

Kerala High Court

V.M.Damodaran vs State Of Kerala on 15 July, 2010

IN THE HIGH COURT OF KERALA AT ERNAKULAM

WP(C).No. 906 of 2010(K)

1. V.M.DAMODARAN, AGED 53 YEARS, S/O.ARIYAN
... Petitioner

Vs

1. STATE OF KERALA, REPRESENTED BY THE
... Respondent

2. THE MALABAR DEVASWOM BOARD, KOZHIKODE,

3. THE COMMISSIONR, MALABAR DEVASWOM BOARD,

4. V.V.RATHEESAN, EXECUTIVE OFFICER,

For Petitioner :SRI.M.RAMESH CHANDER

For Respondent :SRI.P.C.SASIDHARAN

The Hon'ble MR. Justice C.T.RAVIKUMAR

Dated :15/07/2010

O R D E R

C.T. RAVIKUMAR, J.

W.P.(C). NOS. 28705, 28997 OF 2009,
906 & 1039 OF 2010

Dated this the 15th day of Julyww 1, 2010

JUDGMENT

The rival claims for the office of the Deputy Commissioner (Administration) under the Malabar Devaswam Board between one V.M.Damodaran and one Ratheesh is the main issue to be resolved

in these Writ Petitions. The former has filed W.P.(C).Nos.906/2010 and 28997/2009 and the latter has filed W.P.(C).No.28705/2009. W.P.(C). No.1039/2010 has been filed by the Malabar Devaswam Board (hereinafter referred for brevity 'the Board' only). Since common issues based on common facts involve in these Writ Petitions, they were heard jointly and are being jointly considered in this common judgment.

2. For convenience, I take W.P.(C).No.28705/2009 as the leading case and the parties are being referred to hereafter in this judgment according to their respective status in the said Writ Petition. So also, the documents are being referred to in the manner they are set out in the said Writ Petition. The petitioner was working as Deputy Commissioner W.P.(C) NO.28705/09 & (Administration) under the Hindu Religious and Charitable Endowment Department (hereinafter for short 'H.R & C.E' Department). While so, the said Department was abolished and it stood transferred to the second respondent Board by virtue of Section 7 of the Madras Hindu Religious and Charitable Endowment Act, 2008 (for short 'the Act' only) till its employees are absorbed in other Government Departments. The employees were given right to opt for that purpose under Section 19G (d) of the Act. One post of Commissioner and two posts of Deputy Commissioner viz., Deputy Commissioner (Administration) and Deputy Commissioner (Law) were available under the H.R & C.E Department. It was on 30.6.2007 that, pursuant to the order of promotion, the petitioner assumed charge of the office of the Deputy Commissioner (Administration). On 30.11.2008, the petitioner had exercised his right of option to go out of the Department to any other Government Department in terms of Section 19G(d). While so, he was directed to take up the additional charge of special officer of Sri.Parassinikkadavu Muthappan Temple as per order dated 28.9.2008. However, he could assume charge as Special officer only on 20.10.2008 on account of the strong resistance W.P.(C) NO.28705/09 & of the temple authorities. On his assumption of charge as Special Officer he took stringent and strict steps in the matter of financial transactions and that made him an eyesore. On account of political pressure, he was placed under suspension as per Ext.P1 order dated 26.12.2008 of the first respondent. Though the existence of employee-employer relationship between the petitioner and the Government was admitted by the third respondent in the counter affidavits filed in W.P.(C).Nos.32267/2008 and 30999/2008 challenging the posting of the petitioner as Special Officer, the petitioner's request for review of suspension under Rule 10(6) of Kerala Civil Services (Classification, Control & appeal) Rules, 1960 was rejected. The same was challenged by the petitioner in W.P.(C). No.314/2009 and as per Ext.P2 judgment this Court set aside the suspension and directed to reinstate the petitioner as Deputy Commissioner under the second respondent. However, it was also directed thereunder to post him in a suitable post which has nothing to do with the temple. Pursuant to Ext.P2 judgment, the petitioner had submitted Ext.P3 representation before the first respondent and the first respondent exonerated the petitioner from all the charges and directed to reinstate him W.P.(C) NO.28705/09 & in service as Deputy Commissioner (Administration) with immediate effect as per Ext.P4 order dated 1.10.2009. Accordingly, he rejoined duty on 3.10.2009 as Deputy Commissioner (Administration). However, on the same day itself, he was posted at Chandrasekhara Sastha Temple, Kasaragode as per Ext.P5 order dated 3.10.2009 in full additional charge of its Executive Officer. Against Ext.P5, he had submitted Ext.P6. However, no action was taken thereon and in the meanwhile as per Ext.P8 order dated 5.9.2009, the second respondent transferred and posted the fourth respondent herein (petitioner in W.P.(C).No.906/2010 and 28997/2009) as Deputy Commissioner (Administration). According to

