

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

WRIT PETITION Nos.27712 of 2014 and 24198 of 2015

Between:

Syed Moinuddin

....Petitioner

and

A.P.State Wakf Board,
Rep.by its Chief Executive Officer,
Nampally, Hyderabad,
And another.

....Respondents

JUDGMENT PRONOUNCED ON : 22.09.2015

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THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

1. Whether Reporters of Local newspapers : **Yes**
may be allowed to see the Judgments?
2. Whether the copies of judgment may be : **No**
Marked to Law Reporters/Journals?
3. Whether His Lordship wishes to : **No**
see the fair copy of the Judgment?

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

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WRIT PETITION Nos.27712 of 2014 and 24198 of 2015

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COMMON ORDER:

These two Writ Petitions are being disposed of by this common order in view of the common point involved in both the cases.

Heard the learned Senior Counsel, Sri Vedula Venkataramana for the petitioner and Sri Mahmood Ali for the respondents.

The petitioner claims that he was holding the post of Khadim in Dargah Hazarath Janpak Shaheed of Janpahad Village, Nereducharla Mandal in Nalgonda District. The Andhra Pradesh State Waqf Board appointed him on 07.08.2007 as Khadim of the said Dargah and he was

performing his duties attached to the Office. He further states that the Office of Khadim is a hereditary post without any fixed tenure. The petitioner further states that by order dated 09.02.2010, the Waqf Board terminated the petitioner's services as Khadim. Since nobody was appointed in his place, he was continuing to perform the religious rites in the Dargah. When the Waqf Board issued an auction notification on 10.09.2014 auctioning the religious rites, the petitioner filed W.P.No.27712 of 2014. When a notification was again issued on 29.07.2015, he filed another W.P.No.24198 of 2015.

This Court, by order dated 17.09.2014 while admitting W.P.No.27712 of 2014, passed an order in W.P.M.P.No.34701 of 2014 allowing the proposed auction to go on, but not to finalize the same pending further orders. W.P.M.P.No.331 of 2015 was filed in the said Writ Petition seeking impleadment of the second respondent and the same was ordered on 29.06.2015. Thereafter, W.P.No.27712 of 2014 was dismissed for non-prosecution on 07.07.2015. However, the same was restored on filing W.P.M.P.No.29389 of 2015. W.V.M.P.No.3196 of 2014 was filed by the first respondent – Andhra Pradesh State Waqf Board, and W.V.M.P.No.2016 of 2015 was filed by the impleaded second respondent in the said Writ Petition. Those petitions along with W.P.No.24198 of 2015 were taken up for consideration.

The counter affidavit filed by the first respondent states that the petitioner was appointed as Khadim at Dargah of Janpak Shaheed to perform the Chirag Bathi, Oodh, Fateha, Taveez, Zabeeha, Neembu, Nariyal Bandish, Vehicle Pooja and also Sandal Phool and Fateha on condition that he should not claim any salary from the Waqf Board. He was appointed by order dated 07.08.2007 because the District Collector informed that he along with his sons, from his forefathers were performing daily rituals at the Dargah and serving the devotees by Taveez and Tabaruk and also cleaning the Dargah. The counter affidavit further states that there were certain complaints against the petitioner

and in those circumstances, the reports from the Task Force and the Inspector Auditor were called for. Both reported that the petitioner was misusing powers under the guise of rendering services and was collecting huge amounts from the devotees, thereby affecting the income of the waqf institution. In respect of the waqf institution, the Waqf Board itself is the Mutawalli and the appointment of the petitioner by the erstwhile Special Officer was irregular. Hence, the Board resolved to cancel the proceedings dated 07.08.2007. Lastly, it is stated that, if the petitioner has got any grievance, he has a remedy under Section 83 of the Waqf Act to approach the Waqf Tribunal for redressal of the grievance.

The second respondent filed a separate counter affidavit stating that the auction was conducted on 18.09.2014 and he filed sealed tender by enclosing Demand Draft for Rs.10.00 lakhs as EMD. Along with him five other tenderers also participated in the said auction. The entire auction process was completed, but in view of the stay orders passed by this Court, final action could not be taken. After receipt of complaints and reports from the Task Force and Inspector Auditor, a notice was given to the petitioner on 03.07.2009 and the petitioner submitted his explanation on 13.07.2009. Since the explanation submitted by the petitioner was not satisfactory, an order of termination was passed on 09.02.2010. The petitioner did not question the order of termination, and in view of the same, the present Writ Petitions are not maintainable. After termination of the petitioner's appointment, auction notifications were issued from time to time during 2011 to 2013 and the petitioner never questioned the same.

In W.P.No.24198 of 2015, the Waqf Board filed a separate counter affidavit stating that Sri Shaik Khaja filed W.P.No.15383 of 2010 challenging the inaction of the respondents therein, the Police authorities, in providing protection to him and his activities in respect of items enumerated in his appointment orders and usurped by the

petitioner herein, though the allotment orders dated 22.06.2010 were issued in his favour as a contractor with authority to collect the items enumerated therein. The said Writ Petition was disposed of on 04.08.2010 recording the submission of the learned Counsel for the petitioner therein that, in pursuance of the interim direction, respondent Nos.2 and 3 had taken appropriate action for giving protection to the petitioner. The said fact was suppressed by the petitioner.

Learned Counsel for the petitioner submits that since Khadim is a hereditary post and by virtue of the order appointing him in that post on 07.08.2007, the petitioner is entitled to continue his services as Khadim.

Learned Standing Counsel for the Waqf Board submits that the very appointment of the petitioner is contrary to the provisions of the Waqf Act, 1995, and there is no provision for appointment of Khadim under the provisions of the Waqf Act. The appointment order was issued in favour of the petitioner on 07.08.2007 under the provisions of the Durgah Khawaja Saheb Act, 1955, and the provisions of the said Act are not applicable to the instant Waqf institution, but are applicable only to Durgah of Khawaja Moin-ud-din Chishti of Ajmer. Hence, the order of appointment in favour of the petitioner is *non est* in law. He further submits that, since the services of the petitioner were terminated on 09.02.2010, and the petitioner, having not challenged the said order of termination, is not entitled for any relief.

It is clear from the above facts that the services of the petitioner were terminated on 09.02.2010 and the petitioner himself admits the same in W.P.No.24198 of 2015. In the absence of a challenge to the said order, the present Writ Petitions cannot be maintained. If the petitioner claims any customary right, the same has to be established before the Waqf Tribunal, but not in the proceedings under Article 226 of the Constitution of India. The present Writ Petitions are filed against the auction notifications issued in 2014 and 2015, when the Waqf Board is in

direction management of the Waqf institution. It is also a fact that the petitioner did not challenge the auction notifications during 2011 to 2013. The affidavits filed in support of the Writ Petitions do not disclose any ground much less valid grounds for challenging the notifications issued by the Waqf Board.

In the circumstances, these Writ Petitions are devoid of merits, and the same are, accordingly, dismissed. The miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

(A.RAMALINGESWARA RAO, J)

22.09.2015

vs