

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Writ Petition No.26001 of 2008

ORDER:

This writ petition, under Article 226 of the Constitution of India, is filed initially by the petitioners 1 to 13 challenging the appointments of unofficial respondents 5 to 22 made pursuant to the proceedings of the 2nd respondent, dated 15.11.2008, and to declare the said appointments insofar as Sri Swayambhoo Varasidhi Vinayaka Swamy Temple, Kanipakam, Chittoor District, as illegal being contrary to the decisions of the Supreme Court and the Articles of the Constitution of India and consequently direct the respondents 1 to 4 to regularize the services of the petitioners 1 to 13 to the posts of Bhajanthries, Sannaithe (Nadaswaram), Dolu, Sruthi, Talam, in view of the proceedings of the 2nd respondent in Rc.No.Gudi Bata/ Chittoor/ 02/ 2008, dated 31.07.2008, by taking their long service into consideration and grant them all consequential benefits such as pay scales, seniority etcetera.

2. I have heard the submissions of *Sri G.Vidya Sagar*, learned senior counsel representing Sri T.Janardhan Rao, learned counsel appearing for the petitioners, and of the learned Government Pleader for Endowments, appearing for respondents 1 and 2 and of *Sri A.Sreekanth Reddy*, learned Standing Counsel appearing for respondents 3 and 4. None appeared for respondents 5 to 22. I have perused the material record.

3. Be it noted that the 12th petitioner died and his legal representatives are brought on record as petitioners 14 and 15. It is stated that after filing of the writ petition, the 2nd petitioner was absorbed in a regular vacancy.

4. The case of the petitioners 1, 3 to 11 and 13 (hereinafter, 'petitioners') and the submissions made on their behalf, in brief, are as follows: The 1st petitioners' ancestors are Mirasidars of Vara Sddi Vinayaka Swamy Temple,

Kanipakam/ 3rd respondent temple since times immemorial and they continuously performed Nadaswaram Kainkaryam. The 1st petitioner is also performing Nadhaswaram Kainkaryam in the said temple and also in the associate temples, i.e., Sri Veeranjaneya Swamy temple, Manikanteswara Swamy temple and Varadha Raja Swamy temple. The name of the grandfather of the 1st petitioner was Muniswamy and his father's name is Mogilappa. As the 1st petitioner's elder brother was unhealthy, the 1st petitioner has taken up the said service from 01.01.1986 onwards. He is a Nadhaswara Vidhvan and was a Lecturer in S.V.Music College, Tirupathi. He has given many performances and he is proficient in playing Nadhaswaram and clarinet instruments. The 3rd respondent temple is a very famous temple in Chittoor; and, of late, its prominence has increased and a lot of pilgrims who are visiting Tirupathi are making it a point to visit Kanipakam to visit the 3rd respondent temple and take blessings of Varasiddi Vinayaka Swamy. Many functions like the marriages of devotees are being performed at the temple. The ancestors of the 1st petitioner were shareholders and were getting share in all types of tickets like abhishekam, marriage, tonsures, vahana pooja, pramanams etcetera. As the rush of devotees started increasing, the temple committee insisted upon the 1st petitioner to engage more Bhajantries for attending to all types of kainkaryams. The Service Register of the 1st petitioner was opened in the year 1992 and it reveals that he is doing service in the temple since 01.01.1986 on payment of Rs.100/- and a share in all types of tickets. His salary was enhanced from time to time and the share in the tickets also increased as and when there was increase in the sale of tickets. In the year 1994, on account of increase in the number of devotees, the Executive Officer insisted upon appointing three Bhajantries to look after the work of vehicle pooja, three Bhajantries to look after Abhishekam etcetera in the main temple, one Bhajantri for Nithya Koluvu, three Bhajantries for marriages, three Bhajantries in the associate Varadha Raja Swamy, Manikanteshwara and Veeranjaneya

