hereditary posts coming under the various Devaswom Boards and Managing Committees. As per sub-rule (2) of Rule 3, in all cases of direct recruitment, subject to the provisions of sub-section (3) of Section 6 of the Kerala Devaswom Recruitment Board Ordinance, 2015, rules of reservation and rotation as provided in Rules 14 to 17 of Part II of KS&SSR *mutatis mutandis* apply. As per the first proviso sub-rule (2) of Rule 3, the posts reserved in the KS&SSR for the non-Hindu backward communities, shall be divided among the Hindu communities as given in that proviso. As per sub-rule (3) of Rule 3, the candidates for appointment of the selection categories and grades of service shall be chosen by the Departmental Promotion Committee constituted by the Board, which shall consist of one member from the Board as Chairman, a member of the Devaswom Board as



member and convenor and a member nominated by the Government.

26. After considering the submissions made at the Bar, with reference to the statutory provisions referred to hereinbefore and also the law laid down in the decisions referred to supra, the conclusion is irresistible that the provisions under Rule 28(a)(i) of KS&SSR have no application in the case of promotion to the post of Devaswom Commissioner in Travancore Devaswom Board.

27. Another issue that requires consideration is whether the provisions under Rule 18 of the Travancore Devaswom Board Officers' and Servants' Service Rules, 2022, will enable the 8th respondent, who is a probationer under Rule 14, in the post of the Deputy Devaswom Commission, to be promoted as Devaswom Commissioner. The submission made by the learned Standing Counsel for Travancore Devaswom Board and also the Senior Counsel for the 8th respondent is that, though Rule 14(ii) provides that every person appointed by promotion to any of the categories shall be on probation for a period of one year on duty within a continuous period of two years, Rule 18 does not stipulate satisfactory completion of probation in the lower category as a condition for promotion to the categories in Rule 4(a)(a) of the Service Rules. Therefore, satisfactory completion of probation in



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the post of Deputy Devaswom Commissioner is not necessary for being considered for inclusion in the select list prepared by the Departmental Promotion Committee for promotion to the cadre of Devaswom Commissioner.

28. The concept of probation in the matter of appointment in a particular service has been dealt with in detail by the Apex Court in **Ajith Singh v. State of Panjab [(1983) 2 SCC 217]**. Relying on the earlier decision in **Parshotam Lal Dhingra v. Union of India [AIR 1958 SC 36]**, the Apex Court held that the concept of probation is to guard against the errors of human judgment in selecting suitable personnel for service. The period of probation gave a sort of locus poenitentiae to the employer to observe the work, ability, efficiency, sincerity and competence of the servant. The law laid down in **Ajith Singh [(1983) 2 SCC 217]** was reiterated by a Three-Judge Bench of the Apex Court in **Rajashtan High Court v. Vedpriya and another [AIR 2020 SC 2811]**. Paragraphs 15 to 17 of that decision read thus;

"15. Similarly, in **Rajesh Kumar Srivastava v. State of Jharkhand [(2011) 4 SCC 447]** it was opined: (SCC p. 449, para 9)

"9. ... A person is placed on probation so as to enable the employer to adjudge his suitability for continuation in the service and also for confirmation in service. There are various criteria for adjudging



suitability of a person to hold the post on permanent basis and by way of confirmation. At that stage and during the period of probation the action and activities of the probationer (appellant) are generally under scrutiny and on the basis of his overall performance a decision is generally taken as to whether his services should be continued and that he should be confirmed, or he should be released from service.”

16. It is thus clear that the entire objective of probation is to provide the employer an opportunity to evaluate the probationer's performance and test his suitability for a particular post. Such an exercise is a necessary part of the process of recruitment, and must not be treated lightly. Written tests and interviews are only attempts to predict a candidate's possibility of success at a particular job. The true test of suitability is actual performance of duties which can only be applied after the candidate joins and starts working.

17. Such an exercise undoubtedly is subjective, therefore, the 1st respondent's contention that confirmation of probationers must be based only on objective material is far-fetched. Although quantitative parameters are ostensibly fair, but they by themselves are imperfect indicators of future performance. Qualitative assessment and a holistic analysis of non-quantifiable factors are indeed necessary. Merely because the 1st respondent's ACRs were consistently marked "Good", it cannot be a ground to bestow him with a right to continue in service.”

29. The provisions contained in Rule 28(a)(i) of the KS&SSR is a specific provision, which provides for an exception in the case of promotion to the cadre of Head of the Department. In



view of the provisions under Section 28(a)(i), satisfactory completion of probation in the lower cadre is not a legal requirement for promotion to the cadre of the Head of the Department. In the absence of any specific provision to that effect in the Travancore Devaswom Board Officers' and Servants' Service Rules, 2022 and in the absence of incorporation or adoption of the provisions under Rule 28(a) of the KS&SSR by the Travancore Devaswom Board in the aforesaid Service Rules, declaration of probation in the post of Deputy Devaswom Commissioner is an essential requirement for the 8th respondent being considered for inclusion in the select list prepared by the 9th respondent Departmental Promotion Committee for promotion to the cadre of Devaswom Commissioner.

