

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.32900 OF 2016

DATED :25.09.2018

Between :

K.Satyanarayana S/o.late Sri Sanyasi Naidu,
Aged about 71 yrs, Occu : Retd. Senior Assistant,
Sri Kanaka Mahalakshmi Ammavari Devasthanam,
Burujupeeta, Visakhapatnam,
R/o.H.No.MIG-68, APHB Colony,
Near Collector's Bungalow,
Srikakulam Town and District,
Andhra Pradesh.

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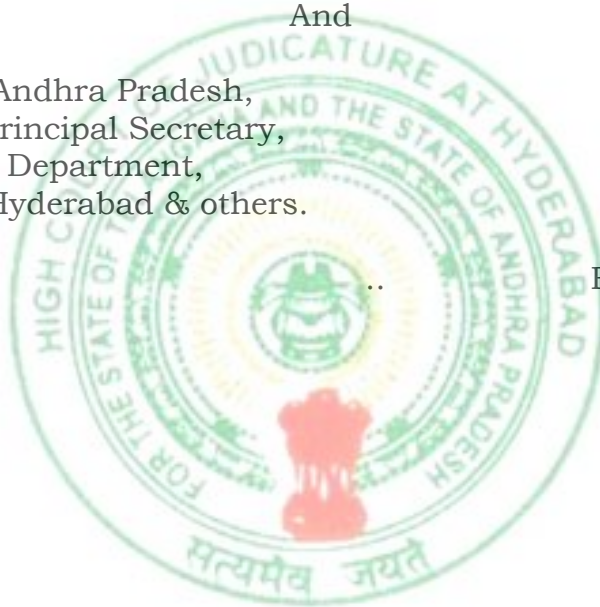
Petitioner

And

The State of Andhra Pradesh,
Rep., by its Principal Secretary,
Endowments Department,
Secretariat, Hyderabad & others.

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Respondents



This court made the following :

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ORDER :

Petitioner joined service as Clerk in the year 1970 in Sri Kurmananda Swamy Temple, Srikurmam, Srikakulam District. In the year 1978 he was transferred to Sri Suryanarayana Swamy temple, Arasavalli. While he was working in the said temple he was promoted as Senior Assistant in the year 1991. By the order dated 08.06.1997, the Commissioner of Endowments, in exercise of power vested in him under Section 39 (1) of the A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1987 (for short 'the Act'), petitioner was transferred to Sri Kanaka Mahalakshmi Ammavari Devasthanam, Visakhapatnam (for short 'the Mahalakshmi temple'). On completion of minimum requisite service, he was granted special grade pay in the Senior Assistant cadre by the Mahalakshmi temple. Due to exigency of service and in order to attend to the administrative work of other temples where there is deficiency of staff for brief period petitioner was sent on deputation to discharge the functions of Executive Officer of Sri Rudra Koteswara Swamy Temple, Srikakulam in the year 2001 and was repatriated to Mahalakshmi temple. While he was working in Mahalakshmi temple, petitioner retired from service on attaining the age of superannuation on 31.05.2003. By order dated 04.03.2004 he was sanctioned pension. Later the pension sanctioned to him was cancelled by the order dated 10.10.2015

affirmed by the Commissioner as a revisional authority, impugned in the present writ petition.

2. Heard Sri M.Rama Rao, learned counsel for the petitioner and learned Standing counsel for respondent-temple.

3. The point for consideration is whether petitioner is to be treated as a permanent employee of Mahalakshmi temple or his assignment in the said temple to be treated as on deputation, treating him as regular employee of Sri Kurmananda Swamy temple or Sri Suryanarayana Swamy temple, Arasavalli.

4. The issue whether petitioner belongs to Mahalakshmi temple or to the other two temples mentioned above has significance as the pension scheme is introduced in Mahalakshmi temple and extended to the employees of said temple. Whereas such scheme is not available to the other two temples mentioned above. Pension scheme was introduced vide orders of the Government in G.O.Ms.No.487 dated 01.07.1998. Though initially pension was sanctioned to the petitioner, later it was withdrawn on the ground that petitioner does not belong to the service of Mahalakshmi temple and as the parent unit is some other temple, he is not entitled to avail the benefit of pension scheme notified vide G.O.Ms.No.487. Thus, the issue for consideration devolves on the order passed by the Commissioner and the consequential proceedings.

5. On 08.06.1997 the Commissioner transferred the petitioner to Mahalakshmi temple in exercise of power vested in him under Section 39 of the Act.

6. A reading of first paragraph of the order would show that pursuant to the orders of the Government in G.O.Ms.No.63 dated 05.05.1997 Officers meeting was held by the Commissioner and in the interest of public service and for the better administration of religious institutions power under Section 39 (1) of the Act was exercised to transfer petitioner to Mahalakshmi temple. The purpose and objective to transfer the petitioner is clearly discernible and the order does not envisage transfer on deputation or for temporary period. Section 39 of the Act vests extraordinary power in the Commissioner, to affect transfer of an employee from one temple to another temple. Though the Section envisages formulation of Rules to regulate exercise of such power, the Rules were actually notified in the year 2000 vide G.O.Ms.No.888 dated 08.12.2000 called 'Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Office Holders and Servants Service Rules, 2000'. For the first time, the Rules therein prescribe that each institution or endowment shall be a unit for the purpose of recruitment, seniority and promotion (Rule 33). Thus prior to the year 2000 there was no such prescription either by the Rules or the administrative orders/instructions prescribing each temple as independent unit.

7. A plain reading of Section 39 of the Act, in the absence of any restriction imposed to exercise such power, coupled with the nature of order, as briefly noted above, would show that transfer of petitioner to Mahalakshmi temple was on permanent basis but not on temporary or adhoc or on deputation.

8. In view of the same the contention of learned Standing counsel, that each temple is an independent unit and the transfer of petitioner dated 08.06.1997 has to be viewed as a temporary transfer or transfer on deputation is rejected.

9. From a reading of the order, it cannot be inferred that the said transfer was temporary nor the subsequent Rules can be imported into the decision made on 08.06.1997. Further as rightly pointed out by Sri M.Rama Rao, after terminating the special assignment given to petitioner, by the proceedings of Commissioner dated 19.07.2002, petitioner was directed to report back to Mahalakshmi temple treating it as his parent unit. Petitioner continued in service until he attained the age of superannuation and retired from service from that temple.

10. Except for contending that the transfer affected to the petitioner on 08.06.1997 has to be viewed as a temporary transfer and petitioner does not belong to service of Mahalakshmi temple, no other plea is raised by the learned Standing Counsel.

11. Having regard to the assessment of the provision in Section 39 of the Act, as it stood when the petitioner was transferred and the order of transfer dated 08.06.1997, petitioner has to be treated as a permanent employee of Mahalakshmi temple and therefore, he was rightly granted pension. The subsequent order withdrawing the pension and the order of Commissioner rejecting the request of petitioner for restoration of pension is held to be illegal.

12. Accordingly, the Writ Petition is allowed. The respondents are directed to restore the pension to petitioner from the date it was stopped and shall pay arrears of amount due, within two (2) months from the date of receipt of copy of this order. The petitioner shall be paid interest @ 6% p.a., from the date of due till the date of payment. Pending miscellaneous petitions shall stand closed.

25th September, 2018
Rds

P.NAVEEN RAO,J

