

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

WP.No.40537 of 2012

ORDER :

Heard counsel for petitioner, Sri C. Srinivasa Baba, counsel for 1st respondent, and the learned Government Pleader for Endowments, for 2nd respondent.

2. The petitioner was engaged as NMR Helper in the S.V. Canteen Complex, Tirumala in 1981. His services were regularized by the Executive Officer of the 1st respondent on 30.11.1990 as a Helper in the said complex.

3. The petitioner filed WP.No.4951 of 1993 for a direction to the 1st respondent to absorb him as Assistant in the T.T.D. as per G.O.Ms.No.296 Revenue (Endowments-III) Department dt.19.04.1988 with all consequential benefits.

4. On 18.08.1993 in WPMP.No.14443 of 1993, this Court granted interim direction directing the 1st respondent to continue the petitioner as Assistant if he was working as such. In view of this order, on 05.10.1993, the 1st respondent informed the petitioner that his request has been considered and he would be continued as Assistant in the scale of pay applicable to the said post, pending disposal of the Writ Petition. However, the said Writ Petition came to be dismissed on 06.01.2003.

5. The petitioner then preferred Writ Appeal No.144 of 2003 before the Division Bench of this Court.

6. On 24.01.2003, this Court admitted the Writ Appeal and granted interim direction to 1st respondent to maintain *status quo* with regard to the post held by petitioner prior to passing of the judgment dt.06.01.2003 of the learned single Judge.

7. Thereafter, in the confirmed seniority list of Assistants / Shroffs, communicated by 1st respondent on 23.11.2003, the petitioner's name was shown at Serial No.875, and the date of his joining in the cadre as 27.10.1993.

8. W.A.M.P.No.1776 of 2003 was filed by 1st respondent to vacate the order dt.24.01.2003.

9. On 17.07.2003, the said application was rejected, and the interim order dt.24.01.2003 was made absolute.

10. Ultimately, the Division Bench allowed the Writ Appeal No.144 of 2003 filed by petitioner on 04.08.2009 and directed the 1st respondent to regularize the petitioner in the category of Assistant with effect from 19.04.1988. However, the 1st respondent erroneously regularized petitioner's services as Helper (Class-IV Post) instead of Assistant (Class – III Post).

11. The petitioner also filed C.C.No.308 of 2012 against the 1st respondent and the 1st respondent then addressed a letter

dt.07.09.2012 to the 2nd respondent to grant permission to regularize the petitioner's services. The 2nd respondent then advised the 2nd respondent to file a Special Leave Petition in the Supreme Court. No Special Leave Petition was filed, and the petitioner's services were also not regularized. The Contempt Case filed by petitioner was closed on 21.08.2012 on the ground that the Contempt Case was not filed within the period of one year, and liberty was granted to petitioner to take steps in accordance with law before the appropriate Forum for implementing the order dt.04.08.2009 passed in Writ Appeal No.144 of 2003.

12. Therefore, the petitioner has filed the instant Writ Petition seeking regularization of his services in the cadre of Assistant with effect from 19.04.1988. The petitioner contends that he gave a representation dt.03.10.2009 seeking implementation of the order passed by the Bench, but no action has been taken in that regard.

13. The counsel for petitioner contends that in a memo dt.25.05.2012, the 2nd respondent had clarified to 1st respondent that 1st respondent is the appointing authority in respect of all posts except the post for which the 2nd respondent is the appointing authority and that the issue in the present case relates to post of NMR's who were appointed as Helpers and Volunteers, Potu, and the 1st respondent had not sought permission from the Government to use their services, and therefore, the 1st respondent should clarify under what rule it is seeking regularization of services of petitioner.

14. The counsel for petitioner contends that it was unnecessary for the 1st respondent to seek any permission from 2nd respondent and it should implement the order passed in the Writ Appeal without any further delay. It is also pointed out that the 1st respondent had implemented directions issued in other cases by this Court relating to other employees such as Sri P. Anandan and cannot discriminate against the petitioner. The petitioner contends that since he has been working as Assistant for the last thirty years without a single promotion, he is entitled to be regularized as an Assistant with effect from 19.04.1988 without insisting on permission from 2nd respondent.

15. Counter-affidavit has been filed by 1st respondent admitting that the order of the Division Bench is binding on it, but stating that approval of 2nd respondent is necessary and such approval has not been granted till date. Reference is made to the Memo dt.25.05.2012 of the 2nd respondent. It is also stated that another letter dt.07.07.2012 was addressed to 2nd respondent seeking permission to regularize the services of petitioners and that orders from the Government are awaited. It is stated that 2nd respondent is the competent authority to create the posts in the 1st respondent-Devasthanam as per G.O.Ms.No.33 Revenue (Endowments-III) Department dt.20.01.2000. It is not denied that the services of Sri P. Anandan, quoted by petitioner, were regularized but it is stated that this was done subject to approval of the Board of Trustees and the orders of the

Government, and that the matter is still pending consideration before the Board of the 1st respondent.

16. From the facts narrated above, it is clear that petitioner had obtained orders in Writ Appeal No.144 of 2003 on 04.08.2009 directing his regularization in the category of Assistant with effect from 19.04.1988 pursuant to G.O.Ms.No.296 Revenue (Endowments-III) Department dt.19.04.1988. This order has not been challenged by the 1st respondent before the Supreme Court of India and has thus attained finality. Therefore, the 1st respondent is bound to implement the said order and cannot take a plea that unless the 2nd respondent permits it to regularize the services of petitioner as Assistant it cannot regularize his services and implement the order passed by the Division Bench. No such plea had been raised in W.A.No.144 of 2003 and such a plea is barred by constructive *res judicata*. The fact that it has regularized the services of Sri P. Anandan without seeking any permission of 2nd respondent initially and that it had subsequently made regularization of Sri P. Anandan subject to orders passed by the Government is clearly borne out by record. It cannot discriminate between the petitioner and the said Sri P. Anandan, and refuse to implement the order in favour of petitioner while implementing it in the case of Sri P. Anandan.

17. The post of Junior Assistant is a post available in the cadre of the T.T.D. Therefore, the appointing authority for the said post is the 1st respondent, and not the Government.

18. Since the order in favour of petitioner was passed way back in 2009, the 1st respondent is bound to implement the said order without any further delay as was done in the case of Sri P. Anandan and regularize his services as an Assistant with effect from 19.04.1988 forthwith.

19. Accordingly, the Writ Petition is allowed with the above directions. No order as to costs.

20. As a sequel, miscellaneous petitions pending if any in this Writ Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 05-01-2017

Ndr/*

