



2023/KER/54485

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

&

THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR

THURSDAY, THE 14TH DAY OF SEPTEMBER 2023 / 23TH BHADRA, 1945

WP(C) NO.19383 OF 2023

PETITIONER:

HARIHARAN.P

AGED 47 YEARS

S/O.G.K.THULASEEDASAN, KOOLAKATH HOUSE,
"VIPANJIKA" PUTHUSSERY P.O, PALAKKAD DISTRICT.,
PIN - 678623

BY ADVS.

JACOB SEBASTIAN

WINSTON K.V

ANU JACOB

DIVYA R. NAIR

RESPONDENTS :

- 1 MALABAR DEVASWOM BOARD
REPRESENTED BY ITS SECRETARY, HOUSEFED COMPLEX,
ERANHIPPALAM P.O, KOZHIKODE DISTRICT, PIN - 673006
- 2 THE COMMISSIONER
MALABAR DEVASWOM BOARD, OFFICE OF THE
COMMISSIONER, HOUSEFED COMPLEX, ERANHIPPALAM P.O,
KOZHIKODE DISTRICT., PIN - 673006
- 3 THE ASSISTANT COMMISSIONER
MALABAR DEVASWOM BOARD, OFFICE OF THE ASSISTANT
COMMISSIONER, CIVIL STATION P.O,
PALAKKAD DISTRICT., PIN - 678001
- 4 THE EXECUTIVE OFFICER (MANAGER)



W.P.(C) No.19383 of 2023

SREE KURUMBA BHAGAVATHI DEVASWOM, P.O
PUDUSSERY, PALAKKAD., PIN - 678623

5 MOOTHEDATH SATHISH @ SATHISHKUMAR M
S/O. NARAYANANKUTTY, HEREDITARY TRUSTEE SREE
KURUMBA BHAGAVATHI DEVASWOM, MOOTHEDATH HOUSE,
PUTHUSSERY, PALAKKAD DISTRICT., PIN - 678623

BY ADVS.

BEJOY JOSEPH P.J. .

MAHESH V RAMAKRISHNAN

BALU TOM(K/498/2014)

GOVIND G. NAIR(K/001627/2018)

BONNY BENNY(K/000234/2017)

M.RAMESH CHANDER (SR.) (R-284)

SR. GP SRI. S. RAJMOHAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR FINAL
HEARING ON 16.08.2023, THE COURT ON 14.09.2023 DELIVERED
THE FOLLOWING:

**J U D G M E N T**

P.G.Ajithkumar, J.

Sree Kurumba Bhagavathi Temple is a religious institution under the supervisory control of the Malabar Devaswom Board. It is administered by a Board of Trustees to which the 5th respondent is a hereditary trustee. He was appointed to the post of 'Kaval cum Kathanavedikkaran' in the temple. In the rank list published after the selection process, Ext.P3 the 5th respondent came first and the petitioner came second. The 5th respondent being a hereditary trustee and the board of trustees is the appointing authority, he is ineligible to be appointed as an employee in the temple. The petitioner submitted Ext.P6 complaint pointing out the said illegality before the 2nd respondent. But, no action on the said complaint was taken and hence the petitioner has filed this writ petition seeking the following reliefs:

- (i) Declare that the selection of the 5th respondent in the post of 'Kaval cum Kathanavedikkaran' in the Sree Kurumba Bhagavathi Devaswom in pursuance of



W.P.(C) No.19383 of 2023

Exhibit-P1 notification is bad in law;

(ii) Declare that the 5th Respondent being a hereditary trustee Kurumba Bhagavathi Devaswom cannot be considered for employment in the Sree Kurumba Bhagavathi Devaswom;

(iii) Issue a writ in the nature of mandamus commanding respondents 2 to 4 to appoint the Petitioner in the post of 'Kaval cum Kathanavedikkaran' in the Sree Kurumba Bhagavathi Devaswom in pursuance of Exhibit-P1 notification.

