

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Writ Petition No.24349 of 2008

ORDER:

This writ petition, under Article 226 of the Constitution of India, is filed seeking verbatim the following relief:

'..to issue appropriate writ or order or direction preferably one in the nature of Writ of Mandamus declaring the action of the 1st respondent in passing the impugned order in G.O.Rt.No.1534, dated 30.07.2008 and the consequential proceedings in Memo No.51632/Endts-1(2)/2008, dated: 20.10.2008, as illegal, void without jurisdiction and consequently set aside the impugned order in G.O.Rt.No.1534, dated 30.7.2008 and the consequential proceedings in Memo No.51632/Endts-1(2)/2008, dated: 20.10.2008 and pass such other or further order or orders..'

2. I have heard the submissions of *Sri G.V.L. Murthy*, learned counsel appearing for the writ petitioner; learned Government Pleader for Endowments representing the respondents 1 and 3; Smt. K. Lalitha, learned Standing Counsel representing the 2nd respondent-Temple; and, of *Sri J. Sreenivasa Rao*, learned counsel appearing for the 4th respondent. I have perused the material record.

3. The main grievance of the writ petitioner is against the orders issued by the 1st respondent in G.O.Rt.No.1534, dated 30.07.2008. By the said G.O.Rt.No.1534, the 1st respondent directed the 3rd respondent, The Commissioner of Endowments, to take necessary action for reverting the petitioner's services from the cadre of Junior Assistant immediately to the cadre of Care Taker of the 2nd respondent-Temple from the date on which she becomes eligible for such regularization of services as Care Taker. While giving such direction, the 1st respondent further directed the 3rd respondent to give a prior show cause notice to the petitioner and obtain her explanation to the show cause notice and duly follow the prescribed procedure in the

matter. The petitioner, *inter alia*, contends that the said order was issued without any authority under law and that the respondents 2 and 3 are only competent to deal with the issue of her regularization and reversion, if necessary.

4. It is an undisputed fact that aggrieved of the above said orders of the 1st respondent in G.O.Rt.No.1534, the petitioner made a representation, dated 04.08.2008, but, her representation was rejected as having no merit and the consequential orders, dated 20.10.2008 *vide* memo No.51632/ Endts-1(2)/ 2008 were issued, once again, directing the 3rd respondent to implement the orders issued in the G.O.Rt.No.1534, dated 30.07.2008. Therefore, the petitioner is before this Court.

5. The facts of the case necessary for consideration, in brief, are as follows: - 'The office of the Commissioner, Endowments, *vide* proceedings in D.Dis.No.C1/ 58280/ 1999, dated 24.02.2000, having considered the circumstances reported by the Executive Officer of the 2nd respondent-temple and the resolution of the Trust Board, dated 29.06.1999, accorded permission to engage the services of one person as an attendant on contract basis on a wage @ Rs.40/- per day to look after the newly constructed guest house and kalyanamandapam initially for a period of one year. Pursuant thereto, the petitioner was initially appointed as an attendant on contract basis on a wage of Rs.40/- per day for a period of one year to look after the newly constructed guest house. Thereafter, by further proceedings, dated 20.04.2001, her contract period was extended by one more year. By proceedings, dated 22.10.2003, her daily wage was enhanced from Rs.40/- to Rs.75/-. She joined duty on 26.02.2000 and worked as contract employee upto 08.04.2005. By proceedings, dated 07.04.2005, the 3rd respondent, Commissioner of Endowments, accorded permission for regularisation of her services in the existing vacancy of Junior Assistant, with usual pay and

allowances. The said proceedings of the Commissioner of Endowments make it manifest that permission is accorded to the Executive Officer of the 2nd respondent-temple to regularise the services of the petitioner-Care Taker, who is working on contract basis, as Junior Assistant, in the existing vacancy with usual pay and allowances. Pursuant thereto, the Assistant Commissioner & Executive Officer of the 2nd respondent-temple by his proceedings, dated 09.04.2005, regularised the services of the petitioner who was by then working as Care Taker and posted her as Junior Assistant in the existing vacancy caused due to promotion of Sri T. Nageswara Rao as Senior Assistant in the establishment of the 2nd respondent-temple. As directed in the said proceedings, she became entitled to draw usual pay and allowances in the cadre of Junior Assistant as fixed in 1999 PRC, that is, in the time scale of Rs.3290-80-3450-.....-6550 with effect from the date of joining as Junior Assistant. She joined as Junior Assistant on the Forenoon of 09.04.2005.'