the petitioner, the fourth respondent was never been promoted to the post of Deputy Commissioner and, as such, his transfer and posting as Deputy Commissioner (Administration) as per Ext.P4 is ipso facto void. In fact, according to the petitioner, the fourth respondent is facing disciplinary proceedings and was reinstated in service only as per Ext.P9 order dated 11.2.2009. That apart, as per Ext.P9 order dated 11.2.2009, the fourth respondent was reinstated only as Assistant Commissioner pending disciplinary action. In fact, in his capacity as Deputy Commissioner, he W.P.(C) NO.28705/09 & was appointed to conduct an enquiry against the fourth respondent. Exts.P9 and P10 would reveal that the order of suspension was revoked by the Government and that disciplinary proceedings were ordered to be continued against the fourth respondent. It is the contention of the petitioner that since the employees under the H.R. & C.E Department are virtually deputationists to the Board, the competent authority as also the disciplinary authority of employees like the petitioner and fourth respondent is the Government. It is with these contentions that this Writ Petition has been filed mainly challenging Exts.P5 and P8 to the extent it orders transfer of the fourth respondent as Deputy Commissioner (Administration). The date of compulsory retirement of the petitioner is 31.3.2010.

3. A counter affidavit has been filed jointly by respondents 2 and

3. The fourth respondent has also filed a counter affidavit in this Writ Petition. The claim of the petitioner that he has been working as Deputy Commissioner (Administration) under the Board has been refuted by the said respondents. Respondents 2 and 3 support the action in issuing Exts.P5 and P8 orders. According to them, Ext.P5 was passed strictly in W.P.(C) NO.28705/09 & terms of Ext.P2 judgment whereby it was directed to reinstate him as Deputy Commissioner under the Devaswom Board and also to give him a suitable post that has nothing to do with the temple. A perusal of Ext.P5 would reveal that the said order is perfectly in tune with the aforesaid direction in Ext.P2 judgment. According to them, the action on the part of the Government in passing Ext.P4 is clear contempt of court. Against Ext.P4 order passed by the Government, the Board has filed a review petition. They have filed I.A.No.14045/2009 seeking permission to implement Ext.R2(a) decision of the Board and to pass consequential orders in the matter of posting of the petitioner during the pendency of the Writ Petition. Ext.R2(a) carries the decision to post the petitioner as Deputy Commissioner and Special Officer (Land Conservancy). A counter affidavit has been filed by the petitioner in the said I.A. According to the petitioner, the contention of the respondents 2 and 3 regarding the existence of the post Deputy Commissioner and Special Officer (Land Conservancy) is nothing but a claptrap in the light of Exts.P11 and P12. Based on Ext.P11 order dated 5.10.2009, it is stated therein that the second respondent Board is not having power to promote the fourth W.P.(C) NO.28705/09 & respondent to the post of Deputy Commissioner whilst such power is vested with the Government. It is further contended that the said post of Special Officer (Land Conservancy) in the grade of Commissioner was created only for a period of one year to protect the landed properties of the Devaswom in the erstwhile H.R.& C.E Department as is obvious from Ext.P13. Though the term of the said post was extended from time to time, it had expired on 1.12.2007 and thereafter, no orders have been issued by the Government for continuance of the said post of Special Officer (Land Conservancy) in the grade of Commissioner. According to the petitioner, said post was an ex-cadre post sanctioned by the Government and, on the retirement of one Sri.Kamaleswaran, the said post was abolished and, hence, the contentions of respondents 2 and 3 based on Ext.P3 is absolutely

bereft of any basis. At any rate, the action on the part of respondents 2 and 3 in posting the petitioner against a post which is not in existence cannot be countenanced in the light of Ext.P4. He is entitled to get reinstated in the post of Deputy commissioner (Administration) and a close scrutiny of Ext.P2 judgment would reveal that there cannot be any inhibition for such a posting, it is further submitted. The said respondents W.P.(C) NO.28705/09 & have filed a reply affidavit to the counter affidavit filed by the petitioner in I.A.No.14045/2009. It is stated therein that no disciplinary proceedings is pending against the fourth respondent- Sri.V.M.Damodaran. According to them, on his reinstatement as Deputy Commissioner on 3.10.2009, the petitioner was given full charge of Executive Officer of Chandragiri Sastha Temple, Kasargode and in spite of taking charge of the temple, he has approached this Court. In support of the said action and to contend that the petitioner was not functioning as Deputy commissioner (Administration), they have produced Ext.R2(d), the interim order passed in W.A.No.2295/2009 dated 16.10.2009. As per the said order, the status quo obtaining as on that date with regard to the occupancy in the post of Deputy Commissioner (Administration) was directed to be continued. Subsequently, the said Writ Appeal along with W.A.No.2296/2009 was disposed of leaving open all the contentions taken by the parties to be urged before the Single Bench. Ext.R2 (d) was ordered to be continued till orders are passed by the Single Judge.