30. As already noticed hereinbefore, the 9th respondent Departmental Promotion Committee found the 8th respondent eligible for being promoted as Devaswom Commissioner on the ground that the provision regarding satisfactory completion of probation for a period of six months of duty within a continuous period of one year, as provided in clause (iii) of Rule 14 of the Travancore Devaswom Board Officers' and Servants' Service Rules, 2022, has no application since promotion is to the cadre of the Head of the Department, relying on the provisions under Rule



28(a)(i) of KS&SSR. When there is no incorporation or adoption of the provisions of KS&SSR, either expressly or by specific reference in the said Service Rules, the principles in 28(a)(i) of KS&SSR have no application in the case of promotion to the cadre of Devaswom Commissioner. In that view of the matter, the conclusion is irresistible that the 8th respondent is a person who is ineligible for being considered for inclusion in the select list prepared by the 9th respondent Departmental Promotion Committee for promotion to the cadre of Devaswom Commissioner. It is based on such inclusion in the select list that the 8th respondent was promoted as Devaswom Commissioner, vide Ext.P23 order dated 12.12.2023 of the 3rd respondent Travancore Devaswom Board. The appointment of the 8th respondent as Devaswom Commissioner, vide Ext.P23 order dated 12.12.2023 of the 3rd respondent Travancore Devaswom Board is contrary to the statutory provisions and the 8th respondent has no authority to hold the post of Devaswom Commissioner of Travancore Devaswom Board.

31. As already noticed hereinbefore, the Travancore Devaswom Board Officers' and Servants' Service Rules, 2022, prescribes unblemished service record in the services of the Board for a person to be promoted as Devaswom Commissioner. At the same time, for the post of Secretary and Thiruvabaranam



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Commissioner, the requirement is good service records in the services of the Board. 'Unblemished' means 'not damaged or marked in any way'. See: the Oxford Dictionary of English 8th Edition.

32. Regarding the purchase of land and building for the Thiruvithamcore Devaswom Employees Confederation, W.P.(C)No.40546 of 2023 is pending consideration before this Court. In the affidavit filed in DBP No.101 of 2023 and also that filed in W.P.(C)No.26259 of 2023, the 8th respondent has offered certain explanations on those aspects. The stand taken in the affidavit is that a total sum of Rs.90,00,000 was collected for that purpose, for which the Confederation is maintaining proper accounts, which are audited by a Chartered Accountant. The 8th respondent was the President of the Confederation at the relevant time. The submission made on behalf of the 8th respondent is that the Confederation is prepared to produce those accounts before this Court, in the pending proceedings, i.e., W.P.(C)No.26259 of 2023 and DBP No.101 of 2023, in a sealed cover. On a specific query made by this Court, the learned Senior Counsel for the 8th respondent submitted that those accounts are yet to be submitted before the Board. If that be so, the decision taken by the Board, which is under challenge in W.P.(C)No.40546 of 2023, is one taken



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without verification of such accounts. Since that issue is pending consideration in that writ petition, we do not propose to consider those aspects in these proceedings.

33. Another issue raised in the writ petition is in respect of the liability incurred by the 8th respondent, to the tune of Rs.10,56,660/-, while he was working as an Administrative Officer of Thiruvallam Devaswom. In the counter affidavit filed by the 8th respondent in W.P.(C)No.43139 of 2023, it is stated that the liability as per draft audit note has now been reduced to Rs.54,719.54/-. During the course of arguments, the learned counsel for the petitioner argued that the procedure adopted by the Board while refixing the liability of the 8th respondent, at such a reduced sum, is contrary to the prescribed procedure to be followed by the Board. The learned counsel would place reliance on Ext.P8 communication dated 10.05.2023 issued by the Secretary of the Board to the Finance and Accounts Officer. On the other hand, the learned Senior Counsel for the 8th respondent would contend that the liability initially shown in the draft audit note, which was not prepared as per the accepted procedure, was rectified by an exercise that has been undertaken by the Board, which culminated in an order passed by the Devaswom Commissioner, as evidenced by Ext.R8(e) proceedings. We do not



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propose to consider the rival contentions on this aspect, in these proceedings, in view of the pendency of W.P.(C)No.26259 of 2023 and also the order of stay granted by a learned Single Judge in W.P.(C)No.19412 of 2022 filed by respondents 8 to 11 in W.P.(C)No.26259 of 2023. We also notice the statutory provisions, which govern the audit of accounts of the Travancore Devaswom Board, which is done by the State Audit Department. The Deputy Director, State Audit Department, Travancore Devaswom Board Audit is a party to W.P.(C)No.26259 of 2023 and all those aspects will have to be decided in that writ petition. Therefore, the legal and factual contentions raised by both sides are left open to be raised in those proceedings. The files handed over by the learned Standing Counsel for Travancore Devaswom Board relating to Ext.R8(e) proceedings are returned.

