
(2024) 11 KL CK 0033

High Court Of Kerala

Case No: Writ Petition (C) Nos. 27642 Of 2017, 33651 Of 2018, 7123 Of 2019 and 8122 Of 2023

O.N.Krishna Kumar

APPELLANT

Vs

Travancore Devaswom
Board

RESPONDENT

Date of Decision: Nov. 26, 2024

Acts Referred:

- Constitution of India, 1950 - Article 226
- Travancore Cochin Hindu Religious Institutions Act, 1950 - Section 35(2)(e), 35(3)
- Kerala Devaswom Recruitment Act, 2015 - Section 9, 9(1)(i)
- Kerala Devaswom Recruitment Rules, 2015 - Rule 2(e)

Citation: (2024) 11 KL CK 0033

Hon'ble Judges: Anil K. Narendran, J; G. Girish, J

Bench: Division Bench

Advocate: D.Somasundaram, C.K.Pavithran, G.Biju, V.V.Nandagopal Nambiar

Final Decision: Dismissed

Judgement

Anil K. Narendran, J

1. The petitioners in these writ petitions are persons who had successfully completed Panchavadyam course and other similar courses in Temple Arts

from Kshethra Kalapeedom, which is under the management of the Travancore Devaswom Board.

2. The petitioners in W.P.(C)No.27642 of 2017 have passed Panchavadyam Course from Kshethra Kalapeedom. Petitioners 1 to 5 and 8 to 10 have

passed the examination held in August 2008 and petitioners 6 and 7 have passed the examination held in August 2009, as evidenced by Exts.P1 and

P1(a) to P1(i) certificates. The petitioners have filed this writ petition seeking a writ of mandamus commanding the respondents to fill up the

vacancies of Sambanthi in various temples under the management of the Travancore Devaswom Board, with persons who have participated in the

certificate verification process conducted by the Board in July 2016. The petitioners have also sought for a declaration that the action of the

respondents in not filling up the vacancies of Sambanthies in various temples under its management is illegal and arbitrary, and it would amount to

violation of its statutory obligation to observe the rituals in the temples.

2.1. Going by the averments in the writ petition, the Travancore Devaswom Board issued a notification requiring the students who have passed

certificate courses from Kshethra Kalapeedom after 2008 to produce their original certificates for verification in July 2016 at Sumangaly Auditorium.

The petitioners produced their original certificates and certificate verification process was completed by the Board. However, the list of candidates

was not published by the Board for making appointments. Though a large number of vacancies of Sambanthi are available in the temples under the

management of the Board, the Board has not taken any action to fill up those vacancies with persons who have passed out from Kshethra

Kalapeedom. On an earlier occasion, when the Board has not taken action to fill up the vacancies of Sambanthi with qualified Panchavadyam Artists

certain persons approached this Court by filing W.P.(C)No.21971 of 2009. That writ petition was disposed of by Ext.P2 judgment dated 25.11.2009

directing the Board to make appointment to the post of Panchavadyam notified in the notification published in Mathrubhoomi daily dated 16.05.2008,

from the rank list that was prepared, as expeditiously as possible, at any rate, within four weeks of production of a copy of that judgment. Despite a

large number of vacancies of Sambanthies, as stated in paragraph 5 of the writ petition, the Board has not taken any action to fill up those vacancies.

The 8th petitioner filed Ext.P3 application dated 15.05.2017 under the Right to Information Act, 2005 before the State Public Information Officer in

the office of the Board, to give information as to the number of available vacancies of Sambanthies and the number of persons who are allowed to

work on daily wage basis. The State Public Information Officer forwarded that application to the Public Information Officer in the office of the

Devaswom Commissioner, vide Ext.P3(a) communication dated 17.05.2017. However, no reply was received.

2.2. On 05.07.2018, when this writ petition came up for admission, it was admitted on file and the learned Standing Counsel for Travancore

Devaswom Board took notice for the respondents.

2.3. The learned Standing Counsel for Travancore Devaswom Board has filed a statement dated 21.09.2018, on behalf of the respondents, opposing

the reliefs sought for in this writ petition, wherein it is stated that though the certificates of the petitioners who have passed Panchavadyam Course

conducted by Kshethra Kalapeedom were verified in the year 2016 and found that they are qualified, in the changed circumstances they could not be

appointed. In W.P.(C)No.17563 of 2008 and connected cases, a Division Bench of this Court dismissed the writ petitions permitting the Board to

appoint eligible candidates from Kshethra Kalapeedom to fill up vacancies of Nadaswaram, Thakil and Panchavadyam. Later, in the year 2016, the

Board verified the certificates of 225 candidates for appointment as Nadaswaram, Thakil and Panchavadyam, which includes 69 candidates for

Thakil, 35 for Nadaswaram and 121 for Panchavadyam. Before completing the process of appointment, the Government promulgated Kerala

Devaswom Recruitment Board Act, 2015 entrusting all appointments in the Devaswom Board to the Devaswom Recruitment Board. Since the

Recruitment Board came into existence as on 01.03.2014, no direct appointment can be made by the Devaswom Board. Unless the Recruitment

Board prepares rank lists and advises candidates for filling up the vacancies, the Devaswom Board cannot fill up the vacancies of Sambanthies in

temples under its management.

2.4. On 14.03.2018, when this writ petition came up for consideration before a learned Single Judge, the learned Standing Counsel for Travancore

Devaswom Board submitted that the Board is submitting a list of 126, persons including the petitioners for regular appointment as Panchavadyam

Artist and steps are being taken to get permission from the Division Bench dealing with Devaswom matters.

2.5. On 10.01.2019, the Board filed I.A.No.1 of 2019 seeking permission to appoint the candidates included in Ext.R1(a) list prepared after certificate

verification, as Thaklil, Panchavadyam and Nadaswaram on a daily wage basis. In the affidavit filed in support of that interlocutory application, it is

stated that the Board filed DBA No.6 of 2018 before the Division Bench dealing with Devaswom matters for making permanent appointment of

candidates from Ext.R1(a) list, which was subsequently withdrawn.