6. In this setting of facts, the following chronological events require examination for resolving the controversy involved in the writ petition.

6.1 By G.O.Rt.No.1422, Revenue (Endts.I) Department, dated 25.07.2005, the Government have issued orders cancelling certain irregular appointments ordered during the period of Sri I. Venkateswarlu, the then Commissioner of Endowments Department. Thereafter, the Executive Officer of the 2nd respondent-temple issued orders, on 26.01.2006, cancelling the regularisation orders of the petitioner and discontinuing her services as Care Taker of the Guest house and Kalyana Mandapam. Aggrieved thereby, the petitioner filed W.P.No.2402 of 2006 before this Court. This Court, while allowing the writ petition gave liberty to the respondents to issue notice and pass orders after affording reasonable opportunity to the petitioner. Subsequent to the said orders, the Assistant Commissioner & Executive Officer of the 2nd respondent-temple issued a show cause notice as to why her services shall not be

terminated; and, received her explanation and passed orders, dated 03.07.2007, reverting her as contract employee with immediate effect and for continuation of her services as contract employee forthwith as in the past. Aggrieved thereby the petitioner preferred an appeal/ revision petition to the Principal Secretary to the Government, that is, the 1st respondent. Her appeal/ revision petition was allowed, by orders, dated 31.07.2007, and the orders of the Assistant Commissioner & Executive Officer were set aside and the Commissioner of Endowments, 3rd respondent, is directed to take necessary action in the matter. Thereafter, the said orders, dated 31.07.2007, of the Government were implemented and the petitioner continued in the post of Junior Assistant.

6.2 In the meanwhile, the 4th respondent, who was said to be a clerk-cum-typist in the establishment of the 2nd respondent-temple and whose services were said to have been regularised on 14.04.2005 in the post of Junior Assistant, submitted a representation in September, 2007, and another representation in May, 2008, claiming seniority over the petitioner herein and *inter alia* alleging that her services were irregularly regularised in the post of Junior Assistant contrary to the Rules. He requested the Government to do justice in the matter of his seniority. The petitioner also submitted a representation, dated 15.04.2008, to resume her seniority as Junior Assistant. Be that as it may. The Government after examining the matter noted that there are following irregularities in the matter of regularisation of services of the petitioner. The first irregularity is that the petitioner's services were regularised even though she did not fulfil the minimum requirement of completion of five years of service. The second irregularity is that she worked as Care Taker and her services were regularised in higher post instead of regularising her services in the cadre of Care Taker. The third irregularity is that without considering the fact that the first application for regularisation is that of the 4th respondent, the second/subsequent application of the

petitioner for regularisation of her services was considered first. In view of the above irregularities noticed by the Government, it was felt that regularisation of the services of the petitioner to the higher post of Junior Assistant are irregular and, therefore, it is appropriate to take necessary action for reverting her from the cadre of Junior Assistant immediately to her original cadre of care taker. However, the case of the petitioner is that there is no sanctioned post of care taker and that her regularisation as Junior Assistant is regular. Be that as it may. The Government eventually issued G.O.Rt.No.1534, dated 30.07.2008, directing the 3rd respondent, Commissioner of Endowments, to take necessary action for reversion of her services from the cadre of Junior Assistant immediately to the cadre of care taker from the date on which she becomes eligible for such regularisation of services as care taker. The said exercise was directed to be done after giving a show cause to her and receiving her explanation and as per procedure. The petitioner contends that while passing the said orders, no opportunity of hearing was given to her and her explanation was not called for. Aggrieved thereof, the petitioner made a representation to the Minister of Endowments requesting to review the orders in G.O.Rt.No.1534, dated 30.07.2008, and keep the said orders in abeyance. Accordingly, the Government, that is, the 1st respondent vide his orders dated 22.08.2008, placed the said orders in G.O.Rt.No.1534 in abeyance and called for detailed remarks from the Commissioner of Endowments on the entire issue to enable the Government to further examine the issue. However, without waiting for receipt of the remarks on the entire issue, the consequential orders that are impugned in the writ petition, that is, the orders, dated 20.10.2008, were passed stating that there are no merits to continue the abeyance orders, dated 22.08.2008; and, accordingly the abeyance orders were revoked and the 3rd respondent-Commissioner of Endowments was directed to implement the orders issued in G.O.Rt.No.1534, dated 30.07.2008.

