

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION Nos.31563, 31666 and 31704 OF 2017

COMMON ORDER:

As the issue involved in these writ petitions is one and the same, they are being heard together and disposed of by way of this Common Order.

2. In these writ petitions, the petitioners are challenging the impugned termination orders passed by the 3rd respondent- Sajjadanashen Cum Muthawalli of Hazrat Syed Khaja Rahmatullah Nayab-e-Rasool Mosque & Tomb Estate, A.S.Peta (Rahmatabad) terminating the services of the petitioners, who are performing their services in the institution of Hazrat Syed Khaja Rahmatullah Nayab-e-Rasool Mosque & Tomb Estate (for short 'the institution/Dargah').

3. Brief facts which are necessary for disposal of these writ petitions are as follows:

The petitioners claim that they have been working in different positions in the institution for a considerable period of time. When disputes arose between the Sajjadanashen and the Muthawalli with regard to management of properties of the institution, suit i.e., O.S.N.21 of 1906 was filed on the file of the District Court, Nellore. Subsequently, OS No.50 of 1913 was filed by the same parties, which lead to filing of AS No.200 of 1917 on the file of the High Court of Madras. The High Court of Madras, by its order dated 25.04.1918 in the aforesaid Appeal, directed the District Court to frame a Scheme and the same was

formulated by the District Court. As such, the said Scheme came into existence and the District Court, Nellore was directed to act as Administrator. Thereafter, the District Court delegated the power to Sub Court, Nellore for effective administration of the institution. Since then, the scheme was effectuated by the Administrator cum-Sub-Judge, Nellore and that the petitioners claims to be appointed by the Administrator-cum-I Addl.Senior Civil Judge, Nellore; that the 2nd respondent/Wakf Board filed an application in I.A.No.661 of 2016 in O.S.No.50 of 1913 before the Principal Senior Civil Judge, Nellore seeking an order of modification in the Scheme framed by the High Court of Madras in AS No.200 of 1917 by substituting words “A.P.Wakf Board” in place of “Court” or “Sub-ordinate Judge”, duly impleading the 3rd respondent and Trustee as necessary parties; that the said application filed by the 2nd respondent allowed and the other implead applications i.e., I.A.No.s.730 and 829 of 2016 in O.S.No.50 of 1913 were dismissed. Challenging the said orders of the Prl.Senior Civil Judge dated 06.01.2017, CRP (SR) No.4390 of 2017 and CRP No. 929 of 2017 are filed and same are pending before this Court. That the order appointing 3rd respondent as Muthawalli is beyond his jurisdiction and that the petitioners were terminated from service without any prior notice and without hearing them, even though there are no complaints and disciplinary proceedings against them. Aggrieved by the action of the 3rd respondent in

removing/terminating the petitioners from the services of the institution, these writ petitions are filed.

4. Separate counter affidavits are filed by the 3rd respondent in all the three writ petitions, mainly denying the averments in the affidavits filed in support of these writ petitions stating that some of the petitioners have suppressed their ages and filed the writ petition questioning the termination orders. That the termination orders are not amenable to writ jurisdiction in as much as the Hazrat Syed Khaja Rahmatullah Nayab-e-Rasool Mosque & Tomb Estate, A.S.Peta (Rahmatabad) (Dargah) is not an instrumentality of State within the meaning of Article 12 of Constitution of India. That the Dargah is not made as a party in all these writ petitions, as such, they are liable to be dismissed on this ground alone. That the petitioners are appointed on temporary basis by the then administrator, who was in charge of the affairs of the Dargah, by virtue of the scheme formulated by the Court of Prl. Senior Civil Judge in OS No.50 of 1913, dated 12.02.1917 as modified by Madras High Court in AS No.200 of 1917, dated 25.4.1918. That though the Dargah was under the administration of the I Addl. Senior Civil Judge, is not an instrumentality of State and the petitioners are not entitled to invoke the writ jurisdiction on the strength of appointment orders issued by the then Administrator. Since the petitioners are appointed on temporary basis, their services can be terminated without giving any notice and without assigning any reason. That the 2nd respondent/Wakf Board

issued guidelines on 20.06.2017 and one of the guideline was to remove the excess staff of Dargah. That due to heavy expenditure being incurred to run the affairs of the Dargah and continuation of surplus staff is a heavy burden on the institution, the excess staff were removed in view of the guideline issued by the Wakf. That the appointment of the petitioners is purely on temporary basis, there is no need of issuing any prior notice and that their termination will come into effect from the date of issuance of termination orders, as such, they are no longer in the services of the institution.