Swamy temples and seven Bhajantries including the 1st petitioner for tonsuring. Thus, 20 Bhajantries are working in the temple since 1994. The 1st petitioner used to receive money towards share from the sale of tickets and used to pay salaries to the other Bhajantries from his said share. He is, therefore, being called as Pradhana Bhajantry and other Bhajantries used to work under him. In the year 1996, the Executive Officer directed stoppage of payments from tickets. The 1st petitioner filed W.P.No.15029 of 1996. An interim order was granted in his favour in the said writ petition. Later, the 3rd respondent paid share to the 1st petitioner as per the interim direction of this Court. In the year 2001, the Commissioner visited the temple and prevailed upon the 1st petitioner and others to take monthly salaries instead of 1st petitioner taking money as Mirasidar and distributing it to other Bhajantries. He promised at that time that the services of all the Bhajantries who are working under him will be regularized and that scales of pay would be granted and insisted upon withdrawal of the writ petition. Though the Commissioner promised for grant of scale of pay, he approved consolidated pay for all the 20 Bhajantries on condition of withdrawal of the writ petition. On such promise, the proceedings in D.Dis.No.C2/ 49739/ 2001, dated 11.10.2001, were issued and accordingly, consolidated salaries were fixed. Therefore, the writ petition was withdrawn, on 09.11.2001, and the proceedings, dated 11.10.2001, of the 2nd respondent were given effect to. Ever since, the petitioners are working on payment of consolidated salaries. The salaries of the petitioners were increased from time to time. In the year 2002, the salary was increased to Rs.1500/-, vide proceedings in D.Dis.No.A3/ 30437/ 2002, dt.05.07.2002 for 13 Bhajantries, who were working in the temple. The services of other Bhajantries, who were working in Kalyana Katta are designated as Barbers and their services are not being touched by any one. Insofar as the petitioners herein are concerned, their services were not regularized though a promise was made by the Commissioner in that regard to the effect that their services will be regularized

and that the petitioners will be given pay scales on par with the Government Servants after two or three years. Instead of regularizing their services, the respondents have increased the consolidated payment from Rs.1,500/- to Rs.2,000/- and to Rs.3,000/- thereafter. Inspite of repeated demands and reminders, the respondents did not take up the matter of regularization of the services. In November, 2007, the 3rd respondent has issued proceedings in Pc.No.A2/ 907/ 2002, directing all the Bhajantries who are working in the temple to produce all the certificates possessed by them at 11 AM on 22.11.2007. All the Bhajantires submitted certificates possessed by them and the 3rd respondent forwarded the applications along with their certificates to the 2nd respondent for approval. Meanwhile, on 31.08.2008, the 2nd respondent conducted "Gudi Bata" for two days in the 3rd respondent temple. At that time, the 2nd respondent has taken up the task of resolving any and all the disputes between 42 temples in and around Chittoor. When a representation was given by the petitioners in the meeting, the Commissioner has given a statement that the services of all the Bhajantries would be regularized. The said statement was also published in the newspapers. The petitioners anxiously waited for regularization orders. While so, a Notification was issued by the 2nd respondent, calling for applications from eligible candidates for filling up the posts of Bhajantries (Dolu, Sannai, Thalam & Sruthi). It is stated in the said Notification that the selection will be made by an expert committee and that the selections will be made on the basis of the skill in the field and interview and that the Bhajantries who are working on contract basis will also have to apply and that preference will be given to them and that appointments will be given to the selected candidates on contract basis initially and that later, they would be appointed regularly, on declaration of their probation and that they will be given pay scales. The 1st petitioner came to know that two posts of 'Talam' were notified for the 4th respondent temple. But, as there is sufficient work, two more persons are necessary for the said post. As the petitioners

