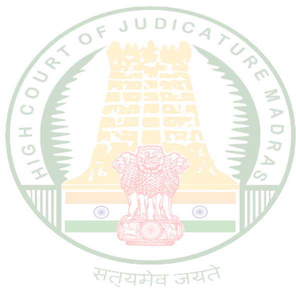

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.07.2022

DELIVERED ON : 22.08.2022

CORAM :

THE HON'BLE MR.MUNISHWAR NATH BHANDARI, CHIEF JUSTICE
AND
THE HON'BLE MRS.JUSTICE N.MALA

W.P.Nos.17802, 18678, 19795, 19936, 20480, 21175, 21906, 25711, 25837, 18753, 19800, 19938, 20489, 25714 of 2021 and 347 of 2022 and

W.M.P.Nos.18991, 18996, 19923, 19922, 21068, 21069, 21185, 21736, 21738, 22460, 22461, 23104, 27151, 27318, 27319, 20036, 20034, 21076, 21077, 21188, 21743, 21744, 27155, 27154, 27153 of 2021, 385, 386, 4363, 4366, 17086 and 17089 of 2022

W.P.No.17802 of 2021:

All India Adi Saiva Sivacharyargal Seva Sangam
rep. by its General Secretary, B.S.R.Muthukumar
No.41/19, south Usman Road
T.Nagar, Chennai – 600 017. .. Petitioner

Vs

1. The State of Tamil Nadu
   rep. by Secretary to Government
   Namakkal Kavignar Maaligai
   Fort St. George
   Chennai – 600 009.

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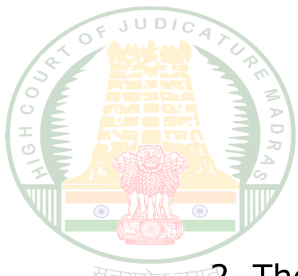
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2. The Commissioner
Hindu Religious and Charitable Endowments
119, Uthamar Gandhi Salai
Nungambakkam, Chennai – 600 034. .. Respondents

PRAYER: Petition under Article 226 of the Constitution of India seeking issuance of a writ of certiorarified mandamus to call for the records of the respondents pertaining to Rules 2(c), 7(b) (including Annexure II Group B Category XXXIV and Annexure VII Group B Category III) and 9 of the Tamil Nadu Hindu Religious Institutions Employees (Conditions of Service) Rules, 2020 issued in pursuance of G.O.Ms.No.114, Tourism, Culture and Religious Endowments Department, dated 3.9.2020 and quash the same and consequently forbear the respondents from appointing or selecting Archakas and other Agama related personnel in temples in contravention of the agamas, as held by the Supreme Court in the decision in Adi Saiva Sivachariyargal Nala Sangam versus State of Tamil Nadu and another, AIR 2016 SC 209.

and batch cases.

For the Petitioners in W.P.Nos.17802, 18678, 19795, 19936, 20480, 18753, 19800, 19938, 20489 of 2021 and 347 of 2022	:	Mr.Mr.P.Valliappan for M/s.P.V.Law Associates
For the Petitioner in W.P.No.21175 of 2021	:	Mr.B.Jagannath Party-in-person
For the Petitioner in W.P.No.21906 of 2021	:	Mr.N.R.Vengatesh
For the Petitioner in W.P.Nos.25711 and 25714 of 2021	:	Mr.Satish Parasaran Senior Counsel assisted by Mr.R.Parthasarathy

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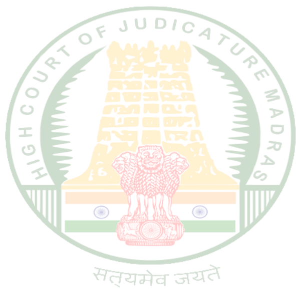
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For the Petitioner in W.P.No.25837 of 2021	:	Mr.P.Neelakantan
For the Respondents	:	Mr.R.Shanmugasundaram Advocate General assisted by Mr.N.R.R.Arun Natarajan Special Government Pleader (HR & CE) and Ms.A.G.Shakeenaa for respondents 1 and 2 in all writ petitions No appearance for respondents 3 to 14 in W.P.No.20489 of 2021

COMMON ORDER

THE CHIEF JUSTICE

In the batch of writ petitions, a challenge is made to Rules 2(c), 7(b) [including Annexure II Group B Category XXXIV and Annexure VII Group B Category III] and 9 of the Tamil Nadu Hindu Religious Institutions Employees (Conditions of Service) Rules, 2020 [for brevity, *"the Rules of 2020"].* In one writ petition, challenge to Rules 2(g), 11 to 15 and 17 of the Rules of 2020 has also been made.

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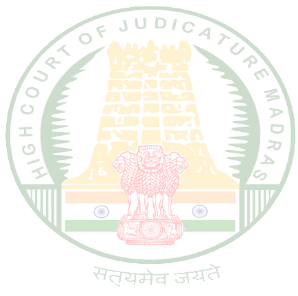
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2. The challenge to the aforesaid Rules has been made precisely in reference to Articles 16(5), 25 and 26 of the Constitution of India. It is in regard to the appointment of Archaka/Poojari in those temples where construction, installation of idols and worship of deity is as per Agamas. The case of the petitioners is that ignoring the rituals and customs stipulated in the Agamas, the Rules of 2020 have been framed prescribing eligibility and qualification for different posts, which includes Archaka/Poojari.

3. According to the petitioners, the qualification given under the Rules of 2020 cannot apply for the post of Archaka/Poojari to be appointed in the temples, where construction, installation of idols and worship of deity is as per Agamas. To buttress the argument, a reference of the judgments in the case of ***Seshammal and others v. State of Tamil Nadu, (1972) 2 SCC 11***, and ***Adi Saiva Sivachariyargal Naia Sangam and others v. Government of Tamil Nadu and another, (2016) 2 SCC 725***, has been given.

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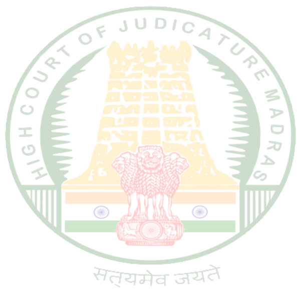
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4. Learned counsel for the petitioners made elaborate arguments in reference to the provisions of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 [for brevity, *"the Act of 1959"]* and the Government Order issued in the year 2006, i.e., on 23.5.2006, which was the subject-matter of the decision of the Apex Court in the case of ***Adi Saiva Sivachariyargal Nala Sangam and others,*** supra. Ignoring the judgment of the Apex Court in the case supra and Articles 25 and 26, apart from Article 16(5) of the Constitution of India, the respondents enacted the Rules of 2020. Earlier they had come out with the Government Order of 2006, which was not struck down by the Apex Court in the case of ***Adi Saiva Sivachariyargal Nala Sangam and others,*** supra, but was made ineffective to the extent it goes contrary to Articles 16(5), 25 and 26 of the Constitution of India.

5. The history of the amendment in the Act of 1959 has also been given. Section 55 of the Act of 1959 was the subject-matter before the Apex Court in the case of ***Seshammal and others,*** supra. The Constitution Bench of the Apex Court in the case supra

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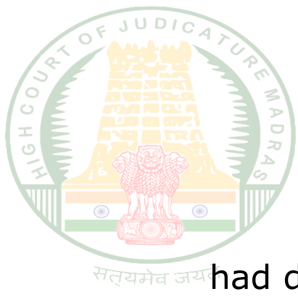
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had discussed the issue in regard to the appointment of Archakas in the temple or group of temples, where construction, installation of idols and worship of deity is as per Agamas. The import of the judgment of the Constitution Bench is to follow the customs and rituals as stipulated in the Agamas. It was, however, held that exclusion of some and inclusion of a particular denomination for appointment of Archakas within the Agamas would not violate Article 14 of the Constitution of India, so long as such inclusion/exclusion is not based on criteria of caste, birth or any other constitutionally unacceptable parameters.

6. It is stated that the Rules of 2020 brought by the respondents provides for the qualification for the post of Archaka/Poojari ignoring those who have learned mantras and poojas in the gurukul and gained three years experience, would be made ineligible if they do not possess the required qualification given in the Rules of 2020, thereby destroying and wiping out the prevailing customs given in the Agamas. The Rules of 2020 prescribe an Archaka/Poojari to have undergone one year certificate

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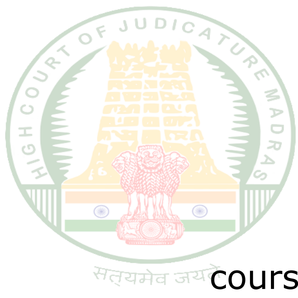
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course for being appointed, which is an attempt to eliminate the prospective candidates for being members of the petitioner sangam in W.P.No.17802 of 2021, at the entry level itself, because most of them do not possess the requisite qualification. The Rule further postulates marks for experience. When there would be no entry for the members of the petitioner sangam and similarly placed persons, there could be no question of awarding marks on the basis of seniority/experience. Therefore, the prescription of qualification of one year certificate course is nothing but an assault on the rights of the Sivachariyars.

7. Learned counsel for the petitioners have given reference to the amendment of the year 1971 to Section 55 of the Act of 1959, whereby an attempt was made to make Archaka/Poojari to be an office holder/servant so as to become subservient to the government, rather to Agamas. That was the subject-matter of challenge in the case of ***Seshammal and others,*** supra. Thereafter, the respondents attempted to affect the custom or usage while bringing the Government Order dated 23.5.2006. The

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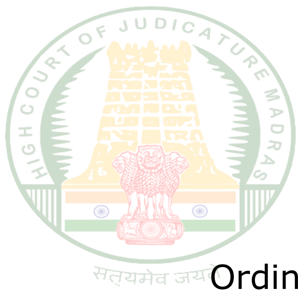
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Ordinance was brought on 14.7.2006 and was followed by the proposed amendment to sub-section (2) of Section 55 of the Act of 1959. The words *"custom or usage"* were brought in, but finally it could not find place in Section 55(2) of the Act of 1959. However, every effort has been made by the respondents to do away with the custom and usage, despite being protected by Articles 25 and 26 of the Constitution of India.

8. The arguments were further enlarged in reference to the judgments in the case of ***Seshammal and others*** and ***Adi Saiva Sivachariyargal Nala Sangam and others****,* supra, by referring to certain paragraphs so as to seek protection of the practice of Agamas for appointment of Archaka/Poojari and, therefore, the prayer was to strike down the provisions under challenge, so as the advertisement issued by the Executive Officer calling for applications for appointment to the post of Archaka/Poojari.

9. It is further submitted that the right of appointment lies with the trustees under Section 55 of the Act of 1959, but offending

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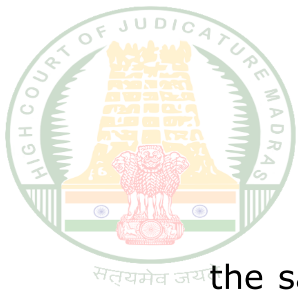
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the said provision, the government is trying to take over the rights of the trustees and for that reason the definition of *"appointing authority"* given under Rule 2(c) of the Rules of 2020 has also been challenged. The said provision allows appointments by the Fit Person. It is submitted that a Fit Person cannot exercise the power of the trustee and, therefore, inclusion of the words *"Fit Person"* under Rule 2(c) of the Rules of 2020 also deserves to be struck down. The appointments should be made only by the trustees.

10. An additional argument was made to constitute a Committee headed by a Retired High Court Judge to identify the temples, where construction, installation of idols and worship of deity is as per Agamas. It is required for the reason that as per the judgments of the Apex Court in the case of ***Seshammal and others*** and ***Adi Saiva Sivachariyargal Nala Sangam and others,*** supra, the appointment of Archaka/Poojari has been allowed as per the Agamas. It was submitted that identification of the temples constructed as per the Agamas is required and should be with further bifurcation of the temples in reference to different

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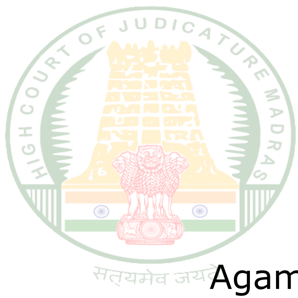
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Agamas. There are various Agamas mainly under the Shaiva and Vaishnava Agamas, apart from others. The identification of the temples in reference to the Agamas is a pre-requisite for appointment of Archaka/Poojari, because different Agamas have different worshipping procedures, rituals and customs to be followed.

11. The issue aforesaid was considered by the Apex Court, but it was left open when a challenge was made to the Government Order of 2006. The parties were allowed to challenge the individual appointment of Archakas, if it is not made as per the Agamas. In view of the aforesaid, there is a necessity to issue a direction to the Government to identify all the temples where construction, installation of idols and worship of deity is as per Agamas. With the classification of the temples in regard to their categories and even identification of Agamas under which it was created, it would be easy to apply the custom and usage stipulated in the Agamas, as otherwise in individual case, the court would have to delve deep into the issue to find out under which Agama a particular temple

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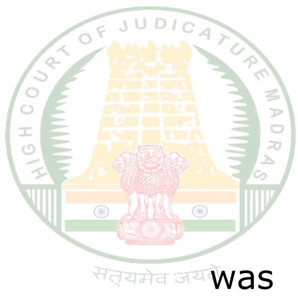
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was constructed. The aforesaid is furthermore required because there may be temples which were not constructed as per the Agamas and, therefore, they may be governed by a separate set of arrangement than those temples which were constructed as per the Agamas.

