

THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

WRIT PETITION No.21017 OF 2004

ORDER:

This writ petition is filed by the petitioner seeking Writ of Mandamus declaring the action of the 1st respondent in dismissing the petitioner without following the procedure as contemplated under the rules and without giving any notice, as illegal, arbitrary, bad and violative of principles of natural justice and consequently set aside the impugned orders dated 15.10.2004 of the 1st respondent and direct the respondents to continue him in service with all consequential and attendant benefits.

The petitioner was appointed as Night Watchman in the 1st respondent Temple on being sponsored by the Krishna District Employment Exchange, Vijayawada and after facing interview conducted on 23.10.2000. He joined the service as such on 01.11.2000 and he was not issued any memo or charge sheet during his tenure. While so, without giving any prior notice and without giving any opportunity of being heard, the 1st respondent issued proceedings dated 15.10.2004 terminating his services without following any procedure as laid down under Rule 19 of the Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1963 as contemplated under Rule 4 of the Endowments Service Rules through imposed the punishment of Dismissal specified in Sec.37 of the Act. The 1st respondent, only to favour the 4th respondent, who was appointed by way of backdoor method and suspended during his service, removed the petitioner illegally though he has put in 4 years unblemished service. It is stated that the petitioner was appointed by following regular process and hence he cannot be terminated on any ground.

The respondents filed counter stating that the 4th respondent is the watchman of the 1st respondent and he was suspended on 02.06.2000 as a theft was occurred in the temple on 01.06.2000. As there is no watchman, the 1st respondent sent requisition to the Employment Exchange and on being sponsored by the Employment Exchange, the petitioner was appointed as Watchman on temporary daily wage basis and by accepting the terms and conditions, the petitioner joined the service. After enquiry against the 4th respondent, the enquiry officer found the 4th respondent not guilty and exonerated him from the charges leveled against him. Therefore, the 1st respondent issued proceedings dated 17.09.2004 reinstating the 4th respondent, and as there was no vacancy of post of watchman, the services of the petitioner were terminated. The impugned proceedings are passed on administrative ground and not as a punishment, and hence G.O.Ms.No.830 is not applicable. The petitioner is a temporary daily wage employee. The petitioner without availing the alternative remedy under Sec.92 of the Endowments Act, directly filed the present writ petition which is not maintainable.

The admitted fact is that the petitioner though graduate was looking for employment and in the 1st respondent temple a vacancy of watchman arose on daily wage basis and after following due procedure i.e. after obtaining list of eligible candidates from the Employment Exchange, the 1st respondent institution appointed the petitioner as night watchman in the 1st respondent temple on 23.10.2000 on daily wage basis, and on the same day, the petitioner joined the service. He had been in service till 15.10.2004. However, before the petitioner was employed as watchman in the 1st respondent temple, the 4th respondent-B.Parasuramaiah was working in the said post and on the allegation of certain charges, he was placed under suspension. Subsequently, in pursuance of the report of the enquiry

officer and the orders of the Authorities, the 4th respondent was directed to be reinstated into service. There is only one post of watchman in the 1st respondent temple and they are bound to reappoint the 4th respondent, who was directed to be reinstated into service.

The learned counsel for the petitioner submits that even though the petitioner was appointed on daily wage basis, since he was appointed through regular process on being sponsored by the Employment Exchange, he ought not to have terminated from service without following any procedure, much less under section 37 of the Endowments Act. He further contends that absolutely no notice was given to the petitioner before he was terminated.

The fact remains that in view of the reinstatement of the 4th respondent and as there was no other vacancy for continuing the writ petitioner and since the petitioner was working on daily wage basis, his services were terminated on administrative grounds. The petitioner will not accrue any right to continue in service. However, taking into consideration of his four years uninterrupted service, the respondent Authorities have to consider his case sympathetically and on humanitarian grounds and try to accommodate him in any institution under the Management of the 1st and 2nd respondent Authorities.

In view of the above, the petitioner is directed to make a representation to the respondents 1 and 2 within two months from the date of receipt of a copy of this order and on receiving such representation, the respondents 1 and 2 shall consider the same sympathetically and accommodate the petitioner in any suitable post in any institution under their Management afresh within a period of two months thereafter.

With the above directions, the Writ Petition is disposed of. No order as to costs.

Pending miscellaneous applications, if any, shall stand closed

in consequence.

Date: 09.12.2015
Dsr

M.S.K.JAISWAL,J