were promised that their services will be regularized, they did not apply for the notified posts. The petitioners came to know that the 3rd respondent reminded the 2nd respondent, vide Rc.No.A2/ 186/ 04, dated 29.09.2008, about regularization of the posts after getting the same approved through central committee. As per the contents of the said letter, 13 posts were sanctioned in the cadre strength on consolidated pay, outsourcing, which is obviously for the petitioners who were working since 22 years, 8 years respectively. The letter also states that in principle, it was agreed to regularize the services after getting 13 Bhajantries posts sanctioned by the central committee and that proposals were sought for from the Executive Officer, vide Memo Rc.No.Gudibata/ Chittoor/ 002/ 2008, dated 31.07.2008. Thus, the 3rd respondent sent proposals to the 2nd respondent, vide letter dated 29.09.2008, for regularization of the services of the petitioners. Yet, their services were not regularized till date. The 2nd respondent, who has got only two posts of 'Talam' in the subject temple notified in the Notification, dated 05.06.2008, has sent a list of 18 persons to the 3rd respondent, i.e., the names of the unofficial respondents herein, vide proceedings dated 15.11.2008, with a direction to the 3rd respondent to issue appointment orders by 25.11.2008. In the proceedings, it is stated that the Government accorded permission, vide G.O.Ms.No.138, Revenue (Endowments-I) Department, dated 22.01.2008, to the Commissioner of Endowments to issue a common notification to fill up the posts of Bhajantries in various temples by constituting Central Expert Selection Committee for selection of Bhajantries and that a common notification was issued, vide paper notification dated 05.06.2008 and that interviews were conducted through expert committee and that a merit list was drawn. Thus, the 2nd respondent having notified only two posts of Talam had sent the names of the respondents 5 to 22, with a direction to issue appointment orders to them, on the ground that they are selected in pursuance of the notification. The same is illegal and contrary to the provisions and against the settled

principles of law. The order states that the respondents 5 to 22 are appointed on contract basis and be called contract Bhajantries. It was further stated therein that they will be paid consolidated pay of Rs.3,000/- per month and after successful completion of their services under probation, they shall be awarded pay scales as prescribed in G.O.Ms.No.261, Revenue (Endowments-I) Department, dated 20.05.2002, and that their initial scale of pay shall be in accordance with the revised scales of pay for that post prevailing at the time of awarding the pay scales. The said proceedings reflect that the said unofficial respondents were appointed in the place of the petitioners herein to deprive the petitioners of their posts, though the cadre strength was sanctioned only in view of petitioners' services in the temple since many years. The petitioners were promised regularization of their posts on the withdrawal of the writ petition. In fact, the respondents have regularized the service of Sweepers, by names, Hamsaveni, Kalavathi, Chinnabha, Anand, Chinapapamma, Shanumugam and Hemalathamma, whose appointments were much later to that of the petitioners' appointments. Two Mirasidars, by names, Munnemma and Jayamma were given permanent appointments. The services of Head cook, Assistant Cook and two cleaners, who were working along with the petitioners from 22 years, were regularized; but, the services of the petitioners were not regularized. The services of an Enquiry Clerk, who was working since eight years, and of the Vedaparayandhars, who were appointed six years back, were also regularized. The impugned proceedings were kept so secretive that the petitioners came to know about the same only on 23.11.2008 when the unofficial respondents came to the temple for joining duties; the copy of the orders was not made available to them. Thus, the respondents are discriminating and are picking and choosing persons of their choice and regularizing the services; the same is violative of Article 14 of the Constitution of India. The appointments issued to the unofficial respondents in pursuance of the proceedings of the 2nd respondent, dated 15.11.2008, are in violation of the

principle of legitimate expectations. The petitioners were paid consolidated pay styling their appointments as on 'contract basis'. The official respondents cannot remove contract basis persons and appoint persons again on contract basis, in view of the settled legal propositions. Therefore, the appointment of the unofficial respondents 5 to 22 is contrary to the settled legal propositions. Hence, the writ petition is filed.

5. A counter affidavit has been filed by the Joint Commissioner, Endowments, & Executive Officer of Swayambhu Sri Varasiddi Vinayakaswamy Vari temple, Kainpakam village & Post, Irala Mandal, Chittoor District. The averments in the counter, in brief, are as follows:

The writ petition is liable to be dismissed on the ground that it is totally misconceived. The petitioners have no locus standi to challenge the present appointments of Bhajantries and cannot stall the proceedings, which are intended to provide more facilities to the visiting pilgrims. Simply because, the petitioners are working on consolidated pay, they have no vested right to stall the fresh appointments. The contention of the petitioners that the present appointments would adversely effect their employment is incorrect and not based on any valid reasons. The writ petitioners cannot interfere with the administration and the writ petition is liable to be dismissed as it is nothing but a frivolous litigation. Even if the 1st petitioner is a Mirasidar, he has no vested right in view of Act 30 of 1987. The constitutional validity of the Act was upheld by the Apex Court. The opening of the Service Register of the 1st petitioner in the year 1992 is true; and even if any such Register is opened, it cannot confer any right on him and other petitioners to claim any relief. The authority made the alleged assurance is incorrect and the petitioners are put to strict proof of the same. The petitioners have deliberately not filed the copy of the paper publication. The said publication was very clear that the Bhajantries already working on contract basis also have to apply and preference will be given to them. The petitioners failed to apply in response