12. In the State of Tamil Nadu there are more than 35000 temples under the Hindu Religious and Charitable Endowments Department *[HR & CE Department]* and identification of those temples constructed as per the Agamas and further bifurcation under which Agama it was constructed will solve the issues often brought before this court to challenge the appointment of Archaka/Poojari. This would even reduce the litigation. Therefore, the identification of temple under which Agamas it was constructed is the need of the hour. Therefore, an additional argument was made to issue a direction on the respondents to constitute a Committee, rather, a request was made that the court itself should nominate a Retired High Court Judge to be the Chairperson of the Committee, with identification of one or two eminent members

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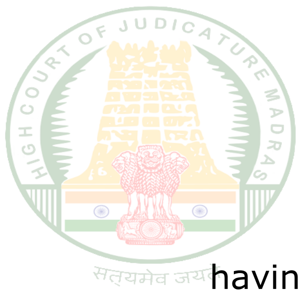
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having deep knowledge on the subject for proper constitution of the Committee, leaving few members to be nominated by the Government and the Commissioner of the H.R. & C.E. Department may act as a Member or Ex-officio Secretary of the Committee.

13. The further prayer of learned counsel for the petitioners is to allow the challenge to the individual appointment of Archaka, if somebody is aggrieved, so that a proper adjudication is made on a challenge to the appointment, but while issuing such a direction, it may be made clear that appointment of Archaka would be made only by the trustees and not by the Commissioner or the Government. The prayer is to allow the writ petitions with appropriate directions.

14. At this stage, it is submitted that if the Rules of 2020 under challenge are not struck down for the reason it is applicable in general and to other posts also, then its application may be excluded insofar as appointment to the post of Archaka/Poojari in the temple or group of temples, where construction, installation of

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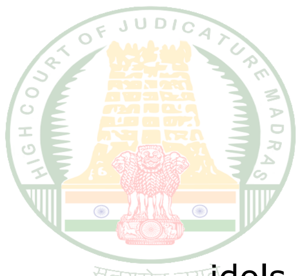
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idols and worship of deity is as per Agamas.

15. Per contra, Mr.R.Shunmugasundaram, learned Advocate General, seriously opposed the prayer made in the writ petitions. It is submitted that the Rules under challenge are applicable not only for the appointment to the post of Archaka/Poojari, but also in regard to other posts, and if those Rules are struck down, the appointment of the officers and employees would remain unguided. The Rules govern even the appointment of Archaka/Poojari because he is considered to be an officer/employee of the temple in view of the judgment of the Apex Court in the case of ***Seshammal and others**,* supra, and even the subsequent judgment in ***Adi Saiva Sivachariyargal Nala Sangam*** *and others,* supra. A further reference of the judgment of the Apex Court in the case of ***A.S.Narayana Deekshitulu v. State of Andhra Pradesh and others, (1996) 9 SCC 548**,* has been given.

16. Learned Advocate General submits that the Rules under challenge do not offend Articles 16(5), 25 and 26 of the Constitution

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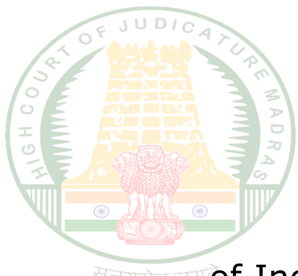
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of India, rather Article 25 of the Constitution of India allows framing of Rules even for the endowments or the temples constructed as per the Agamas.

17. Referring to the definition of the term *''appointing authority"* given under Rule 2(c) of the Rules of 2020, it is submitted that the authority of the appointment exists with the trustees and, therefore, the definition does not offend the provisions of the Act of 1959 or the constitutional provisions. The Fit Person is appointed under Section 49 of the Act of 1959 in the absence of the trustee. In the absence of the Trustees, the Fit Person discharges the duties of the Trustee and, therefore, in those temples where there is a dispute amongst the Trustees or for any other reason, as envisaged under Section 49 of the Act of 1959, a Fit Person is appointed, then the powers of the trustees are exercised by him.

18. It is further submitted that if the power of appointment is not given to the Fit Person, who is a substitute to the trustee, the

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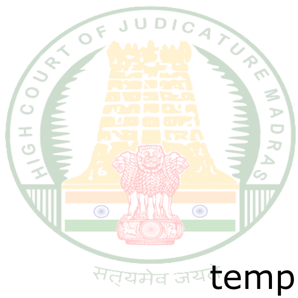
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temples administered by the Fit Person would be unable to make appointment of the employees and, therefore, to have better administration of the temple with required staff, the definition of the term '*"appointing authority*" has been given appropriately. It does not offend any of the constitutional provisions.

19. A reference of Rules 7 and 9 of the Rules of 2020 under challenge has also been given to clarify that the qualification provided therein requires to be applied for appointment of the officers and employees without any discrimination, rather to streamline the same. It is, however, submitted that if it offends any usage and practice given under the Agamas, this court may clarify that to that extent the Rules may not be applicable for appointment of Archakas. It is, however, with a clarity that the aforesaid arrangement would be applicable only to the temple or group of temples, which were constructed as per the Agamas and not for any other temple. It is for the reason that many temples have not been constructed as per the Agamas and for that Rules of 2020 under challenge would be applicable for appointment of Archakas.

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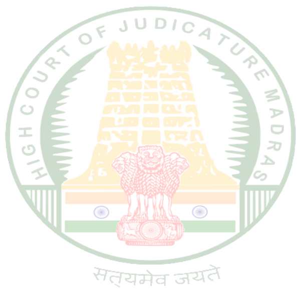
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20. The aforesaid was even ruled by the Apex Court in the case of ***Adi Saiva Sivachariyargal Nala Sangam and others***, supra, where the Government Order of 2006 was under challenge. It was not nullified, but it was held that individuals would be permitted to challenge the appointment of Archakas, if it was not as per the Agamas, and it was left open to the court to adjudicate the issue. Learned Advocate General submitted that a similar direction can be given in the instant case also by saving the Rules of 2020 under challenge.

21. Learned Advocate General, however, submitted that though a plea has been raised to apply the Agamas for appointment of the Archakas, it is without identification of the temples said to have been constructed as per the Agamas. In view of the above, learned Advocate General also submitted that the Government would be identifying the temples which were constructed as per the Agamas. It would otherwise make it convenient for the trustees to make appointment of Archakas/Poojaris as per the Agamas. The

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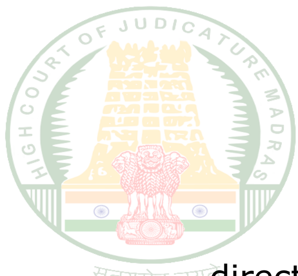
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direction aforesaid would also serve the purpose for which a detailed judgment has been given by the Constitution Bench of the Apex Court in the case of ***Seshammal and others***, supra.

22. We have considered the rival submissions of the parties and perused the records.

23. Rules 2(c), 7(b) and 9 of the Rules of 2020, which are under challenge, are quoted hereunder:

> *"2. Definitions*
>
> *(1) In these rules, unless the context otherwise requires:-*
>
> *(a) ...*
>
> *(b) ...*
>
> *(c)* ***'Appointing Authority' means the Trustee or Fit Person of the concerned religious institution."***
>
> *7. Qualification*
>
> *(a) ...*
>
> *(b) Other qualifications.- No person shall be eligible for appointment to the category of posts specified in*

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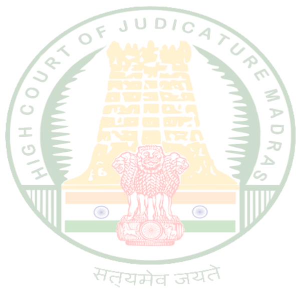
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column (1) of the tabular column in the Annexures I to XI by the methods specified in column (2) thereof unless he possesses the qualifications specified in the corresponding entry in column (3) thereof:

Provided that in cases where this rule prescribes a diploma or a degree or a post-graduate degree as qualification for appointment, then-

(a) a diploma obtained, after completion of S.S.L.C. or Higher Secondary course [10+3 (3 years Diploma)] or [10+2+2 (Lateral Entry)]; or

(b) a degree obtained, after completion of S.S.L.C. and Higher Secondary course (10+2+3 or more; or

(c) a post-graduate degree obtained, after completion of S.S.L.C. Higher Secondary course and a degree (10+2+3+2 or 3) from any University or Institution, recognized by the University Grants Commission shall be recognized as the qualification."

9. Filling up of vacancies by direct recruitment.-

(1) Whenever a vacancy arises in an entry level post included in the Schedule of Establishment of a

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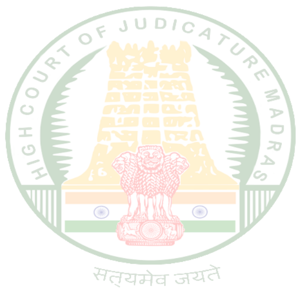
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religious institution, the said post shall be filled by direct recruitment in accordance with the proportion specified in that Establishment.

Provided that while filling the vacancies by direct recruitment, every third vacancy arising in the entry level posts in the Schedule of Establishment of Senior Grade Temples shall be filled from the qualified employees of non-senior grade temples and the cycle for such appointment shall be as follows:-

from open market ----------------1

from open market ----------------1

from non-senior grade temples --1

Provided further that if no sufficient number of qualified and suitable employees of non-senior grade temples are available for entry level posts of Senior Grade Temples then those vacancies shall be filled up by the other method prescribed (i.e) from the open market.

(2) The Executive Authority shall prepare a list of vacant posts and notify the number of vacancies and take action for publication of notices calling for applications as detailed below:-

(a) The Executive Authority shall publish a notice containing the details of the posts proposed to be

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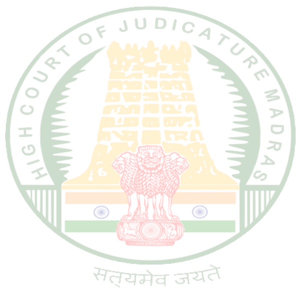
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filled up, namely the number of vacancies, the required qualifications, the scale of pay and such other details as may be necessary, calling for applications for the post, giving minimum of one month time, for submission of applications.

(b) Such notice calling for applications shall be published on the Notice Board of the religious institution / official websites of the religious institution and the department /Office of the Village Administrative Officer/Panchayat Board/ Municipality/Corporation, where the religious institution is situated, as the case may be, and in neighbouring temples. Where the religious institution is included in the list published under section 46(iii) of the Act, notice shall also be published in one leading Tamil Daily News Paper having wide circulation in the area where the religious institution is situated.

(c) On receipt of applications, the Executive Authority shall call for an interview of the eligible candidates. Notice of the date, time and place of interview shall be intimated to the candidates, in writing. The interview will be conducted by a Committee constituted by the Executive Authority for this purpose.

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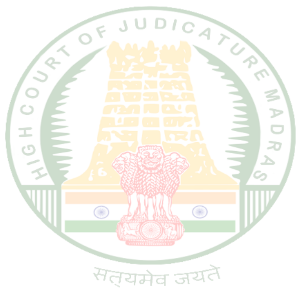
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(d) The Committee for interviewing the candidates shall consist of - (1) the Chairman of the Board of Trustees; or Hereditary Trustee; or Trustee, if there is only one trustee; or the Fit Person; or where the Executive Officer himself is the Fit Person, the Division Inspector of Hindu Religious and Charitable Endowments Department or where the Inspector is the Fit Person, another Division Inspector/Executive Officer of Hindu Religious and Charitable Endowments Department; (2) the Executive Officer of the religious institution concerned or Division Inspector of Hindu Religious and Charitable Endowments Department where there is no Executive Officer; (3) Two experts in the concerned subject; (4) in the case of Senior Grade Temples a person nominated by the Commissioner, in all other cases an official nominated by the Joint Commissioner of the region where the religious institution is situated.

(3) Selection:- (a)The weightage to be given for basic educational qualification, experience, practical tests, additional qualification and oral test/interview shall be as in the table below:-

1	*For marks obtained in the basic*	*10 Marks*

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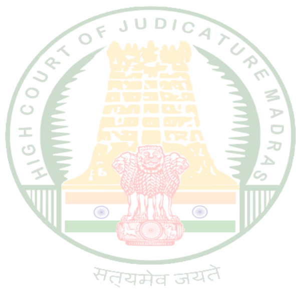
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	qualification prescribed	
2	*For experience in the field (one mark shall be given for each year of experience subject to maximum of 10 marks)*	*10 Marks*
3	*For practical test (for Technical posts) Special Category post like Melam, Nathaswaram, Thavil, Thalam, Musical instruments/post requiring provision in Manthras/Hymns.*	*15 Marks*
4	*(a) Recitation of Thala varalaru, Thala Puranam of temples, atleast 2 chapters Ramayanam, Mahabharatham, Thiruvilaiyadal Puranam.* *(b) Two Stanzas of Thevaram, Thiruvasagam, Thiruppugazh, Kanthasasthi Kavacham, Nalayira Divya Prabhandham, consistent with the temple's history*	*10 Marks*
5	*For oral test / interview in the relevant subject*	*5 Marks*
	Total	*50 Marks*

In cases where the selection to the posts do not require a practical test, the marks meant for practical test shall be allotted to the interview, thus making the total marks for interview as 20 marks. For the post requiring only reading and writing as the qualification, the marks allotted for basic qualification will be allotted for reading and writing

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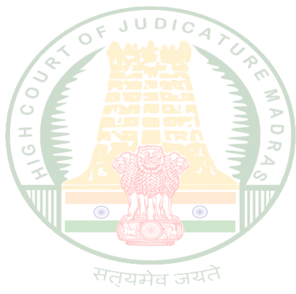

skills.