34. As already held hereinbefore, in view of the law laid down in **Satheeshkumar v. Travancore Devaswom Board [2009 (2) KLT 828]**, which was one rendered after taking note of the law laid down by the Apex Court in **Nagpur Investment Trust v. Vasantarao [(2002) 7 SCC 657]**, when there is no incorporation or adoption of the provisions of KS&SSR either expressly or by specific reference in the Travancore Devaswom Board Officers' and Servants' Service Rules, 2022, the principle in



Rule 28(a)(i) of KS&SSR has no application in the preparation of select list by the 9th respondent Departmental Promotion Committee for promotion to the post of Devaswom Commissioner. In the absence of incorporation or adoption of the provisions of Rule 28(a) of KS&SSR by the Travancore Devaswom Board in the Service Rules of 2022, declaration of probation in the post of Deputy Devaswom Commissioner is an essential requirement for the 8th respondent being considered for inclusion in the select list prepared by the 9th respondent Departmental Promotion Committee for promotion to the cadre of Devaswom Commissioner. Therefore, the appointment of the 8th respondent as Devaswom Commissioner, vide Ext.P23 order dated 12.12.2023 of the 3rd respondent Travancore Devaswom Board is contrary to the statutory provisions and the 8th respondent has no authority to hold the post of Devaswom Commissioner of Travancore Devaswom Board.

Accordingly, this writ petition is disposed of by issuing a writ of quo warranto declaring that the appointment of the 8th respondent as Devaswom Commissioner in the 3rd respondent Travancore Devaswom Board is contrary to the statutory provisions and that he has no authority to hold the post of Devaswom Commissioner. As a consequence, Ext.P23 order dated



W.P.(C)No.43139 of 2023

12.12.2023 is set aside and it is declared that the 8th respondent will not be entitled to get any service benefits including monetary benefits on account of the promotion granted on 12.12.2023 to the post of Devaswom Commissioner.

Sd/-

ANIL K. NARENDRAN, JUDGE

Sd/-

G. GIRISH, JUDGE

Vgd/AV/bkn/min



APPENDIX OF WP(C) 43139/2023

PETITIONER EXHIBITS

- Exhibit P1 TRUE COPY OF ORDER VIDE ROC.NO.5600/23/EST-1(I) DATED 13.06.2023 ISSUED BY TRAVANCORE DEVASWOM BOARD
- Exhibit P2 TRUE COPY OF THE RELEVANT PORTION OF THE AUDIT NOTE OF THIRUVALLAM DEVASWOM STATING OBTAINED UNDER RIGHT TO INFORMATION ACT SHOWING THE LIABILITIES OF RS.10,56,650.54/- AGAINST SAID C.N.RAMAN
- Exhibit P3 TRUE COPY OF THE REPORT OF THE POLICE SUB INSPECTOR, VIGILANCE WING, TRAVANCORE DEVASWOM BOARD (PTN NO.150/19/TDB/VIG) DATED 10.05.2020
- Exhibit P4 TRUE COPY OF THE JUDGMENT OF THE HON'BLE HIGH COURT OF KERALA IN W.P. (C) NO.31159 OF 2022 DATED 1.8.2023
- Exhibit P5 TRUE COPY OF THE CIRCULAR VIDE ROC. NO.966/04/OAD DATED 02.03.2004 ISSUED BY THE 4TH RESPONDENT
- Exhibit P6 TRUE COPY OF THE ORDER OF THE TRAVANCORE DEVASWOM BOARD DATED 15.02.2021
- Exhibit P7 TRUE COPY OF THE RELEVANT PORTION OF RE-FIXED LIABILITY STATEMENT AGAINST ONE RAMAN BY THE FINANCE & ACCOUNTS OFFICER
- Exhibit P8 TRUE COPY OF THE ROC.NO.11/22/EST-I DATED 10.05.2023 ISSUED BY SECRETARY, TRAVANCORE DEVASWOM BOARD
- Exhibit P9 TRUE COPY OF THE CIRCULAR ISSUED BY THE SECRETARY, TRAVANCORE DEVASWOM BOARD VIDE ROC.NO.296/14/HCA/EST-I DATED 16.01.2015
- Exhibit P10 TRUE COPY OF THE AFFIDAVIT FILED BY THE DEPUTY SUPERINTENDENT OF POLICE, VIGILANCE AND ANTICORRUPTION BUREAU, THIRUVANANTHAPURAM IN W.P. (C) NO.26259 OF 2023 DATED 27.9.2023
- Exhibit P11 TRUE COPY OF THE ORDER OF THE SECRETARY, TRAVANCORE DEVASWOM BOARD VIDE ROC NO.245/09/EST-1/DPC DATED 25.08.2023
- Exhibit P12 TRUE COPY OF THE RELEVANT PORTION OF RULE 14 OF TRAVANCORE DEVASWOM BOARD OFFICERS' AND SERVANTS' SERVICE RULES.2022
- Exhibit P13 TRUE COPY OF THE MINUTES OF THE DEPARTMENT PROMOTION COMMITTEE HELD ON 24.08.2023