2. On 21.06.2023, this Court after hearing the submissions of the learned counsel on either side including the learned Standing Counsel for the Malabar Devaswom Board passed an interim order directing the 3rd respondent Assistant Commissioner, Malabar Devaswom Board, Palakkad not to proceed further on the process of approval of the appointment of the 5th respondent as 'Kaval cum Kathanavedikkaran' in Sree Kurumba Bhagavathi Temple for a period of one month. That interim order was extended subsequently.



W.P.(C) No.19383 of 2023

3. The 4th respondent filed a counter affidavit wherein the allegations about the bias in making appointment of the 5th respondent as 'Kaval cum Kathanavedikkaran' in the temple are denied. Paragraph nos.5 to 11 in the counter affidavit read as follows:

"5. It was on 28.05.2022 that the board of trustees decided to make permanent appointment to various posts, which were lying vacant. The photostat copy of the minutes of the board meeting dated 28.05.2022 is produced herewith and marked as Exhibit R4(a). From Ext.R4(a) it could be seen that four trustees had participated in the meeting. The 5th respondent, though a trustee of the Devaswom, had attended the trustee board meeting on 19.01.2022 and from the records in the Devaswom, it is seen that he has not participated in any of the meetings thereafter. The hereditary trustees are all from six families including the particular family known as 'Kulakkathu House'. From Ext.P6 complaint made by the writ petitioner and from the address shown in the writ petition it can be seen that the writ petitioner also hails from the same Kulakkathu House but it does not come under the family having the right of trusteeship.



W.P.(C) No.19383 of 2023

6. Based on an application given on 18.10.2022 by the Manager of the Devaswom, an interview board was constituted by the 3rd respondent. The Interview board consists of Area Committee Chairman, Member of the Area Committee, Devaswom Manager, Trustee Board Chairman and a member of the Trustee Board. Photostat copy of the order No.A6-4132/2022/M.D.B. issued by the 3rd respondent dated 04.11.2022 is produced herewith and marked as Exhibit R4(b).

7. As respectfully submitted earlier the 5th respondent had not participated in any of the board meetings, as is revealed from the records from 19.01.2022. From the records maintained in the Devaswom, it is seen that the 5th respondent had given a letter to the Manager through the Chairman of the temple stating that he is not interested in continuing as a member of the trustee board. This was communicated to the 3rd respondent, Assistant Commissioner of the board. The 3rd respondent issued a communication to the manager of the Devaswom acknowledging the receipt of the said letter also directing the manager to give details regarding the appointment of a fit person or regarding the handing over of the charge to the



W.P.(C) No.19383 of 2023

next proper person of the family of trustees. True copy of the communication issued by the 3rd respondent dated 28.11.2022 is produced herewith and marked as Exhibit R4(c). As could be seen from Ext.P5, communication dated 17.12.2022 issued by the manager, a meeting of the board of trustees was sought to be held on 23.12.2022 at 11.30 AM. One of the agendas in the said meeting was to publish the rank list with respect to permanent employees who were found to be eligible pursuant to Ext.P1 notification. Though the said notice is also addressed to the 5th respondent, he has neither accepted the said notice nor as he participated in the meeting held on 23.12.2022. As there was no sufficient quorum for the meeting of the board of trustees on 23.12.2022, the meeting could not take place. It was decided to have an emergent meeting of the board of trustees. True copy of the resolution dated 23.12.2022 is produced herewith and marked as Exhibit R4(d). Thereafter the meeting was held on 24.12.2022 and there was sufficient quorum for the meeting. It was decided in the said meeting that the rank list of the successful candidates to the various posts can be published after the annual temple festival is over. True copy of the minutes of



W.P.(C) No.19383 of 2023

the trustee board meeting held on 24.12.2022 is produced herewith and marked as Exhibit R4(e).

8. It is respectfully submitted that thereafter the rank list was published on 30.03.2023.

9. Pursuant to the rank list published, the 5th respondent was given an order of appointment. True copy of the order of appointment issued to 5th respondent dated 08.06.2023 is produced herewith and marked as Exhibit R4(f). Pursuant to the same, the 5th respondent joined duty and took charge on 10.06.2023. True copy of the letter dated 10.06.2023 evidencing the taking of charge by the 5th respondent is produced herewith and marked as Exhibit R4(g).