(b) The selection shall be made with reference to the rank obtained in the list of approved candidates drawn by the appointing authority.
(c) The Appointing Authority shall pass resolution for the appointment of eligible candidates and issue appointment orders.
(d) Once the appointment order is issued the Executive Authority shall submit report with all details along with the resolution and appointment orders to the Commissioner through the concerned Assistant Commissioner or the Joint Commissioner, as the case may be."

24. The challenge to the Rules quoted above is made precisely in reference to Articles 16(5), 25 and 26 of the Constitution of India, apart from the ratio propounded in the judgment of the Constitution Bench of the Apex Court in the case of ***Seshammal and others,*** supra, and subsequent judgment in the case of ***Adi Saiva Sivachariyargal Nala Sangam and others,*** supra. According to the petitioners, the judgments of the Apex Court,

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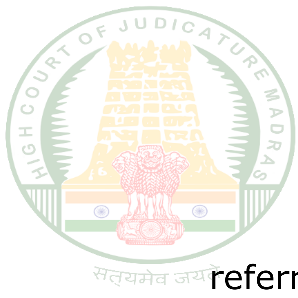
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referred supra, should govern the field and thereby the effort of the respondents to nullify the judgments by enacting the Rules of 2020 may be interfered by holding it to be unconstitutional to the extent the Rules have been challenged.

25. To analyse the issue aforesaid, it would be gainful to refer to Articles 16(5), 25 and 26 of the Constitution of India hereunder:

> *"16. Equality of opportunity in matters of public employment.—*
> *(1) to (4) ...*
> *(5)* ***Nothing in this article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination.***
>
> *25. Freedom of conscience and free profession, practice and propagation of religion.—*
> *(1) Subject to public order, morality and health and to the other provisions of this Part, all persons are*

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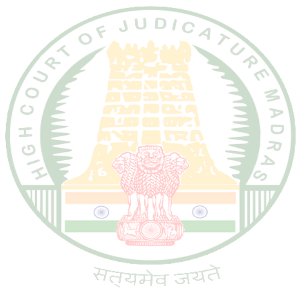
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equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion.

(2) ***Nothing in this article shall affect the operation of any existing law or prevent the State from making any law.-***

(a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;

(b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.

Explanation I. — The wearing and carrying of kirpans shall be included in the profession of the Sikh religion.

Explanation II. — In sub-clause (b) of clause (2) the reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly.

26. Freedom to manage religious affairs.— Subject to public order, morality and health, every religious

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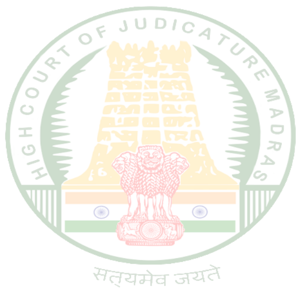
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denomination or any section thereof shall have the right-

(a) to establish and maintain institutions for religious and charitable purposes;

(b) to manage its own affairs in matters of religion;

(c) to own and acquire movable and immovable property; and

(d) to administer such property in accordance with law."

[emphasis supplied]

26. The issue in reference to the constitutional provisions quoted above was the subject-matter before the Constitution Bench of the Apex Court in the case of ***Seshammal and others,*** supra. A Five-Judge Bench in the said case crystallized the issue in reference to the appointment of Archaka and, for that, reference of Articles 25 and 26 of the Constitution of India was given. The main principle underlying those provisions was laid down, out of which the first is that the protection under those Articles is not limited to matters of doctrine or belief, but extends to the acts in pursuance of religion and, therefore, contain a guarantee for rituals and observances,

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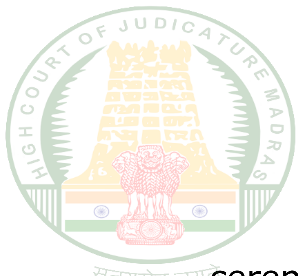
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ceremonies and modes of worship which are integral parts of the religion. The second principle laid down was as to what constitutes an essential part of a religion or a religious practice. It was left open for the court to decide in reference to the doctrine of a particular religion and include practices which are regarded by the community as part of its religion. A reference of certain earlier judgments of the Apex Court was given therein. The third proposition given by the Apex Court was that if a ritual in a temple cannot be performed except by a person belonging to a particular denomination, the purpose of worship would be defeated. However, hereditary appointments on the post of Archakas was not supported, but the provisions of the Act of 1959 were held to be constitutionally valid to this effect.

27. The next proposition laid down by the Apex Court was in reference to Section 28(1) of the Act of 1959, which directs the trustee to administer the affairs of the temple in accordance with the terms of the trust or the usage of the institution. This would control the appointment of the Archakas to be made by him as per

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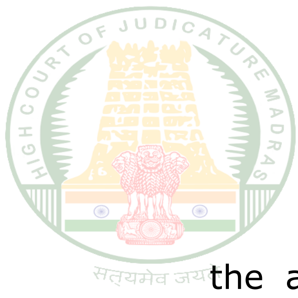
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the amended provision of Section 55 of the Act of 1959. It is, however, with the opinion that the appointment of the Archakas is by a secular authority. It was held that shebaits and managers of temples exercise essentially a secular function.

28. With the aforesaid proposition, it was held that the amendment to Section 55(2) of the Act of 1959 makes it clear that the appointment of Archakas is no longer limited to operation of rule of next-in-line of succession in temples, where usage was to appoint the Archaka on the hereditary principle. It was further held that the rule making powers given to the Government should not interfere with the rituals and ceremonies of the temples and, therefore, it has to be governed by the custom and usage. The authority of Agamas is otherwise recognised by the Supreme Court in several cases, which includes the judgment in the case of ***Sri Venkataramana Devaru v. State of Mysore, 1958 SCR 895***. The judgment in the case of ***Seshammal and others***, supra, squarely applies to appointment of Archakas for those temples or group of temples, which were constructed as per Agamas. It is to

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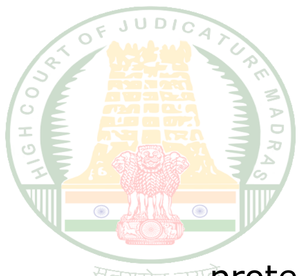
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protect the rights guaranteed under Articles 25 and 26 of the Constitution of India and saved under Article 16(5) of the Constitution of India.

29. We are not required to reiterate the facts and the ratio propounded by the Apex Court therein, because elaborately it was discussed and finding has been recorded by the Apex Court in the case of ***Seshammal and others****,* supra, and subsequently in ***Adi Saiva Sivachariyargal Nala Sangam and others****,* supra. It would, therefore, be appropriate to refer to the relevant paragraphs of the judgment in the case of ***Seshammal and others****,* supra, to govern the subject, hereunder:

> *"11. Before we turn to these questions, it will be necessary to refer to certain concepts of Hindu religious faith and practices to understand and appreciate the position in law. The temples with which we are concerned are public religious institutions established in olden times. Some of them are Saivite temples and the others are Vaishnavite temples, which means, that in these temples God Shiva and Vishnu in their several manifestations are*

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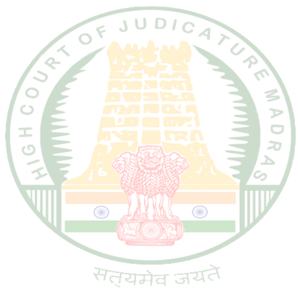
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worshipped. The image of Shiva is worshipped by his worshippers who are called Saivites and the image of Vishnu is worshipped by his worshippers who are known as Vaishnavites. The institution of temple worship has an ancient history and according to Dr Kane, temples of deities had existed even in the 4th or 5th century B.C. (See History of Dharmasastra Vol. II, Part II, p. 710). With the construction of temples the institution of Archakas also came into existence, the Archakas being professional men who made their livelihood by attending on the images. Just when the cult of worship of Siva and Vishnu started and developed into two distinct cults is very difficult to say, but there can be no doubt that in the times of the Mahabharata these cults were separately developed and there was keen rivalry between them to such an extent that the Mahabharata and some of the Puranas endeavoured to inculcate a spirit of synthesis by impressing that there was no difference between the two deities. (See p. 725 supra.) ***With the establishment of temples and the institution of Archakas, treatises on rituals were compiled and they are known as "Agamas". The authority of these Agamas is***

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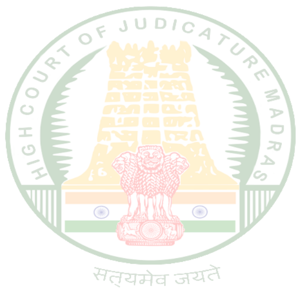
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recognised in several decided cases and by this Court in Sri Venkataramana Devaru v. State of Mysore [1958 SCR 895] Agamas are described in the last case as treatises of ceremonial law dealing with such matters as the construction of temples, installation of idols therein and conduct of the worship of the deity. There are 28 Agamas relating to the Saiva temples, the most important of them being the Kamikagama, the Karanagama and the Suprabedagama. The Vaishnavas also had their own Agamas. Their principal Agamas were the Vikhanasa and the Pancharatra. The Agamas contain elaborate rules as to how the temple is to be constructed, where the principal deity is to be consecrated, and where the other Devatas are to be installed and where the several classes of worshippers are to stand and worship. Where the temple was constructed as per directions of the Agamas the idol had to be consecrated in accordance with an elaborate and complicated ritual accompanied by chanting of mantras and devotional songs appropriate to the deity. On the consecration of the image in the temple the Hindu worshippers believe that the Divine

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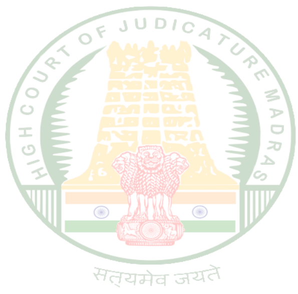
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Spirit has descended into the image and from then on the image of the deity is fit to be worshipped. Rules with regard to daily and periodical worship have been laid down for securing the continuance of the Divine Spirit. The rituals have a two-fold object. One is to attract the lay worshipper to participate in the worship carried on by the priest or Archaka. It is believed that when a congregation of worshippers participates in the worship a particular attitude of aspiration and devotion is developed and confers great spiritual benefit. The second object is to preserve the image from pollution, defilement or desecration. It is part of the religious belief of a Hindu worshipper that when the image is polluted or defiled the Divine Spirit in the image diminishes or even vanishes. That is a situation which every devotee or worshipper looks upon with horror. Pollution or defilement may take place in a variety of ways. According to the Agamas, an image becomes defiled if there is any departure or violation of any of the rules relating to worship*. In fact, purificatory ceremonies have to be performed for restoring the*

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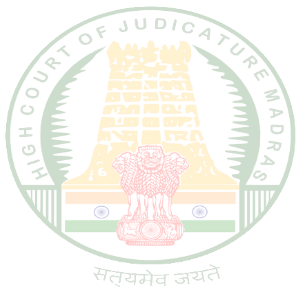
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sanctity of the shrine [1958 SCR 895 (910)]. Worshippers lay great store by the rituals and whatever other people, not of the faith, may think about these rituals and ceremonies, they are a part of the Hindu religious faith and cannot be dismissed as either irrational or superstitious. An illustration of the importance attached to minor details of ritual is found in the case of His Holiness Peria Kovil Kelvi Appan Thiruvenkata Ramanuja Pedda Jiyyangarlu Varlu v. Prathivathi Bhavankaram Venkatacharlu [73 IA 156] which went up to the Privy Council. The contest was between two denominations of Vaishnava worshippers of South India, the Vadagalais and Tengalais. The temple was a Vaishnava temple and the controversy between them involved the question as to how the invocation was to begin at the time of worship and which should be the concluding benedictory verses. This gives the measure of the importance attached by the worshippers to certain modes of worship. The idea most prominent in the mind of the worshipper is that a departure from the traditional rules would result in the pollution or defilement of the image which must be avoided at all costs. That is also ***the rationale for preserving the sanctity of the Garbhagriha***

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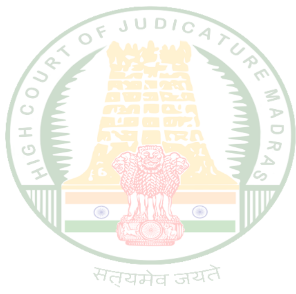
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or the sanctum sanctorum. In all these temples in which the images are consecrated, the Agamas insist that only the qualified Archaka or Pujari shall step inside the sanctum sanctorum and that too after observing the daily disciplines which are imposed upon him by the Agamas. As an Archaka he has to touch the image in the course of the worship and it is his sole right and duty to touch it. The touch of anybody else would defile it. Thus under the ceremonial law pertaining to temples even the question as to who is to enter the Garbhagriha or the sanctum sanctorum and who is not entitled to enter it and who can worship and from which place in the temple are all matters of religion as shown in the above decision of this Court.