WHICH HAS BEEN OBTAINED UNDER RIGHT TO
INFORMATION ACT

- Exhibit P14 TRUE COPY OF THE JUDGMENT DATED 14.03.2019
IN R.P. NO.243 OF 2019 IN DBP. NO. 11 OF
2017 OF THE HON'BLE HIGH COURT OF KERALA
- Exhibit P15 TRUE COPY OF THE ORDER OF THE HON'BLE
SUPREME COURT OF INDIA DATED 08.04.2019 IN
SPECIAL LEAVE TO APPEAL (C) NO(S). 8254-
8255/2019
- Exhibit P16 TRUE COPY OF THE ORDER OF THE HON'BLE
SUPREME COURT OF INDIA DATED 09.12.2019 IN
SPECIAL LEAVE TO APPEAL (C) NO(S). 8254-
8255/2019
- Exhibit P17 TRUE COPY OF ORDER DATED 02.03.2021 IN
SPECIAL LEAVE TO APPEAL (C) NO(S). 8254-
8255/2019 OF THE HON'BLE SUPREME COURT OF
INDIA
- Exhibit P18 TRUE COPY OF THE I.A. NO. 254326 OF 2023 IN
SPECIAL LEAVE TO APPEAL (C) NO(S). 8254-
8255/2019 BEFORE THE HON'BLE SUPREME COURT
OF INDIA (WITHOUT ANNEXURES)
- Exhibit P19 TRUE COPY OF THE I.A. NO. 246877 OF 2023
DATED 10.11.2023 IN SPECIAL LEAVE TO APPEAL
(C) NO(S). 8254-8255/2019 BEFORE THE
HON'BLE SUPREME COURT OF INDIA FILED BY THE
TRAVANCORE DEVASWOM BOARD (WITHOUT
ANNEXURES)
- Exhibit P20 TRUE COPY OF THE I.A. NO.253764 OF 2023
DATED 05.12.2023 IN SPECIAL LEAVE TO APPEAL
(C) NO(S). 8254-8255/2019 BEFORE THE
HON'BLE SUPREME COURT OF INDIA (WITHOUT
ANNEXURES)
- Exhibit P21 TRUE COPY OF THE ORDER DATED 08.12.2023 IN
SPECIAL LEAVE TO APPEAL (C) NO(S). 8254-
8255/2019 OF THE HON'BLE SUPREME COURT OF
INDIA
- Exhibit P22 TRUE COPY OF ORDER VIDE ROC. NO.
01/2018/EST-1(II) DATED 12.12.2023 OF THE
SECRETARY, TRAVANCORE DEVASWOM BOARD
- Exhibit P23 TRUE COPY OF THE ROC.NO.01/2018/EST-1(I)
DATED 12.12.2023. TRUE COPY OF THE ORDER
VIDE ROC.NO.01/2018/EST-1(I) DATED
12.12.2023 OF THE SECRETARY, TRAVANCORE
DEVASWOM BOARD

RESPONDENT EXHIBITS



W.P.(C)No.43139 of 2023

- EXHIBIT R8 (a)** True copy of minutes of the meeting of the Departmental Promotion Committee dated 7.6.2023.
- EXHIBIT R8 (b)** True copy of explanation dated 10.10.2022 submitted by the 8th Respondent before the Finance and Accounts Officer, Travancore Devaswom Board
- EXHIBIT R8 (c)** True copy of order No. ROC No.10416/12/Suit/NS dated 4.1.2023 issued by Travancore Devaswom Board.
- EXHIBIT R8 (d)** True copy of Order No. ROC No. 11/22/Est-I dated 03.04.2023 issued by Travancore Devaswom Board.
- EXHIBIT R8 (e)** True copy of order No. ROC.14291/22/OAD dated 11.7.2023 issued by Devaswom Commissioner, Travancore Devaswom Board