2.6. By the order dated 18.01.2019 in I.A.No.1 of 2019, a learned Single Judge of this Court granted permission, as prayed for in that interlocutory

application, i.e., permission to appoint the candidates included in Ext.R1(a) list as Thakil, Panchavadyam and Nadaswaram on daily wages.

2.7. On 24.07.2019, when this writ petition came up for consideration along with the connected matters, i.e., W.P.(C)Nos.33651 of 2018 and 7123 of

2019, the learned Standing Counsel for the Devaswom Recruitment Board submitted that DBA No.6 of 2018 filed by the Board before the Division

Bench dealing with Devaswom matters was later withdrawn. Without recourse to the Devaswom Recruitment Board, daily wage employees are

being continued. In view of the fact that a DBA had been attempted by the Devaswom Board, the learned Single Judge found that the matter requires

consideration by the Division Bench dealing with Devaswom matters. Accordingly, Registry was directed to take appropriate steps to see that the

matter is listed before the Division Bench at the earliest.

2.8. Before the Division Bench, the petitioners filed I.A.No.3 of 2019 for impleading the Devaswom Recruitment Board as additional 4th respondent,

which was allowed by the order dated 22.10.2019.

2.9. On 14.11.2019, the learned Standing Counsel for Kerala Devaswom Recruitment Board filed a statement dated 13.11.2019, on behalf of the

additional 4th respondent, wherein it is stated that after the commencement of the Kerala Devaswom Recruitment Act, 2015, which came into force

with effect from 01.03.2014, the Devaswom Recruitment Board is the sole authority for conducting selection of candidates for various posts in the

Devaswom Boards in Kerala, except hereditary posts as defined in Rule 2(e) of the Kerala Devaswom Recruitment Rules, 2015, and posts in aided

educational institutions. In view of the provisions contained in Section 9 of the Act, the Travancore Devaswom Board has no authority to make

appointments to various posts in the Devaswom Board, except the hereditary posts and posts in aided educational institutions, other than from a select

list prepared by the Recruitment Board. The candidates advised by the Recruitment Board alone can be appointed by the Travancore Devaswom

Board. Therefore, the petitioners cannot now seek an appointment from a list prepared in the year 2019, which expired long back. In the statement, it

is pointed out that Ext.P2 judgment of this Court dated 25.11.2009 in W.P.(C)No.21971 of 2009 was rendered at a time when the Recruitment Board

was not in existence and the selection and appointments were made by the Devaswom Board itself. After the commencement of the Kerala

Devaswom Recruitment Act, 2015, the directions contained in Ext.P2 judgment or that contained in the common judgment in W.P.(C)No.17563 of

2008 and connected matters have no relevance. In the statement, it was pointed out that earlier the Devaswom Board filed DBA No.6 of 2018

seeking permission of the Division Bench to approve the list prepared for appointment to the post of Nadaswaram, Thakil and Panchavadyam. When

the Recruitment Board filed a counter statement disputing the power of the Devaswom Board to make appointments to the above posts, without a

selection process by the Recruitment Board, the above DBA was not pressed by the Devaswom Board, and accordingly, it was dismissed as not

pressed. A copy of the statement filed by the Recruitment Board in DBA No.6 of 2018 is produced as Annexure R4(a) along with that statement and

a copy of the order of the Division Bench dated 25.06.2018, dismissing DBA No.6 of 2018 as not pressed, as Annexure R4(b).

3. The petitioners in W.P.(C)No.33651 of 2018 are candidates who have passed certificate examination of Kshethra Kalapeedom with optional

subjects like Panchavadyam, Thakil and Nadaswaram, the particulars of which are given in the table in paragraph 1 of the statement of facts. The

petitioners have filed this writ petition seeking a declaration that the proposed action of the 4th respondent Kerala Devaswom Recruitment Board to

initiate a fresh selection process to the post of Thakil, Nadaswaram, Sambanthi, (Panchavadya, Poojapattu, and Sankeerthanam) in

temples under the 2nd respondent Travancore Devaswom Board, despite the selection process already initiated as seen from Ext.P5 reply dated

21.08.2018 received under the Right to Information Act is unjust, illegal and arbitrary; a writ of mandamus commanding the 2nd respondent

Travancore Devaswom Board and the 3rd respondent Devaswom Commissioner to continue the selection process for the post of Thakil,

Nadaswaram, Sambanthi (Panchavadya, Poojapattu and Sankeerthanam) in the temples under the management of the 2nd respondent Devaswom

Board, based on the seniority of the candidates, whose certificates are verified as seen in Ext.P5. The petitioners have also sought for other

consequential reliefs.

3.1. The document marked as Ext.P1 is a copy of notification R.O.C.No.6171/2007/CA dated 24.01.2008 published by the Devaswom Board, which

is a preliminary notification published under clause (e) of sub-section (2) of Section 35 of the Travancore-Cochin Hindu Religious Institutions Act,

1950, with a proposal for amending the qualification for appointment of Nadaswaram, Thakil and Panchavadyam, as a pass certificate from Kshethra

Kalapeedom of Travancore Devaswom Board. The rank list for the same will be prepared subject to the eligibility of the candidates and also taking

into consideration the year of passing the examination. The document marked as Ext.P2 is the certificate obtained by the 2nd petitioner for

Nadaswaram after undergoing a certificate course in Kshethra Kalapeedom in August 2009. The document marked as Ext.P3 is a copy of the

judgment of a learned Single Judge of this Court dated 25.11.2009 in W.P.(C)No.21971 of 2009 and Ext.P4 is a copy of the judgment dated

07.09.2011 of the Division Bench in W.P.(C)No.17563 of 2008 and connected matters. The document marked as Ext.P5 is a reply dated 21.08.2018

received under the Right to Information Act enclosing therewith the list prepared by the Board after certificate verification of those who secured

certificates in Thakil, Nadaswaram and Panchavadyam from Kshethra Kalapeedom. All the petitioners are included in the said list.

