

THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION No.16960 OF 2001

ORDER:

The petitioner, who is presently working as an Office Subordinate-cum-Watchman in the respondent-Devasthanam, filed this writ petition seeking to issue a Writ of Mandamus to declare the action of the respondent-Devasthanam in not absorbing the petitioner as Data Entry Operator from 09.10.1991, as illegal, arbitrary and violative of Article 16 of the Constitution of India.

2. The case of the petitioner is that he passed B.Sc. (MPC) in second division in the year 1987 and M.Sc. (Applied Mathematics) in second division in the year 1990. He also obtained P.G. Diploma in Computers in the year 1988. The petitioner was selected and enrolled as Home Guard in Chittoor District by the Superintendent of Police outside the sanctioned strength of the District for being deputed to Tirumala Tirupati Devasthanam (TTD), Tirupati vide D.O. Roc.No.20/91, B7/H.G/49/91, dated 19.03.1991 of the Superintendent of Police, Chittoor and he was kept at the disposal of the TTD's Home Guards, a voluntary organization. He was deputed to TTD and ordered to report before the Chief Vigilance and Security Officer's Office on 27.04.1991 after completion of training. He was ordered to work under the control of the Vigilance and Security Officer's Office, Tirupati

vide proceedings in Roc.No.C1/599/S&VO/90, dated 27.04.1991 and he was paid Rs.74.75 Ps. per day on N.M.R. basis from the contingency fund of TTD. As he was P.G. Diploma holder in Computers, he was posted to Computer centre of TTD at Tirupati by proceedings dated 03.10.1991. As per the request of the Chief Accounts Officer, TTD, Tirupati vide Roc.No.A11/037745/90, the services of the petitioner is being used in Computer centre, Accounts branch, TTD, Tirupati for assisting the data entry vide proceedings in Roc.No.C1/599/S&VO/Tpt/90, dated 28.10.1991 of Vigilance & Security Officer, TTD, Tirupati. The petitioner is allowed to continue to work in the Computer centre, Accounts section in his existing capacity as Home Guard on NMR basis as his services are useful in Computer centre, Accounts section, TTD, Tirupati vide proceedings in Roc.No.A11/036396/93, dated 29.06.1994 of the order of the Executive Officer, TTD on the note run by the Chief Accounts Officer, TTD dated 28.06.1994. The Chief Security & Vigilance Officer, TTD was requested not to recall the petitioner's services to Vigilance & Security Wing as he was assisting the Budget clerk in dealing with the budget and feeding of data relating to budget and related subjects of financial statements. As the petitioner was qualified to hold the post of Computer Operator and working as Computer Operator since 1991 in TTD services on payment of daily wages as Home Guard, he submitted a representation on

11.01.1995 to the respondent-Devasthanam to absorb him as Computer Operator in the TTD service. By proceedings dated 01.02.1995, the Chief Accounts Officer was directed to send the particulars of the petitioner for taking necessary action and the Chief Accounts officer by his proceedings dated 07.02.1995 sent the particulars of the respondent, but no action has been taken to absorb the petitioner as Computer Operator. Due to increase of work load in the computer centre, the work was distributed by proceedings dated 09.06.1995 of the Chief Accounts Officer and the petitioner was allotted to work as Computer Operator by proceedings dated 25.08.1995 and the petitioner was also directed to maintain certain registers as Computer Operator. The Joint Executive Officer by order dated 05.09.1995 directed the Chief Accounts Officer to relieve the petitioner to work in cottage allotment counter, but the Chief Accounts Officer stated that the petitioner is the only Computer Operator working in Computer centre and the petitioner's services are very much needed in the Computer centre and he did not relieve the petitioner. He made another representation dated 13.05.1996 requesting the respondent to absorb the petitioner as Computer Operator, but no avail.

