

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.1547 OF 2010

DATED : 31.01.2017

Between :

Bondada Pavan Kumar S/o.Suryanarayana,
Age : 26 yrs, Occu : Attender,
Sri Venkateswara Swamy Vari Devasthanam,
Dwaraka Tirumala (Chinna Tirupathi),
West Godavari District.

..
Petitioner

And

The Executive Officer,
Sri Venkateswara Swamy Vari Devasthanam,
Dwaraka Tirumala (Chinna Tirupathi),
West Godavari District – 534 426 & others.

..
Respondents



This court made the following :

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ORDER :

The family of the petitioner owned huge extent of land near to Sri Venkateswara Swamy Vari Devasthanam, Dwaraka Tirumala. Earlier, father of the petitioner gave his entire land for development activities of the temple on the hill. By the year 1997 the petitioner's family was left with an extent of Ac.2.93 cents nearer to the temple, which was at that time, was valued around Rs.10 lakhs. The petitioner's family demanded provision of appointment in addition to payment of compensation to give their land for the purpose of development of temple. It appears there were negotiations and the petitioner's family has agreed to part with their lands subject to provision of employment to a family member and not to claim compensation. Accordingly, the land was taken over by the temple and is being put to use for development activities. Petitioner herein S/o.Bondada Suryanarayana was provided appointment as attender on consolidated payment basis. The Regional Joint Commissioner & the Executive Officer of the temple vide his letter dated 28.08.2008 informed the Commissioner about these facts and requested him to grant permission to appoint the petitioner as attender, since there are vacancies in the category of attender and that the petitioner belongs to BC-A community. The proposal of the Executive Officer was rejected by the Commissioner, vide memo dated 13.10.2008 on the ground that there is ban on recruitment. It appears there were further proposals to appoint the petitioner on regular basis and time and again the Executive Officer informed the

Commissioner that the vacancies are available and petitioner deserves such appointment. The proposals are rejected on one or the other reason. The reason assigned for rejection of the proposal was on the ground that petitioner was already provided with employment on consolidated pay, therefore, the question of providing employment on regular basis does not arise and that the issue can be settled after the ban of recruitment is lifted.

2. Heard learned counsel for the petitioner and learned Standing counsel for the 1st respondent.

3. Learned counsel for the petitioner contended that the entire land belonging to the family of petitioner was given to Devasthanam for its development in 2007. By the year 2007 the petitioner's family was left with only Ac.2.93 cents of land. Even though the land was valuable and was very close to the temple, they have agreed for surrendering of land to the temple for development activities, without claiming compensation, provided atleast employment would be given to one family member. By the time understanding was reached between the temple authorities and the family of the petitioner there were clear vacancies of attender. The rejection of the proposal was on the ground that there was ban on recruitment. Whereas it is not the case of recruitment being made in open market, but was one of provision of appointment in exchange of land belonging to the family in lieu of compensation. However, the very same Commissioner, within few weeks thereafter granted permission to the Executive Officer of Sri Kanaka Maha Lakshmi Ammavari Temple, Burujupeta, Visakhapatnam to appoint two persons whose lands were **"purchased"** for the purpose of development of temple by

providing two Record Assistant posts to the legal representatives of the owners of the buildings. Though there were no vacancies, a further direction was issued to create supernumerary vacancies to adjust them. He would therefore submit that the action of the Commissioner in rejecting the request of the petitioner was illegal and amounts to arbitrary exercise of power. He further submits that the subsequent observation of the Commissioner in rejecting the proposal on the ground that petitioner was already provided with appointment on consolidated pay or that such consideration can be made after the ban is lifted, one made in arbitrary exercise of power, without application of mind and all the actions of the Commissioner amounts to harassment and humiliation on the person whose family lost entire extent of land for the development of the temple.

4. No counter is filed on behalf of the 2nd respondent.

5. The justification of the Commissioner in rejecting the proposal of the Executive Officer initially was on the ground that there was ban on recruitment. This being a kind of arrangement, instead of paying lumpsum compensation for acquisition of land, to provide employment, which could not have been seen as a factor of recruitment, even assuming that there was ban on recruitment. Private lands cannot be acquired for any public purpose without following due process and without paying compensation to the owner of the property. Thus, the proposal of the Executive Officer to provide appointment to the petitioner ought to have been considered by the Commissioner in the above perspective and it clearly shows there was total non-application of mind.

6. The reason assigned in the order dated 13.10.2008 that there was ban on recruitment also appears to be not valid because on 17.12.2008 the Commissioner has authorised the Executive Officer of another temple to create two supernumerary posts and to appoint two persons whose houses were proposed for **purchase**. It is also relevant to note that it was not because of acquisition or parting of the land by the owners in lieu of provision of employment. Their houses were **purchased**. When that being so, the question of provision of appointment, in addition to purchase value, without following the due process would not arise. Furthermore, even if appointment can be made in addition to purchase of houses, it can be only if there are vacancies. There were no vacancies of Record Assistants in Sri Kanaka Maha Lakshmi Temple. Therefore, the Commissioner directed creation of two supernumerary vacancies to appoint those two persons whose houses were purchased. This would also mean that there was no impediment in making the recruitment. Thus, the initial reason for rejection of the request of Executive Officer for appointment of the petitioner was clearly arbitrary. It is also appropriate to notice at this stage that there were vacancies available in the respondent-temple. Petitioner has been working in one of the clear vacancies on consolidated pay for almost ten years, for no fault of him.

7. The further order of the Commissioner rejecting the request of the Executive Officer for appointment on the ground that petitioner is working on consolidated pay also amounts to decision taken in arbitrary manner, in gross abuse of power by the competent authority.

8. Thus, the rejection of the proposal of the Executive Officer of the respondent-temple, for appointment of petitioner is clearly illegal and was made in arbitrary exercise of power. Therefore, the said action is declared as illegal.

9. It is relevant to note that by the time petitioner was initially provided appointment on consolidated basis, according to the assessment of the Executive Officer of the Respondent temple, petitioner was qualified to be appointed on regular basis and there were clear vacancies available. As noted above, the appointment was, as a matter of settlement between the family of the petitioner and the temple authorities where under the family of the petitioner agreed to part with their lands without taking compensation in lieu of provision of employment in temple service. Thus, the appointment made to the petitioner on 09.07.2007 shall be treated as regular and the petitioner shall be paid all consequential benefits flowing there from.

10. With the above observations, the Writ Petition is disposed of. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

31st January, 2017
Rds

P.NAVEEN RAO,J