

THE HON'BLE SRI JUSTICE S.V.BHATT

WRIT PETITION No.4930 of 2003

ORDER:

Heard Sri V.Jagapathi for petitioners and Sri Harinath Gupta for the 2nd respondent. No representation for the 1st respondent.

The petitioners pray for Mandamus declaring the action of the 2nd respondent in not regularizing the services of petitioners and not paying to petitioners' the time scale of pay attached to the post held by the petitioners, in terms of directions in W.P.No.5484 of 1990, dated 27-07-1999, as arbitrary, discriminatory and contrary to law and further pray for a direction to the respondents to regularize the services of petitioners with effect from 23-09-1988 i.e., the date of their initial absorption in TTDs service, with all other consequential benefits from the date of initial absorption with monetary benefits.

The circumstances relevant for disposing of the writ petition are substantially admitted in the counter affidavit filed by 2nd respondent and these circumstances are considered and decided by this Court in earlier round of litigation. Therefore, the circumstances relevant for disposal of the writ petition are referred.

The petitioners were working in Sri Prasanna Venkateswara Swamy Temple (for short "SPVS Temple"), Appalayagunta. The 2nd respondent through its Resolution No.895 dated 23-01-1988 resolved to recommend to the Government to include SPVS Temple in the I Schedule under Section 2(20) of Act 30 of 1987.

The 1st respondent favourably accepted the Resolution and issued G.O.Ms.No.365, Revenue (Endts.III) Department, dated 10-05-1988, whereby included SPVS Temple in I Schedule of Act 30 of 1987. On 23-09-1988, the staff of SPVS Temple has been absorbed on consolidated pay.

On 21-12-1988, the 2nd respondent through letter ROC No.TS3/59795/87 forwarded proposals for approving the appointment of nine employees taken over along with SPVS Temple. The petitioners allege that they are unaware of the outcome or decision taken by the 1st respondent on letter dated 21-12-1988. However, the 2nd respondent continued to pay consolidated pay to petitioners. The details of which are unnecessary for the present, having regard to the orders of this Court in earlier writ petition.

The petitioners aggrieved by the inaction as well as discrimination meted out to them in pay, allowance,

regularization etc., filed W.P.No.5484 of 1990 against the 2nd respondent herein seeking following relief:-

“..... to issue a Writ of Mandamus or any other appropriate Writ or direction declaring the Memo of the respondent passed in TS/ 3/ 6160/ 90 dt.29.3.1990 as illegal and direct the respondent to pay salary to the petitioners on par with other regular employees working in Tirumala Tirupathi Devasthanams from the date of their initial appointment and further direct the respondent to pay the petitioners the difference in arrears of salary accrued to them from the date of their absorption into Tirumala Tirupathi Devasthanams Service.”

The 2nd respondent filed counter affidavit and opposed the writ prayer.

On 27-07-1999, W.P.No.5484 of 1990 was disposed of by observing as follows :-

“The respondent, however, contended that the respondent has magnanimously increased the amount of the petitioners consolidated pay immediately after they were absorbed by the respondent. It is not proper for the petitioners to make any further grievance as their pay has already been increased. It is contended that the salary of the petitioners' cannot be enhanced by resorting to G.O.Ms.No.895 dated 23-01-1988. The petitioners are not against the sanctioned posts and they cannot be absorbed on monthly time scale.

It is unfortunate that the petitioners though have been absorbed by the TTD on the ground that they were doing work already in the erstwhile temple of “Sri Prasanna Venkateswara Swami Temple”, they cannot be absorbed against regular time scale. G.O.Ms.No.709 dated 12-7-1989 clearly shows that the temple was taken over along with the staff by the TTD. As soon as the TTD took over the staff including the petitioners it was quite obvious that the

respondent was expected to treat the petitioners as their regular employees. It is true that at the time of taking over the petitioners were working on consolidated salary, but there is no justification now for keeping the petitioners on consolidated salary when persons doing the identical work recruited by the respondent are being paid a regular scale of salary. The absorption of the petitioners cannot be to the detriment of the petitioners. The principle of equal work equal pay has to be followed. It is not the case that the petitioners are less qualified or doing different nature of work than the regularly recruited persons subsequently by the TTD.