10. At this juncture it may be relevant to point before this Honourable Court that though on 26.10.2022 the 5th respondent had given a letter in writing that he does not want to continue as a member of the trustee board, he had again given a letter to the manager on 25.01.2023 resigning from the post of the trustee board. True copy of the letter given by 5th respondent to the manager dated 25.01.2023 is produced herewith and marked as Exhibit R4(h). This letter was communicated to the Deputy Commissioner who passed an order on



W.P.(C) No.19383 of 2023

03.06.2023 accepting the resignation. True copy of the order No.A3-215/2023/MDB(KDIS) dated 03.06.2023 issued by the Deputy Commissioner is produced herewith and marked as Exhibit R4(i). In this letter the Deputy Commissioner makes mention of the communication dated 26.10.2022.

11. It is respectfully submitted that the Commissioner, the 1st respondent on receipt of Ext.P6 complaint, had sought for remarks from this respondent. To the same this respondent had given a reply on 10.06.2023. True copy of the reply given by this respondent dated 10.06.2023 is produced herewith and marked as Exhibit R4(j). In fact the complaint with respect to certain other appointments also and this respondent had answered all the allegations. This respondent understands that the matter is now pending consideration before the 2nd respondent. It is also respectfully submitted that there was willful delay in publishing the rank list is not correct. The delay in publishing the rank list was due to the fact that the trustee board meeting had decided to have the rank list published after the annual festival."

4. The 5th respondent filed counter affidavit justifying



W.P.(C) No.19383 of 2023

his appointment. He contended that he happened to be a hereditary trustee is not a disqualification for applying and getting appointment as an employee in the Temple. He also highlighted his pressing need of getting the job of 'Kaval cum Kathanavedikkaran' in the temple. Paragraph nos.6 to 8 in the counter affidavit read as follows:

“6. I respectfully submit that the sole basis on which the challenge against the appointment of this Respondent is raised in the above Writ Petition is that this Respondent is a hereditary trustee of the temple. The said contention is incorrect and hence denied. As on the date on which this Respondent has been appointed, as stated above, this Respondent was not a hereditary trustee of the temple. It is true that this Respondent belonged to one among the 6 hereditary trustee families of Sree Kurumba Bhagavathi Devaswom. The 6 hereditary trustee families are 1) "Madathil", 2) "Kollaykkal", 3) "Ullattil", 4) Kulakkath", 5) Moothedath" and 6) "Paraykkal". The Petitioner is a member of "Moothedath" Tarward. The senior most male member of the said Family, Sri.Parameswaran Nair was the hereditary trustee representing the said



W.P.(C) No.19383 of 2023

Family. After his demise on 22-09-2020, there was no other senior male member from the family to act as the hereditary trustee representing the family. This Respondent had two brothers, who have died. It was in such circumstances, the family recommended the name of this Respondent as the hereditary trustee of the temple. Accordingly, a formal application was submitted and the same was approved by the Deputy Commissioner of the Malabar Devaswom Board as per Order No.A3-457/2021/MDB(KDis) dated 04-03-2022, a true copy of which is produced herewith and marked as Exhibit R5(c). Accordingly this Respondent acted as a hereditary trustee of the temple for some time till 19-01-2022. Thereafter, this Respondent could not attend the meetings of the Board of trustees for taking care of his mother who is bedridden and also for doing some job on daily wage basis for the livelihood of his family. The family of this Respondent is financially a very poor family and this Respondent is the only breadwinner of the family. This Respondent is having 4 Cents of landed property and this Respondent had started construction of a house in it in the year 2018, however this Respondent could not complete the



construction of the house due to lack of money. This Respondent and his family along with his mother are residing in the partly constructed house. The only income for the family of this Respondent, which is consisting of his wife, children and aged mother, was the income being received by the Respondent from his daily kooli work and he had to attend the work throughout the day including Sundays. It was in such circumstances, this Respondent could not participate in the meetings of the trustee board continuously or in any manner take part in the administration of the temple as one among the 6 hereditary trustees. It was in the meanwhile Ext.P1 notification was issued by the 4th Respondent inviting applications for appointment to various posts in the temple. Since this Respondent was badly in need of a job especially for the bad financial situation of his family, and since he was fully eligible as per Ext.P1 notification to apply for the post of 'Kaval cum Kathanavedikkaran', this Respondent submitted application for the said post. Later, since the name of this Respondent was continuing on record as the hereditary trustee of the temple, though he was not acting as such from January 2022 onwards, this Respondent submitted