6.3 It is to be noted that the first contention of the respondents that there is no clear vacancy of Junior Assistant cannot be countenanced for the reason that the petitioner's regularisation order clearly reflects that she was regularised in the post of Junior Assistant, that is, the vacancy created by the promotion of Sri T. Nageswara Rao as Senior Assistant.

6.4 Coming to the contention that the petitioner did not have minimum five years of service, it is to be noted that the counter of the 3rd respondent makes it manifest that she worked as a contract employee, that is, as a contract attendant from 01.04.2000 to 08.04.2005. It is pertinent to note that by proceedings, dated 07.04.2005, of the Office of the Commissioner, permission was accorded to the Executive Officer of the 2nd respondent-temple to regularise the services of the petitioner as Junior Assistant in the existing vacancy with usual pay and allowances. The said proceedings reflect that the services are to be regularised in an existing vacancy. The proceedings, dated 09.04.2005, of the Assistant Commissioner & Executive Officer of the 2nd respondent-temple also make it manifest that her services were regularised in the establishment of the 2nd respondent temple in the post of Junior Assistant, that is, in the existing vacancy caused due to promotion of Sri T. Nageswara Rao as Senior Assistant. Therefore, the contentions of the respondents that there is no clear existing vacancy and that the cadre strength is five and that the petitioner was working as Additional Junior Assistant in the sixth post, which is not sanctioned, cannot be countenanced.

6.5 The further contentions that the petitioner's original position is Care Taker on contract basis and therefore, she was reverted as Care Taker and that she was not eligible for regularisation as Junior Assistant in higher position also cannot be countenanced as the proceedings of her appointment make it manifest that she was appointed as an attendant. Further, the

contention of the petitioner is that there is no post of Care Taker in the sanctioned strength of the establishment. The said aspect is not denied in the counters of the respondents. Her further contention is that her services and the services of the 4th respondent were regularised in the post of Junior Assistant and, therefore, when the issue is one of seniority between her and the 4th respondent, the respondents are required to go into the said aspect only and are not supposed to disturb the regularisation of her services as Junior Assistant on any grounds much less on irrelevant and unsustainable grounds.

6.6 In G.O.Rt.No.1534, there is a direction to the Commissioner of Endowments, 3rd respondent, to take necessary action for reversion of the services of the petitioner from the cadre of Junior Assistant to the cadre of Care Taker of the 2nd respondent-temple. The said direction reflects that the further suggested exercise of giving a show cause notice calling for an explanation is a nominal exercise since a direction is already given by the superior authority to the subordinate authority to take necessary action for her reversion. In that view of the matter, the said direction in G.O.Rt.No.1534, dated 30.07.2008, is wholly unsustainable. Be that as it may.

6.7 On the representation made to the Minister of Endowments, the direction in G.O.Rt.No.1534 was kept in abeyance by the proceedings, dated 22.08.2008. Further, detailed remarks of the Commissioner of Endowments were called for. However, without waiting for the receipt of the detailed remarks of the Commissioner, the consequential proceedings, dated 20.10.2008, were issued rejecting her representation as having no merit and further directing to implement the direction in G.O.Rt.No.1534, dated 30.07.2008. The petitioner clearly points out in her writ petition that these cancellation orders are biased orders and that the same were passed by the

officer concerned of the Government having come to know that he is being transferred from his post and the fact that he passed the said orders on the day he is transferred clearly shows bias. These allegations are also not denied in the counters of the respondents.

7. Viewed thus, this Court finds that the whole exercise that resulted in issuance of G.O.Rt.No.1534, dated 30.07.2008, and the consequential memo dated 20.10.2008, is illegal, arbitrary and unwarranted being a colourful exercise and, therefore, the said orders which are impugned in the writ petition, are liable to be set aside.

8. In the result, the Writ Petition is allowed as prayed for. However, it is made clear that this order shall not preclude the respondents concerned from deciding the issue of seniority between the petitioner and the 4th respondent vis-à-vis the others in the same cadre of Junior Assistant in strict accordance with procedure established by law and also from examining the issue of regularisation of the petitioner's services in the post of Junior Assistant, in accordance with law and procedure, if only such a decision on the said aspect is necessary at this distance of time. It is also made clear that till such exercise is completed, the petitioner shall be allowed to continue in her present post of Junior Assistant.

Miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

JUSTICE M. SEETHARAMA MURTI

01.06.2017

Vjl