4. The fourth respondent, in the counter affidavit filed in this Writ Petition contended that he was given a posting as Deputy W.P.(C) NO.28705/09 & commissioner (Administration) as per Ext.P8 order dated 5.9.2009 and consequently, he assumed charge of the said office. In paragraph 4 of the said counter affidavit, the fourth respondent pointed out the fact that the respondents 2 and 3 had categorically refuted the pendency of any disciplinary proceedings against him. Relying on the said statement made by respondents 2 and 3 in their counter affidavit, it is contended that there is no basis for the contention of the petitioner that disciplinary proceedings is pending against him. However, in the same paragraph, it is stated thus: 'moreover, the charges levelled against him are false and flimsy'. The contention of the fourth respondent is that he has been transferred and posted as Deputy commissioner (Administration) and, therefore, the petitioner cannot contend that he is continuing in the post of Deputy Commissioner (Administration).

5. The challenge of the petitioner against Ext.P5 order dated 3.10.2009 need not be looked into any further for the simple reason that as per respondents 2 and 3, pursuant to the interim order in this Writ Petition staying Ext.P5 order, they have resolved to post the petitioner as Special Officer (Land Conservancy) which is in the grade of Deputy W.P.(C) NO.28705/09 & commissioner. 6. Now, I may deal with the other Writ Petitions. The second respondent has filed W.P.(C).No.1039/2010. The petitioner and the fourth respondent herein respectively are respondents 2 and 3 in the said Writ Petition. The relief sought for in the said Writ Petition are as follows:

- i) issue a writ of certiorari or any other appropriate writ, order or direction calling for the records leading to Exts.P4 and P12 and quash the same;
- ii) issue an appropriate writ, order or direction declaring that the 3rd respondent is entitled to continue as Deputy Commissioner (Administration) in the Malabar Devaswom Board;

7. A perusal of the said Writ Petition would reveal that the contentions are more or less the same contentions raised in the counter affidavit filed by respondents 2 and 3 in Writ Petition No.28705/2009. Ext.P4 in the said Writ Petition is G.O.(RT)No.3594/2009/RD/ dated 1.10.2009. In fact, it is the same G.O that was produced as Ext.P4 in W.P. (C).NO.28705/2009 whereby Sri.V.V.Ratheesan, the petitioner was exonerated of all the charges and directed to be reinstated in service as W.P.(C) NO.28705/09 & Deputy Commissioner (Administration). Ext.P12 therein is G.O.(RT) No.4659/09/Rd dated 26.12.2009 passed by the Government dismissing the review petition submitted by the Board. The further prayer made in the said Writ Petition is for the issuance of a declaration that Sri.V.M Damodaran (third Respondent therein) is entitled to continue as Deputy commissioner (Administration) in the Malabar Devaswom Board.

8. The fourth respondent has filed Writ Petition Nos.28997/2009 and 906/2010. The prayer in Writ Petition No.28997/2009 is for issuing a writ of mandamus commanding the respondents 2 and 3, the Board and the Commissioner of the Board, to initiate all proceedings to comply with Ext.P4 order. Ext.P4 therein is order No.HRJ.1-4245/09 dated 3.10.2009 which is in fact Ext.P5, the impugned order in W.P.(C) No.28705/2009. The order dated 14.10.2009 passed in W.P.(C) No.28997/2009 also assume relevance in the context of the contentions raised in these Writ Petitions. It reads thus:

"Admit. G.P takes notice for R1. Renjini takes notice for R2 and R3. Mr.Mohan C.Menon takes notice for R4. Post along with W.P.(C).NO.28705/09.

Heard the learned counsel on the question of interim relief. I had already passed a detailed order in W.P.(C).NO.28705/2009, directing the petitioner W.P.(C) NO.28705/09 & therein, the 4th respondent herein, to be retained as Deputy Commissioner (Admn.) of Malabar Dewaswom Board. In the circumstances, prayer for interim relief made by the petitioner herein will stand declined. The order passed in W.P.(C).NO.28705/09 will be treated as an order passed in this case as well."

