

THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION No.290 OF 2001

ORDER:

The petitioner filed this writ petition to issue a Writ of Mandamus declaring the action of the respondents in not paying the salary to the petitioner from the month of April, 1994 till date of termination of the services of the petitioner as Record Assistant in Elamarru Group Temples by an oral order dated 06.01.2001, is bad and arbitrary, and consequently to direct the respondents to pay the arrears of salary to the petitioner.

2. The case of the petitioner is that he was appointed as Record Assistant on 01.10.1991 in the pay scale of Rs.350-10-460-15-550/- with D.A. at 50% and H.R.A. at 10%, by the Executive Officer of the Elamarru Group Temples. The Assistant Commissioner of Endowments – 2nd respondent through his Proceedings in D.Dis.No.A5/3453/92 dated 31.03.1992, sanctioned petitioner's salary in the Budget sanctioned for that year. The Elamarru Group Temples are registered as Group-C temples. There are no daily earnings to the temples. The Executive Officer used to pay the salaries to all the staff of the Group Temples twice in a year after getting Maktha from the cultivators of the land belonging to the temples. He was paid salary upto March, 1994. In spite of repeated requests, the Executive Officer has not paid the

salary to the petitioner from April, 1994 onwards. The 1st respondent – Executive Officer submitted a report through the Assistant Commissioner of Endowments, Vijayawada to the Commissioner of Endowments, Hyderabad to transfer the petitioner to some other temple having sufficient funds, but it did not fructify. Since last six years, the respondents have not paid salary to the petitioner. Then, the petitioner got issued a legal notice dated 13.09.2000 to the 1st respondent duly marking copies to the 2nd and 4th respondents. The respondents have not given any reply to the said legal notice.

The further case of the petitioner is that on 06.01.2001, the Executive Officer asked the petitioner not to come to duty from 07.01.2001 as his services were terminated, but the petitioner was not issued any termination order in writing. The punishment of termination is not based on any misconduct or enquiry or notice. The petitioner was not paid any salary nor was his termination supported by any charge sheet. Hence, he filed this writ petition.

3. The 4th respondent – Commissioner of Endowments, Hyderabad filed counter stating that he got conducted enquiry through an Enquiry Officer with regard to the services of the petitioner. The Enquiry Officer submitted his report on 12.08.2006. The enquiry reveals that the petitioner was appointed as Record Assistant temporarily on 01.10.1991 in the time scale of Rs.350-10-460-15-550 + D.A. at 50% in

Sri Ramalingeswara Swamy Temple, Elamarru. The entries in the Service Register of the petitioner are not attested by Executive Officer of the Temples. As seen from the temple file, there is no sanction of the post of Record Assistant in the establishment of Group Temples, Elamarru Village. The then Executive Officer of Group Temples has issued Proceedings dated 31.03.1992 that the petitioner was appointed as Record Assistant in Elamarru Group Temples in the time scale of pay of Rs.350-120-460-15-550/- per month with D.A. at 50% and H.R.A. at 10% of the basic pay with effect from 01.10.1991, in pursuance of the orders of the Assistant Commissioner, Endowments Department, Vijayawada in D.Dis. No.A5/3453/1992 dated 31.03.1992. His salary was ordered to be apportioned as mentioned below:

Sl. No.	Name of the Temple	Village	Pay	D.A.	H.R.A.	Total
01.	Sri Ramalingeswara Swamy Temple	Elamarru	Rs.150/-	Rs.70/-	Rs.18/-	Rs.235/-
02.	Sri Venugopala Swamy Temple	Elamarru	Rs.150/-	Rs.100/-	Rs.15/-	Rs.265/-
03.	Sri Sitharama Swamy Temple	Elamarru	Rs.50/-	Rs.5/-	Rs.35/-	Rs.90/-

The appointment order issued by the Executive Officer is irregular and illegal. The Executive Officer of Group Temples has submitted proposals to the Assistant Commissioner, Endowments Department, Vijayawada for enhancement of D.A. from 50% to 95% to the petitioner. The Executive Officer has submitted a report dated 23.01.1994 to the Assistant Commissioner, Endowments Department,