5. Reply affidavits are filed to the counter affidavits filed by the 3rd respondent, reiterating the averments in the affidavit filed in support of the writ affidavits, stating that any Dargah or Temple or any department of the State, shall be represented by the officers concerned, as such, the question of impleading Dargah is not essential. That these writ petitions are filed only on the ground of violation of principles of natural justice by the 3rd respondent in issuing impugned termination orders, but not by the Dargah, as such, the writ petitions are maintainable. That the 3rd respondent is acting through the 2nd respondent, as such, it is not necessary to add Dargah as respondent party to these writ petitions. That cause of action by the same authority would be sufficient to file a single writ petition and that the competency of removal of the petitioners by the 3rd respondent is in question and not the appointing authority-the Senior Civil Judge, who appointed the petitioners, so as to maintain the writ

petition. That on one hand the petitioners were removed/terminated in view of excess staff or reducing the cost of expenditure of the Dargah, but on the contrary, the 3rd respondent is appointing his relatives, without taking care of welfare of the employees already employed, overthrowing the guidelines of the Scheme, which is prevalent even today as a direction to run the institution.

6. Heard Sri Mohd.Vasi Ahmed, learned counsel for the petitioners, Sri Arifullah, learned Standing Counsel for 2nd respondent and Sri M.V.Suresh Kumar, learned Senior Counsel appearing for Sri Aravalla Sreenivasa Rao, learned counsel for the 3rd respondent.

7. Learned counsel for the petitioners, apart from reiterating the averments in the affidavits filed in support of the writ petitions and in the reply to the counters of the 3rd respondent, vehemently contended that the impugned termination orders passed by the 3rd respondent is in violation of principles of natural justice as no prior notice was issued and no opportunity of hearing was given to the petitioners before issuing the impugned orders. That the 3rd respondent has passed impugned proceedings, ignoring the fact that the petitioners have been discharging services, without any complaints whatsoever, for considerable period of time. He submits that out of 56 employees, only 11 persons were removed from service selectively and that he also appointed his relatives in the place of the writ petitioners. He submits that the 3rd respondent has

no power to terminate the services of the petitioners. He would contend that no charges were leveled against petitioners and no inquiry was contemplated against them, as such, termination of the petitioners by the 3rd respondent, without any notice and without hearing them, is against the principles of natural justice.

8. On the other hand, Sri M.V.Suresh Kumar, learned Senior Counsel appearing for 3rd respondent would submit that the 3rd respondent is only an employee of the Dargah/institution as that of the petitioners and in pursuant to directions issued by the 2nd respondent, he has issued the impugned termination proceedings, in order to effectuate the functioning of the Dargah. He submits that though the petitioners are claiming relief against the institution/Dargah, same is not made as a party to the writ petitions and wrongly impleaded the State as the 1st respondent, as such, these writ petitions are liable to be dismissed for mis-joinder of necessary parties. He would submit that the causes of action of the petitioners is different, as such, single writ petition is not maintainable as causes of actions are different. He would contend that since the appointments of the petitioners were purely on temporary basis, their services can be terminated without any notice. He submits that the 3rd respondent has issued impugned termination orders basing on the guidelines issued by the 2nd respondent, in order to safeguard the interests of the institution.

9. In view of above rival contentions, the point that arises for consideration is whether the writ petitions are maintainable? If so, the petitioners are entitled to challenge the impugned proceedings of the 3rd respondent.

10. It is to be seen that the petitioners in all these writ petitions were appointed purely on temporary basis on a consolidated pay, in different positions by the then Administrator-Senior Civil Judge, Nellore, basing on the directions of the Hon'ble High Court of Madras by judgment dated 25.04.1918 in AS No.200 of 1917. A perusal of the appointment order dated 17.07.2002 of the 1st petitioner in WP No.31563 of 2017 goes to show that his appointment as 'Teacher' is purely on temporary and that he is not conferred any right of probation or re-appointment and that he will be ousted from service at any point of time, without notice and without assigning any reason therefor. A note in the said proceedings reads as follows:

(ii) The individuals are further informed that their appointment is purely temporary and that they are not conferred any right of probation or reappointment and that they will be ousted from service at any point of time, without notice and without assigning any reason therefor."