He further stated that Board of Trustees passed a resolution No.747 dated 23/24.10.1998 appreciating the work done by the employees in the Computer centre, Accounts Department and granted incentives of Rs.2,000/- to

each employee including the petitioner. By proceedings dated 08.03.1999, the work was allotted amongst the staff working in the Computer section and the petitioner was directed to supervise as Computer Operator by memo dated 28.07.1999. The CV & SO wanted to withdraw the services of the petitioner from Computer centre by proceedings dated 16.03.2001, but the Chief Accounts Officer by his proceedings dated 30.03.2000 stated that no other suitable employee is available in the Computer centre for attending the work and as the petitioner has been trained, his services are mostly needed in the Computer centre, Accounts Department and the CV & SO was requested to drop the proposal to withdraw the petitioner from the Computer centre. Even though the petitioner was appointed as Home Guard on daily wage basis, his services are being utilised as a Computer Operator since 1991 and now he is working as a Data Entry Operator under the control of Chief Accounts Officer, TTD, but he has been paid the salary of Home Guard. The continuation of the petitioner as a Home Guard and utilising his services as a Computer Operator/Data Entry Operator and he was also not paid salaries of the Computer Operator/Data Entry Operator, is violative of principles of 'equal pay for equal work' and continuation of the petitioner as a daily wage Home Guard having extracting the work of Computer Operator/Data Entry Operator is illegal and arbitrary. The post of Junior Computer Operator in the respondent-Devasthanam carries

the scale of pay of Rs.1875-3750/- with the qualification of B.Sc. II Class and one year experience in a reputed computer centre. The petitioner is qualified M.Sc. in second division and P.G. Diploma in Computers and working as Computer Operator since 1991 on daily wage payment of Home Guard. Since 1991, the petitioner is working as Computer Operator with a fond hope of being absorbed as a Data Entry Operator, but he was not absorbed till date. Aggrieved by the same, the present writ petition came to be filed.

3. The respondent filed counter stating that the petitioner was selected and enrolled as a Home Guard in Chittoor District by the Superintendent of Police outside the sanctioned strength of the District for being deputed to TTD, Tirupati vide D.O. Roc.No.20/91, B7/H.G/49/91 dated 19.03.1991 of the Superintendent of Police, Chittoor and kept at the disposal of TTD's Home Guards, a voluntary organization. The petitioner was deputed to the Chief Vigilance & Security Officer on 27.04.1991 and after completion of the training, he was called to work by the Vigilance and Security Officer, Tirupati vide proceedings Roc.No.C1/599/S&VO/Tpt/90, dated 27.04.1991 along with other Home Guards and they are being paid at Rs.74.75 Ps. per day on NMR basis from the contingency fund of TTD. As per the request of the Chief Accounts Officer, TTD, Tirupati vide Roc.No.A11/037745/90, dated 03.10.1991, the services of the petitioner were placed in Computer centre, Accounts

section, TTD, Tirupati for assisting for the data entry vide Memo Roc.No.C1/599/S&VO/Tpt/90, dated 28.10.1991 of the Vigilance & Security Officer, TTD, Tirupati. The petitioner was allowed to continue in the Computer centre, Accounts section in his existing capacity as Home Guard on NMR basis. His services were used in the Computer centre, Accounts section, TTD, Tirupati vide Proceedings Roc.No.A11/036396/93, dated 29.06.1994 of the order of the Executive Officer, TTD on the note run by the Chief Accounts Officer, TTD dated 28.06.1994. The Chief Security & Vigilance Officer, TTD requested not to press for recalling of the petitioner's services to Vigilance & Security Wing as he was assisting the Budget clerk in dealing with the budget and feeding of data relating to budget and related subjects of financial statements and denied the contentions of the petitioner that he was qualified to hold the post of Computer Operator and he was working since 1991 in TTD on payment of daily wages. The petitioner is now working as Home Guard on daily wage basis, but not as a Computer Operator. There is no post of Computer Operator in TTD. The petitioner submitted representations to absorb in the TTD services as a Computer Operator. Ever since he was deputed to Computer centre of the Accounts section, he is assisting the Budget clerk and related financial statements and no proceedings were given to the petitioner to work as Computer Operator. The petitioner was instructed only to assist the Budget clerk

and he was never entrusted with the duties of Computer Operator. The claim of the petitioner for absorption as a Computer Operator is misconceived and untenable. As the budget was under preparation in 1995, the petitioner was not relieved to work in cottages allotment counter as directed by the Joint Executive Officer and he is continued to assist in Accounts section. In order to operate the computers for feeding the data, the TTD is utilising the services of M/s.Hi-Tech Computers, Tirupati on contract basis and the data feeding work is attended by persons from outside TTD on contract basis. An incentive of Rs.2000/- has been approved by the Board of Trustees to all the employees working in the Budget section whether regular or on daily wage basis. The petitioner though a daily wage Home Guard also got Rs.2000/- as incentive.