W.P.(C) No.19383 of 2023

an application dated 26-10-2022 intimating the 4th Respondent that this Respondent cannot continue to be an inactive trustee and to take appropriate steps to remove this Respondent and to substitute some other member of the trustee family as a hereditary trustee. True copy of the letter of resignation dated 26-10-2022 submitted by the 5th Respondent to the 4th Respondent is produced herewith and marked as Exhibit R5(d). Though the letter of resignation is dated 26-10-2022, this Respondent was completely inactive as a trustee from January 2022 onwards. On receipt of the said letter from this Respondent, the 4th Respondent forwarded the same appropriately to the Deputy Commissioner, Malabar Devaswom, who as per order No.A3-215/2023.MDB(KDis) dated 03-06-2023 approved the resignation of this Respondent as the hereditary trustee of the temple, a true copy of which is produced herewith and marked as Exhibit R5(e).

7. I respectfully submit that as already stated above, this Respondent was not acting as a hereditary trustee from January 2022 onwards for various personal reasons narrated above. The last meeting of the Board of trustees in which this Respondent participated was on 19-01-2022.



Thereafter this Respondent could not participate in the meeting of the board of trustees. This Respondent was not a participant in the meeting of the board of trustees dated 28-05-2022 in which a decision was taken to issue Ext.P1 notification for recruitment. This Respondent was not in any manner connected with any of the proceedings pursuant to Ext.P1 since he was not in any manner taking part in the administration of the temple. In the meanwhile, this Respondent resigned from the post of hereditary trustee as per letter dated 26-10-2022. The mere reason that the respondent was representing his family as a hereditary trustee of the temple by itself is not a disqualification for this Respondent to submit application seeking appointment as per Ext.P1 notification. The resignation of this Respondent has been accepted by the competent authority under the Malabar Devaswom Board, as stated above, and this Respondent ceased to be a hereditary trustee before he has been appointed to the post of "Kaval cum Kathanavedikkaran". No relative of this Respondent is in the trustee board during the process of selection. Apart from this, the recruitment was done by a totally independent



committee separately constituted by the Commissioner, Malabar Devaswom Board and not by the board of trustees of the temple. Therefore, there was absolutely no legal impediment for this Respondent to join as an employee of the temple. Apart from this, there is no legal bar as per any of the provisions of the Madras Hindu Religious and Charitable Endowments Act, 1951. Apart from this there is no such disqualification stated in Ext.P1 notification also. Therefore the contentions raised by the Petitioner are frivolous and will not sustain under law.

8. I respectfully submit that the contention in the writ petition that this Respondent being a trustee of the temple is directly concerned with the administration of the temple, regularly involves with everybody who is concerned with the administration of the temple as well as the statutory authorities and that the members of the interview Board are the close acquaintances of the 5th Respondent etc are incorrect and hence denied. The further contention that this Respondent could not have been applied pursuant to Ext.P1 is also incorrect and hence denied. The further contention that the selection process is farce or mockery etc are



W.P.(C) No.19383 of 2023

fallacious.”

5. Heard the learned counsel appearing for the petitioner, the learned Standing Counsel for Malabar Devaswom Board, the learned counsel appearing for the 4th respondent Executive Officer of the Temple and the learned counsel appearing for the 5th respondent.