3.2. In the writ petition, it is stated that the petitioners and others were engaged for duty at Sabarimala, during Mandala-Makaravilakku festival season,

vide Board order No.ROC 180/17/SAB dated 22.11.2017, which is evident from Ext.P6 letter dated 25.11.2017 of the Cultural Director, Travancore

Devaswom Board. According to the petitioners, the persons included in Ext.P5 list are entitled to get regular appointment to the respective posts based

on their seniority in Ext.P1. In the meanwhile, the Government of Kerala promulgated Ext.P7 Kerala Devaswom Recruitment Board Act, 2015, which

came into force on 01.03.2014. Thereafter, the 4th respondent Recruitment Board is taking steps to publish notification inviting applications for the

post of Nadaswaram, Thakil and Panchavadyam and the proposed action of the Recruitment Board is highly arbitrary and illegal. Till the year 2017,

the 2nd respondent Devaswom Board was following the method of making appointments from the seniority list prepared among the persons who

passed out from Kshethra Kalapeedom, which is evident from Ext.P8 proceedings dated 14.12.2017 of the 3rd respondent Devaswom Commissioner.

3.3. On 25.10.2018, when this writ petition came up for admission before a learned Single Judge, the matter was admitted on file. The learned

Government Pleader took notice for the 1st respondent, the learned Standing Counsel for Travancore Devaswom Board for respondents 2, 3 and 5

and the learned Standing Counsel for Kerala Devaswom Recruitment Board for the 4th respondent. Thereafter, the writ petition was listed before the

Division Bench along with the connected matters, i.e., W.P.(C)Nos.27642 of 2017 and 7123 of 2019.

3.4. On 14.06.2019, the learned Standing Counsel for Devaswom Recruitment Board filed a statement dated 13.06.2019 on behalf of the Recruitment

Board, which is similarly worded to the statement filed in W.P.(C)No.27642 of 2017. The petitioners have filed a reply affidavit dated 24.07.2019.

3.5. The learned Standing Counsel for Travancore Devaswom Board has filed a counter affidavit dated 04.11.2021, on behalf of the 2nd respondent

Board, which is similarly worded to the statement filed in W.P.(C)No.27642 of 2017. Along with a memo dated 07.01.2022 filed by the learned

Government Pleader, a copy of Government Order dated 09.09.2021 and communications dated 06.10.2021, 06.12.2021, 10.12.2021 and 18.12.2021 of

the Principal Secretary to Government, Revenue (Devaswom) Department were placed on record. Thereafter, along with another memo dated

23.03.2022 filed by the learned Senior Government Pleader a copy of the minutes of the joint meeting held on 16.03.2022 between the Travancore

Devaswom Board and the Revenue (Devaswom) Department for finalising the draft Recruitment Rules for the Travancore Devaswom Board was

placed on record.

3.6. The learned counsel for the petitioners has submitted an argument note dated 01.06.2022. Along with I.A.No.1 of 2022 filed by the Travancore

Devaswom Board, a copy of Annexure R2(a) proceedings dated 27.07.2022 on the appointment of candidates who have completed the certificate

course in Kshethra Kalapeedom was placed on record. On 22.09.2022, the learned Standing Counsel for Devaswom Recruitment Board filed an

affidavit dated 10.10.2022 sworn to by the Secretary of the Recruitment Board, opposing the reliefs sought for in this writ petition. In the said affidavit

the judgment of the Apex Court in State of Himachal Pradesh v. Rajkumar [(2023) 3 SCC 773], whereby the longstanding principle laid down in the

decision of the Apex Court in Y.V. Rangaiah v. Sreenivasa Rao [(1983) 3 SCC 284] that the vacancies which occurred prior to the amended rules

would be governed by the old rules and not by the amended rules was overruled, as it does not reflect the correct proposition of law governing

services under the Union and the States under Part 14 of the Constitution of India.

3.7. The petitioners have filed a reply affidavit dated 02.12.2022. The learned Senior Government Pleader has filed a counter affidavit dated

08.05.2023, on behalf of the 1st respondent, opposing the reliefs sought for in this writ petition, producing therewith Ext.R1(a) Government Order

dated 09.09.2021 granting approval for the Travancore Devaswom Board Officers' and Servants Rules, 2021. The petitioners have filed a reply

affidavit dated 18.07.2023 to the counter affidavit filed on behalf of the 1st respondent. The petitioners have filed I.A.No.1 of 2023 seeking an interim

stay of operation of Ext.P10 notification dated 11.10.2023 issued by the Devaswom Recruitment Board for recruitment to the post of Nadaswaram-

cum-Watcher and I.A.No.2 of 2023 for accepting Ext.P10 as an additional document. The learned counsel for the petitioners has filed an additional

argument note dated 30.10.2023.

4. The petitioners in W.P.(C)No.7123 of 2019 are persons who have passed out certificate courses from Kshethra Kalapeedom managed by the 1st

respondent Travancore Devaswom Board. Petitioners 1, 2, 5 and 6 have passed Nadaswaram course, and petitioners 3 and 4 have passed Thakil

course. A copy of the certificates issued from Kshethra Kalapeedom in the year 2007 in Nadaswaram and Thakil are produced as Ext.P1 series. The

documents marked as Ext.P2 series are memo dated 02.02.2009 issued by the Cultural Director of Travancore Devaswom Board regarding the

process of certificate verification scheduled on 13.02.2009 in the premises of the Kshethra Kalapeedom at Vaikom. The documents marked as

Exst.P3 and P4 are the lists of eligible candidates in Nadaswaram and Thakil published after such certificate verification. The petitioners find a place

in Exts.P3 and P4. By Ext.P5 order dated 14.12.2017, persons included in Ext.P3 list were appointed as Nadaswaram in various groups. The

document marked as Ext.P6 is a communication dated 11.10.2018 of the Board addressed to the 2nd respondent Devaswom Commissioner, wherein

the existence of a large number of vacancies for appointment of persons from Exts.P3 and P4 lists was noticed. The petitioners filed this writ petition

seeking a writ of mandamus commanding the respondents to appoint them as Nadaswaram and Thakil in the temples under the management of the

Travancore Devaswom Board, as they figure in Exts.P3 and P4 lists. The petitioners have also sought for a declaration that the action of the

respondents in not appointing the petitioners, in spite of the availability of vacancies of Nadaswaram and Thakil, from Exts.P3 and P4 lists is illegal,

arbitrary and discriminatory.