It would reveal that as per interim order in W.P.(C).NO.28705/2009, this Court directed the petitioner therein viz., SriV.V.Ratheesan to be retained as Deputy Commissioner (Administration) of Malabar Devaswom Board. Further, the said order was ordered to be treated as an order passed in W.P. (C).NO.28997/2009 as well. In fact, the said order was passed after declining the interim prayer sought in W.P.(C).NO. 28997/2009. Ext.R2

(d) is the order passed on 16.10.2009 in W.A.No.2295/2009 filed against the order in W.P.(C).NO.28705/2009 dated 13.10.2009. Ext.R2(d) reads thus:

" Sri.Mohan C.Menon, learned counsel appearing for the Writ Petitioner submits that the Writ Petitioner has already taken charge as Deputy Commissioner(Admn.) on 14.10.2009. Learned counsel for the appellants however, refute the above submission. Be that as it may, the status quo obtaining as on today with regard to occupancy in the post of Deputy Commissioner (Admn.) will continue."

Ext.R2(d) is the common judgment dated 4.11.2009 passed in W.P.(C) NO.28705/09 & W.ANos.2295/2009 and 2296/2009 filed respectively against the interim orders passed in W.P.(C).NO. 28705/09 dated 13.10.2009 and W.P.(C). NO. 28997/09 dated 14.10.2009. The said common judgment was passed taking note of the decision of the Board taken on 22.10.2009 ie., Ext.R2(a) in W.P.(C).NO. 28705/2009 whereby the Board decided to post the petitioner as Special Officer (Land Conservancy) in the grade of Deputy Commissioner. As per Ext.R2(f), the interim order passed in the Writ Appeal viz., Ext.R2(d) was directed to be continued till orders are passed in the Writ Petitions and the said Writ Petitions are directed to be posted before the Single Bench.

9. As noticed hereinbefore, the fourth respondent has also filed W.P.(C).No.906/2010. The state, the Board, the Commissioner of the board and V.V Ratheesan-petitioner in W.P.(C). No.28705/2009 are respondents 1 to 4 respectively in the said Writ petition. It has been filed mainly with the following prayer:

"to call for the records leading to Ext.P7 and quash the same in so far as it directs the displacement of the petitioner as the Deputy Commissioner (Administration) of the Malabar Devaswom Board by a Writ of Certiorari or any other writ, direction or order".

W.P.(C) NO.28705/09 & A perusal of the same would reveal that it is in fact, somewhat similar to the interim relief sought for by him in W.P.(C).NO. 28997/2009 and declined by this Court as per order dated 14.10.2009.

10. Ext.P7 is the order under challenge in the said Writ Petition. The said order dated 26.12.2009 is Ext.P12 in W.P.(C).No.1029/2010 filed by the Board. It is an order by the Government. It was held therein that the Board has no power to promote Sri.V.M.Damodaran, the petitioner in W.P.(C).No.906/2010. He assails the same on the ground of violation of the principles of natural justice. Normally, in such circumstances, this court would remit back the matter to the concerned authority for reconsideration with notice to the concerned parties. Since all the parties are before this Court and all the parties have addressed on all issues including the right of the petitioner in W.P.(C).No.906/2010 (fourth respondent in W.P.(C).No.28705/2009) to get a transfer and posting as Deputy commissioner (Administration) I do not propose to do so. In fact, to decide the issues involved in W.P.(C).NOs.28705/2009 and 1039/2010, the said issue is also to be considered. The contentions in W.P.(C). W.P.(C) NO.28705/09 & No.906/2010 is that Sri.V.M.Damodaran, the petitioner therein was promoted as per Ext.P1therein to the post of Deputy Commissioner (Administration) in Malabar Devaswom Board.

11. In short, the contentions raised by the parties to these Writ Petitions raised two points for consideration. Firstly, whether without issuing an order of promotion an Assistant Commissioner under the Board can be transferred and posted as its Deputy Commissioner. Secondly, whether the posting of the petitioner (petitioner in W.P.(C). No.28705/2009) as Special Officer (Land Conservancy) is sustainable. Certain incidental questions also would crop up for consideration while considering the aforesaid issues.

12. Admittedly, the petitioner was promoted and posted as Deputy Commissioner (Administration) and it was while working in the said post that he was placed under suspension. A close scrutiny of Ext.P2 judgment of this Court in W.P.(C).No.314/2009 would reveal that the arguments during the course of hearing of the said Writ Petition were confined only to the validity of the order placing the petitioner under suspension and the W.P.(C) NO.28705/09 & validity of Ext.P21 therein rejecting Ext.P19 review petition filed by the petitioner before the Government. The petitioner therein was the petitioner in W.P.(C).No.28705/2009 ie., Sri.V.V.Ratheesan After considering the rival contentions, this Court interfered with the order of suspension of the petitioner. All the aspects and particularly the fact that petitioner had already attained the age of superannuation in May 2009 and his continuance till 31.3.2010 would be only in view of the amendment to the Kerala Service Rules. Ext.P16 order therein to the extent it placed the petitioner under suspension and Ext.P21 therein rejecting his review were set aside. Paragraph 14 therein also assumes relevance in the context of the rival contentions and the same reads thus:

"Needless to say that this will not enable the petitioner to continue to continue as Special Officer of the Temple and his reinstatement will be as Deputy Commissioner under the Devaswom and he will be posted in a suitable post, which has nothing to do with the temple."