In the circumstances, the respondent is directed to consider the petitioners' case for regularization and pass appropriate orders regularizing them. It is open for the respondent to pass orders for regularization from appropriate date. Final orders will be passed within two months from the date of receipt of a copy of this order, as sought for by the learned counsel for the respondent."

Aggrieved by the order dated 27-07-1999, the 2nd respondent filed W.A.No.514 of 2000. On 06-11-2008, the writ appeal filed by the 2nd respondent was dismissed. While dismissing writ appeal, the objections raised by 2nd respondent have been considered in great detail and the pathetic conditions in which the petitioners herein are working are also noted. The findings in the writ appeal are as follows :-

10. As can be seen from the record, the learned single Judge having observed that the petitioners were not regularized on the ground that they were working in the erstwhile temple of Sri Prasanna Venkateswara Swami Temple and they cannot be regularized and the said temple along with staff was taken over by Tirumala Tirupati Devasthanam through GO.Ms.No.709, dated 12-7-1989. The learned single Judge further directed to consider the case of the petitioners for regularization and

pass appropriate orders regularizing them. It is also further observed that the date of regularization also kept open to pass appropriate orders and granted two months time. The record further shows that the writ appeal is filed on 08-6-2000 along with WAMP.No.996 of 2000 seeking stay of the operation of the order passed in WP.No.5484 of 1990 but the stay was declined. The appellant-Tirumala Tirupati Devasthanam is aware of the fact that in these hard days of galloping double-digit inflation how the petitioners can work on a paltry sum of Rs.150/- ? This kind of dilly-dallying by the appellant-authorities of Tirumala Tirupati Devasthanam would cause untold hardship for the respondents-petitioners to maintain themselves at a subsistence level. It is very unfortunate to observe that the inaction on the part of the appellant-authorities is not justifiable and nothing is detrimental to the appellant-authorities of Tirumala Tirupati Devasthanam to regularize the services of the petitioners.

11. Under the above circumstances, while confirming the orders passed by the learned single Judge, we are of the opinion that the time granted by the learned single Judge for regularizing the services of the petitioners is extended by six months. The appellant-authorities of Tirumala Tirupati Devasthanam shall regularize the services of the petitioners by avoiding the least possible delay and pass appropriate orders, positively within a period of six months, from the date of receipt of a copy of the order.

12. With the above observation, the writ appeal is disposed of. No costs."

Admittedly, the order of Division Bench has become final and binding between the petitioners and the 2nd respondent.

The petitioners have the two remedies against the disobedience of the order in W.P.No.5484 of 1990 viz., file a Contempt Case for willful disobedience of order and secondly

file a writ petition for Mandamus for implementation of order in W.P.No.5484 of 1990, but the petitioners guided by discretion filed the present writ petition with the prayer referred to above.

The 2nd respondent filed counter affidavit and does not dispute the circumstances adverted to above.

Briefly stated, the objections of the 2nd respondent are that the petitioners were taken into TTDs service on consolidated pay only and they are not regular employees of TTD. Therefore, the 2nd respondent is paying consolidated pay as enhanced from time to time.

The 2nd respondent admits disposal of writ appeal on 06-11-2008. The reply against not regularizing the services of petitioners or implementing the directions issued by this Court in W.P.No,5484 of 1990, of the 2nd respondent is that the 1st respondent has not given approval and hence, 2nd respondent is not in a position to regularize the services of petitioners.

It is further averred that the TTD Board passed Resolution No.619 dated 29-01-2008 requesting the 1st respondent to sanction 110 posts for accommodating various employees taken over by the 2nd respondent along with Institution.