4.1. On 09.04.2019 when this writ petition came up for consideration, the learned Single Judge passed an interim order directing the respondents to

provisionally appoint the petitioners as Nadaswaram and Thakil in the available vacancies in the temples belonging to the Travancore Devaswom

Board, taking note of their inclusion in Exts.P3 and P4 lists subject to further orders in this writ petition, within two weeks from the date of receipt of a

copy of that order. By that order, this writ petition was directed to be listed along with W.P.(C)No.27642 of 2017.

4.2. On 14.11.2019, the learned Standing Counsel for Devaswom Recruitment Board has filed a statement dated 13.11.2019 on behalf of the 3rd

respondent, which is similarly worded to the statement filed in W.P.(C)No.27642 of 2017.

4.3. On 11.03.2020, the petitioners filed I.A.No.1 of 2020 seeking an order to amend the writ petition, as stated in that interlocutory application by

incorporating additional statement of facts, grounds and reliefs. The petitioners have produced Exts.P7 to P12 documents along with that interlocutory

application and the additional relief sought for are a writ certiorari to quash Ext.P8 order dated 02.05.2019 of the 2nd respondent Devaswom

Commissioner appointing petitioners 1, 2, 5 and 6 as daily wage Nadaswaram Artists, Ext.P9 order dated 02.05.2019 appointing petitioners 3 and 4 as

daily wage Thakil Artists and Ext.P12 order dated 07.01.2020, whereby the request made by the 5th petitioner for regular appointment of the students

of 2004-2007 batch in Kshethra Kalapeedom stands rejected on the ground that after the constitution of the Devaswom Recruitment Board,

appointments in the Travancore Devaswom Board can be made only through the Recruitment Board. Another relief sought for is a writ of mandamus

commanding the 1st respondent Travancore Devaswom Board to give permanent appointments to the petitioners who are included in Exts.P3 and P4

lists, who have passed Nadaswaram and Thakil course from Kshethra Kalapeedom during 2004-2007. That interlocutory application was allowed and

the petitioners have filed an amended writ petition on 07.07.2020. The petitioners have filed a reply affidavit dated 18.07.2021 to the statement filed on

behalf of the 3rd respondent Devaswom Recruitment Board, producing therewith Exts.P13 to P20 documents. On behalf of the 1st respondent Board

a counter affidavit dated 02.11.2021 is filed, opposing the reliefs sought for in this writ petition, which is similarly worded to that filed in W.P.

(C)No.27642 of 2017.

4.4. Along with a memo dated 07.10.2024 filed by the learned counsel for the petitioners, a copy of the award of the Apex Court dated 01.08.2024 in

SLP(C)No.14416-17 of 2021 and a copy of proceedings ROC No.13488/12/Mis. dated 30.09.2024 of the Devaswom Commissioner regarding the

appointment of part-time Thali in the temples under the management of the Travancore Devaswom Board, which is one issued pursuant to the award

dated 01.08.2024 of the Apex Court, are placed on record.

5. The petitioners in W.P.(C)No.8122 of 2023 have passed Nadaswaram course from Kshethra Kalapeedom, in the year 2007, as evidenced by

Ext.P2 certificate dated 13.05.2008 and Ext.P3 certificate dated 02.04.2008. The document marked as Ext.P1 is a copy of a notification ROC

No.6171/2007/CA dated 24.01.2008 published by the 2nd respondent Travancore Devaswom Board, which is a preliminary notification published

under clause (e) of sub-section (2) of Section 35 of the Act, with a proposal for amending the qualification for appointment of Nadaswaram, Thakil

and Panchavadyam, as a pass certificate from Kshethra Kalapeedom. In the writ petition it is averred that based on Ext.P1 notification, the 2nd

respondent Devaswom Board conducted certificate verification and prepared Ext.P4 list of candidates for the post of Nadaswaram, in which the

petitioners are included as Serial Nos.66 and 64 respectively. The candidates up to Serial No.62 were appointed. The last appointment was in the year

2017, as evidenced by Ext.P5 order of appointment dated 30.12.2017 issued by the 3rd respondent Devaswom Commissioner in the post of Thakil;

Ext.P6 order of appointment dated 14.12.2017 in the post of Panchavadyam; and Ext.P7 order of appointment dated 23.07.2016 in the post of Thakil.

As evidenced by Ext.P8 reply dated 22.10.2021 obtained under the Right to Information Act, vacancies are available for Nadaswaram. However, no

candidates are being appointed from Ext.P4 list. Even after the coming into force of the 4th respondent Kerala Devaswom Recruitment Board, the

2nd respondent Devaswom Board made permanent appointments to the post of Panchavadyam, Thakil and Nadaswaram. Ext.P9 order dated

17.09.2015 is one such order issued by the 3rd respondent Devaswom Commissioner, appointing a candidate as Nadaswaram Artist. In the writ

petition, the petitioners have sought for a writ of mandamus commanding the 2nd respondent Devaswom Board to issue orders appointing the

petitioners against the existing vacancies of Nadaswaram in temples under its management, based on Ext.P1 notification. The petitioners have also

sought for a declaration that they are entitled to get appointed to any of the existing vacancies of Nadaswaram in any of the temples under the

management of the 2nd respondent Devaswom Board, based on Ext.P1 notification.