6. Ext.P1 is the Notification inviting applications for appointment of employees in Kurumba Bhagavathi Devaswom, Pudussery, Palakkad. One among the notified posts is 'Kaval cum Kathanavedikkaran'. It is a permanent non hereditary post. There were only two applicants; the petitioner and the 5th respondent. A practical test and interview were held on 01.12.2022. Based on the said practical test and interview, a rank list was published on 31.03.2022 which is Ext.P3. Since the 5th respondent came first, he was appointed and accordingly he joined duty on 10.06.2023. The order of his appointment is Ext.R4(f).

7. The allegation of the petitioner is that the 5th respondent being a hereditary trustee of the temple, he is



W.P.(C) No.19383 of 2023

ineligible to apply to the post of an employee in the same temple and therefore his appointment is illegal. The fact that the 5th respondent was a hereditary trustee of the temple, is not in dispute. His contention is that on 26.10.2022, he submitted his resignation as a hereditary trustee and therefore no vice can be attributed to his appointment. The learned counsel appearing for the 5th respondent would submit that albeit being a hereditary trustee, his living conditions were so pathetic that he was in dire need of employment. Therefore he resigned as the hereditary trustee and submitted an application for appointment as a 'Kaval cum Kathanavedikkaran' in the temple. It is also submitted that from January 2022 onwards, the 5th respondent has not been attending any meeting of the board of trustees. Thus it is contended that the 5th respondent did not have any role or participation in the process of selection and appointment of employees in the temple. The further submission of the learned counsel is that there is no provision in the Madras Hindu Religious and Charitable Endowments Act, 1951



W.P.(C) No.19383 of 2023

prohibiting appointment of a hereditary trustee or a member in the family having hereditary right of trusteeship as an employee in the temple and hence the appointment of the 5th respondent does not suffer from any legal infirmity.

8. The learned counsel appearing for the 4th respondent also made submissions in the same lines. The present Executive Officer who sworn to the counter affidavit, furnished the details on the basis of the records since he took charge only on 13.12.2022. The learned counsel would submit that the 5th respondent did not attend any meeting of the board of trustees after 19.01.2022. Therefore, it is contended, that the resignation of the 5th respondent and its acceptance, though were subsequent, he was not part of the recruitment body. The learned Standing Counsel for the Malabar Devaswom Board would submit that from the information gathered following Ext.P6 complaint, the 2nd respondent was convinced of the aforesaid facts, and that the appointment of the 5th respondent cannot be said to be illegal.

9. The learned counsel appearing for the petitioner



W.P.(C) No.19383 of 2023

would urge that appointment of the 5th respondent is like one appointing himself as his employee, which is violative of the basic canons of the principles of natural justice. The learned counsel pointed out that going by the provisions of the HR&CE Act, the board of trustees of the temple of a controlled institution is the appointing authority and the present contention that the 5th respondent has not participate in any of the meeting of the board or its activities since January 2022 is only a technical excuse which cannot be countenanced to legalise the appointment of the 5th respondent.

10. Section 6(9) of the HR&CE Act defines hereditary trustee as a trustee of a religious institution, succession to whose office devolves by hereditary right or is regulated by usage or is specifically provided for by the founder, so long as such scheme of succession is in force. Section 6 (19) defines a trustee as the person or body in which the administration of a religious institution is vested. Section 48 (1) of the HR and CE Act envisages that vacancies in a religious institution, whether permanent or temporary, shall be filled by the trustee, where



W.P.(C) No.19383 of 2023

the office or service is not hereditary. Therefore, it is the absolute prerogative of the trustee, as the case may be, the board of trustees to make appointments of employees in a religious institution. A hereditary trustee is not appointed, but the trusteeship is befallen by an automatic process of succession. In Sree Kurumba Bhagavathi Temple, senior members from six families constitute the trustee board. The 5th respondent became a hereditary trustee of the temple in such a process. It follows that the 5th respondent is a member of the board which is empowered to make appointments in Sree Kurumba Bhagavathi Devaswom/Temple.

