

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

FRIDAY, THE TWENTY NINETH DAY OF AUGUST
TWO THOUSAND AND EIGHT

PRESENT
THE HON'BLE MR JUSTICE B.SESHASAYANA REDDY
WRIT PETITION NO : 6616 of 2008

Between:

Syed Khader Basha Quadri, S/o. Late Syed Latddf Basha
Quadri,

R/o. D.No. 2/182, Hanmesh Nagar Colony, Guntakal,
Ananthapur District.

..... PETITIONER

AND

1 The Minorities Welfare (Wakf-1) Department, Government of
Andhra Pradesh, Rep by its Secretary,
Secretariat, Hyderabad.

2 Syed Abdul Sattar Latheefi, S/o. Syed Hussain,
R/o. D.No. 9/299, Sofia Street, Guntakal, Ananthapur
District.

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India
praying that in the circumstances stated in the Affidavit filed
herein the High Court will be pleased to to issue a writ, order or
direction more particularly one in the nature of Writ of Mandamus
declaring the GO Ms.No. 4 dated 06-2-2008 issued by the 1st
Respondent appointing 2nd Respondent as Additional Government
Kazi to Guntakal Town and Mandla, Ananthapur District for
performing marriage of Qazzath as illegal, arbitrary, null and void,
in violation of principles of Natural Justice and contrary to Kazis
Act 1880 and quash the same and pass

Counsel for the Petitioner: MR.MIRZASAFIULLA BAIG

Counsel for the Respondent No.: GP FOR SOCIAL WELFARE

The Court made the following :

O R D E R:

This writ petition has been filed by Syed Khadar Basha Quadri with a prayer to declare G.O.Ms.No.4, dated 6.2.2008 as illegal, arbitrary and void.

The petitioner-Syed Khadar Basha Quadri possesses Islamic education qualifications (a) Moulvi Fazil (b) Adib-e-Fazil (c) Urdu alim, (d) Urdu Fazil and (e) S.S.C. The Guntakal town Mosque Managing Committee/Muthawallis as well as majority of the Muslims and Muslim organizations of Guntakal town had recommended his name for appointment as Kazi of Guntakal Town and Mandal. Thereupon, the District Collector, Anantapur District had sent a panel of three persons for appointment of Government Khazi to Guntakal Town and Mandal. The Government of Andhra Pradesh-1st respondent appointed him as Government Khazi to Guntakal Town and Mandal to perform marriages and other related ceremonies under section 2 of Kazis Act, 1880 vide G.O.Ms.No.3, dated 16.1.2006. After his appointment as Government Khazi, he appointed 13 Naib Kazis to various areas of Guntakal town for performing marriages and other ceremonies. He submitted detailed representation with regard to his progress as Government Khazi to 1st respondent and the District Collector, Anantapur. While so, 1st respondent without issuing any notice to the petitioner proceeded in appointing 2nd respondent-Syed Abdul Sattar Latheefi as Additional Government Khazi to Guntakal Town to perform the marriages for Qazzath. According to the petitioner, 2nd respondent is not qualified to be appointed as an Additional Government Khazi as he passed only the Naib Qazath examination in third division of annual examination held in the month of September, 2006 from Jamia Nizamia, Hyderabad which is a prerequisite qualification for Naib Kazis only. It is his grievance that the Government of Andhra Pradesh appointed 2nd respondent as Additional Government Khazi without putting him on notice. The appointment of 2nd respondent as Additional Government Khazi,

according to the petitioner, seriously effected his duties as Government Khazi of Guntakal town and Mandal.

The 2nd respondent entered appearance through a counsel and filed his counter. The sum and substance of his counter affidavit is:

1st respondent got the power to appoint one or more Kazis depending upon the requirement etc. The District Collector, Anantapur submitted detailed report for appointment of Additional Government Khazi in Guntakal town. The 1st respondent considered the report of District Collector, Anantapur and appointed him as Additional Government Khazi by exercising its power and jurisdiction. He is qualified for appointment as Additional Government Khazi since he passed Khazavath examination conducted by Jamia Nizamia Mosque, Hyderabad. The entire 13 committees of Guntakal Mosques requested for appointment of Additional Government Khazi. The District Collector, Anantapur after satisfying about the requirement of appointment of Additional Government Khazi to serve 40,000 population of muslim community of Guntakal town recommended his name to the Government and accordingly the Government appointed him as Additional Government Khazi. It is further averred in the counter affidavit that the petitioner is not eligible to continue as Khazi since he secured appointment by suppressing the fact of his Government employment and pendency of disciplinary proceedings against him for misappropriation of school funds. The relevant portion of the counter reads as under:

“ 6.....The writ petitioner who is not all eligible to continue as Kazi as he became Kazi by suppressing the fact of his government employment and facing disciplinary proceedings for misappropriation of school funds and same fact is crystal clear from the aforesaid proceedings of the District Educational officer approached the Honourable court with unclean hands and with false and frivolous contentions which are highly unwarranted. The writ petition is misconceived, devoid of merits and liable to be dismissed in limini with costs.”