5.1. On 19.03.2023, when this writ petition came up for admission before a learned Single Judge, the matter was admitted on file. The learned

Government Pleader took notice for the 1st respondent, the learned Standing Counsel for Travancore Devaswom Board for respondents 2 and 3 and

the learned Standing Counsel for Kerala Devaswom Recruitment Board for the 4th respondent. By the order dated 09.03.2023, this writ petition was

directed to be listed along with W.P.(C)No.33651 of 2018, which was pending before the Division Bench dealing with Devaswom matters.

5.2. Along with I.A.No.2 of 2023, the petitioners have placed on record Ext.P10 notification dated 11.10.2023 issued by the 4th respondent

Devaswom Recruitment Board inviting applications for recruitment to various posts in the Travancore Devaswom Board, Guruvayur Devaswom,

Malabar Devaswom Board, etc., including the posts of Nadaswaram-cum-Watcher and Thakil-cum-Watcher in the temples under the management of

Travancore Devaswom Board. Along with I.A.No.3 of 2023, the petitioners have placed on record Ext.P11 notification dated 13.05.2008 issued by

the 3rd respondent Devaswom Commissioner for certificate verification of candidates who have secured certificate from Kshethra Kalapeedom for

appointment as Thakil, Nadaswaram, Panchavadyam in the temples under its management and Ext.P12 judgment dated 07.09.2011 of a Division

Bench of this Court in W.P.(C)No.17563 of 2008 and connected matters. Along with I.A.No.1 of 2024, the petitioners have placed on record Ext.P13

award dated 01.08.2024 of the Apex Court in SLP(C)Nos.14416-17 of 2021, based on a settlement arrived at before the District Legal Services

Authority, Thiruvananthapuram, and Ext.P14 order dated 30.09.2024 issued by the 3rd respondent Devaswom Commissioner, based on Ext.P13

award, appointing certain candidates as part-time Thali in the temples under the management of the 2nd respondent Devaswom Board.

6. Heard the learned counsel for the petitioners in the respective writ petitions, the learned Standing Counsel for Travancore Devaswom Board for the

Board and the Devaswom Commissioner, the learned Standing Counsel for Kerala Devaswom Recruitment Board and also the learned Senior

Government Pleader for the State.

7. The common relief sought for in these writ petitions is appointment as Nadaswaram, Thakil and Panchavadyam in the temples under the

management of the Travancore Devaswom Board. The said relief is sought, relying on a notification dated 24.01.2008 issued by the Travancore

Devaswom Board. Though various legal and factual contentions have been advanced by the learned counsel for the petitioners in the respective writ

petitions, the main issue that requires consideration is as to whether the prescribed qualification for appointment to the post of Nadaswaram, Thakil

and Panchavadyam at the time of issuance of the notification dated 13.05.2008 issued by the Devaswom Commissioner was a pass certificate from

the Kshethra Kalapeedom of Travancore Devaswom Board. In case a pass certificate from Kshethra Kalapeedom is not the prescribed qualification,

the petitioners have no legal right to insist that they should be appointed as Nadaswaram, Thakil and Panchavadyam based on their placement in the

lists prepared after certificate verification.

8. The aforesaid notification, i.e., ROC No.6171/2007/CA dated 24.01.2008 issued by the Travancore Devaswom Board, a copy of which is marked

as Ext.P1 in W.P.(C)No.33651 of 2018, is one issued in the exercise of powers conferred under clause (e) of sub-section (2) of Section 35 of the

Travancore-Cochin Hindu Religious Institutions Act, whereby the qualification prescribed by the earlier notification dated 03.10.2001, which was final

notification under sub-section (3) of Section 35 of the Act, was proposed to be amended as follows;

“A pass certificate from the Kshethra Kalapeedom of Travancore Devaswom Board and rank list for the same will be prepared subject to the eligibility of the

candidates and also taking into consideration the passing the year of their examination.

9. The qualifications prescribed for the post of Nadaswaram, Thakil and Panchavadyam in the aforesaid final notification, i.e., ROC

No.6669/2001/Mis.III dated 03.10.2001 issued by the Travancore Devaswom Board, which is a final notification published in the Kerala Gazette dated

07.08.2001, as per the requirements of sub-section (3) of Section 35 of the Act, reads thus;

Ã, Ã¢, -Ã“Nadaswaram, Thakil, Panchavadyam

Ã, (1) Completed VIII Standard or equivalent

(2) Experience in playing the concerned instrumentÃ¢, -â€‹

10. According to the petitioners in these writ petitions, pursuant to the preliminary notification dated 24.01.2008 issued by the Travancore Devaswom

Board in the exercise of the powers conferred under clause (e) of sub-section (2) of Section 35 of the Act, a process of certificate verification of the

candidates who passed out from Kshethra Kalapeedom in Thakil, Nadaswaram and Panchavadyam was conducted by the Devaswom Board, based

on which separate lists of candidates for the post of Thakil, Nadaswaram and Panchavadyam were prepared, in which the candidates were included

depending upon the year of passing the examination. The petitioners in these writ petitions find a place in the said lists. The documents marked as

Exts.P3 and P4 in W.P.(C)No.7123 of 2019 are the lists for Nadaswaram and Thakil respectively.

11. A reading of the notification dated 24.01.2008 issued by the Devaswom Commissioner would make it explicitly clear that it is only a preliminary

notification published in the Kerala Gazette, as per the requirements of sub-section (2) of Section 35 of the Act, inviting objections, if any, to the said

proposal. In the said notification, it is provided that if no objection is received within the aforesaid time, it will presume that there is no objection for

anyone to the said notification and the same will come into effect from the date of preliminary notification, i.e., 24.01.2008.

12. The fact that the said notification dated 24.01.2008 is only a preliminary notification inviting objections to the proposal made therein for amending

the qualification prescribed in the earlier notification dated 03.10.2001, which is a final notification published in the Kerala Gazette dated 07.08.2001, as

per the requirements of sub-section (3) of Section 35 of the Act, is not in dispute. As rightly pointed out by the learned Standing Counsel for

Travancore Devaswom Board, in view of the statutory mandate of sub-section (3) of Section 35 of the Act, any such amendment to the Rules

prescribing a new qualification for appointment to the post of Thakil, Nadaswaram and Panchavadyam in the temples under the management of

Travancore Devaswom Board shall come into force only after the publication of final notification like the one dated 03.10.2001, in the Kerala Gazette.