13. After issuing such a direction in paragraph 14, it was made clear in paragraph 15 thereunder as follows:- 'it is made clear that the observation made herein will have no effect whatsoever on the charges that have been levelled against the petitioner'. Thus a perusal of the said W.P.(C) NO.28705/09 & judgment would reveal that the petitioner was directed to be reinstated as Deputy Commissioner under the Board and at the same time, taking into account the circumstances prevailed at that point of time, it was held that the said judgment would not enable the petitioner to continue as as Special Officer of the temple and he would be posted in a suitable post that has nothing to do with the temple. Admittedly, Ext.P5 order was passed in purported compliance of Ext.P2 judgment. As per the same, the petitioner was ordered to be posted as in-charge of the Executive Officer of Chandragiri Sastha Temple, Kasargode. According to the respondents 2 and 3, they have taken a decision to vary Ext.P5 order taking note of the interim order dated 13.10.2009 and to post him as Special Officer (Land Conservancy) in the grade of Commissioner. In Ext.R2(a), it has been stated thus:

. . . .
W.P. (C) 28705/2009
13.10.2009
03.10.2009

W.ANo.2295/2009

W.P. (C) NO.28705/09 &

16.10.2009

. 15.09.2009

.

14. It is thus obvious from the above extracted portion of Ext.R2

(a) that the second respondent took such decision on 22.10.2009 after Ext.R2(d) interim order of this Court dated 16.10.2009 in W.A.No.2295/2009 ordering status quo with respect to the occupancy of the post of Deputy Commissioner (Administration). The interim order dated 13.10.2009 in W.P.(C).NO.28705/2009 and the order dated 14.10.2009 in W.P.(C).NO.28997/2009 would reveal that this Court directed to retain the petitioner Sri.V.V.Ratheesan, as the Deputy Commissioner (Administration) of Malabar Devaswom. According to respondents 2 and 3, in the said circumstances as also in view of Ext.P2 judgment, they were compelled to take such a resolution ie., Ext.R2(a) dated 22.10.2009 for the purpose of reinstating the petitioner as Deputy Commissioner and to post him against a post which is absolutely unconnected with the Parassinikadavu Muthappan Temple. According to W.P.(C) NO.28705/09 & the said respondents, as per Ext.P8 order dated 5.9.2009, the fourth respondent was transferred and posted as Deputy Commissioner (Administration) and therefore, the petitioner cannot aspire reinstatement in that post especially in view of the specific directions in paragraph 14 of Ext.P2 judgment. The said order could not have taken its effect in view of the interim order dated 13.10.2009 in W.P.(C).NO.28705/2009 and the interim order dated 14.10.2009 in W.P.(C).NO.28997/2009. As already noticed, there cannot be any doubt regarding the reason for this Court in putting a rider in the said judgment while directing for reinstatement. The rider in Ext.P2 judgment in paragraph 14 thereunder was issued only taking into account the facts and circumstances then available. At that point of time, the disciplinary proceedings was pending against the petitioner. In paragraph 15 thereunder, it was made clear that the observations in Ext.P2 would have no effect whatsoever on the charges that have been leveled against the petitioner. Admittedly, disciplinary proceedings were initiated against the petitioner by the Government and respondents 2 and 3 have no case that they have initiated any disciplinary proceedings apart from the disciplinary proceedings initiated by the W.P.(C) NO.28705/09 & government, against the petitioner. In the said context, Ext.P4 assumes relevance. Ext.P4 is an order passed by the government on 1.10.2009 in the matter of disciplinary proceedings initiated against the petitioner. Ext.P4 would reveal that the petitioner was exonerated off all the charges levelled against him and he was reinstated in service as Deputy Commissioner (Administration), Malabar Devaswom Board with immediate effect. Further, the period of suspension was also ordered to be treated as duty for all purpose including pension. Indisputably, the disciplinary proceedings were initiated against the petitioner by the Government and not by

