



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.03.2016

CORAM:

THE HONOURABLE MR. JUSTICE S. MANIKUMAR
and
THE HONOURABLE MR. JUSTICE C. T. SELVAM

W.A. (MD) No. 469 of 2016 against WP (MD) No. 11452 of 2005
and
CMP. (MD) No. 3306 of 2016

The Commissioner,
Hindu Religious and Charitable Endowments
Board, Nungambakkam,
Chennai 600 034. .. Appellant/1st Respondent

Vs.

1. Nagarajan .. 1st Respondent/Writ Petitioner

2. The Joint Commissioner/Executive Officer,
Arulmigu Ramanathaswami Thirukoil,
Rameshwaram,
Ramanathapuram District. .. 2nd Respondent/2nd Respondent

3. The Chairman Board of Trustees,
Arulmigu Ramanathaswami Thirukoil,
Rameshwaram,
Ramanathapuram District. .. 3rd Respondent/3rd Respondent

PRAYER: The Writ Appeal is filed under Clause 15 of Letters Patent against the order of this Court, dated 04.10.2010 in W.P. (MD) No. 11452 of 2005.

Prayer in WP (MD). 11452/ 2005 :

Writ Petition is filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Mandamus, directing the respondents herein to regularize the petitioners service in the post of "Para" in the temple management and to accommodate the petitioner as a permanent employee of the temple.

For Appellants: Mr. A. K. Bhaskarapandian
Special Government Pleader

For R1 : Mrs. V. Jeyarani

For R2 & R3 : No Appearance

JUDGMENT

(Judgment of this Court was delivered by S.MANIKUMAR, J.)

Vide impugned order, in W.P.(MD)No.11452 of 2005, dated 04.10.2010, the Writ Court, at paragraph No.7, has ordered as hereunder:-

"7.It is not disputed that the petitioner was appointed by the temple authority as Para in the year 1986 on casual basis at the rate of Rs.10/- per day, which was later on increased to Rs.50/- per day by the 2nd respondent. From the date of his appointment in the post of Para, the petitioner has been working without any break in service till today. Therefore, the 2nd respondent/the Joint Commissioner-Executive Officer, also recommended the petitioner for regularisation of his services to the 1st respondent by clearly mentioning that there is a post lying vacant. Further, the petitioner is admittedly working for the last 25 years in the post of 'Para', which is also required to be regularised, otherwise, the petitioner, who is working for the last 25 years in the post of Para, would not be in a position to pay more serious interest in discharging his duties, position to pay more serious interest in discharging his duties, while working in the temple. On that basis, the stand taken by the 1st respondent that since there has been an excess staffing, the prayer of the petitioner for regularisation cannot be granted, is liable to be rejected. Accordingly, this Court directs the first respondent to consider the recommendation made by the 2nd respondent for regularisation of his services in accordance with law, preferably within a period of 8 weeks from the date of receipt of a copy of this order."

2.On this day, when the matter came up for hearing, inviting the attention of this Court to the decision made in W.A. (MD)No.1254 of 2012, dated 21.01.2014, filed by the Joint Commissioner/Executive Officer of Arulmigu Ramanathaswami Thirukoil, Rameshwaram, Mrs.V.Jeyaranai, learned counsel for the respondent No.1, submitted that when the decision in W.P.(MD) No.11452 of 2005, dated 04.10.2010, was challenged by the Joint Commissioner/Executive Officer, in W.A.(MD)No.1254 of 2012, a Hon'ble the Division Bench of this Court, has dismissed the same with an observation that it is for the Commissioner to take a decision on the recommendation of the Joint Commissioner. She further submitted that the order impugned in the instant appeal



3. Perusal of the order made in W.A.(MD)No.1254 of 2012, dated 21.01.2014, shows that a Hon'ble Division Bench has interfered with the order made in W.P.(MD)No.11452 of 2005, dated 04.10.2010, on the ground *inter alia* that the respondent No.1 had served as 'Para' (Security) for 25 years.

4. Though in the instant appeal, the Commissioner, Hindu Religious and Charitable Endowments Board, Chennai, has submitted that the Court below has failed to consider the report, wherein excess staffing to the extent of 50% in the post of 'Para' (security) was noticed, further contended that the respondent No.1 appointed on daily wages cannot demand as a matter of right that he should be regularised in time scale of pay. This Court is not inclined to accept the said contention for the reason that the continuous service of the first respondent for 25 years in the post of 'Para' (security) has not been disputed. Yet another factor to be noted is that though the report intimated excess staffing, the department had not abolished any post on that ground. In fact, the department had allowed such post to continue. Mere recommendation of the Committee and the consequential report regarding excess staffing to an extent of 50%, in the post of 'Para' (security) would not amount to abolition of posts. It is only the recommendatory in nature. While the Joint Commissioner/Executive Officer, has recommended for regularisation of the first respondent, he has clearly indicated that the post of 'Para' (security) was vacant and that the respondent No.1 was working as against the said sanctioned post for nearly 25 years. Nowhere in the Memorandum of grounds, the Commissioner, Hindu Religious and Charitable Endowments Board, Chennai, has disputed that the respondent No.1 was not working as against the sanctioned post. Though the appellant has contended that the respondent No.1 appointed on daily wages, he cannot demand as a matter of right that he should be regularised and placed in the time scale of pay, we are not inclined to accept the said contention by applying the decision of the Hon'ble Supreme Court in *Umadevi*. Reported in **2006 (4) SCC 1 (Secretary, State of Karnataka v. Umadevi)**, wherein, at paragraph No.53 of the said Judgment, the Hon'ble Supreme Court has held as hereunder:-

"53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in *S.V. NARAYANAPPA* (supra), *R.N. NANJUNDAPPA* (supra), and *B.N. NAGARAJAN* (supra), and referred to in paragraph 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this



Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not subjudice, need not be reopened based on this judgment, but there should be no further by-passing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme."

5.Keeping the respondent No.1 on daily rated basis for nearly 25 years does not reflect equity, justice and good conscience, on the part of the appellant. When a sanctioned post is vacant and the respondent No.1 is working indisputably for 25 years, he is entitled to be regularised. Added further, W.A.(MD) No.1254 of 2012 filed by the Joint Commissioner, HR&CE, has already been dismissed and the challenge made has reached finality on 21.01.2014. The Commissioner, Hindu Religious and Charitable Endowments Board, Chennai, is directed to take steps to regularise the services of the respondent No.1 within a period of six weeks from the date of receipt of a copy of this order.

6.In the result, the writ appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is also dismissed.

Sd/-

Assistant Registrar

/True Copy/

Sub Assistant Registrar

rj2

To

1.The Commissioner,

Hindu Religious and Charitable Endowments

Board, Nungambakkam, Chennai 600 034.



2.The Joint Commissioner/Executive Officer,
Arulmigu Ramanathaswami Thirukoil,
Rameshwaram, Ramanathapuram District.

3.The Chairman Board of Trustees,
Arulmigu Ramanathaswami Thirukoil,
Rameshwaram, Ramanathapuram District.

+1CC to Spl.Government Pleader Sr.No.17281

GJM/SKs/RR/11.4.16-5p-5C

W.A. (MD) No.469 of 2016
and
CMP. (MD) No.3306 of 2016
28.03.2016