13. From the pleadings and materials on record and also the submissions made at the Bar, we notice that even in the absence of a final notification as

per the requirements of sub-section (3) of Section 35 of the Act, the Devaswom Commissioner issued a notification dated 13.05.2008, inviting

applications for the post of Thakil, Nadaswaram and Panchavadyam in temples under the management of the Travancore Devaswom Board, from

those who have successfully completed certificate course in Thakil, Nadaswaram and Panchavadyam from Kshethra Kalapeedom. Based on the said

notification, the process for certificate verification was conducted by the Devaswom Board, which resulted in the preparation of the lists of qualified

candidates for appointment as Thakil, Nadaswaram and Panchavadyam. In the said lists, the candidates are placed taking into consideration the year

of passing the examination.

14. The learned counsel for the petitioners in W.P.(C)No.7123 of 2019 raised a contention that in addition to certificate verification, the candidates

were also interviewed before preparing the lists for Thakil, Nadaswaram and Panchavadyam. The learned Standing Counsel for Travancore

Devaswom Board submitted that no such interview was conducted in connection with the process undertaken pursuant to the notification dated

13.05.2008 inviting applications for the posts of Thakil, Nadaswaram and Panchavadyam. The said fact is also evident from Ext.P2 memos dated

02.02.2009 (3 in number) produced in W.P.(C)No.7123 of 2019 regarding the certificate verification held on 13.02.2009. In Ext.P2 memos dated

02.02.2009, the word 'interview' is scored off and it is handwritten that 'certificate verification' is scheduled to be held on 13.02.2009.

15. In the absence of a final notification published under sub-section (3) of Section 35 of the Act, in continuation of the preliminary notification dated

24.01.2008, the qualifications prescribed for appointment to the post of Thakil, Nadaswaram and Panchavadyam in the temples under the management

of the Travancore Devaswom Board are that contained in the final notification dated 03.10.2001 published in the Kerala Gazette dated 07.08.2001, as

per the requirements of sub-section (3) of Section 35 of the Act. Therefore, as on the date of the notification dated 13.05.2008 issued by the

Devaswom Commissioner inviting applications for appointment to the post of Thakil, Nadaswaram and Panchavadyam, the qualifications prescribed

for those posts are as follows; (1) Completed VIII Standard or equivalent; and (2) Experience in playing the concerned instrument, as prescribed in

the final notification dated 03.10.2001, published in the Kerala Gazette dated 07.08.2001. When a pass certificate from Kshethra Kalapeedom is not

the prescribed qualification, the petitioners have no legal right to insist that they should be appointed as Nadaswaram, Thakil and Panchavadyam based

on their placement in the lists prepared after certificate verification, in which the candidates are placed taking into consideration the year of passing

the examination. Therefore, the petitioners in these writ petitions cannot seek a writ of mandamus commanding the Travancore Devaswom Board and

the Devaswom Commissioner to appoint them as Thakil, Nadaswaram and Panchavadyam based on their placement in the lists prepared after

certificate verification, in terms of the notification dated 13.05.2008 issued by the Devaswom Commissioner, since no court can issue mandamus

directing the authorities to act in contravention of the rules, as it would amount to compelling the authorities to violate the law, as held by the Apex

Court in State of West Bengal v. Subhas Kumar Chatterjee [(2010) 11 SCC 694].

16. The learned counsel for the petitioners in the respective writ petitions would place reliance on the judgment of a learned Single Judge of this Court

dated 25.11.2009 in W.P.(C)No.21971 of 2009 [produced as Ext.P3 in W.P.(C)No.33651 of 2018, which is also placed on record in the connected

matters] whereby this Court directed the Devaswom Board to make appointments to the post of Panchavadyam notified in the notification published in

Mathrubhoomi daily dated 16.05.2008 [notification dated 13.05.2008 issued by the Devaswom Commissioner] from the list that was prepared after

certificate verification.

17. A reading of the said decision would show that the pendency W.P.(C)No.17563 of 2008 and the connected matters were brought to the notice of

the learned Single Judge by the learned Standing Counsel for Travancore Devaswom Board and it was pointed out that, in view of the pendency of

those writ petitions in which the selection pursuant to the notification dated 13.05.2008 issued by the Devaswom Commissioner, in so far as Thakil and

Nadaswaram are concerned are under challenge, against confining eligibility to the candidates who are qualified from Kshetra Kalapeedom, and in

view of the pendency of those writ petitions and the interim orders that have been passed, the Devaswom Board decided not to fill up the posts from

the list in question.

18. By the judgment dated 07.09.2017 in W.P.(C)No.17563 of 2008 and connected matters [produced as Ext.P4 in W.P.(C)No.33651 of 2018, which

is also placed on record in the connected matters], the Division Bench repelled the challenge against confining eligibility to the candidates who are

qualified from Kshetra Kalapeedom, stating that as per the existing Rules only persons trained in Kshetra Kalapeedom are entitled to apply for the

said posts. The Rule pointed out before the Division Bench was one based on a preliminary notification dated 24.01.2008. In the absence of a final

notification, the qualifications prescribed for the said posts were as prescribed in the final notification dated 03.10.2001, published in the Kerala

Gazette dated 07.08.2001.

19. The learned Standing Counsel for Travancore Devaswom Board would point out that the aforesaid judgments of this Court were rendered at a time when the Kerala Devaswom Recruitment Board was not in existence.