12. The Agamas have also rules with regard to the Archakas. In Saivite temples only a devotee of Siva, and there too, one belonging to a particular denomination or group or sub-group is entitled to be the Archaka. If he is a Saivite, he cannot possibly be an Archaka in a Vaishnavite Agama temple to whatever caste

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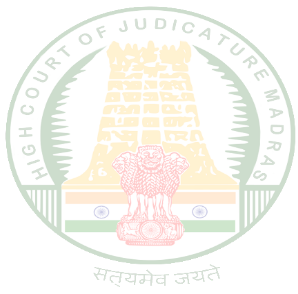
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he may belong and however learned he may be. Similarly, a Vaishnavite Archaka has no place as an Archaka in a Saivite temple. Indeed there is no bar to a Saivite worshipping in a Vaishnavite temple as a lay worshipper or vice versa. What the Agamas prohibit is his appointment as an Archaka in a temple of a different denomination. *Dr Kane has quoted the Brahmapurana on the topic of Punah-pratistha (Re-consecration of images in temples) at p. 904 of his History of Dharmasastra referred to above. The Brahmapurana says that "when an image is broken into two or is reduced to particles, is burnt, is removed from its pedestal, is insulted, has ceased to be worshipped, is touched by beasts like donkeys or falls on impure ground or is worshipped with mantras of other deities or is rendered impure by the touch of outcastes and the like — in these ten contingencies, God ceases to indwell therein".* ***The Agamas appear to be more severe in this respect.*** *Shri R. Parthasarathy Bhattacharya, whose authority on Agama literature is unquestioned, has filed his affidavit in Writ Petition No. 442 of 1971 and stated in his affidavit, with special reference to the Vaikhanasa Sutra to which he belongs, that*

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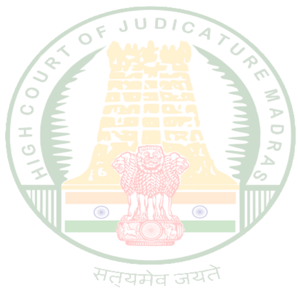
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according to the texts of the Vaikhanasa Shastra (Agama), persons who are the followers of the four Rishi traditions of Bhrigu, Atri, Marichi and Kasyapa and born of Vaikhanasa parents are alone competent to do puja in Vaikhanasa temples of Vaishnavites. They only can touch the idols and perform the ceremonies and rituals. None others, however, high placed in society as pontiffs or Acharyas, or even other Brahmins could touch the idol, do puja or even enter the Garbha Griha. Not even a person belonging to another Agama is competent to do puja in Vaikhanasa temples. That is the general rule with regard to all these sectarian denominational temples. It is, therefore, manifest that the Archaka of such a temple besides being proficient in the rituals appropriate to the worship of the particular deity, must also belong, according to the Agamas, to a particular denomination. An Archaka of a different denomination is supposed to defile the image by his touch and since it is of the essence of the religious faith of all worshippers that there should be no pollution or defilement of the image under any

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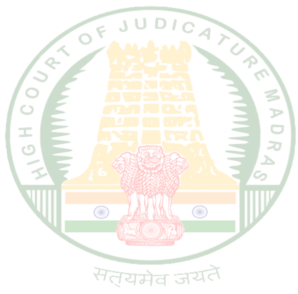
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circumstance, the Archaka undoubtedly occupies an important place in the matter of temple worship. Any State action which permits the defilement or pollution of the image by the touch of an Archaka not authorised by the Agamas would violently interfere with the religious faith and practices of the Hindu worshipper in a vital respect, and would, therefore, be prima facie invalid under Article 25(1) of the Constitution.

...

19. We have found no any difficulty in agreeing with the learned Advocate-General that Section 28(1) of the principal Act which directs the trustee to administer the affairs of the temple in accordance with the terms of the trust or the usage of the institution, would control the appointment of the Archaka to be made by him under the amended Section 55 of the Act. In a Saivite or a Vaishnavite temple the appointment of the Archaka will have to be made from a specified denomination, sect or group in accordance with the directions of the Agamas governing those temples. Failure to do so would not only be contrary to Section 28(1) which requires the trustee to follow the usage of the

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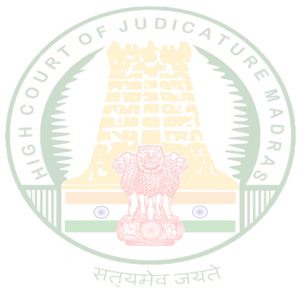
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temple, but would also interfere with a religious practice the inevitable result of which would be to defile the image. The question, however, remains whether the trustee, while making appointment from the specified denomination, sect or group in accordance with the Agamas, will be bound to follow the hereditary principle as a usage peculiar to the temple. The learned Advocate-General contends that there is no such invariable usage. It may be that, as a matter of convenience, an Archaka's son being readily available to perform the worship may have been selected for appointment as an Archaka from times immemorial. But that, in his submission, was not a usage. The principle of next-in-line of succession has failed when the successor was a female or had refused to accept the appointment or was under some disability. In all such cases the Archaka was appointed from the particular denomination, sect or group and the worship was carried on with the help of such a substitute. It, however, appears to us that it is now too late in the day to contend that the hereditary principle in appointment was not a usage. For whatever reasons, whether of convenience or otherwise, this hereditary principle might have been adopted, there can be no

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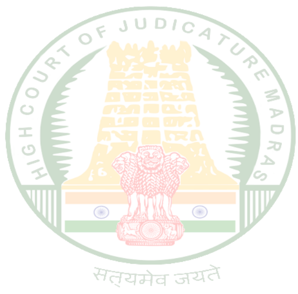
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doubt that the principle had been accepted from antiquity and had also been fully recognised in the unamended Section 55 of the principal Act. Sub-section (2) of Section 55 provided that where the office or service is hereditary, the person next in the line of succession shall be entitled to succeed and only a limited right was given under sub-section (3) to the trustee to appoint a substitute. Even in such cases the explanation to sub-section (3) provided that in making the appointment of the substitute the trustee should have due regard to the claims of the members of the family, if any, entitled to the succession. Therefore, it cannot be denied as a fact that there are several temples in Tamil Nadu where the appointment of an Archaka is governed by the usage of hereditary succession. The real question, therefore, is whether such a usage should be regarded either as a secular usage or a religious usage. If it is a secular usage, it is obvious, legislation would be permissible under Article 25(1)(a) and if it is a religious usage it would be permissible if it falls squarely under sub-section 25(1)(b).

...

21. It is true that a priest or an Archaka when

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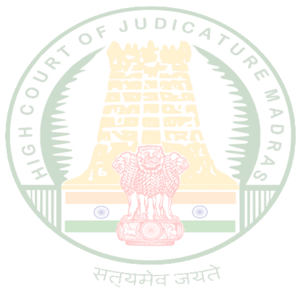
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appointed has to perform some religious functions but the question is whether the appointment of a priest is by itself a secular function or a religious practice. Mr.Palkhivala gave the illustration of the spiritual head of a math belonging to a denomination of a Hindu sect like the Shankaracharya and expressed horror at the idea that such a spiritual head could be chosen by a method recommended by the State though in conflict with the usage and the traditions of the particular institution. Where, for example, a successor of a Mathadhipati is chosen by the Mathadhipati by giving him mantra-deeksha or where the Mathadhipati is chosen by his immediate disciples, it would be, he contended, extraordinary for the State to interfere and direct that some other mode of appointment should be followed on the ground of social reform. Indeed this may strike one as an intrusion in the matter of religion. But we are afraid such an illustration is inapt when we are considering the appointment of an Archaka of a temple. ***The Archaka has never been regarded as a spiritual head of any institution****. He may be an accomplished person, well versed in the Agamas and rituals necessary to be performed in a temple but he does not have the status of a spiritual head.*

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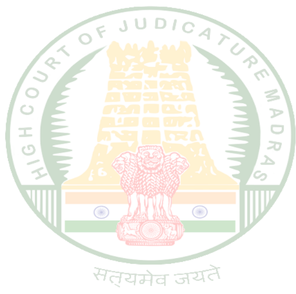
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Then again the assumption made that the Archaka may be chosen in a variety of ways is not correct. ***The Dharam-karta or the Shebait makes the appointment and the Archaka is a servant of the temple. It has been held in K. Seshadri Aiyangar v. Ranga Bhattar [ILR 35 Mad 631] that even the position of the hereditary Archaka of a temple is that of a servant subject to the disciplinary power of the trustee. The trustee can enquire into the conduct of such a servant and dismiss him for misconduct. As a servant he is subject to the discipline and control of the trustee as recognised by the unamended Section 56 of the principal Act which provides "all office-holders and servants attached to a religious institution or in receipt of any emolument or perquisite therefrom shall, whether the office or service is hereditary or not, be controlled by the trustee and the trustee may, after following the prescribed procedure, if any, fine, suspend, remove or dismiss any of them for breach of trust, incapacity, disobedience of orders, neglect of duty, misconduct or other sufficient cause". That being the position of an Archaka,***

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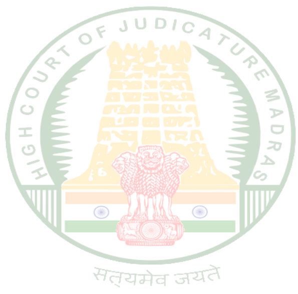
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the act of his appointment by the trustee is essentially secular. He owes his appointment to a secular authority. Any lay founder of a temple may appoint the Archaka. The Shebaits and Managers of temples exercise essentially a secular function in choosing and appointing the Archaka. *That the son of an Archaka or the son's son has been continued in the office from generation to generation does not make any difference to the principle of appointment and no such hereditary Archaka can claim any right to the office. See Kali Krishan Ray v. Makhan Lal Mookerjee [ILR 50 Cal 233], Nanabhai Narotamdas v. Trimbak Balwant Bhandare [(1878-80) Vol. 4, Unreported printed Judgments of the Bombay High Court, p. 169] and Maharanee Indurjeet Kooer v. Chundemun Misser [16 WR 99] . Thus the appointment of an Archaka is a secular act and the fact that in some temples the hereditary principle was followed in making the appointment would not make the successive appointments anything but secular. It would only mean that in making the appointment the trustee is limited in respect of the sources of recruitment. Instead of casting his net wide for selecting a proper candidate, he appoints the next*

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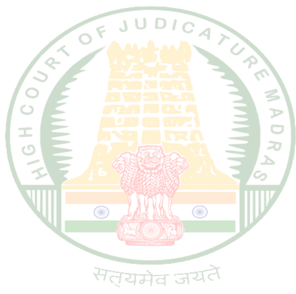
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heir of the last holder of the office. That after his appointment the Archaka performs worship is no ground for holding that the appointment is either a religious practice or a matter of religion.

22. ***In view of sub-section (2) of Section 55, as it now stands amended, the choice of the trustee in the matter of appointment of an Archaka is no longer limited by the operation of the rule of next-in-line of succession in temples where the usage was to appoint the Archaka on the hereditary principle. The trustee is not bound to make the appointment on the sole ground that the candidate, is the next-in-line of succession to the last holder of office****. To that extent, and to that extent alone, the trustee is released from the obligation imposed on him by Section 28 of the principal Act to administer the affairs in accordance with that part of the usage of a temple which enjoined hereditary appointments. The legislation in this respect, as we have shown, does not interfere with any religious practice or matter of religion and, therefore, is not invalid.*

23. We shall now take separately the several

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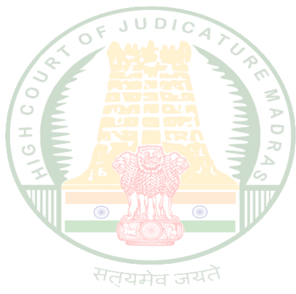
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*amendments which were challenged as invalid. **Section 2 of the Amendment Act amended Section 55 of the principal Act and the important change which was impugned on behalf of the petitioners related to the abolition of the hereditary principle in the appointment of the Archaka.** We have shown for reasons already mentioned that the change effected by the Amendment is not invalid. The other changes effected in the other provisions of the principal Act appear to us to be merely consequential. Since the hereditary principle was done away with the words "whether the office or service is hereditary or not" found in Section 56 of the principal Act have been omitted by Section 3 of the Amendment Act. By Section 4 of the latter Act clause (xxiii) of sub-section (2) in Section 116 is suitably amended with a view to deleting the reference to the qualifications of hereditary and non-hereditary offices which was there in clause (xxiii) of the principal Act. The change is only consequential on the amendment of Section 55 of the principal Act. Sections 5 and 6 of the Amendment Act are also consequential on the amendment of Sections 55 and 56. These are all the sections in the Amendment Act and in our view the*

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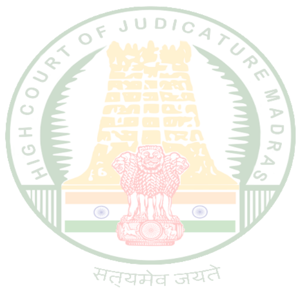
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Amendment Act as a whole must be regarded as valid.

