

HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

W.P.No.7716 of 2003

ORDER:

Heard the learned counsel for the petitioner and Sri A.K.Jayaprakash Rao, learned counsel for the respondent.

2. The petitioner was appointed as an Assistant in the Tirumala Tirupati Devasthanam Cooperative Stores in 1969. He was later promoted as Junior Assistant in 1976. Due to certain reasons, a decision was taken by the Commissioner for Cooperation and Registrar of Cooperative Societies, Andhra Pradesh, for absorption of the employees of the stores in the Tirumala Tirupati Devasthanam TTD (the respondent herein).

3. The respondent requested the State Government to accord permission to absorb the staff of the Cooperative Stores in its organization.

4. After considering the same, the Government issued G.O.Ms.No.1025 dt.21-12-1990 to absorb the TTD Cooperative Stores Employees i.e. the Superintendents, Upper Divisional Clerks (UDCs) and Lower Divisional Clerks (LDCs) in the respondent organization against the vacancies earmarked for direct recruitment in the LDC cadre.

5. Thereafter proceedings B3/5541/90 dt.10-04-1991 were issued by the respondent for absorption of the TTD Cooperative Stores Employees stating their service conditions would be governed

by the TTD Service Rules and other Rules applicable to regular employees of the respondent organization.

6. W.P.No.5038 of 1992 was filed by the employees' association of the TTD Cooperative Stores for implementation of G.O.Ms.No.1025 dt.21-12-1990 and the consequential order of absorption issued as per the proceedings dt.10-04-1991.

7. The said Writ Petition was allowed by a learned Single Judge on 27-12-1995. The petitioner was a party to the said Writ Petition.

8. The order of the learned Single Judge was questioned by the Executive Officer of the respondent in W.A.No.32 of 1998 and batch. The Division Bench held in its order dt.07-09-2001 that the respondent was bound by the terms and conditions laid down in G.O.Ms.no.1025 dt.21-12-1990, and pursuant to and in furtherance of the said policy decision, persons who have been working as Superintendents, UDCs and LDCs in the TTD Employees Cooperative Society were to be appointed in the existing vacancies of LDCs, and they could not have been appointed as attenders. It however modified the decision of the learned Single Judge to the extent that he directed absorption with effect from 01-04-1993 and stated that they would be absorbed from the date the resolutions were approved by the Board of Trustees of the respondent. This order became final.

9. Thereafter, on 10-03-2003, the petitioner approached the respondents through a representation for appointment to the Special Grade Post on the ground that he completed 8 years of service. He contended that the action of the TTD in absorbing him as attender instead of LDC even though he is holding the post of Junior Assistant equivalent to the post of LDC is contrary to the order passed by the Division Bench and if his services are counted from 11-08-1993, he would be entitled to the Special Grade Post since he completed 8 years of service.

10. This was rejected by the respondent by proceedings Roc.P1/63/Press/2003 dt.12-03-2003 on the ground that he had not completed eight years of service in the cadre of LDC and that he had been absorbed as LDC on 26-08-1997.

11. Assailing the same, this Writ Petition is filed.

12. Learned counsel for the petitioner contended that the petitioner is entitled to be treated as LDC with effect from 11-08-1993, the date when he was absorbed in the service of TTD; that his services have to be counted from 11-08-1993 for the purpose of seniority, salary and all other benefits; as per the G.O.Ms.No.117 dt.25-05-1982 on completion of 8 years service, an employee is entitled to a Special Grade Post and the said G.O. is applicable to the TTD also; since the petitioner has put in 8 years service as LDC treating his appointment as LDC as from 11-08-1993, he is entitled to

the benefit of Special Grade Post. He contended that the respondent cannot count his service as LDC from 26-08-1997 and that the petitioner had worked from 11-08-1993 only as an attender even though Division Bench in W.A.No.32 of 1998 and batch had held that the petitioner was entitled to be absorbed in the service of TTD as an LDC and not as an attender from 11-08-1993. According to him, with effect from 11-08-2001 i.e. the date when he completed 8 years in the cadre of LDC, he is entitled the Special Grade Post.

13. Counter affidavit is filed by the respondent reiterating its stand that the petitioner did not actually work as Junior Assistant from 11-08-1993 but from 26-08-1997 and so he cannot claim seniority, salary and all other benefits as per the terms and conditions laid down in the G.OMs.No.117 dt.25-07-1982. It is further stated that (i) every employee after completion of eight years in a particular scale shall be eligible for next higher scale but petitioner has not completed eight years of service in the said post and he is not eligible and (ii) for the purpose of computation of eight years of service referred to in the preceding para, the service that counts for increment in the scale shall be taken into account, and the petitioner has not received eight increments in the cadre of Junior Assistant and thus he is not entitled to receive the increment.

14. Learned counsel for the respondent reiterated the said contentions.

15. In view of the rival contentions, the point for consideration is “Whether the petitioner’s services are to be counted in the cadre of LDC from 11-08-1993 and whether he is entitled to Special Grade Post in the respondent organization?”

16. It is not disputed by the respondent that the petitioner was holding the post of Junior Assistant equivalent to LDC post in the TTD Cooperative Stores. Therefore, by virtue of the judgment of the Division Bench in W.A.No.32 of 1998 and batch dt.07-09-2001 and as per G.O.Ms.No.1025 dt.21-12-1990, he ought to have been appointed in the respondent organization only as an LDC and not as an attender.

17. But admittedly the respondent absorbed him as an attender instead of as a Junior Assistant/LDC on 11-08-1993 and appointed him as an LDC only on 26-08-1997. This action of the respondent virtually amounts to contempt of the order dt.07-09-2001 in W.A.No.32 of 1998 and batch.

18. In view of the judgment of the Division Bench, the petitioner has to be treated as having rendered services as LDC/Junior Assistant from 11-08-1993, the date when he was absorbed by the respondent as attender. This being the legal position, the action of the respondent in stating that the petitioner is not entitled to the Special Grade Post since he did not complete 8 years in the cadre of LDC cannot be accepted since the service of the petitioner as LDC ought to

be taken from 11-08-1993 as held by the Division Bench in W.A.No.32 of 1998 and batch.

19. Therefore, I am of the opinion that the petitioner is deemed to have worked as LDC in the TTD from 11-08-1993 and not from 26-08-1997, and therefore he would have completed 8 years of service by 10-08-2001 and from that date, he is entitled for the Special Grade Post as per G.O.Ms.No.117 dt.25-05-1982.

20. Accordingly, the Writ Petition is allowed and proceedings Roc.No.P1/63/Press/2003 dt.12-03-2003 are set aside and consequential directions are issued to the respondent to grant Special Grade Post to the petitioner taking into account his service with effect from 11-08-1993 as service in the post of LDC with all consequential benefits. The respondent shall also pay costs of Rs.2,000/- (Rupees Two Thousand only) to the petitioner. This exercise shall be done within eight weeks from the date of receipt of a copy of this order.

21. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 23-02-2017
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