20. The Kerala Devaswom Recruitment Board Act, 2015, which was published in the Kerala Gazette Extraordinary dated 17.08.2015 came into force

with effect from 01.04.2014. As per clause (i) of sub-section (1) Section 9 of the said Act, notwithstanding anything contained in any other existing

Act or Rules or Regulations or orders or judgments or decree in respect of the appointment of candidates to the Devaswom Board, the Devaswom

Recruitment Board shall prepare select list for the appointment of candidates to various posts other than the hereditary posts and posts in the aided

educational institutions in the Devaswom Boards, as per the provisions of this Act, Rules and Regulations.

21. The specific stand taken in the statement filed on behalf of the Devaswom Board and also in the statement filed on behalf of the Devaswom

Recruitment Board is that, after coming into force of the Kerala Devaswom Recruitment Act, 2015, the Recruitment Board is the sole authority for

conducting selection of candidates for various posts in the Devaswom Boards in Kerala, except hereditary posts as defined in Rule 2(e) of the Kerala

Devaswom Recruitment Rules, 2015, and posts in aided educational institutions. In view of the provisions contained in Section 9 of the said Act, the

Devaswom Board has no authority to make appointments to the post of Thakil, Nadaswaram and Panchavadyam, except hereditary posts.

22. The petitioners in these writ petitions have approached this Court in the years 2017, 2018, 2019 and 2023 respectively, i.e., much after the

enactment of the Kerala Devaswom Recruitment Act, 2015, which came into force with effect from 01.04.2014, seeking appointment as Thakil,

Nadaswaram and Panchavadyam, based on their position in the lists prepared by the Travancore Devaswom Board after certificate verification

process of candidates from Kshetra Kalapeedom, in which the candidates are placed taking into consideration the year of passing the examination. As

already noticed hereinbefore, when a pass certificate from Kshethra Kalapeedom is not the prescribed qualification, in view of the qualifications

prescribed in the final notification dated 03.10.2001, published in the Kerala Gazette dated 07.08.2001, the petitioners have no legal right to insist that

they should be appointed as Nadaswaram, Thakil and Panchavadyam based on their placement in the lists prepared after certificate verification.

23. The Amended, qualifications, prescribed, in, the Travancore Devaswom Board Officers' and Servants Rules, 2021, for the

posts of Part-time Panchavadyam-cum-Watcher, Thakil-cum-Watcher and Nadaswaram-cum-Watcher, came into force only in 2021. As per Rule

5(1)(b) of the said Rules, the method of appointment for the post of Panchavadyam-cum-Watcher is by promotion and that for the posts of Part-time

Panchavadyam-cum-Watcher, Thakil-cum-Watcher and Nadaswaram-cum-Watcher is by direct recruitment. The qualifications prescribed in Rule

6(1)(b) of the Rules for direct recruitment to the said posts are as follows;

“Certificate in the concerned subject from Kshetra Kalapeedom or any such institutions approved by the Board.”

As per clause (e) of Rule 17 of the Rules of 2021, in respect of Part-time Panchavadyam-cum-Watcher, Thakil-cum-Watcher and Nadaswaram-

cum-Watcher in Rule 4(1)(b), 80% of the vacancies shall be set apart for candidates who have completed their course from Kshetra Kalapeedom of

the Board.

24. As per the provisions contained in the Travancore Devaswom Board Officers' and Servants Rules, 2021, direct recruitment to the posts of Part-

time Panchavadyam-cum-Watcher, Thakil-cum-Watcher and Nadaswaram-cum-Watcher in temples under the management of Travancore

Devaswom Board cannot be confined only to certificate holders from Kshetra Kalapeedom. Further, there is no direct recruitment to the post of

Panchavadyam-cum-Watcher. Even prior to the said Rules of 2021, direct recruitment to the posts of Panchavadyam, Thakil and Nadaswaram in

temples under the management of Travancore Devaswom Board cannot be confined only to certificate holders from Kshetra Kalapeedom, in view of

the qualifications prescribed in the final notification dated 03.10.2001, published in the Kerala Gazette dated 07.08.2001

25. The specific stand taken by the learned Standing Counsel for Travancore Devaswom Board is that the Board wants to fill up the vacancies in the

posts of Nadaswaram-cum-Watcher, Thakil-cum-Watcher, etc., through the Devaswom Recruitment Board, as per the qualifications prescribed in the

Travancore Devaswom Board Officers' and Servants Rules, 2021. The Recruitment Board has already issued notifications inviting applications for

such appointments. Ext.P10 in W.P.(C)No.8122 of 2023 is one such notification dated 11.10.2023 issued by the Devaswom Recruitment Board. The

learned Standing Counsel for Travancore Devaswom Board and the learned Standing Counsel for Devaswom Recruitment Board would rely on the

decision of the Apex Court in State of Himachal Pradesh v. Rajkumar [(2023) 3 SCC 773].

26. Though the learned counsel for the petitioners in the respective writ petitions cited various decisions on the applicability of the amended Rules, we

notice that the Apex Court in State of Himachal Pradesh v. Rajkumar [(2023) 3 SCC 773], overruled the longstanding principle laid down in the

decision in Y.V. Rangaiah v. Sreenivasa Rao [(1983) 3 SCC 284] that the vacancies which occurred prior to the amended rules would be governed by

the old rules and not by the amended rules was overruled, as it does not reflect the correct proposition of law governing services under the Union and

the States under Part 14 of the Constitution of India. Therefore, we find no force in the contention of the learned counsel for the petitioners in the

respective writ petitions that the vacancies which occurred prior to the amended Rules will have to be filled up by the old Rules. We also notice that

the said contention will in no way support the case of the writ petitioners, since a pass certificate from Kshethra Kalapeedom is not the prescribed

qualification, in view of the qualifications prescribed in the final notification dated 03.10.2001, published in the Kerala Gazette dated 07.08.2001, and as

such the petitioners have no legal right to insist that they should be appointed as Nadaswaram, Thakil and Panchavadyam based on their placement in

the lists prepared after certificate verification.