24. It was, however, submitted before us that the State had taken power under Section 116(2), clause (xxiii) to prescribe qualifications to be possessed by the Archakas and, in view of the avowed object of the State Government to create a class of Archakas irrespective of caste, creed or race, it would be open to the Government to prescribe qualifications for the office of an Archaka which were in conflict with Agamas. ***Under Rule 12 of the Madras Hindu Religious Institutions (Officers and Servants) Service Rules, 1964 proper provision has been made for qualifications of the Archakas and the petitioners have no objection to that rule. The rule still continues to be in force.*** *But the petitioners apprehend that it is open to the Government to substitute any other rule for Rule 12 and prescribe qualifications which were in conflict with Agamic injunctions. For example at present the Ulthurai servant whose duty it is to perform pujas and recite vedic mantras etc, has to obtain the fitness certificate for his office from the head of institutions which impart instructions in Agamas and ritualistic matters. The Government, however, it is*

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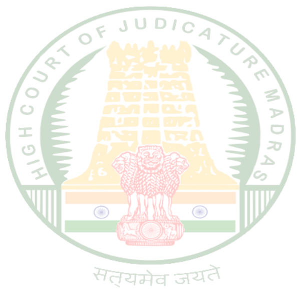

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submitted, may hereafter change its mind and prescribe qualifications which take no note of Agamas and Agamic rituals and direct that the Archaka candidate should produce a fitness certificate from an institution which does not specialise in teaching Agamas and rituals. It is submitted that the Act does not provide guidelines to the Government in the matter of prescribing qualifications with regard to the fitness of an Archaka for performing the rituals and ceremonies in these temples and it will be open to the Government to prescribe a simple standardised curriculum for pujas in the several temples ignoring the traditional pujas and rituals followed in those temples. In our opinion the apprehensions of the petitioners are unfounded. Rule 12 referred to above still holds the field and there is no good reason to think that the State Government wants to revolutionise temple worship by introducing methods of worship not current in the several temples. ***The rule-making power conferred on the Government by Section 116 is only intended with a view to carry out the purposes of the Act which are essentially secular. The Act nowhere gives the indication that one of the purposes of the Act is to effect a***

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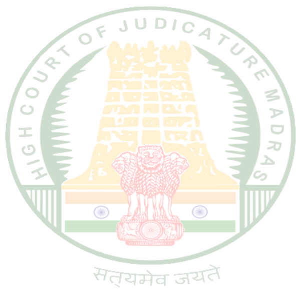
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> ***change in the rituals and ceremonies followed in the temples.*** *On the other hand, Section 107 of the principal Act emphasises that nothing contained in the Act would be deemed to confer any power or impose any duty in contravention of the rights conferred on any religious denomination or any section thereof by Article 26 of the Constitution. Similarly, Section 105 provides that nothing contained in the Act shall (a) save as otherwise expressly provided in the Act or the rules made thereunder, affect any honour, emolument or perquisite to which any person is entitled by custom or otherwise in any religious institution, or its established usage in regard to any other matter.* ***Moreover, if any rule is framed by the Government which purports to interfere with the rituals and ceremonies of the temples the same will be liable to be challenged by those who are interested in the temple worship.*** *In our opinion, therefore, the apprehensions now expressed by the petitioners are groundless and premature."*

The relevant paragraphs of the judgment in the case of ***Adi Saiva Sivachariyargal Nala Sangam and others,*** supra, are quoted

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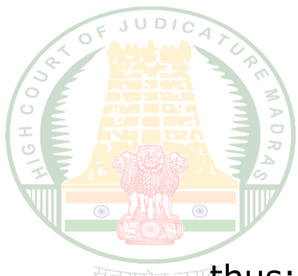
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thus:

"32. Before we go on to deliberate on the validity of the impugned G.O. dated 23-5-2006 it will be useful to try to understand what is Hinduism? A broad answer is to be found in the preface to this Report but, perhaps, we should delve a little deeper into the issue. The subject has received an in-depth consideration of the country's philosopher President Dr S. Radhakrishnan in the celebrated work The Hindu View of Life. The said work has been exhaustively considered in Shastri Yagnapurushdasji v. Muldas Bhundardas Vaishya, AIR 1966 SC 1119 : (1966) 3 SCR 242 in the context of the question as to whether Swaminarayan sect is a religion distinguishable and separate from the Hindu religion and consequently the temples belonging to the said sect fell outside the scope of Section 3 of the Bombay Hindu Places of Public Worship (Entry Authorisation) Act, 1956. The aforesaid Section 3 of the Act inter alia provided that every temple to which the Act applied shall be open to the excluded classes for worship in the same manner and to the same extent as other Hindus in general. While the eventual decision of the Court which answered the question raised is in the

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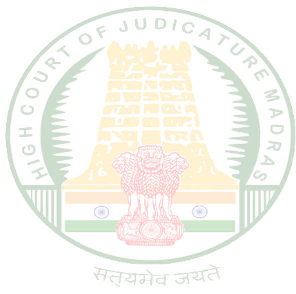
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negative, namely, that the sect in question was not a distinguishable and different religion, it is the very learned discourse that is to be found in the Report with regard to the true tenets of Hinduism that would be of interest so far the present case is concerned.

33. The following passages from the Report are truly worthy of reproduction both for the purpose of recapitulation and illumination: Shastri Yagnapurushdasji v. Muldas Bhundardas Vaishya, AIR 1966 SC 1119 : (1966) 3 SCR 242 , AIR pp. 1128-31, paras 29-33, 36-37 & 40

> *"29. When we think of the Hindu religion, we find it difficult, if not impossible, to define Hindu religion or even adequately describe it. Unlike other religions in the world, the Hindu religion does not claim any one prophet; it does not worship any one God; it does not subscribe to any one dogma; it does not believe in any one philosophic concept; it does not follow any one set of religious rites or performances; in fact, it does not appear to satisfy the narrow traditional features of any religion or creed. It may broadly be described as a way of life and nothing more.*

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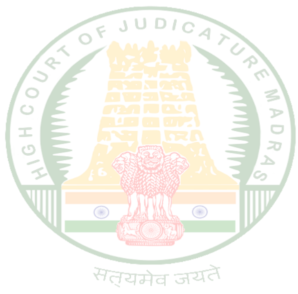
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30. The Hindu thinkers reckoned with the striking fact that the men and women dwelling in India belonged to different communities, worshipped different gods, and practiced different rites (Kurma Purana). (The Hindu View of Life by Dr Radhakrishnan, p. 12.)

31. … It presents for our investigation a complex congeries of creeds and doctrines which in its gradual accumulation may be compared to the gathering together of the mighty volume of the Ganges, swollen by a continual influx of tributary rivers and rivulets, spreading itself over an ever-increasing area of country, and finally resolving itself into an intricate delta of tortuous streams and jungly marshes…. The Hindu religion is a reflection of the composite character of the Hindus, who are not one people but many. It is based on the idea of universal receptivity. It has ever aimed at accommodating itself to circumstances, and has carried on the process of adaptation through more than three thousand years. It has first borne with and then, so to speak, swallowed, digested, and assimilated something from all creeds. (Religious Thought and Life in India by

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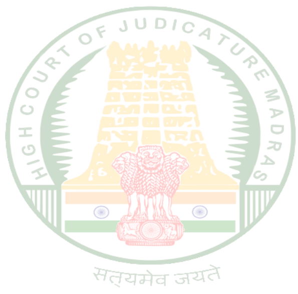
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Monier Williams, p. 57.)

32. … The history of Indian thought emphatically brings out the fact that the development of Hindu religion has always been inspired by an endless quest of the mind for truth based on the consciousness that truth has many facets. Truth is one but wise men describe it differently. The Indian mind has, consistently through the ages, been exercised over the problem of the nature of godhead the problem that faces the spirit at the end of life, and the interrelation between the individual and the universal soul. 'If we can abstract from the variety of opinion', says Dr Radhakrishnan, 'and observe the general spirit of Indian thought, we shall find that it has a disposition to interpret life and nature in the way of monistic idealism, though this tendency is so plastic, living and manifold that it takes many forms and expresses itself in even mutually hostile teachings'. (Indian Philosophy by Dr Radhakrishnan, Vol. 1, p. 32.)

33. … Though philosophic concepts and principles evolved by different Hindu thinkers and philosophers varied in many ways and even appeared to conflict with each other in some

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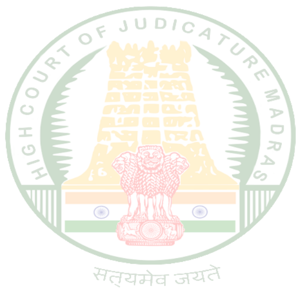
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particulars, they all had reverence for the past and accepted the Vedas as sole foundation of the Hindu philosophy. Naturally enough, it was realised by Hindu religion from the very beginning of its career that truth was many-sided and different views contained different aspects of truth which no one could fully express. …

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36. Do the Hindus worship at their temples the same set or number of gods? That is another question which can be asked in this connection; and the answer to this question again has to be in the negative. Indeed, there are certain sections of the Hindu community which do not believe in the worship of idols; and as regards those sections of the Hindu community which believe in the worship of idols, their idols differ from community to community and it cannot be said that one definite idol or a definite number of idols are worshipped by all the Hindus in general. In the Hindu Pantheon the first gods that were worshipped in Vedic times were mainly Indra, Varuna, Vayu and Agni. Later, Brahma, Vishnu and Mahesh came to be

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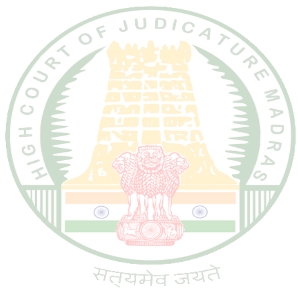
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worshipped. In course of time, Rama and Krishna secured a place of pride in the Hindu Pantheon, and gradually as different philosophic concepts held sway in different sects and in different sections of the Hindu community, a large number of gods were added, with the result that today, the Hindu Pantheon presents the spectacle of a very large number of gods who are worshipped by different sections of the Hindus.

37. The development of Hindu religion and philosophy shows that from time to time saints and religious reformers attempted to remove from the Hindu thought and practices elements of corruption and superstition and that led to the formation of different sects. Buddha started Buddhism; Mahavir founded Jainism; Basava became the founder of Lingayat religion, Dhyaneshwar and Tukaram initiated the Varakari cult; Guru Nanak inspired Sikhism; Dayananda founded Arya Samaj, and Chaitanya began Bhakti cult; and as a result of the teachings of Ramakrishna and Vivekananda, Hindu religion flowered into its most attractive, progressive and dynamic form. If we study the

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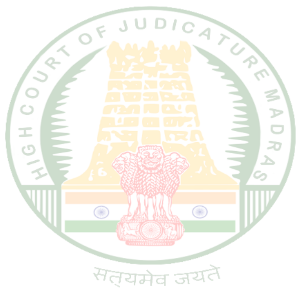
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teachings of these saints and religious reformers, we would notice an amount of divergence in their respective views; but underneath that divergence, there is a kind of subtle indescribable unity which keeps them within the sweep of the broad and progressive Hindu religion.

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40. Tilak faced this complex and difficult problem of defining or at least describing adequately Hindu religion and he evolved a working formula which may be regarded as fairly adequate and satisfactory. Said Tilak: 'Acceptance of the Vedas with reverence; recognition of the fact that the means or ways to salvation are diverse; and realisation of the truth that the number of gods to be worshipped is large, that indeed is the distinguishing feature of Hindu religion' . This definition brings out succinctly the broad distinctive features of Hindu religion. It is somewhat remarkable that this broad sweep of Hindu religion has been eloquently described by Toynbee. Says Toynbee: 'When we pass from the plane of social practice to the plane of intellectual

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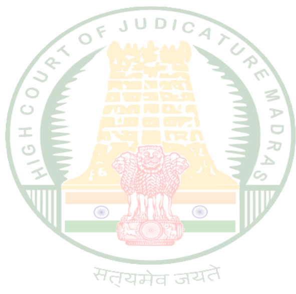
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outlook, Hinduism too comes out well by comparison with the religions on ideologies of the South-West Asian group. In contrast to these Hinduism has the same outlook as the pre-Christian and pre-Muslim religions and philosophies of the Western half of the old world. Like them, Hinduism takes it for granted that there is more than one valid approach to truth and to salvation and that these different approaches are not only compatible with each other, but are complementary' (The Present day Experiment in Western Civilisation by Toynbee, pp. 48-49.)."

(emphasis supplied)

34. The fact that reference to Hindus in the Constitution includes persons professing the Sikh, Jain and Buddhist religions and the statutory enactments like the Hindu Marriage Act, the Hindu Succession Act, etc. also embraces Sikhs, Jains and Buddhists within the ambit of the said enactments is another significant fact that was highlighted and needs to be specially taken note of.

35. What is sought to be emphasised is that all the

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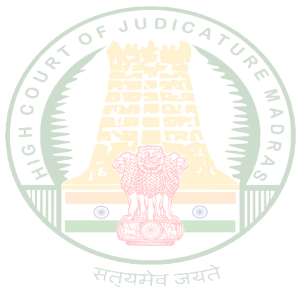
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above would show the wide expanse of beliefs, thoughts and forms of worship that Hinduism encompasses without any divergence or friction within itself or amongst its adherents. It is in the backdrop of the above response to the question posed earlier "What is Hinduism"? that we have to proceed further in the matter.

36. Image worship is a predominant feature of Hindu religion. The origins of image worship is interesting and a learned discourse on the subject is available in a century-old judgment of the Madras High Court in Gopala Moopanar v. Dharmakarta Subramaniya Iyer [Gopala Moopanar v. Dharmakarta Subramaniya Iyer, AIR 1915 Mad 363] . In the said Report the learned Judge (Sadasiva Aiyar, J.) on the basis of accepted texts and a study thereof had found that in the "first stage" of existence of mankind God was worshipped as immanent in the heart of everything and worship consisted solely in service to ones fellow creatures. In the second stage, the spirit of universal brotherhood lost its initial efficacy and notions of inferiority and superiority amongst men surfaced leading to a situation where the inferior man was asked to worship the superior man who was

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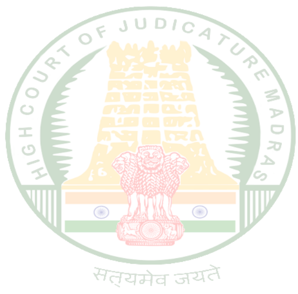
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considered as a manifestation of God. Disputes arose about the relative superiority and inferiority which were resolved by the wise sages by introducing image worship to enable all men to worship God without squabbles about their relative superiorities. With passage of time there emerged rules regulating worship in temples which came to be laid down in the treatises known as Agamas and the Thantras. Specifically in Gopala Moopanar v. Dharmakarta Subramaniya Iyer, AIR 1915 Mad 363, it was noticed that the Agamas prescribed rules as regards "what caused pollution to a temple and as regards the ceremonies for removing pollution when caused".

