

THE HON'BLE SRI JUSTICE A.V. SESA SAI

WRIT PETITION No.2417 of 2016

ORDER:

This writ petition is filed under Article 226 of the Constitution of India for the following relief:

“to issue a writ or order or direction more particularly in the nature of Writ of Mandamus under Article 226 of Constitution of India declaring the impugned G.O.R.T.No. 900 Revenue(Endowments Dept) dt.24-09-2015 as illegal, and also to declare the actions of the Respondents 1 and 2 in not considering the petitioner for the post of Deputy Executive Officer or Joint Executive Officer as illegal, improper, contrary to law, violative of principles of natural justice and without jurisdiction and consequently declare the actions of Respondents 1 & 2 in not sanctioning the post of Deputy Executive Officer inspite of several resolutions of the trust board of the Devasthanam as illegal and pass such other order or orders as it deem fit, proper and necessary in the circumstances of the case and in the interest of justice.”

2. Petitioner herein is presently working as an Assistant Executive Officer in the cadre of Assistant Commissioner in the third respondent-Temple. According to the petitioner, there is no sanctioned post in the category of Deputy Commissioner in the cadre strength of the third respondent-Company and earlier the Trust Board of the third respondent Temple passed resolutions, requesting the State Government to sanction post in the category of Deputy Commissioner in the third respondent Temple, but no such post has been sanctioned by the State Government so far. Now by virtue of the impugned Governmental order, the State Government posted the fourth respondent on deputation as Joint Executive Officer for a period of two years. The said action of the State Government is under challenge in the present writ petition.

3. Counter affidavits have been filed by both the official as well as the unofficial respondents.

4. Heard Sri P.Gangaiah Naidu, learned Senior Counsel representing the counsel on record for the petitioner-Smt.G.Bhanu Priya; learned Government Pleader for respondent Nos.1 and 2- Sri Y.Sreekanth Reddy, learned counsel for respondent No.3; and learned counsel for the fourth respondent-Sri M.Panduranga Rao.

5. Learned senior counsel, appearing for the petitioner contends that the impugned Governmental order is without jurisdiction as there is no sanctioned post of Deputy Commissioner in the cadre strength of the third respondent-Temple. It is further contended that the action impugned does not have any legal sanction and there is no channel for resorting to the impugned action; that the notification issued vide G.O.Ms.No.337, Revenue (Endowments-I) Department, dated 10.09.2015, is only a proposal for carrying out certain amendments to the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Service Rules, 2002 issued vide G.O.Ms.No.245, Rev. (Endt.I) Dept., dt.8.5.2002 and the said proposed amendments have not come into force so far and that the orders issued in G.O.Ms.No.337 dated 10.09.2015 have been kept in abeyance vide G.O.Ms.No.13 Revenue (Endowments-I) Department, dated 08.01.2016, and as such the impugned order has no legal sanctity.

6. On the contrary, it is vehemently contended by the learned Government Pleader so also the counsel appearing for the contesting respondent that there is no illegality nor there exists

any procedural infirmity in the impugned action and as such, the writ petition is not maintainable and the petitioner is not entitled to any relief from this Court under Article 226 of the Constitution of India and the Government is justified in issuing the impugned GO in view of Note 7 of Rule 3 as per G.O.Ms.No.337, dated 10.09.2015; and that the petitioner has no locus to question the appointment of the fourth respondent as Joint Executive Officer in the cadre of Deputy Commissioner.

7. Learned counsel for the fourth respondent, in support of his contentions and submissions, placed reliance on the judgment of the Hon'ble Apex Court in ***Ayaaubkhan Noorkhan Pathan vs. State of Maharashtra***^[1].

8. In the above background, now the issues that boil down for consideration of this Court are:

1. Whether the petitioner has *locus standi* to maintain the present writ petition?
2. Whether the impugned action is in accordance with law?

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ISSUE No.1: -

9. There is absolutely no dispute with regard to the reality that the petitioner herein is right now working as an Assistant Executive Officer in the third respondent temple and is governed by the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Service Rules, 2002, and there is also no dispute that the said post is in the cadre of Assistant

Commissioner in the third respondent-Temple. There is also no controversy that the said post is a feeder category for consideration for promotion to the category of Deputy Commissioner i.e., Category IV of Class I of A.P.Charitable & Hindu Religious Institutions and Endowments Service Rules, 2002 notified vide G.O.Ms.No.245, Revenue (Endowments-I) Department dated 08.05.2002. Therefore, in the considered and definite opinion of this Court, it cannot be said, by any stretch of imagination, that the petitioner is neither an aggrieved party nor has *locus standi* to question the impugned action.

10. The judgment of the Hon'ble Apex Court cited by the learned counsel for the fourth respondent (1 supra) would not render any assistance to the petitioner as in the said reported case, the complainant who complained against the caste certificate was a person belonging to General Category but not a reserved category. Therefore, the same has neither any relevance nor the same can be relied upon by the fourth respondent to non-suit the petitioner herein. Therefore, issue No.1 is answered in favour of the petitioner and in favour of the maintainability of the writ petition by the petitioner herein.

ISSUE No.2: -

11. According to the petitioner, there is no sanctioned post in the category of Deputy Commissioner nor there exists any post of Joint Executive Officer in the third respondent temple. In this context it may be appropriate to refer to the Governmental order issued vide G.O.Ms.No.337, Revenue (Endowments-I) Department, dated 10.09.2015.

12. A reading of the said Governmental order, in vivid and categorical terms, shows that by virtue of the said preliminary notification, State Government proposed certain amendments to the Rules, notified vide G.O.Ms.No.245, dated 08.05.2002 while inviting objections or suggestions. There is also no dispute that the said proposed amendments have not transformed into reality.

13. Another aspect which needs to be taken note of is that as per Note 7 of Rule 3 of the said proposed amendments, there shall be a Joint Executive Officer in the cadre of Deputy Commissioner for seven major temples including the third respondent-Temple. The said proposed amendment enables the State Government to fill up the said post of Joint Executive Officer in the cadre of Deputy Commissioner in the respective temples on deputation basis from Endowments Department or any other suitable person from any other Department or appointment of a Hindu person on contractual basis. There is also no dispute with regard to the reality that subsequently the State Government vide G.O.Ms.No.13, Revenue (Endowments-I) Department, dated 08.01.2016 kept G.O.Ms.No.337 dated 10.09.2015 in abeyance. Therefore, the very action of the respondents in posting the fourth respondent as Joint Executive Officer in the category of Deputy Commissioner, which is admittedly a non-existent post in the third respondent Temple, under a proposed amendment to the Rules, which has been kept in abeyance, in the considered opinion of this Court cannot be sustained in the eye of law. Therefore, issue No.2 is also answered in favour of the petitioner and against the respondents.

14. For the aforesaid reasons, the writ petition is allowed,

setting aside the orders of the first respondent-State Government issued vide G.O.Rt.No.900, Revenue (Endowments.I) Department, dated 24.09.2015.

As a sequel, the miscellaneous petitions pending consideration, if any, in the Writ Petition shall stand dismissed. No order as to costs.

JUSTICE A.V. SETHA SAI

April 13, 2016
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THE HON'BLE SRI JUSTICE A.V. SETHA SAI

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