respondents 2 and 3 and therefore, it is well within the powers of the Government to exonerate the petitioner from all the charges leveled against him that formed the basis for initiation of action against him. When once, the petitioner was exonerated off all the charges leveled against him, there cannot be any impediment in reinstating the petitioner to the post of Deputy Commissioner (Administration), Malabar Devaswom Board and as it was while holding the said post that he was placed under suspension. Being a delinquent facing various charges was the reason that made this Court to put a rider in paragraph 14 of Ext.P2 W.P.(C) NO.28705/09 & judgment. The effect of the observations in paragraph 15 would suggest the same and therefore, after exoneration from all the charges, there cannot be any justification to contend that the said rider should continue to be in force as regards the right of the petitioner to be reinstated as Deputy commissioner (Administration). In fact, the very direction in Ext.P2 judgment is to reinstate the petitioner as Deputy Commissioner. The condition ' he will be posted in a suitable post, which has nothing to do with the temple' cannot therefore, be understood as a direction not to reinstate the petitioner as Deputy Commissioner (Administration). It is a fact that it was while holding the said post of Deputy Commissioner (Administration) that the petitioner was posted in full additional charge of the Special Officer for Parassinikkadavu Sree Madappura Muthappan Sathanam Temple. The allegations levelled against him were also relating the said period and relating the activities as its Special Officer. Therefore, according to me, the rider in Ext.P2 judgment as mentioned above could not have been taken as a restriction on reinstatement as Deputy Commissioner (Administration) whilst it should have been taken only as a restriction regarding his posting as Special Officer or some other posts W.P.(C) NO.28705/09 & having something to do with the Parassinikkadavu Sree Madappura Muthappan Sathanam Temple. Thus it is obvious that the respondents 2 and 3 have also understood and taken the said rider in Ext.P2 judgment only in that manner. In that context, it is relevant to note the following recital in Ext.R2(a):-

"	W. P. (C) . NO.
314/2009	14-
.	.
. . .	.
"	

At any rate, while the petitioner was placed under suspension as per G.O. (RT) No.1034/2009/Rd dated 20.3.2009 he was holding the post of Deputy Commissioner (Administration), Malabar Devaswom Board and, therefore, according to me, the contentions of respondents 2 and 3 that by virtue of the observations in Ext.P2, the petitioner could not have been reinstated as Deputy commissioner (Administration) cannot be upheld. As already noticed, this Court as per interim order dated 13.10.2009 in W.P.(C).NO. 28705/2009 directed to retain the petitioner as Deputy Commissioner (Administration) of the Malabar Dewaswom Board. The question is W.P.(C) NO.28705/09 & whether Ext.P8 would stand in the way of such reinstatement. Ext.P8 order would reveal that the fourth respondent was transferred and posted as Deputy Commissioner (Administration) Malabar Devaswam Board, Kozhikode subject to the ratification of the

Government. The relevant portion in Ext.P8 pertaining to the fourth respondent runs as follows:

Sri.V.M.Damodaran, Asst.Commissioner, Kasaragod, the senior most officer in the H.R & C.E (Admn.) Department is transferred and posted as Deputy Commissioner (Admn.), Malabar Devaswom Board, Kozhikode, subject to the ratification of Government.

(emphasis supplied)

15. It would thus reveal that the transfer and posting of the fourth respondent as Deputy Commissioner was ordered to be subject to the ratification of the government. Evidently, as per Ext.P12 order in W.P.(C). 1039/2010 i.e, G.O dated 26.10.2009 the first respondent declined to grant ratification for the aforesaid posting. The contention of the concerned person i.e, Sri.V.M.Damodaran in W.P.(C).No.28997/2009 is that he was promoted to the post of Deputy commissioner (Administration) as per Ext.P8 order dated 5.9.2009 (Ext.P1 in W.P.(C).No.28997/2009). W.P.(C) NO.28705/09 & However, the contention of the respondents 2 and 3 runs counter to the said contention. Respondents 2 and 3 relied on the definition of the term 'Deputy Commissioner' as defined under Section 6(7) of the Act and it reads thus: "Deputy Commissioner" means the Deputy Commissioner appointed under Sub-section (4) of Section 8(c). Sub-section 4 of Section 8(c) of the Act enables the Board to appoint such numbers of the Deputy Commissioners necessary to discharge all the functions under the Act". Ext.P12 dated 24.1.2009 would reveal that there is only one post of Commissioner and two posts of Deputy Commissioners i.e., Deputy Commissioner (Administration) and Deputy Commissioner (Law) available under the Board. These are the two posts which were available under the H.R. & C.E Department that were shifted to the Malabar Devaswom Board pursuant to the abolition of H.R.& C.E Department. Ext.P12 order dated 24.1.2009 did not reveal the existence of the post of Special Officer (Land Conservancy) in the grade of Deputy commissioner under the Devaswom Board. Ext.P13 is the order whereby the said post was created and the same would reveal that it was a post initially created for a period of one year. Its tenure was subsequently extended from time W.P.(C) NO.28705/09 & to time and Ext.P14 order would reveal that it had expired on 1.12.2007. True that the respondents 2 and 3 have produced Ext.R2(c) i.e, the G.O sanctioning a post of Special Officer (Land Conservancy) dated 12.1.2005. The said order would reveal that certain other posts were sanctioned for the purpose of conservation of the Devaswam lands thereunder and the Special Officer appointed for the said purpose should supervise the functioning of the aforesaid officers for the purpose mentioned in Ext.R2