37. In the said judgment in Gopala Moopanar v. Dharmakarta Subramaniya Iyer, AIR 1915 Mad 363 it is further mentioned that: (SCC OnLine Mad)

> *"… There are, it is well known Thanthries in Malabar who are specialists in these matters of pollution. As the temple priests have got the special Saivite initiation or dheeksha which entitles them to touch the innermost image, and as the touch of the persons who have got no such initiation, even though they be Brahmins,*

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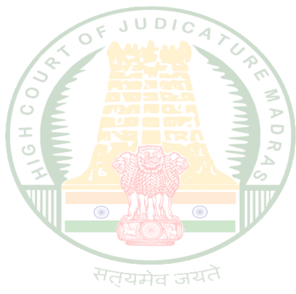
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was supposed to pollute the image, even Brahmins other than the temple priest Brahmins were in many temples not allowed to go into the garbhagraham."

(emphasis supplied)

The Agamas also contain other prescriptions including who is entitled to worship from which portion of the temple: [Gopala Moopanar v. Dharmakarta Subramaniya Iyer, AIR 1915 Mad 363] , SCC OnLine Mad)

"… In one of the Agamas, it is said (as freely translated) thus: 'Saivite Brahmin priests are entitled to worship in the antharala portion. Brahmins learned in the Vedas are entitled to worship in the arthamantabha, other Brahmins in the front Mantabha, Kings and Vaisyas in the dwaramantabha, initiated Sudras in the Bahir Mantapa' and so on."

*The legal effect of the above prescriptions need not detain us and it is the portion underlined (herein italicised) [**Ed.**: Herein italicised.] which is of particular importance as the discussions that follow would reveal.*

...

43. That the freedom of religion under Articles 25

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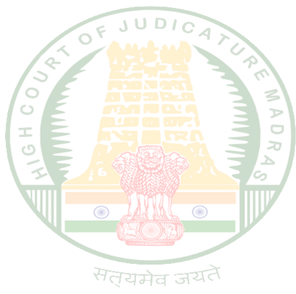
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and 26 of the Constitution is not only confined to beliefs but extends to religious practices also would hardly require reiteration. Right of belief and practice is guaranteed by Article 25 subject to public order, morality and health and other provisions of Part III of the Constitution. Clause (2) is an exception and makes the right guaranteed by clause (1) subject to any existing law or to such law as may be enacted to, inter alia, provide for social welfare and reforms or throwing or proposing to throw open Hindu religious institutions of a public character to all classes and sections of Hindus. Article 26(b) on the other hand guarantees to every religious denomination or section full freedom to manage its own affairs insofar as matters of religion are concerned, subject, once again, to public order, morality and health and as held by this Court subject to such laws as may be made under Article 25(2)(b). The rights guaranteed by Articles 25 and 26, therefore, are circumscribed and are to be enjoyed within constitutionally permissible parameters. Often occasions will arise when it may become necessary to determine whether a belief or a practice claimed and asserted is a fundamental part of the religious practice of a group or denomination making such a

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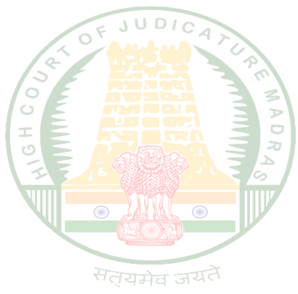
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claim before embarking upon the required adjudication. A decision on such claims becomes the duty of the constitutional court. It is neither an easy nor an enviable task that the courts are called to perform. Performance of such tasks is not enjoined in the court by virtue of any ecclesiastical jurisdiction conferred on it but in view of its role as the constitutional arbiter. Any apprehension that the determination by the court of an essential religious practice itself negatives the freedoms guaranteed by Articles 25 and 26 will have to be dispelled on the touchstone of constitutional necessity. Without such a determination there can be no effective adjudication whether the claimed right is in conformity with public order, morality and health and in accord with the indisputable and unquestionable notions of social welfare and reforms. A just balance can always be made by holding that the exercise of judicial power to determine essential religious practices, though always available being an inherent power to protect the guarantees under Articles 25 and 26, the exercise thereof must always be restricted and restrained.

44. Article 16(5) which has virtually gone unnoticed

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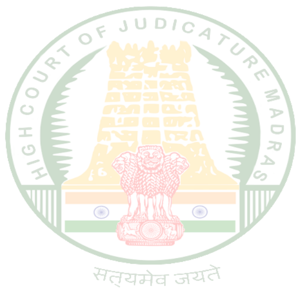
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till date and, therefore, may now be seen is in the following terms:

"16.(5) Nothing in this article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination."

45. A plain reading of the aforesaid provision i.e. Article 16(5), fortified by the debates that had taken place in the Constituent Assembly, according to us, protects the appointment of Archakas from a particular denomination, if so required to be made, by the Agamas holding the field. The debates in the Constituent Assembly referred to disclose that the suggestion that the operation of Article 16(5) should be restricted to appointment in offices connected with administration of a religious institution was negatived. The exception in Article 16(5), therefore, would cover an office in a temple which also requires performance of religious functions. In fact, the above though not expressly stated could be one of the bases for the views expressed by the Constitution

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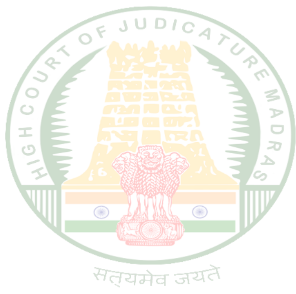
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Bench in Seshammal v. State of T.N., (1972) 2 SCC 11.

46. The preceding discussion indicates the gravity of the issues arising and the perceptible magnitude of the impact thereof on Hindu society. It would be, therefore, incorrect, if not self defeating, to take too pedantic an approach at resolution either by holding the principle of res judicata or locus to bar an adjudication on merits or to strike down the impugned G.O. as an executive fiat that does not have legislative approval, made explicit by the fact that though what has been brought by the G.O. dated 23-5-2006 was also sought to be incorporated in the statute by the Ordinance, eventually, the amending Bill presented before the legislature specifically omitted the aforesaid inclusion. The significance of the aforesaid fact, however, cannot be underestimated. What is sought to be emphasised is that the same, by itself, cannot be determinative of the invalidity of the G.O. which will have to be tested on certain other premises and foundation treating the same to be an instance of exercise of executive power in an area not covered by any specific law.

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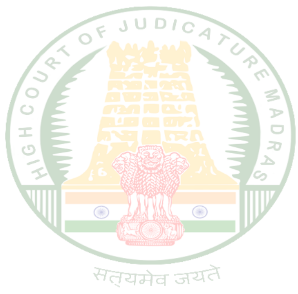

47. The issue of untouchability raised on the anvil of Article 17 of the Constitution stands at the extreme opposite end of the pendulum. Article 17 of the Constitution strikes at caste-based practices built on superstitions and beliefs that have no rationale or logic. The exposition of the Agamas made a century back by the Madras High Court in Gopala Moopanar v. Dharmakarta Subramaniya Iyer, 1914 SCC OnLine Mad 104 : AIR 1915 Mad 363 that exclusion from the sanctum sanctorum and duties of performance of poojas extends even to Brahmins is significant. The prescription with regard to the exclusion of even Brahmins in Gopala Moopanar has been echoed in the opinion of Shri Parthasarthy Bhattacharya as noted by the Constitution Bench in Seshammal. Such exclusion is not on the basis of caste, birth or pedigree. The provisions of Article 17 and the Protection of Civil Rights Act, 1955, therefore, would not be of much significance for the present case. Similarly, the "offer" of the State in its affidavit to appoint Shaivite as Archakas in Shiva temples and Vaishnavas in Vaishnavite temples is too naïve an understanding of a denomination which is, to say the least, a far more sharply identified subgroup both in case of Shaivite and Vaishnavite

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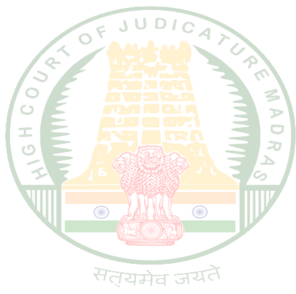
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followers. However, what cannot be ignored is the "admission" inbuilt in the said offer resulting in some flexibility in the impugned G.O. that the State itself has acknowledged.

48. Seshammal is not an authority for any proposition as to what an Agama or a set of Agamas governing a particular or group of temples lay down with regard to the question that confronts the court, namely, whether any particular denomination of worshippers or believers have an exclusive right to be appointed as Archakas to perform the poojas. Much less, has the judgment taken note of the particular class or caste to which the Archakas of a temple must belong as prescribed by the Agamas. All that it does and says is that some of the Agamas do incorporate a fundamental religious belief of the necessity of performance of the poojas by Archakas belonging to a particular and distinct sect/group/denomination, failing which, there will be defilement of deity requiring purification ceremonies. Surely, if the Agamas in question do not proscribe any group of citizens from being appointed as Archakas on the basis of caste or class the sanctity of Article 17 or any other provision of Part III of the

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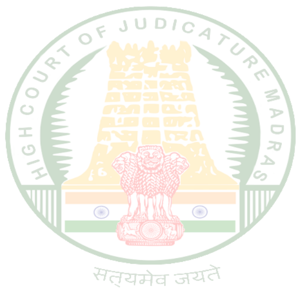
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Constitution or even the Protection of Civil Rights Act, 1955 will not be violated. What has been said in Seshammal (supra) is that if any prescription with regard to appointment of Archakas is made by the Agamas, Section 28 of the Tamil Nadu Act mandates the trustee to conduct the temple affairs in accordance with such custom or usage. The requirement of constitutional conformity is inbuilt and if a custom or usage is outside the protective umbrella afforded and envisaged by Articles 25 and 26, the law would certainly take its own course. The constitutional legitimacy, naturally, must supersede all religious beliefs or practices.

49. The difficulty lies not in understanding or restating the constitutional values. There is not an iota of doubt on what they are. But to determine whether a claim of State action in furtherance thereof overrides the constitutional guarantees under Articles 25 and 26 may often involve what has already been referred to as a delicate and unenviable task of identifying essential religious beliefs and practices, sans which the religion itself does not survive. It is in the performance of this task that the absence of any exclusive ecclesiastical jurisdiction of

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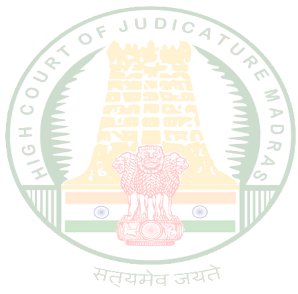
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this Court, if not other shortcomings and adequacies, that can be felt. Moreover, there is some amount of uncertainty with regard to the prescription contained in the Agamas. Coupled with the above is the lack of easy availability of established works and the declining numbers of acknowledged and undisputed scholars on the subject. In such a situation one is reminded of the observations, if not the caution note struck by Mukherjea, J. in Commr., Hindu Religious Endowments v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, AIR 1954 SC 282 : 1954 SCR 1005 with regard to complete autonomy of a denomination to decide as to what constitutes an essential religious practice, a view that has also been subsequently echoed by this Court though as a "minority view". But we must hasten to clarify that no such view of the Court can be understood to be an indication of any bar to judicial determination of the issue as and when it arises. Any contrary opinion would give rise to large-scale conflicts of claims and usages as to what is an essential religious practice with no acceptable or adequate forum for resolution. That apart the "complete autonomy" contemplated in Shirur Mutt and the meaning of "outside authority" must not be torn out of the context in

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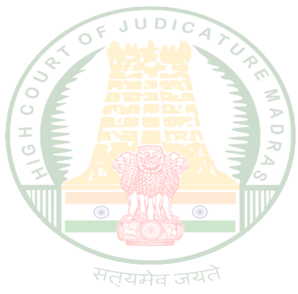
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which the views, already extracted, came to be recorded (p. 1028). The exclusion of all "outside authorities" from deciding what is an essential religious practice must be viewed in the context of the limited role of the State in matters relating to religious freedom as envisaged by Articles 25 and 26 itself and not of the courts as the arbiter of constitutional rights and principles.

50. What then is the eventual result? The answer defies a straightforward resolution and it is the considered view of the Court that the validity or otherwise of the impugned G.O. would depend on the facts of each case of appointment. What is found and held to be prescribed by one particular or a set of Agamas for a solitary or a group of temples, as may be, would be determinative of the issue. In this regard it will be necessary to re-emphasise what has been already stated with regard to the purport and effect of Article 16(5) of the Constitution, namely, that the exclusion of some and inclusion of a particular segment or denomination for appointment as Archakas would not violate Article 14 so long as such inclusion/exclusion is not based on the criteria of caste, birth or any other constitutionally

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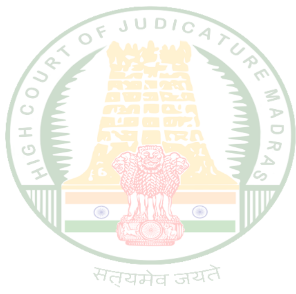
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unacceptable parameter. So long as the prescription(s) under a particular Agama or Agamas is not contrary to any constitutional mandate as discussed above, the impugned G.O. dated 23-5-2006 by its blanket fiat to the effect that, "Any person who is a Hindu and possessing the requisite qualification and training can be appointed as a Archaka in Hindu temples" has the potential of falling foul of the dictum laid down in Seshammal. A determination of the contours of a claimed custom or usage would be imperative and it is in that light that the validity of the impugned G.O. dated 23-5-2006 will have to be decided in each case of appointment of Archakas whenever and wherever the issue is raised. The necessity of seeking specific judicial verdicts in the future is inevitable and unavoidable; the contours of the present case and the issues arising being what has been discussed.