It is further stated that it is a practice to utilise the services of Gardeners, Forest Mazdoors, etc. in miscellaneous works in Accounts Department when there is less work in the concerned departments as the two departments require more labour in seasons. Similarly, the petitioner's services were also utilized in Accounts section for attending the miscellaneous works only as a Home Guard on a daily wage basis. The petitioner was only on deputation from S.P., Chittoor as daily wage Home Guard. When he was not appointed by TTD and not called for any interview for such a post which in fact is non-existing, the question of considering

his case for absorption as a Computer Operator does not arise. For recruitment or absorption or otherwise, the TTD has to go by the rules incorporated in G.O.Ms.No.1060, dated 24.10.1989. Mere possessing of qualification for the post of Computer Operator will not entitle anybody to get the scale of pay of Computer Operator unless there is a sanctioned post and he was appointed as per the procedure prescribed under the rules incorporated in G.O.Ms.No.1060, dated 24.10.1989. The petitioner's request for direction to the respondents the scale of pay attached to the post of Computer Operator is already being paid in accordance with the norms as stated above. Since the TTD is following the method of recruitment, rule of reservation, etc. while going for any appointment as per the rules and regulations governed in G.O.Ms.No.1060, dated 24.10.1989, the absorption of the petitioner directly from the present position as Home Guard on deputation into TTD services as a Computer Operator is not possible. The TTD Board/Specified Authority passed the resolution vide Resolution No.506 dated 5/6.12.2001, which reads as follows:

“The Home Guards are selected exclusively by the Superintendent of Police, Chittoor for TTD outside the sanctioned strength of the district. They are serving TTD for the past 10 years. They are paid by TTD directly and therefore their regularisation needs sympathetic consideration. Proposals may be sent to the Government for their regularisation as Attender-cum-Watchman in the posts of Security Guards to be converted as Attender-cum-Watchman.”

Accordingly, the Executive Officer, TTD, Tirupati issued proceedings in Roc.No.B7/E7 (Services)/50013/1997, dated 18.02.2016 based on the Government Order, regularizing the services of 98 Security Guards including the petitioner, who were appointed during the period 1990-1992, as Office Subordinate-cum-Watchman with effect from 14.12.1998, extending the monetary benefit with effect from 29.01.2008, as per Rule 5(i) of Tirumala Tirupati Devasthanams Employees Service Rules. As such, the petitioner is not entitled for regularisation/absorption as Computer Operator/Data Entry Operator in the TTD. Hence, the writ petition is misconceived and is liable to be dismissed.

4. Sri A.Bhaskara Chari, learned counsel for the petitioner, while reiterating the averments of the affidavit filed in support of the petition as stated above, would contend that the petitioner is working as Computer Operator since 1991 as evidenced in various orders issued by the Government. The petitioner is fully qualified and eligible to be appointed as Computer Operator/Data Entry Operator and he worked as such without any complaint since 1991. There is a post of Junior Computer Operator existing in the respondent-Devasthanam in the pay scale of Rs.1875-3750/-, for which the qualification prescribed is B.Sc. II Class and one year experience in a reputed computer centre. The petitioner is qualified M.Sc. (Applied Mathematics) in second division and obtained P.G.Diploma in Computers and working as

Computer Operator since 1991 though appointed on daily wage basis as Home Guard in the respondent-Devasthanam without any complaint. The respondent-Devasthanam is extracting the services of the petitioner as Computer Operator and he is also working with a fond hope that he would be absorbed as a Computer Operator, but he was paid only on daily wage basis as Home Guard. The action of the respondent in extracting the work as a Computer Operator but not extending the pay scale and benefits by absorbing the petitioner as a Computer Operator/Data Entry Operator even though he is fully qualified and eligible to be appointed as a Computer Operator/Data Entry Operator, is illegal and violative of Article 16 and 39(d) of the Constitution of India.

The learned counsel relied on a decision of the Hon'ble Supreme Court in *Secretary, State of Karnataka and others Vs. Umadevi¹ and others* and contended that whoever qualified and continuing against the existing vacancy is entitled to be regularized and paid the salary attached to the post. He vehemently argued that the petitioner is entitled for absorption in the respondent-Devasthanam as a Computer Operator/Data Entry Operator as he is fully qualified and eligible and prayed this Court to direct the respondent to absorb the services of the petitioner as a Computer Operator/Data Entry Operator in the respondent-Devasthanam.