It is to be seen that all the petitioners, who were appointed by the then Administrator on temporary basis, having acceded to the conditions of appointment, cannot question the removal/termination orders passed by the 3rd respondent, which were issued to reduce the excess/surplus staff of the

institution on the directions of the 2nd respondent. As already observed supra, their services are on temporary basis and that they can be removed at any point of time, without notice and without assigning any reason. Moreover, basing on the application filed by the 2nd respondent, the 3rd respondent being appointed by the Administrator-Senior Civil Judge, has followed the guidelines issued by the 2nd respondent, in order to effectuate the functioning of the institution and no malafides can be attributed to the 3rd respondent in this regard.

11. As rightly contended by learned Senior Counsel that the Dargah is not an instrumentality of State within the meaning of Article 12 of the Constitution of India for the reason that the Dargah is not discharging any public function called 'education', as same is not the primary function of the Dargah. Apart from the above, when once the petitioners are claiming to be the employees of Dargah and they are claiming right against the Dargah, they ought to have impleaded Dargah as one of the party to the writ petition. Though, it is contended by the learned counsel for the petitioner that since the 3rd respondent is acting on behalf of the 2nd respondent and the 2nd respondent/Wakf Board is added as party to the writ petitions, it is not necessary to add the Dargah as party, said contention cannot be accepted for the reason that the petitioners are questioning the termination orders passed by the 3rd respondent, who is also an employee of the Dargah. As such, it cannot be said that the Dargah is not proper and necessary

party. When once the Dargah is not added as a party to the writ petitions, the same are liable to be dismissed on this ground alone.

12. Be that as it may, it is also pertinent to note that the 2nd respondent/Wakf Board issued guidelines on 20.06.2017, wherein it was clearly stated at para IV that “the expenditure for salaries is excessive and exceeding the income, the surplus staff whose services are not needed and if continued as per court scheme they shall be removed by the Sajjada Nashin as a measure of economy.” When the 2nd respondent has taken a policy decision to minimize expenditure on the surplus staff, and directed the 3rd respondent, who is the employee of the Dargah, to implement the guidelines, the 3rd respondent has to obey the directions of the 2nd respondent and implement the same, as such, no malafides can be attributed to the 3rd respondent in implementing the same, by issuing termination/removal orders to the petitioners.

13. Though, in the counter affidavit filed by the 3rd respondent in W.P.No.31704 of 2017, it is clearly averred that the petitioners therein are senior citizens and that by suppressing their ages, they have filed the writ petition. Denying the said averment in the counter affidavit, neither reply is filed by the petitioners therein nor filed any proof of their ages. As such, the said writ petition is liable to be dismissed for suppression of material facts.

14. That apart, when once the 2nd respondent/Wakf Board was of the view that there is heavy expenditure being incurred to run the affairs of the Dargah and continuation of surplus staff is a heavy burden on the institution, the action of the 3rd respondent in removing/terminating the excess/surplus staff from the institution cannot be faulted. Though it is contended by the learned counsel for the petitioners that the 3rd respondent is appointing his relatives in place of writ petitioners, no documentary evidence is produced to that effect. Whether the 3rd respondent has appointed his relatives or not, are disputed questions of facts, which cannot be decided in these Writ Petitions, by exercising the power of extraordinary jurisdiction under Article 226 of the Constitution of India. As already observed supra, the services of the petitioners were purely on temporary basis, as such, they cannot challenge the impugned termination orders, by way of writ petitions, without adding necessary and proper parties, on the ground of violation of principles of natural justice.

For the reasons aforementioned, all these writ petitions are liable to be dismissed and accordingly dismissed. There shall be no order as to costs. As a sequel to the disposal of these Writ Petitions, miscellaneous petitions, if any, pending shall stand closed.

A.RAJASHEKER REDDY,J

07-12-2017
kvs

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION Nos. 31563, 31666 and 31704 OF 2017



kvs