to the said Notification. The appointments of respondents 5 to 22 were made by the 2nd respondent and the 3rd respondent has nothing to do with the said appointments. The writ petitioners cannot approach this Court by invoking the extraordinary jurisdiction under Article 226 of the Constitution of India. The relief sought is misconceived; the petitioners have no *locus standi* and there is no vested right to question the steps taken by the respondents to provide more facilities to the visiting pilgrims. Hence, the writ petition may be dismissed with costs.

6. I have given earnest consideration to the facts and I have noted the submissions.

7. Learned senior counsel appearing for the petitioners and the learned Standing Counsel appearing for the 3rd respondent temple advanced arguments in line with the respective contentions of the parties.

8. It is manifest from the record that the petitioners, that is, petitioners 1, 3 to 11 and 13 were and are working on consolidated pay; and that the proceedings, dated 11.10.2001, were issued by fixing their consolidated pay; and that their salaries were increased from time to time; and, that by June 2009, the petitioners 1, 5, 6, 8 and 9 were drawing Rs.3,000/- per month and that the petitioners 3, 4, 7, 10, 11 and 13 were drawing Rs.2,500/- per month. Be that as it may, a 'Gudi Bata' was conducted by the 2nd respondent as stated by the petitioners. Further, the said petitioners, bhajantries, were and are working on contract basis and the 3rd respondent temple was willing to give them preference while making appointments are all admitted facts and the said facts are borne out by the record. However, the said petitioners did not apply when a notification was issued as according to them, they were under the impression that their services would be regularized in view of the assurance given by the 2nd respondent that their services would be regularized. However,

the 2nd respondent denies the said contention and states that no promise was ever made for regularizing the services of the said petitioners.

9. At the hearing, the learned senior counsel appearing for the petitioners also would submit that the case of the petitioners 1, 3 to 11 and 13 is squarely covered by the ratio in the decision of the Supreme Court in *Secretary, State of Karnataka v. Uma Devi*¹ and that therefore, the respondents 1 to 4 may be directed to consider for regularization, the services of the petitioners, who worked for long years in duly sanctioned posts. The learned senior counsel for the 3rd respondent temple does not dispute the legal position in the decision cited, but, would only submit that the respondents 5 to 22 were duly appointed by following the regular process and that have reported to duties by submitting joining reports. The respondents 5 to 22 are also contract employees and they were subsequently appointed is not in dispute. Be that as it may, in the well considered view of this Court, the petitioners' requests based on their claim of long tenure of service on contract basis in duly sanctioned posts, which are required to be filled up, requires to be examined in the light of the precedential guidance in the following decision relied upon by the learned senior counsel for the petitioners.

10. In the decision in *Uma Devi* (1 supra) the Supreme Court held as follows:

.....In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularise as a one-time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularisation, if any already made, but not sub-judice, need not be repined based on this judgment, but there should be no further bypassing of the constitutional requirement and regularising or making permanent, those not duly appointed as per the constitutional scheme.

¹ (2006) 4 Supreme Court Cases 1

Thus, the Supreme Court opined that there is a justification to consider the case of certain class of employees who have put in 10 years of such service (*ad hoc* or temporary). Having regard to the facts and submissions, this Court is satisfied that this writ petition can be disposed of, with certain directions.

11. In the result, the Writ Petition is disposed of directing the respondents 1 to 4 to consider the cases of the petitioners 1, 3 to 11 and 13 for regularization of their services subject to their eligibility as per the precedential guidance in the decision of the Supreme Court (1 *supra*) and pass appropriate orders in strict accordance with the procedure established by law. The necessary exercise in this regard shall be completed by the respondents as expeditiously as possible and preferably, within two months from the date of receipt of a copy of this order. It is needless to state that any decision taken and the order made by the respondents shall be communicated to the petitioners within a reasonable time.

Pending miscellaneous petitions, if any, shall stand closed.

There shall be no order as to costs.

21st April, 2017
RAR

M. SEETHARAMA MURTI, J