51. Consequently and in the light of the aforesaid discussion, we dispose of all the writ petitions in terms of our findings, observations and directions made above reiterating that as held in Seshammal, appointments of Archakas will have to be made in accordance with the Agamas, subject to their due

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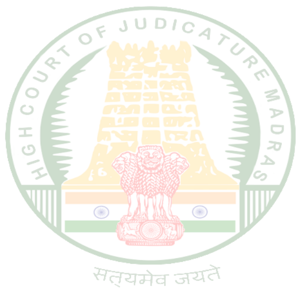
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identification as well as their conformity with the constitutional mandates and principles as discussed above."

30. The judgments in the case of ***Seshammal and others,*** supra, and subsequently in ***Adi Saiva Sivachariyargal Nala Sangam and others,*** supra, need to be applied squarely to the facts of this case, but certain clarification on the facts is required and for that even the issue is to be addressed in reference to the challenge to the Rules of 2020.

31. We would first refer to Rule 2(c) of the Rules of 2020 which defines the term *"appointing authority''.* The appointing authority is not only trustee, but even a Fit Person. A challenge is made to the authority of the Fit Person to appoint Archakas. An elaborate argument has been made by learned Advocate General with a prayer to hold the said provision to be *intra vires.* We find that a Fit Person is appointed by invoking Section 49 of the Act of 1959. It is in a given case where either the trustees are not available or for the reasons given under Section 49 of the Act of

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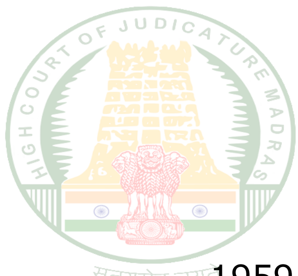
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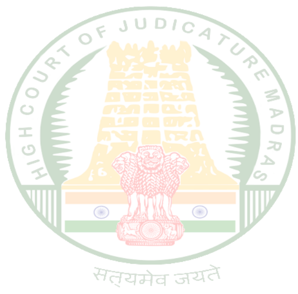
1959, a fit person is appointed. In the absence of trustees, the temples cannot be left in lurch. We do not find that the definition of the term *"appointing authority"* is in any manner offending the constitutional provisions or even the provisions of the Act of 1959. It is no doubt true that the right to make appointment of the Archakas lies with the trustees, but this court cannot be oblivious to the fact that in the absence of the trustees, the affairs of the temple have to be looked after by someone. Only in the absence of trustees or for any reason given in Section 49 of the Act of 1959, a fit person is appointed to exercise the power of trustees. Hence, we do not find that the definition of the term *"appointing authority"* given under Rule 2(c) of the Rules of 2020 offends the constitutional provision or the Act of 1959. It is, however, with a clarification that the government should not continue the arrangement of fit person for indefinite period, rather trustees should be nominated or appointed at the earliest, so that the ultimate management of the temple remains with the trustees of the temple and for that even exercise of powers for appointment of Archakas.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32. Now, we take up the issue in reference to the challenge to Rules 7 and 9 of the Rules of 2020. The provisions aforesaid have been challenged mainly on the ground that they stipulate eligibility, qualification and age even for appointment of Archakas. The qualification of one year certificate course has been prescribed for Archaka and thereby even if an Archaka is performing pooja for last many years and gained experience, he would be ineligible for appointment in the absence of requisite qualification. It also stipulates awarding of marks towards experience, but once a person is not having the requisite qualification of one year certificate course, there would be no question of marks for experience.

33. We have threadbare analyzed the provisions aforesaid and find that Rules 7 and 9 of the Rules of 2020 cannot be held to be unconstitutional as such, because it is not only applicable to appointment of Archaka/Poojari, but even to other posts. If Rules 7 and 9 of the Rules of 2020 are struck down, it will create a situation where the appointment to other posts than of Archakas would

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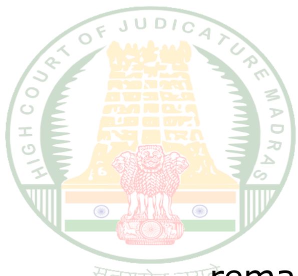
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remain unguided and, therefore, the government framed the Rules of 2020 to prescribe the eligibility and qualification of the officer/employee of the temple along with the mode. It is, however, necessary to apply the doctrine of reading down of those provisions in regard to the appointment of Archakas in the temple or group of temples, which were constructed as per Agamas. The appointment of Archakas in the temples constructed as per Agamas would be governed by the Agamas and for that the Rule under challenge would not apply. It would otherwise offend Articles 25 and 26 of the Constitution of India. It is more especially when Article 26 of the Constitution of India postulates that every religious denomination or any section shall have the right to establish and maintain institutions for religious and charitable purposes and manage its own affairs in the manner provided in the religion. The protection in that regard has been given by the Apex Court in the case of ***Seshammal and others,*** supra, while analyzing the argument in regard to the appointment of Archakas in temples constructed as per the Agamas.

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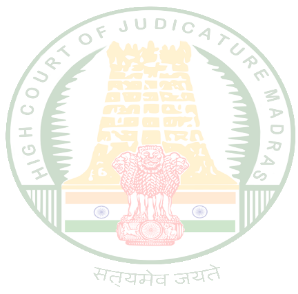
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34. The ratio propounded by the Apex Court in the case of ***Seshammal and others,*** supra, and ***Adi Saiva Sivachariyargal Nala Sangam and others,*** supra, would apply for the appointment of Archakas in the temples, which were constructed as per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

35. At this stage, we may further consider the challenge to the constitutional validity of Rules 2(g), 11 to 15 and 17 of the Rules of 2020 made in W.P.No.25837 of 2021, because in all the other writ petitions the challenge is made only to Rule 2(c), 7 and 9 of the Rules of 2020.

36. For ready reference, Rules 2(g), 11 to 15 and 17 of the Rules of 2020 are quoted hereunder:

> ***"2(g) "Executive Authority"*** *means the Trustee, Fit Person or the Executive Officer, as the case may be."*
>
> *11.* ***Seniority.-*** *The seniority of a person shall,*

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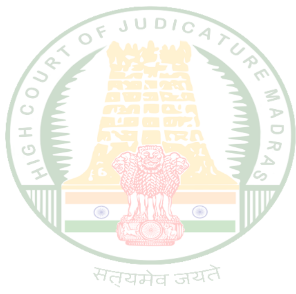
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unless has been reduced to a lower rank as a punishment, be determined by the date on which he is appointed to the category. Whenever more than one vacancy is filled up, the appointing authority shall fix the order of placement based on the rank obtained by them in the list of approved candidates drawn up by the appointing authority. If other things being equal their seniority shall be decided with reference to their age, the elder shall be placed at the top.

12. ***Counting of service in a different institution.-*** *(1) Each religious institution shall be a separate unit for the purpose of recruitment, seniority and promotion.*
(2) Services rendered in one institution shall count for another institution for the purpose of pension.

13. ***Promotion.-*** *(i) Number of posts which have to be filled up by promotion from the feeder categories within the religious institution shall be worked out by the religious institution and a panel of qualified persons for each post shall be prepared every year as per the seniority in the feeder category.*
(ii) No person shall be eligible for promotion unless

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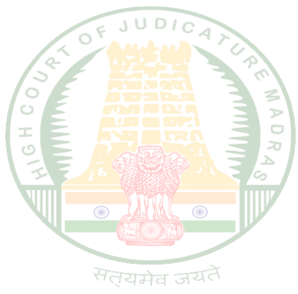
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he has satisfactorily completed his probation.

(iii) If the feeder category for a post is not available in the institution or the person in the feeder category is not suitable for the promotional post, then that vacancy shall be filled up by the employees of other religious institutions by notifying those vacancies and calling for applications from other religious institutions.

14. ***Preparation of Panel.-*** *(1) No employee is eligible for drawal/ inclusion in the panel for promotion and appointment by promotion if,-*

(a) disciplinary action is pending or contemplated against him; or

(b) criminal case is pending or contemplated against him; or

(c) vigilance case is pending or contemplated against him; or

(d) he is convicted in a Criminal case; or

(e) he is undergoing any punishment.

(2) The crucial date for preparation of such panel shall be the 1st July of every year. The appointing authority shall lake action for preparation of the panel three months prior to the crucial date taking into account the number of vacancies due to arise in

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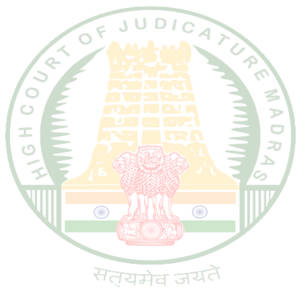
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the particular year and get such estimate of vacancies approved by the Assistant Commissioner in respect of religious institutions not included in the list published under section 46 of the Act; and by the Regional Joint Commissioner concerned in respect of religious institutions included in the list published under section 46(i) and 46(ii); by the Commissioner or the officer nominated by the Commissioner in respect of religious institutions included in the list published under section 46(iii) of the Act. On approval by the authorities, it shall be published on the Notice Board of the religious institution concerned and thereafter promotions shall be made based on such panel.

15. ***Probation.-*** *(1) Every person appointed to a post by direct recruitment shall, from the date on which he joins duty, be on probation for a total period of two years on duty within a continuous period of three years.*

Explanation.- For the purpose of calculating the period of probation of a probationer, complete calendar months, irrespective of the number of days in each month, shall first be calculated and then the odd number of days calculated subsequently. Period

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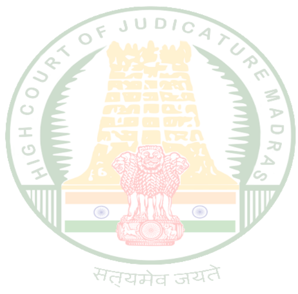
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of leave, other than casual leave, if any, taken during the period of probation shall be excluded while calculating the period of probation.

(2) The appointing authority may extend the period of probation of any probationer, up to five years, to enable him to pass the prescribed tests as per Annexure – XII.

(3) If the appointing authority, decides that a probationer is suitable for declaration of probation then, he shall issue an order declaring the probationer to have satisfactorily completed the period of probation. If no such order is issued within six months from the date on which he is eligible for such declaration the probationer shall be deemed to have satisfactorily completed his probation and on the date of expiry of the prescribed or extended period of probation. A formal order declaring the completion of probation shall, however, be issued by the appointing authority.

(4) Probation cannot be declared if charges are pending and probation shall be declared by the appointing authority within one month after final orders are passed on the charges.

(5) If the appointing authority decides that a probationer is not suitable for such post or if a

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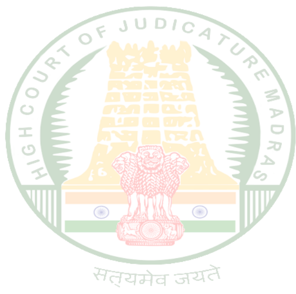
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probationer has not or if a probationer has not passed the test as prescribed within the period of probation, it shall, unless the period of probation is extended, by an order, discharge him from the service after giving him a reasonable opportunity for showing cause against the action to be taken against him.

(6) The decision of the appointing authority that the probationer is not suitable for service may also be based on his work and conduct till the date of decision inclusive of the period subsequent to the prescribed or extended period of probation.

17. ***Transfers and postings.*** *- (1) The employees of religious institutions may be transferred to the entry level post, from one religious institution to another religious institution having Executive Officer of the same grade based on the mutual consent of the Executive Authorities of the religious institutions, by considering the objections of employees of the said religious institutions and subject to approval by the Commissioner:*

Provided that the scale of pay and designation of the post are the same in both the religious institutions.

(2) An employee transferred from one religious

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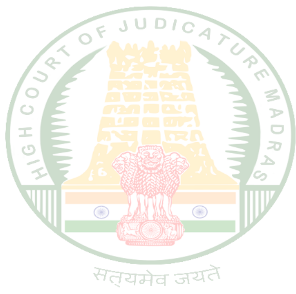
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institution to another religious institution is entitled for joining time as admissible to Government Servants.

(3) No employee shall be considered for transfer during the period of probation if,

(i) disciplinary action is pending or contemplated against him.

(ii) criminal case is pending or contemplated against him.

(iii) vigilance case is pending or contemplated against him.

(iv) he is undergoing any punishment.

(4) Notwithstanding anything contained in this rule, the Commissioner may, in the interest of administration of religious institutions, transfer employees of any religious institution to any other religious institution having Executive Officer of the same grade".

37. Rule 2(g) of the Rules of 2020 provides the definition of the term *"Executive Authority",* who is basically a trustee, and in his absence, a fit person appointed under Section 49 of the Act of 1959, or the Executive Officer. We do not find that Rule 2(g) of the

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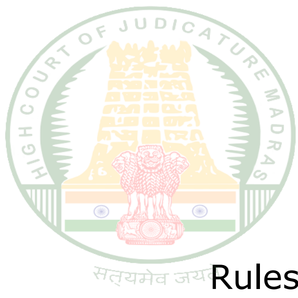
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Rules of 2020 offends any constitutional provision because Section 28(1) of the Act of 1959 directs the trustees to administer the affairs of the temple in accordance with the terms of the trust or the usage of the institution. Hence, the inclusion of the word *"Executive Officer"* after the words trustee and fit person would not be any person other than who can administer the religious institution.

