

**IN THE HIGH COURT OF JUDICATURE, AT HYDERABAD
FOR THE STATE OF TELANGANA & THE STATE OF ANDHRA
PRADESH**

HON'BLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION NO. 7948 OF 2013

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Between:

Md. Ahmed Mohiuddin S/o Md. Lala Bhagan aged about 33 years
Occ. Assistant Electrician

....Petitioner

A n d

The Government of Andhra Pradesh represented by its Principal
Secretary, Revenue (Endowments-1) Department and two others

....Respondents

DATE OF ORDER: 25.01.2016

HON'BLE SRI JUSTICE P. NAVEEN RAO

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ORDER:

Father of the petitioner died while he was working. The petitioner was appointed in accordance with the scheme of compassionate appointment against the vacancy of Assistant Electrician, the post in which his father was working with effect from 26.11.2004 on a consolidated pay of Rs. 2,000/-. It is not in dispute that the petitioner was having ITI in Electrician Trade and qualified to be appointed as Assistant Electrician. It is also not in dispute that there is a regular vacancy of Assistant Electrician against which his father was working. Further it is also not in dispute that the scheme of appointment on compassionate grounds is applicable to the third respondent-Temple. In terms of the said scheme, the petitioner was appointed temporarily on a consolidated pay of Rs. 2,000/-. However, for want of approval by the higher authority, the said appointment on consolidated pay was continued. The third respondent-Temple requested the Commissioner, Endowments Department-second respondent herein, vide proceedings dated 13.12.2009, to grant regularization of services of the petitioner as Assistant Electrician since the petitioner has put in long service. On consideration of the proposal submitted by the third respondent-Temple vide proceedings dated 21.3.2010, the Executive Officer of the Temple sent fresh proposals. However, in response to the earlier proposal submitted, the Commissioner, Endowments Department-second respondent passed orders dated 22.3.2010 rejecting the proposals for regularization of services and also sanction of pay scales on the ground that there was a ban imposed by the

Government on fresh appointment vide G.O.Ms.No. 1997 dated 18.10.2005. Aggrieved by the same, the petitioner filed a revision to the Government-first respondent and the Government instead of acceding the request of the petitioner, passed further orders directing to take action against the persons responsible for appointing the petitioner as the petitioner is a non-hindu. Aggrieved thereby, this Writ Petition is filed.

2. This Court by an order dated 07.2.2014 made in WPMP No. 9963 of 2013, directed the third respondent to pay the salary attached to the post of Assistant Electrician to the petitioner. Praying to vacate the said interim order, WVMP No. 2480 of 2014 is filed by the Government. Alleging non-compliance of orders passed by this Court, the petitioner filed CC No. 981 of 2014.

3. With the consent of counsel appearing for the petitioner, Government Pleader for Endowments (TG) appearing for first respondent and Sri Ch. Satish Kumar, Standing Counsel for respondents 2 & 3, this Writ Petition is disposed of finally.

4. As noticed above, the petitioner was appointed on compassionate grounds as a consequence to the death of his father while he was in service, working in the services of the third respondent-Temple as an Assistant Electrician. There was a clear vacancy available on the date of his appointment. Thus, the petitioner was entitled for regular appointment. However, he was appointed on a temporary basis on a consolidated pay of Rs. 2,000/- and he is continuing in the same capacity till date. When the third respondent-Temple sent a proposal for regularization of his services for grant of time scale of pay, the same was rejected on the ground that there was a ban imposed by the Government in the year 2005 and therefore the claim cannot be accepted.

5. As fairly submitted by the learned Government Pleader and also learned Standing Counsel, the ban imposed by the Government in the year 2005 was relating to direct recruitment and there was no such

ban relating to the appointments on compassionate grounds. In fact statutory recognition is according to appointments on compassionate grounds by incorporating appropriate provision in the Act 2 of 1994.

6. Be that as it may, the petitioner was appointed prior to imposition of ban and therefore, the ban has no impediment for such appointment. Admittedly, the Government without acceding the request of the petitioner passed further orders to take action against the persons responsible for appointing the petitioner as the ban was imposed on appointments of non-Hindus in Hindu religious temples.

7. It may be true that the ban was imposed on such appointments and that ban is validly made in accordance with the provisions of Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987. In the case on hand, the father of the petitioner was working in the same post and in his place, the petitioner was appointed under the compassionate appointment scheme. Even assuming that the petitioner cannot work in religious institutions being non-Hindu, having regard to the fact that the petitioner has been working for more than 11 years against the post in which his father was working in the same temple, it would be unreasonable to through the petitioner out of employment at this stage on the ground that he is a non-Hindu. However, having regard to the sentiments attached to the appointments in religious establishments in Endowments Department, the respondents shall make an endeavour to appoint the petitioner on any other post at any other place so that the petitioner cannot be deprived of his appointment having utilized his services for more than 11 years. Learned counsel for the petitioner fairly submits that petitioner is willing to work wherever employment is provided and in any post.

8. Be that as it may, rejecting the proposals of the third respondent by the Commissioner is un-sustainable. Further more, the decision of the Government holding that the appointment of the petitioner was erroneous was also not sustainable, more so, when such an order

was made after nine years of service rendered by the petitioner. As averments in the counter affidavit and the record produced by the third respondent-Temple would show that the post in which the petitioner was appointed is a regular post. The appointment on compassionate grounds is being an exception to the normal method of recruitment and the petitioner fulfils all other requirements attached to the post, the petitioner is entitled to the Scale attached to the post and denial of the same and granting him only consolidated pay and continuing to pay him only such consolidated amount is illegal, amounts to exploitation of labour and unethical practice by the Government. Petitioner is entitled to payment of salary attached to the post of Assistant Electrician.

9. Having regard to the same, the Writ Petition is allowed and the order impugned is set aside. However, the petitioner shall file an affidavit giving an undertaking for his willingness to work in any other place and in any equivalent post. As soon as such an undertaking is filed, respondents shall take steps to accommodate the petitioner wherever it is possible and permissible. Till such alternative job and/or place is made, the petitioner shall be continued in the service of the third respondent-Temple. Petitioner shall also be paid the Scale attached to the post of Assistant Electrician from the date of completion of five years. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, pending if any, shall stand closed.

P. NAVEEN RAO, J

Date: 25.01.2016

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