The writ petitioner filed reply affidavit. It is stated in the reply affidavit that Naib Kazi appointed under section 3 of Kazi's Act, 1880 is competent to perform all religious functions. It is

asserted in the reply affidavit that 2nd respondent is not eligible to act as Additional Government Khazi since he passed only Naib Kazi examination. The necessity of appointment of Additional Government Khazi in Guntakal town is also denied. Para 8 of the reply affidavit need to be noted and it is thus:

“ 8. In reply to para 6 and 7 of the counter affidavit filed by the 2nd respondent I submit that there is no need of an additional Kazi in Guntakal Town, since I as a Kazi of Guntakal town and mandal has appointed 13 Naib Kazi's to perform the religious ceremonies in Guntakal town and mandal, which are sufficient for the population of 40,000 more so the manner in which the proposals were sent, demonstrates the arbitrariness on part of 1st respondent as the application was made by 2nd respondent on 28.2.2006 i.e. hardly after 40 days after my appointment i.e. on 16.1.2006 and further the 1st respondent issued memo dated 5.6.2006 requesting the Collector, Anantapur to examine the matter and file detailed report for appointment of 2nd respondent as Additional Kazi to Guntakal Town and thereafter the Collector, Anantapur made proposal on 9.11.2006 recommending 2nd respondent to be appointed as Additional Kazi. It is pertinent to mention that the Collector, Anantapur on what basis recommended for appointment of additional Kazi, as expressly only 10 months had passed after the 1st respondent appointment me as Kazi for Guntakal Town and Mandal and it is not known within such a short period how the population has grown who were eligible to be married as such there was a need for appointment of an Additional Kazi when I appointed 13 Naib Kazis who are sufficient to perform the duties in Guntakal Town and Mandal. I respectfully submit that the entire affair of sending proposal and appointment of 2nd respondent for the post of Additional Kazi, who in fact possesses the qualification of a Naib Kazi only, smacks of arbitrariness on part of 1st respondent, who without giving any notice to me, appointing 2nd respondent as Additional Kazi to Guntakal town which is illegal, arbitrary and violation of principles of natural justice.”

Heard learned counsel appearing for the petitioner and learned counsel appearing for 2nd respondent.

Learned counsel appearing for the petitioner submits that the 2nd respondent has no requisite qualification for appointment as Additional Government Khazi and therefore the Government Order issued appointing 2nd respondent as Additional Government Khazi is liable to be set aside. A further submission has been made that the certificate which he filed as proof of his qualifications for appointment as Khazi indicates that he passed Nayi Khazi examination and the certificate itself is sufficient to dislodge him from the post of Additional Government Khazi.

Learned counsel appearing for the 2nd respondent submits that there is no qualification prescribed for appointment of Khazi and even otherwise the qualification possessed by 2nd respondent is sufficient to perform the functions of Khazi. He would also contend that the petitioner is disqualified to be Khazi of Guntakal Town and Mandal since he is involved in misappropriation case and is serving as a teacher.

Section 2 of Kazis Act, 1880 deals with the power of the State Government to appoint Kazis. Sec.3 of Kazis Act, 1880 deals with appointment of Naib Kazis. Sections 2 and 3 read as under:

“ **S.2 Power to appoint Kazis for any local area:**

Wherever it appears to the a[a] Substituted for the words "Provincial Government" by A.L.O., 1950. [State Government] that any considerable number of the Muhammadans resident in any local area desire that one or more Kazis should be appointed for such local area, the a[a] Substituted for the words "Provincial Government" by A.L.O., 1950. [State Government] may, if it thinks fit, after consulting the principal Muhammadan residents of such local area, select one or more fit persons and appoint him or them to be Kazis for such local area. If any question arises whether any person has been rightly appointed Kazi under this section, the decision thereof by the a[a] Substituted for the words "Provincial Government" by A.L.O., 1950. [State Government] shall be conclusive. The a[a] Substituted for the words "Provincial Government" by A.L.O., 1950. [State Government] may, if it thinks fit, suspend or remove any Kazi appointed under this section who is guilty of any misconduct in the execution of his office, or who is for a continuous period of six months absent from the local area for which he is appointed, or leaves such local area for the purpose of residing elsewhere, or is declared an insolvent, or desires to be discharged from the office, or who refuses or becomes in the opinion of the a[a] Substituted for the words "Provincial Government" by A.L.O., 1950. [State Government] unfit, or personally incapable, to discharge the duties of the office.

S.3 Naib Kazis:

Any Kazi appointed under this Act may appoint one or more persons as his naib or naibs to act in his place in all or any of the matters appertaining to his office throughout the whole or in any portion of the local area for which he is appointed, and may suspend or remove any naib so appointed. When any Kazi is suspended or removed under section 2, his naib or naibs (if any) shall be deemed to be suspended or removed, as the case may be."

A plain reading of the above referred to provisions indicate that Naib Kazi is lower in cadre to Kazi. It is the Kazi who is empowered to appoint Naib Kazi, whereas the State Government is competent authority to appoint Kazis under section 2 of the Act.

The core question involved in this writ petition is whether the 2nd respondent is qualified to be appointed as Additional Government Kazi. The 2nd respondent possessed a certificate issued by Jamia Nizamia, Hyderabad. As per the certificate the 2nd respondent passed Nib Qazath in III division held in the month of September, 2006.

Indisputably Naib Kazi is lower in cadre to Kazi. When 2nd respondent is holding a certificate in Naib Qazath, it cannot be stated that he is qualified to be appointed as a Kazi. The District Collector, Anantapur seems to have recommended the case of 2nd respondent without looking into the qualifications possessed by 2nd respondent. When 2nd respondent passed Naib Qazath examination, he cannot be appointed as Additional Government Kazi which is superior to Naib Kazi. Therefore, the Government Order impugned in this writ petition issued by the 1st respondent appointing 2nd respondent as Additional Government Kazi is liable to be set aside.

Accordingly, this writ petition is allowed setting aside the Government Order No.3, dated 16.1.2006.

29th August, 2008.

(B.Seshasayana Reddy,J)

tnb

**THE HONOURABLE SRI JUSTICE
B.SESHASAYANA REDDY**

WRIT PETITION NO.6616 OF 2008

29TH AUGUST 2008.

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

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