At the hearing, the learned Standing Counsel places on record G.O.Ms.No.1536, dated 20-12-2008 issued by the 1st respondent directing the 2nd respondent to release grants-in-aid to the taken over Temples and pay salary, provide for upkeep etc., from the grants-in-aid. It refers to paying salaries equivalent to minimum time scale of pay ensuring the pay protection of employees without integrating their services into TTD/2nd respondent.

The undisputed fact as on date is the service conditions of petitioners remain unchanged inspite of the order of this Court and G.O.Ms.No.1536 dt.20.12.2008.

It is relevant to refer to one of the admissions of the 1st respondent while considering the request of 2nd respondent for sanction of 110 posts and the admission reads thus:-

“The Executive Officer, Tirumala Tirupati Devasthanams in his letter 1st read above has reported that from time to time the Tirumala Tirupati Devasthanams had taken over the following Temples from the Endowments Department and private organizations for better maintenance. At the time of taking over of the temples, the Tirumala Tirupati Devasthanams has taken over property, jewellery attached to the temples and staff working at that time.”

From the above, it is very clear and evident that the 2nd respondent has taken over the property, jewellery attached to the Temples and staff working at that time. A few efforts were made to streamline the services of employees working in taken over temples, but without a positive result. Be that as it may,

the petitioners filed W.P.No.5484 of 1990 for the relief of declaring Memo dated 29-03-1990 as illegal and direct the 2nd respondent herein to pay salary to petitioners on par with regular employees working in TTDs from the date of their initial appointment etc. This Court, after taking note of the stand taken by the 2nd respondent, directed the 2nd respondent to consider the petitioners' case for regularization and pass appropriate order regularizing their services.

As regards regularization is concerned, this Court has given discretion to the 2nd respondent to fix the starting date of regularization. The order in writ petition is confirmed and the Hon'ble Division Bench gave further six months time to the 2nd respondent to regularize the services of petitioners.

The order in W.P.No.5484 of 1990 as well as the order in W.A.No.514 of 2000 remain unattended and not implemented by the 2nd respondent.

This Court is conscious that it is only considering the prayer of petitioners for a Mandamus, basing on the orders already passed by this Court, but not whether the inaction in implementing the orders amounts to Contempt of Court or not. The reply of 2nd respondent that G.O.Ms.No.1536 dt.20.12.2008 was issued by 1st respondent is not a tenable reply, inasmuch as the outcome stated in G.O. can't be

equated to a decision taken after the order dt.06.11.2008. The 2nd respondent ought to have taken steps as directed by the Division Bench and regularized the services of petitioners as per the order dated 27-07-1999.

Keeping in view the orders of this Court in writ petition/writ appeal, referred to above, the explanation offered by the 2nd respondent that the 1st respondent has not given approval and it is not in a position to regularize the services of petitioners is merely noted and rejected as unsustainable. The order in W.P.No.5484 of 1990 is between the petitioners and the 2nd respondent, and it is the complete and absolute responsibility of the 2nd respondent to obey the directions issued by this Court in W.P.No.5484 of 1990 read with W.A.No.514 of 2000.

The 1st respondent cannot escape the obligation in passing order of regularization after accepting the request of 2nd respondent to take over Institutions with staff and issuing G.O.Ms.No.365, dated 10-05-1988. The pleas now taken are not available to the 2nd respondent. I am satisfied that the petitioners have made out case for ordering the writ prayer.

The writ petition is accordingly allowed. The respondents are directed to implement the order passed by this Court in

W.P.No.5484 of 1990 within three months from the date of receipt of a copy of this order. No order as to costs.

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

S. V. BHATT, J

Dt: 17-03-2017

Note:

Issue C.C. in three days

(B/o)

Prv



THE HON'BLE SRI JUSTICE S.V.BHATT



17-03-2017

Prv