(c). In the light of the specific contention of the petitioner in the light of Exts.P12 and P14 that the post of Special Officer (Land Conservancy) in the grade of Deputy Commissioner was created under the Devaswom Board initially for a period of one year and the tenure of the same expired by 1.12.2007. Poignantly and pointedly a specific question was put to the learned counsel for respondents 2 and 3 as to whether there is any subsequent order issued by the Government extending the term of the said post. In fact, the said respondents could not make available any such order passed by the Government. Government also have no case that the period of the said post was subsequently extended and still it is in force. Therefore, there is nothing on record to controvert the

assertion of the W.P.(C) NO.28705/09 & petitioner, in the light of Exts.P12 and P14, that the said post was originally created for a period of one year and its term had expired on 1.12.2007. So long as the respondents 2 to 4 failed to bring to my attention that the said post was actually available and still available to accommodate the petitioner in the grade of Deputy commissioner under the Board, the only option available to this Court is to accept the contentions made by the petitioner based on Exts.P12 and P14. As already noticed, there are only two posts of Deputy Commissioners viz., Deputy Commissioner (Administration) and Deputy Commissioner (Law) which were shifted to the Malabar Devaswam Board by the Government on abolition of the H.R.& J.E Department. The petitioner was the person holding the post of Deputy Commissioner (Administration). He was suspended while holding the said post and consequently, reinstated pursuant to the order of this Court in Ext.P2 and the disciplinary proceedings initiated against him were virtually dropped and he was exonerated of all the charges by the Government and Government have also issued a direction to reinstate the petitioner as Deputy Commissioner (Administration). In such circumstances, relying on a condition put by this W.P.(C) NO.28705/09 & court in Ext.P2 judgment taking note of the pendency of the proceedings initiated against the petitioner, at that point of time the respondents cannot be heard to content that the petitioner is ineligible to get reinstated and continued in the post of Deputy commissioner (Administration) under the Malabar Devaswom Board.

16. As already noted, according to respondents 2 and 3 by virtue of definition of Deputy Commissioner under section 6(7) and powers under Section 8(c) of the H.R.& J.E Act, the Board is entitled to post or appoint any person as Deputy Commissioner. The said contention of the respondents 2 and 3 have to be analysed in the light of the facts obtained in this case. As already noticed, the petitioner was the person who was promoted and posted as Deputy Commissioner (Administration) and he was holding the said post while he was placed under suspension. Apart from the said post of Deputy Commissioner (Law) is the other post available in the grade of Deputy commissioner. Admittedly, the fourth respondent was an Assistant Commissioner and he was facing disciplinary action. The contention of the respondents 2 and 3 that the fourth respondent was not facing any disciplinary action cannot be W.P.(C) NO.28705/09 & countenanced. In fact, even going by the contention of the fourth respondent, the charges levelled against him are false and flimsy which would suggest continuance of such a proceedings against him. The very order by which the fourth respondent was reinstated in service as Assistant Commissioner would also make it clear that he was so ordered to be reinstated by the government without prejudice to the continuance of the disciplinary action. In such circumstances, I am at a loss to understand as to how the respondents 2 and 3 could content that no disciplinary proceedings are pending against the fourth respondent. In fact, after Ext.P9 order of the Government ordering revocation of the suspension of the fourth respondent and his reinstatement into the post of Assistant Commissioner, the Board has issued Ext.P10 order. Ext.P10 would reveal that as part of continuance of the disciplinary proceedings initiated against the fourth respondent, the Deputy Commissioner (Administration) was appointed as the Enquiry Officer. The said order is dated 4.7.2009. No proceedings have been produced before this Court to show that subsequent to Exts.P9 and P10 the disciplinary proceedings initiated against the fourth respondent were culminated in his exoneration. No order dropping the W.P.(C) NO.28705/09 & proceedings was also produced by the respondent. That apart, the very order would reveal that as on 4.7.2009, he was working as Assistant Commissioner and the Deputy Commissioner (Administration) was appointed as the Enquiry Commissioner against the petitioner.