11. Indisputably, a resignation was submitted by the 5th respondent on 26.10.2022 and his resignation was formally accepted by the Malabar Devaswom Board on 03.06.2023 as per Ext.R5(e). It is true that the letter of appointment was issued to the 5th respondent only on 08.06.2023 which was after his resignation. Ext.R4(f) is the order of appointment. Pursuant to that, the 5th respondent joined duty on 10.06.2023. The respondents tried to justify the appointment



W.P.(C) No.19383 of 2023

saying that before his appointment, the 5th respondent resigned as a hereditary trustee and he had not been participating in the activities of the board of trustees since 19.01.2022, whereas the decision to initiate steps for appointment were initiated only on 28.05.2022, pursuant to a decision taken on that day by the board of trustees. It is pointed out that in none of the meetings of the board of trustees after 19.01.2022, the 5th respondent attended.

12. We are afraid, the justifications offered by the respondents help to save the appointment of the 5th respondent. He continued to be a hereditary trustee, at any rate till 26.10.2022 on which date, he submitted his resignation. Although it was formally accepted only on 03.06.2023, it can be said that on acceptance of resignation, it took effect from the date on which the letter of resignation was submitted.

13. Ext.P5 is a copy of the notice regarding meeting of the board of trustees scheduled to be held on 23.12.2022. This notice has been given to the 5th respondent also. The



W.P.(C) No.19383 of 2023

petitioner did not produce any document to show that he attended the said meeting or other meetings immediately before or after the said meeting on 23.12.2022. But it remains that the 5th respondent continued to be a hereditary trustee and therefore a member of the trustee board which was to make the appointment. Simply for the reason that there is no document evidencing his physical participation in the meetings of the board of trustees, it cannot be taken that he did not have any role in the process of appointment. Legally, he continued to be a part of the board of trustees. In such circumstances, we are of the view that the 5th respondent also was a constituent party to the body that made the appointment.

14. 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/shebaitis/employees. Instances are many where persons entrusted with the duty of



W.P.(C) No.19383 of 2023

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.

15. 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



W.P.(C) No.19383 of 2023

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 parents patriae will also apply in exercising the jurisdiction.

16. 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 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.

17. A trustee cannot therefore occasion any loss to the Trust and it is his duty to act in good faith in all matters of the Deity and the Temple.

18. The **Apex Court in Dinakaran P. D. (Justice) v.**



W.P.(C) No.19383 of 2023

Hon'ble Judges Inquiry Committee and others [AIR 2011 SC 3711] examined the contours of personal bias. It was held that the first of the two principles of natural justice recognized by the traditional English Law, is *Nemo debet esse iudex in propria causa*. This principle consists of the rule against bias or interest and is based on three maxims: (i) No man shall be a judge in his own cause; (ii) Justice should not only be done, but manifestly and undoubtedly be seen to be done; and (iii) Judges, like Caesar's wife should be above suspicion. The first requirement of natural justice is that the Judge should be impartial and neutral and must be free from bias. He is supposed to be indifferent to the parties to the controversy. He cannot act as Judge of a cause in which he himself has some interest either pecuniary or otherwise as it affords the strongest proof against neutrality. He must be in a position to act judicially and to decide the matter objectively. A Judge must be of sterner stuff. His mental equipoise must always remain firm and undetected. He should not allow his personal prejudice to go into the decision - making. The object is not merely that the scales be held even; it is also that they may not appear to be inclined. If the Judge is



W.P.(C) No.19383 of 2023

subject to bias in favour of or against either party to the dispute or is in a position that a bias can be assumed, he is disqualified to act as a Judge, and the proceedings will be vitiated. This rule applies to the judicial and administrative authorities required to act judicially or quasi - judicially.

19. In **Delhi Financial Corpn. and Another v. Rajiv Anand and Others [(2004) 11 SCC 625]** the Apex Court explained as to when can it be said there is personal bias. It was held that mere appointment of an officer of the corporation does not by itself bring into play the doctrine that "no man can be a judge in his own cause". For that doctrine to come into play it must be shown that the officer concerned has a personal bias or a personal interest or has personally acted in the matter concerned and / or has already taken a decision one way or the other which he may be interested in supporting it.

