

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

WRIT PETITION No.529 OF 2003

ORDER:

This Writ Petition is filed under Article 226 of the Constitution of India to issue a writ or order more particularly one in the nature of a Writ of Mandamus declaring the action of respondent No.1 in passing oral termination of the services of the writ petitioner as bad and direct the respondents to regularise the services of the writ petitioner.

2. The facts leading to filing of the present writ petition are, in brief, as follows: The petitioner was appointed as N.M.R. in the month of August, 1997 by the first respondent – Temple on a salary of Rs.25/- per day. The petitioner worked as sales man in fruit stall maintained by the temple. The petitioner worked in the fruit stall continuously for a period of five years. As per the circular instructions of the second respondent issued on 03.03.1993, the services of the N.M.R. has to be regularised after completion of three years of service and having S.S.C. qualification. Some of the N.M.R. employees filed W.P.No.24105 of 1999 and the same was disposed of. In pursuance of the order of this Court, the second respondent passed the order stating that the cases of the petitioners in W.P.No.24105 of 1999 will be considered as and when the establishment charges are within the statutory limit of 30%. Hence, the petition.

3. The first respondent filed counter denying all the averments made in the petition *inter alia* contending that the circular instructions as mentioned in the writ affidavit, are applicable to the persons, who were engaged as N.M.Rs. by following due process of law. In this matter, the petitioner has not been engaged by the 1st respondent – Temple. Hence, the petition may be dismissed.

4. Heard Sri N.Guru Gopal, the learned counsel for the petitioner and Ms. K.Lalitha, the learned Standing Counsel for the first respondent – Temple.

5. The only contention of the learned counsel for the petitioner is that the first respondent – Temple appointed the petitioner as N.M.R. way back in the year 1997 and continuously worked for a period of five years. It is not the case of the petitioner

that initially he was appointed by following due process of law. At the time of arguments, the learned counsel for the petitioner submitted that the petitioner is no longer in service. As per the Circular issued by the department, services of a person who worked continuously for a period of three years can be regularised provided that the establishment charges shall not exceed 30% over assessable income. Except the averments in the petition, there is no other material to establish that the petitioner worked continuously for a period of five years from August, 1997 in fruit stall of the Temple as N.M.R. If really the petitioner was appointed as N.M.R. by the first respondent – Temple, what prevented the petitioner to file the appointment order? Like wise, the petitioner also did not file the termination order. In order to cover up latches on the part of petitioner, the possibility of taking plea of oral appointment and oral termination cannot be ruled out. It is not the case of the petitioner that he has passed S.S.C. examination which is a condition precedent for regularisation of the services. Even assuming, but not conceding, that he worked for a period of three years, the petitioner has not produced any document to prove that he passed S.S.C. examination. Absolutely, there is no material on record to establish that the petitioner was appointed as N.M.R. by the first respondent – Temple and terminated his services after a period of five years. A person who approach the Court seeking relief has to establish his right. Absolutely, there is no material on record to establish that the petitioner worked for a period of five years in the fruit stall of the first respondent – Temple. In the absence of appointment order, it is not possible to hold that the petitioner worked in first respondent – Temple. A person, who is not in service, is not entitled to seek the relief for regularisation of the services.

6. Learned counsel for the petitioner submitted that this Court disposed of a batch of writ petitions with a direction to the petitioners therein to approach the first respondent – Devasthanam for regularisation of their services. In the instant case, absolutely there is no material on record to establish that the petitioner was fully qualified for regularisation of his service, as stipulated in the guidelines issued by the department. Hence, there are no merits in the writ petition.

7. Accordingly, the Writ Petition is dismissed. No costs.

8. Consequently, Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed.

T.SUNIL CHOWDARY, J

Date: 10.04.2015

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