38. The clarification aforesaid has been made to read the definition of *"Executive Authority"* in consonance with the provisions of the Act of 1959 and thereby the term *"Executive Authority"* would mean the trustees at the first place and in the absence of the trustees, the fit person and the word *"Executive Officer"* used therein after trustee and fit person would be read in consonance with what has been opined by us hereinabove.

39. Now we take up the challenge to the constitutional validity of Rules 11 to 15 of the Rules of 2020. We do not find provisions to be unconstitutional or offending the Act of 1959. Rule 11 of the Rules of 2020 talks about the seniority of the person to be

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determined by the date on which he was appointed to the category of a post. The right to determine the seniority has been given to the appointing authority and in case more than one vacancy is filled up, the seniority would be determined in the order of the placement of the candidate in the order of rank obtained by them in the list approved by the appointing authority. In case everything is equal, the seniority is to be determined with reference to the age and thereby the elder would be senior to others. We do not find that Rule 11 of the Rules 2020 either offends any of the constitutional provisions or the provisions of the Act of 1959. Thus, challenge to Rule 11 of the Rules of 2020 cannot be accepted.

40. Rule 12 of the Rules of 2020 directs that each religious institution shall be treated as a separate unit for the purpose of recruitment, seniority and promotion. No argument for challenge to it has been made, otherwise Rule 12 of the Rules of 2020 makes it clear that each religious institution shall be a separate unit for the purpose of recruitment, seniority and promotion. It is otherwise required to maintain the custom and usage of each institution in

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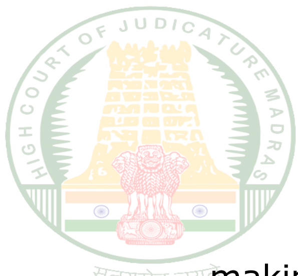
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making recruitment and promotion, which should be as per the Agamas. If an individual is appointed as Archaka/Poojari keeping in mind the custom and usage of the particular Agama, for illustration, Shaiva Agama, then such a religious institution should make recruitment and promotion of their employees as per the Agamas. Therefore, challenge to Rule 12 of the Rules of 2020 is not sustainable.

41. Rules 13 to 15 of the Rules of 2020 are for promotion, preparation of panel and probation. We do not find that any of the said Rules offends either any of the constitutional provision or the Act of 1959 and, therefore, no argument could be advanced to sustain the challenge. Therefore, the challenge to Rules 13 to 15 of the Rules of 2020 is summarily rejected.

42. Now remains the challenge to Rule 17 of the Rules of 2020 regarding transfer and posting. Rule 17 of the Rules of 2020 was amended vide G.O.Ms.No.132, Tourism, Culture and Religious Endowments [RE 4-2] Department, dated 26.10.2021. The

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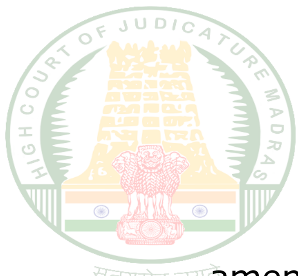
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amendment and the Circular issued by the Commissioner dated 25.1.2022 framing guidelines for transfer was the subject-matter of consideration in W.P.(M) Nos.2288 and 2289 of 2022 [***S.Sudharsanam and another v. The State of Tamilnadu and others***], decided on 28.4.2022. The amendment impugned therein is quoted in paragraph 19 of the said judgment, which is reproduced hereunder:

> *"19. The impugned amendment reads as follows:*
>
> *In the said Rules.-*
> *(a) in sub-rule (1) of rule 17, for the expression "may be transferred" the expression* ***"may be transferred by the appointing authority concerned"*** *shall be substituted.*
> *(b) after sub-rule (3) of the rule 17, the following sub-rule shall be added, namely:-*
>
> > ***"(4) Notwithstanding anything contained in this rule, the Commissioner may, in the interest of administration of religious institutions, transfer employees of any religious institution to any other religious institution having Executive Officer of the same grade".***

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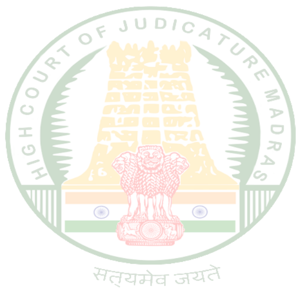
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[emphasis supplied]

43. After considering the aforesaid amendment, the following order was passed by the Division Bench in ***S.Sudharsanam and another***, supra:

> *"25. First, the said arguments cannot be relevant for the purpose of testing the Constitutional validity of the impugned amendment as well as the Circular. The possibility of a wrongful exercise of power under an enabling Rule or the Circular cannot be a ground to declare the very Rule or the Circular itself as unconstitutional.*
>
> *26. Second, from the guidelines extracted above and the* categorical statements made under the counter affidavit, it is clear that no condition of service will be affected by the transfer and that, no *Agamas* or religious practice of any Temple or religious institution will be, in any manner, affected.
>
> *27. Further, if and when any employee is transferred, in such a manner, which affected the religious practices or agamas or his salary is affected or promotion which is due is affected on account of*

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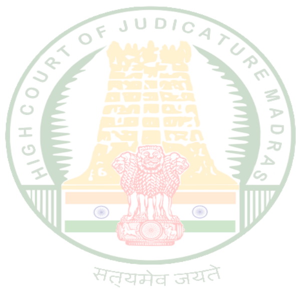
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transfer, that would give rise to the individual, the cause of action to challenge the transfer and the same cannot be a ground for attacking the Constitutional validity of the Rule/ circular.

28. The impugned amendment and the consequential circular are

(i) very well within the powers of the respondents;

(ii) are not violating any rights of the employees;

(iii) are issued in compliance of the directions of the various orders of this Court referred to above and therefore, absolutely, no illegality whatsoever can be attributed in respect of the same."

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

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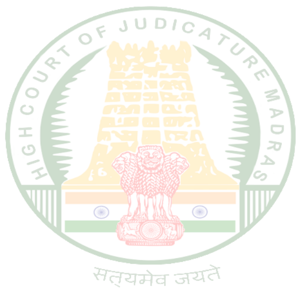
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45. The aforesaid direction would take care of Article 26 of the Constitution of India and the issue raised by the petitioners herein. We would not hold Rule 17 of the Rules of 2020 to be unconstitutional, however, necessary protection has been given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

46. In the light of the discussion made above, the challenge to Rule 2(c), 2(g), 7, 9, 11 to 15 and 17 of the Rules of 2020 is answered and, accordingly, the appointment of Archaka/Poojari would be governed by the Agama under which the temple or group of temples were constructed. It is, however, with a clarity that this judgment would not be applicable to those temples which are not constructed as per the Agamas. We need to reiterate the reasoning given in the judgments of the Apex Court in the cases of *Seshammal and others* and *Adi Saiva Sivachariyargal Nala Sangam and others,* supra, wherein it has been elaborately given out that as per the texts of the Vaikhanasa Shastra (Agama), persons who are

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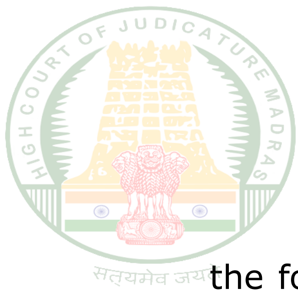
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the followers of the four Rishi traditions of Bhrigu, Atri, Marichi and Kasyapa and born of Vaikhanasa parents are alone competent to do puja in Vaikhanasa temples of Vaishnavites. They only can touch the idols and perform the ceremonies and rituals. None others, however, high placed in society as pontiffs or Acharyas, or even other Brahmins could touch the idol, do puja or even enter the Garbha Griha. The illustration aforesaid was given after elaborate discussion, in regard to the temples constructed as per the Agamas, with a clarification that if one is not recognised under the Agamas to touch the idol, then such a person would not be eligible for appointment as Archaka/Poojari. Since elaborate discussion on the issue has been made in the judgments of the Apex Court in the cases of ***Seshammal and others*** and ***Adi Saiva Sivachariyargal Nala Sangam and others***, supra, we need not emphasise the same reasoning and finding, rather for that purpose, we have quoted the relevant paragraphs of the judgments to make it applicable to the present case also.

47. The issue that remains is in regard to challenge to the

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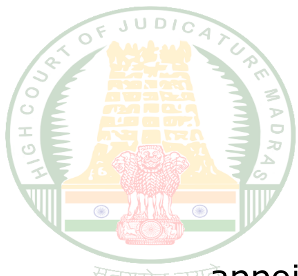
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appointment of Archaka. The issue aforesaid would also be governed by the judgment of the Apex Court in the case of ***Adi Saiva Sivachariyargal Nala Sangam and others,*** supra. If the appointment of Archaka is not made as per the Agamas, the individual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

48. At this stage, it is further necessary to enlarge the scope of the issue, because what has already been decided by the Apex Court is reiterated and it is not required to be elaborated because the relevant paragraphs of it have already been quoted above and are to be applied to these writ petitions.

49. The only grey area is about the identification of the temples constructed as per the Agamas. It is for the reason that while the Apex Court recognized the right of a doctrine or belief guaranteed under Article 26 of the Constitution of India, it left it

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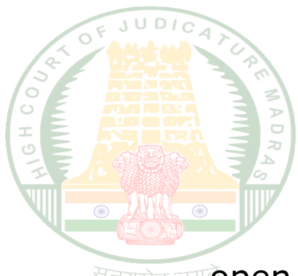
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open for the individual to challenge the appointment of Archakas in the temples which were constructed as per Agamas. It has been held that the Archakas have to be appointed keeping in mind temple constructed as per the Agamas and therefore, there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

50. Accordingly, we direct the State Government to constitute a Five-Member Committee, out of which the Chairperson would be

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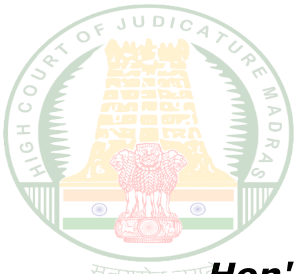
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Hon'ble Mr.Justice M.Chockalingam, ***Retired Judge of the Madras High Court***, with ***Mr.N.Gopalaswami, Head of the Madras Sanskrit College's Executive Committee***, as one of the Member, being an eminent person possessing knowledge of the subject. Two members would be nominated by the Government in consultation with the Chairperson of the Committee within a period of one month from the date of receipt of a copy of this order. The Commissioner of the HR & CE Department would be the Ex-officio Member of the Committee. The Committee would then identify the temples which were constructed as per Agamas. On identification of the temple constructed as per particular Agama, the appointment of Archaka would be governed accordingly and as per the judgment of the Apex Court, supra, leaving those temples which have not been constructed as per the Agamas.

51. If any appointment of Archaka is made offending the Agamas, it would be amenable to challenge before this court by the individual aggrieved person. It is again clarified that the direction in this judgment would apply only to temples which were constructed

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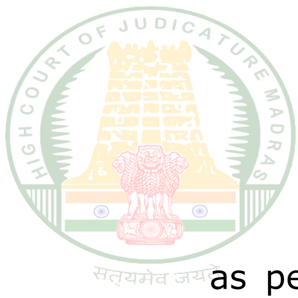
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as per Agamas, and not for any other temple and, therefore, we have not accepted the challenge to Rules 2(c), 2(g), 7, 9 and 11 to 15 of the Rules of 2020, but are applying the doctrine of reading down to protect the rights guaranteed under Articles 16(5), 25 and 26 of the Constitution of India.

52. The Committee would identify the temple or group of temples which were constructed as per Agamas and, while doing it, they would further identify under which Agama, the said temple was constructed. It is leaving those temples which were not constructed as per the Agamas. The temple or group of temples which were constructed as per the Agamas would be governed by the custom and practice not only in respect of the worship of the deity, but in all respects, which includes even the appointment of Archakas. The appointment of Archakas in the temple or group of temples constructed under the respective Agama shall, accordingly, be governed by the Agamas and not by Rules 7 and 9 of the Rules of 2020. The detailed reason for it was earlier given by the Apex Court in the judgments of ***Seshammal and others*** and ***Adi Saiva***

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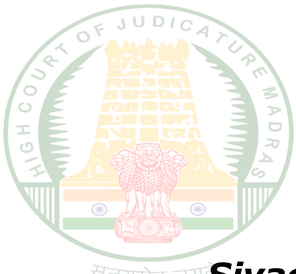
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Sivachariyargal Nala Sangam and others, supra, and is to be followed.

With the aforesaid directions, all the writ petitions are disposed of. There will be no order as to costs. Consequently, connected miscellaneous petitions are closed.

(M.N.B., CJ.) (N.M., J.)
22.08.2022

Index : Yes
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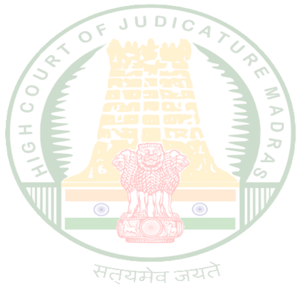

THE HON'BLE CHIEF JUSTICE
AND
N.MALA,J.

(sasi)

W.P.Nos.17802, 18678, 19795, 19936, 20480, 21175, 21906, 25711, 25837, 18753, 19800, 19938, 20489, 25714 of 2021 and 347 of 2022

22.08.2022

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