20. On an anxious consideration of the proceedings that had culminated in the appointment of the 5th respondent as 'Kaval cum Kathanavedikkaran' in Sree Kurumba Bhagavathi Temple, it is certainly evident that his appointment is vitiated in the light of the law laid down in the



W.P.(C) No.19383 of 2023

aforesaid decisions. It may be a fact that the 5th respondent, in his living circumstances, may be in dire need of an employment. He therefore might have preferred the employment as 'Kaval cum Kathanavedikkaran' to the post of hereditary trustee of the temple, which is an honorary post and not a remunerative one. As held in the aforesaid decisions, justice not only be done, but undoubtedly and manifestly appears to be done also. The 5th respondent while continuing as a hereditary trustee got appointed as an employee in the same temple. No further deliberation is required to conclude that the bias is apparent and the same vitiated the appointment. Therefore the appointment of the 5th respondent as 'Kaval cum Kathanavedikkaran' of the temple is liable to be set aside.

21. The further question is whether a hereditary trustee or a member of the family having hereditary right of trusteeship is permanently barred from being appointed as an employee in the temple. As pointed out above, a hereditary trustee is not appointed but befallen by an automatic process



W.P.(C) No.19383 of 2023

of succession, unless the scheme for administration of the temple says otherwise. In the case of a hereditary trustee, selection of which is by succession, there is a chance for every member of the family to become a hereditary trustee. Can, on account of such a chance which is not certain, a member of the family be denied the right to apply for an employment in the temple. Further, can a hereditary trustee abandon that right and apply for an employment in the temple?

22. From the contentions of the 5th respondent, a social reality emerges. For many, hereditary trusteeship is just an ornamental post, and often then not it would not save one from even starvation. In such cases, it may be totally unjust and inappropriate to deny one from applying for an employment in a temple for the reason that he is or may have a chance on a remote future to become a hereditary trustee of the temple. No doubt, if there is a provision in the statute denying such a right, that will hold the field. There is no such provision in the HR&CE Act. In such circumstances, if a hereditary trustee abandons his right to continue, cannot be



W.P.(C) No.19383 of 2023

denied his right to apply for an employment in the temple. Similarly, if a member of the family having hereditary right of trusteeship relinquishes his claim to become a trustee cannot also be denied the right to apply for an employment in the temple.

23. Such a right can be a availed subject only to strict conditions. If a trustee of a temple wants to apply for an employment in the temple or group of temples, he must vacate the post of hereditary trustee before initiating steps for appointment of the post, that is to say, before the date on which the board decides to notify the recruitment. In the case of a member of a family having hereditary right of trusteeship, he should have relinquished his right to become a trustee before submission of his application for the employment. In case, a trustee who abandons/resigns or a member of the family having hereditary right of trusteeship applies, after his relinquishing his right to succeed that right, for an employment in the same temple, the whole process of recruitment shall be done by a totally independent body



W.P.(C) No.19383 of 2023

constituted by the Malabar Devaswom Board. Once the trustee/board of trustees receives such an application and the application satisfies the aforesaid conditions, the trustee board shall report the matter to the Assistant Commissioner concerned and the whole process of recruitment shall be done by an independent body under the orders of the Commissioner/Deputy Commissioner/Assistant Commissioner of the Malabar Devaswom Board. The process of appointment shall be transparent so that there shall not be any room for a complaint.

This writ petition is allowed accordingly. Appointment of the 5th respondent as 'Kaval cum Kathanavedikkarar' in Sree Kurumba Bhagavathi Temple as per Ext.R4(f) order dated 08.06.2023 is set aside. Ext.P4 rank list itself is set aside. The 4th respondent may initiate a fresh process for appointment starting from inviting applications of the prospective candidates and make the appointment following the procedure laid down herein before. It is made clear that there shall not be any bar for the 5th respondent to make application to the



2023/KER/54485

31

W.P.(C) No.19383 of 2023

post of 'Kaval cum Kathanavedikkaran' provided his resignation as the hereditary trustee is in force.

Sd/-

ANIL K. NARENDRAN, JUDGE

Sd/-

P.G. AJITHKUMAR, JUDGE

PV