¹ (2006) 4 SCC 1

5. Per contra, Sri B.Rajeswar Reddy, learned counsel for the respondent, while reiterating the contents of the counter-affidavit, would contend that the petitioner is only working as a Home Guard on deputation basis as daily wage in the Vigilance and Security Wing of TTD, but his services were engaged as a Computer Operator in the Computer centre, Accounts section of TTD through various proceedings, but his services were utilised in the computer centre as per his request along with others on payment of daily wage as a Home Guard. Mere working as and when his services are required in the Computer centre is not entitled for absorption as Computer Operator on payment of regular pay scale. Actually there is no post of Computer Operator in the respondent-Devasthanam. The recruitment or absorption has to be taken as per the TTD rules issued through G.O.Ms.No.1060, dated 24.10.1989. The recruitment has to be taken place by following the rule of reservation, etc. The respondent-Devasthanam is utilising the services of M/s.Hi-Tech Computers, Tirupati on contract basis and the data feeding work is attended by persons from outside TTD on contract basis. The services of the petitioner could not be absorbed as his services were regularized as Office Subordinate-cum-Watchman with effect from 14.12.1998, extending the monetary benefit with effect from 29.01.2008 vide proceedings dated 18.02.2016. Hence, the petitioner is

not entitled for any relief and prayed to dismiss the writ petition.

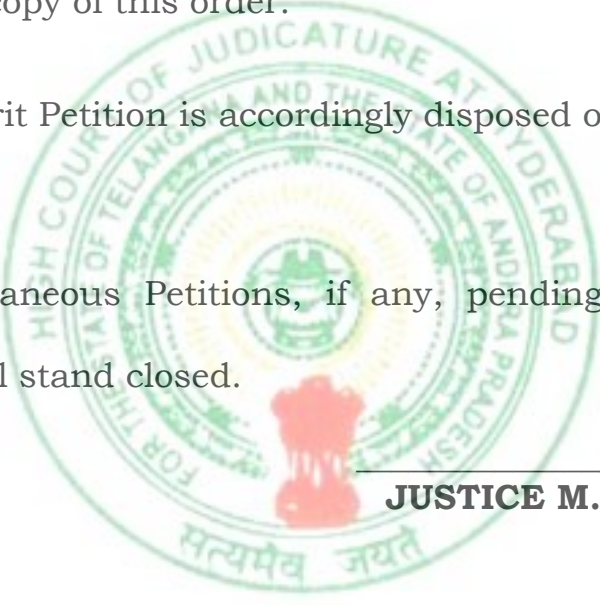
6. Having carefully considered the rival contentions of the learned counsel and in the facts and circumstances of the case, this Court finds that the services of the petitioner has been utilized as a Computer Operator since 1991 in the Computer centre, Accounts section of the respondent-Devasthanam even though he is a Home Guard working on daily wage on deputation basis. The petitioner is fully qualified and eligible to be appointed as Computer Operator as per the rules of the TTD and pay scale attached to that post as he passed M.Sc. (Applied Mathematics) in second division and obtained P.G. Diploma in Computers. Continuation of the petitioner as Computer Operator without extending the pay scale attached to the post of Computer Operator is illegal and violative of Article 16 and 39(d) of the Constitution of India.

7. The contention of the learned counsel for the respondent that the services of the petitioner is being utilized as and when there is a requirement in the Accounts section, but that does not obligate them to absorb the petitioner as Computer Operator/Date Entry Operator in the respondent-Devasthanam and there is no post of Computer Operator in the respondent-Devasthanam, are untenable. This Court finds that the petitioner's services are being utilized in

Computer centre since 1991 and he is fully qualified and eligible to be absorbed as Computer Operator/Date Entry Operator in the Computer centre, Accounts section of the respondent-Devasthanam. Therefore, the respondent-Devasthanam is directed to consider the case of the petitioner for absorption as Computer Operator/Date Entry Operator in the respondent-Devasthanam in the light of above observations of this Court. The said exercise shall be completed within a period of two (2) months from the date of receipt of a copy of this order.

8. The Writ Petition is accordingly disposed of. No order as to costs.

Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed.



JUSTICE M.GANGA RAO

31-08-2018
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