27. The learned counsel for the petitioners in W.P.(C)No.27462 of 2017 would point out the interim order dated 18.01.2019 of the learned Single Judge

in I.A.No.1 of 2019, whereby permission was granted to the Devaswom Board to include the candidates in Ext.R1(a) list as Thakil, Panchavadyam

and Nadaswaram on daily wages. The learned counsel for the petitioners in W.P.(C)No.7123 of 2019 would point out the interim order dated

09.04.2019 granted by the learned Single Judge, whereby the Devaswom Board is directed to provisionally appoint the petitioners therein as

Nadaswaram and Thakil in the available vacancies in the temples belonging to Travancore Devaswom Board, taking note of their inclusion in Exts.P3

and P4 lists, subject to further orders in the writ petition.

28. As pointed out by the learned Standing Counsel for Devaswom Recruitment Board, Travancore Devaswom Board filed DBA No.6 of 2018

before the Division Bench dealing with Devaswom matters seeking permission to approve the lists prepared for appointment to the post of

Nadaswaram, Thakil and Panchavadyam, pursuant to the notification issued by the Devaswom Commissioner inviting applications for those posts,

from the candidates who have obtained certificate from Kshethra Kalapeedom. When the Devaswom Recruitment Board filed a counter statement in

DBA No.6 of 2018 [a copy of which is marked as Ext.R4(a) in the counter affidavit filed in W.P.(C)No.27642 of 2017] disputing the power of the

Devaswom Board to make appointments to the above posts, without a selection process by the Devaswom Recruitment Board, the DBA was not

pressed by the Devaswom Board, which was dismissed as not pressed, by the order dated 25.06.2018 [a copy of which is marked as Ext.R4(b) in the

counter affidavit filed in W.P.(C)No.27642 of 2017].

29. The engagement, if any, of the petitioners in W.P.(C)No.27462 of 2017 on a daily wage basis, in terms of the interim order dated 18.01.2019 and

the engagement of the petitioners in W.P.(C)No.7123 of 2019 provisionally, subject to further orders in the writ petition, in terms of the interim order

dated 09.04.2019, will not confer them an indefeasible right to hold those posts once it is found that they have no legal right to insist that they should be

appointed as Nadaswaram, Thakil and Panchavadyam based on their placement in the lists prepared after certificate verification. The petitioners in

W.P.(C)No.7123 of 2019 have no legal right to challenge Ext.P8 order dated 02.05.2019 and Ext.P9 order dated 02.05.2019 of the Devaswom

Commissioner, whereby they have been appointed as daily wage Nadaswaram and Thakil, in compliance of the direction contained in the interim order

dated 09.04.2019 of the learned Single Judge. Ext.P12 order dated 07.01.2020 issued by the Board, the request made by the 5th petitioner for regular

appointment to certificate holders of Kshetra Kalapeedom (2004-2007 batch) was rejected by the Devaswom Board stating valid reasons. The said

order warrants no interference under Article 226 of the Constitution of India.

30. The learned counsel for the petitioner in W.P.(C)No.8122 of 2023 would point out Ext.P13 award dated 01.08.2024 of the Apex Court in

SLP(C)Nos.14416-17 of 2021, based on a settlement arrived at before the District Legal Services Authority, Thiruvananthapuram, and Ext.P14 order

dated 30.09.2024 issued by the Devaswom Commissioner, Travancore Devaswom Board, based on Ext.P13 award, appointing certain candidates as

part-time Thali in the temples under the management of the Travancore Devaswom Board. The learned counsel for the petitioners in W.P.

(C)No.7123 of 2019 has also relied on the said award and the order issued by the Devaswom Commissioner, which are placed on record in that writ

petition, along with a memo dated 07.10.2024.

31. As already noticed hereinbefore, when a pass certificate from Kshethra Kalapeedom is not the prescribed qualification, as on the date of the

notification dated 13.05.2008 issued by the Devaswom Commissioner, in view of the qualifications prescribed in the final notification dated 03.10.2001,

published in the Kerala Gazette dated 07.08.2001, the petitioners in these writ petitions cannot seek a writ of mandamus commanding the Travancore

Devaswom Board and the Devaswom Commissioner to appoint them as Thakil, Nadaswaram and Panchavadyam, based on their placement in the

lists prepared after certificate verification, since no mandamus under Article 226 of the Constitution of India can be issued by the High Court

commanding the Devaswom Board or the Devaswom Commissioner to act in contravention of the rules, as held by the Apex Court in State of West

Bengal v. Subhas Kumar Chatterjee [(2010) 11 SCC 694].

32. The learned counsel for the petitioners in the respective writ petitions would submit that since the petitioners have now become overaged, they

should be permitted to participate in the process of recruitment by the Devaswom Recruitment Board, after relaxing the upper age limit.

33. The engagement, if any, of petitioners in W.P.(C)No.27462 of 2017, in terms of the interim order dated 18.01.2019, is on a daily wage basis and the

engagement, if any, of the petitioners in W.P.(C)No.7123 of 2019, in terms of the interim order dated 09.04.2019 is provisional, which is subject to

further orders in that writ petition. As already noticed hereinbefore, as per the provisions contained in the Travancore Devaswom Board Officers' and

Servants Rules, 2021, direct recruitment to the posts of Part-time Panchavadyam-cum-Watcher, Thakil-cum-Watcher and Nadaswaram-cum-

Watcher in temples under the management of Travancore Devaswom Board cannot be confined only to certificate holders from Kshetra

Kalapeedom. There is no direct recruitment to the post of Panchavadyam-cum-Watcher. Even prior to the said Rules of 2021, direct recruitment to

the posts of Panchavadyam, Thakil and Nadaswaram in temples under the management of Travancore Devaswom Board cannot be confined only to

certificate holders from Kshetra Kalapeedom, in view of the qualifications prescribed in the final notification dated 03.10.2001, published in the Kerala

Gazette dated 07.08.2001. Therefore, the petitioners in these writ petitions are not entitled to any age relaxation in the recruitment process undertaken

by the Devaswom Recruitment Board.

In the result, these writ petitions fail, and they are accordingly dismissed. No order as to costs.