So long as that order was not withdrawn, the 4th respondent could not have been promoted/transferred and posted as Deputy Commissioner (Administration). No relevant provision which enables the Board to transfer and post an Assistant Commissioner as Deputy Commissioner was also brought to my notice by respondents 2 to 4.

17. In the context of the aforesaid contentions, certain facts also require consideration. Ext.P2 would reveal that besides the two posts of Deputy Commissioners six posts of Assistant Commissioners were available under the H.R & C.E Department and all these posts were shifted to Malabar Devaswom Board. Based on Ext.P12, it is evident that subsequent to the abolition of H.R & C.E Department those posts were shifted to the Malabar Devaswom Board and, accordingly, besides two posts of Deputy Commissioners, six posts of Assistant Commissioners are also available under the Board. The respondents also did not dispute the W.P.(C) NO.28705/09 & said aspect. No provision or relevant orders are brought to my notice which would make the posts of Deputy Commissioner and Assistant Commissioner interchangeable or treating the said two categories as equivalent categories. According to me, the post of Deputy Commissioner can be regarded only as a promotion post of Assistant Commissioner. I am fortified in my view by the averments of the respondents. In paragraph 6 of W.P.(C).NO. 28997/2009, the fourth respondent has stated as follows:

"Sub Section 4 of Section 8(c) of the Act enables the Board to appoint such members of Deputy Commissioners necessary for the discharge of the functions under the Act. At present, there are two Deputy Commissioners. One is Deputy Commissioner (Administration) and two is Deputy Commissioner (Law). The petitioner herein is the Deputy Commissioner (Administration). The other Deputy Commissioner (Law) is also junior to the petitioner".

Paragraph 2 and 3 of W.P.(C).NO.906/2009 filed by the fourth respondent also assumes relevance in this context.

"2. The fourth respondent and the petitioner were in the category of Assistant Commissioner on 30.6.2004 whereas the fourth respondent was promoted to the post of Assistant Commissioner only on 16.8.2006.

3. The petitioner herein was placed under suspension on flimsy charges for a period of three years and he was re-instated in service as per the W.P.(C) NO.28705/09 & order dated 11.2.2009. It was during the period of petitioner's suspension that the fourth respondent was promoted, overlooking the seniority of the petitioner."

It is evident from the above extracted portions that only two posts of Deputy Commissioners are available under the Malabar Devaswom Board and promotion to the post of Deputy Commissioner is being effected from the category of Assistant Commissioner. In the above context, the sustainability of the contentions made on behalf of the respondents 2 to 4 that the fourth respondent was transferred and posted as Deputy Commissioner (Administration) is to be looked into. Exts.P9 and P10 would reveal that the fourth respondent on revocation of suspension was reinstated only as an Assistant Commissioner under the Devaswom Board. It would also reveal that

the Deputy Commissioner (Administration) was appointed as the Enquiry Officer to conduct enquiry against the fourth respondent. Though the fourth respondent described Ext.P1 as an order granting him promotion, respondents 2 and 3 maintained the stand that it was only a transfer and posting. No order promoting the fourth respondent from the category of Assistant Commissioner to the post of Deputy Commissioner was produced in any of these Writ Petitions. In fact, there W.P.(C) NO.28705/09 & is no such case for respondents 2 and 3. As already observed, no relevant provision was brought to my notice which enables the respondents 2 and 3 to transfer an Assistant Commissioner and give posting to him as Assistant Commissioner. In such circumstances, I am of the view that since the petitioner was reinstated as Deputy Commissioner (Administration), there was no place for the fourth respondent to be adjusted as Deputy Commissioner even in case he was given promotion. In the light of the long discussion as above, I have no doubt in my mind that the petitioner who was reinstated based on Ext.P2 judgment and Ext.P4 order as Deputy Commissioner should have been permitted to hold the post of Deputy Commissioner (Administration) till 31.3.2010. Since Ext.P5 was already varied by respondents 2 and 3 as is obvious from Ext.R2(a) and appointment of the petitioner as Special Officer (Land Conservancy) could not have effected, I am inclined to declare that the petitioner shall be considered as having retired from the Board on 31.3.2010 as Deputy Commissioner (Administration) and, accordingly, he shall be given all consequential benefits expeditiously, at any rate, within a period of three months from the date of receipt of a copy of this judgment. W.P.(C). W.P.(C) NO.28705/09 & NO.28705/2009 is accordingly, disposed of. W.P.(C).NOs.28997/2009, 1039/2010 and 906/2010 are liable to be dismissed in the above circumstances and, therefore, they are dismissed.

(C.T. RAVIKUMAR, JUDGE) spc W.P.(C) NO.28705/09 & C.T. RAVIKUMAR, J.

W.P.(C). NO. /2010 JUDGMENT June, 2010 W.P.(C) NO.28705/09 &