Vijayawada for promotion to the petitioner from the cadre of Record Assistant to the cadre of Junior Assistant. The successor Executive Officer has issued a notice dated 04.06.1994 to the petitioner informing that he has been paid salary upto the month of March, 1994 as per the budget sanctioned and that he has not been attending to duties from 01.04.1994 to 04.06.1994 without applying for leave and directed to issue a show-cause notice within a week as to why suitable disciplinary action should not be initiated against the petitioner. A show-cause notice was issued to the petitioner by the Executive Officer, but the petitioner has issued a notice to the Executive Officer which was received on 13.09.2000 to pay his arrears of salary from April, 1994 to September, 2000 and otherwise action would be taken through process of law. The Executive Officer has given reply to the notice on 21.09.2000. While the matters stood thus, the petitioner filed Writ petition No.290 of 2001 before this Court to declare the action of the Executive Officer in not paying the salary from April, 1994 to till date of termination of the services of petitioner orally as Record Assistant is illegal and arbitrary. Thereafter, the said writ petition was allowed *ex parte* by orders dated 12.10.2001, but the same was restored to file by order dated 19.07.2002 passed in WPMP No.30460 of 2001. In the meanwhile, the petitioner filed Contempt Case No.135 of 2002 on the ground that the orders of this Court dated 12.10.2001 in W.P.No.290 of 2001 have

not been implemented. Later, the Contempt Case was closed. The Deputy Commissioner of Endowments, Kakinada issued orders dated 12.02.1995 and 22.02.2002 deputing the petitioner to assist the Festival Officer during the festival scheduled to take place from 26.02.1995 to 28.02.1995 and from 11.03.2002 to 13.03.2002 in Sri Pathalabhogeswara Swamy Temple, Kalidindi Village & Mandal, Krishna District. The Executive Officers namely Sri V.Srirama Murthi, Executive Officer Grade-III who retired on 28.02.2002 and Sri K.Harihara Rao, Manager (under suspension) were found responsible for recommending the deputation of the petitioner without verifying into the service particulars of the petitioner and action is being contemplated against them for the lapses/irregularities committed by them. As seen from the records and proceedings dated 08.05.2002, the Commissioner in his proceedings in Rc.No.B1/1689/02, directed the Assistant Commissioner, Endowments Department, Vijayawada to enquire into the contents of the representation and submit a report. The Manager of the subject temple in his Letter No.Nil/02, dated 29.04.2002, submitted a detailed report regarding the court orders in W.P.No.290 of 2001. Basing on the report of the Manager of the temple, the Assistant Commissioner of Endowments, Vijayawada has submitted a detailed report in Letter No.A5/10095/01 dated 08.05.2002 duly enlightening all the facts and requested to accord permission to the person-in-management of the

temple to pay the arrear salaries due to the petitioner and to continue him as Record Assistant in Group Temples, Elamarru Village subject to final orders in WPMP No.30460 of 2001. In view of the fact that the appointment of the petitioner itself was irregular and he had been absconding from duties in spite of show-cause notice issued to him, there are no merits in the writ petition and hence it is liable to be dismissed.

4. On behalf of the 1st respondent, Sri K.V.L.Srinivasa Rao, the Person-in-Management of Sri Venugopala Swamy Temple, Elamarru filed counter-affidavit, mainly stating that though previously there is one Executive Officer for the Elamarru Group of Temples, which consists of Sri Venugopala Swamy Temple, Sri Rameswara Swamy Temple and Sri Sitarama Swamy Temple, by proceedings dated 31.08.2001, the Commissioner of Endowments appointed him on administrative reasons as Person-in-Management of Sri Venugopala Swamy Temple, Elamarru and likewise appointed one R.Ramadas as Person-in-Management of other two temples in Elamarru Group Temples. The petitioner was appointed by proceedings dated 31.03.1992 of the Executive Officer with effect from 01.10.1991. Due to paucity of funds, the salaries are paid once in 4 or 5 months. The petitioner worked as Record Assistant till the month of March, 1994 and thereafter he failed to attend the duties and nothing was heard about the petitioner for more than 6 ½ years till legal

notice dated 13.09.2000 was issued. Sri K.K.Basaveswarlu, the then Executive officer of Elamarru Group Temples, issued a notice dated 04.06.1994 to the petitioner to show cause why disciplinary action should not be initiated against him for his unauthorized absence from 01.04.1994 and the petitioner has not given any reply to the said show-cause notice. The petitioner made a representation to the Assistant Commissioner of Endowments through the Executive Officer on 05.12.1993 requesting the authorities to transfer him to Sri Valli Deva Seva Sametha Sri Subramanyeswara Swamy Vari Temple, Singarayapalem, Mudinepalli Mandal as it is nearer to his native place of Devapudi and the same was forwarded to the Assistant Commissioner by the Executive Officer by a covering letter dated 09.12.1993, and thereafter, no action was taken to transfer the petitioner as the petitioner abstained from duties since April, 1994 and never came to work in the Elamarru Group Temples. As the petitioner was abstained from duties since April, 1994, he is not entitled for any salary much less revised pay scales of 1993 and 1999.

5. Sri N.Guru Gopal, learned counsel appearing for the petitioner, would contend that the petitioner was appointed as Record Assistant on 01.10.1991 in the pay scale of Rs.350-580/- with D.A. at 50% and H.R.A. at 10% by the Executive Officer of the Elamarru Group Temples, as per the procedure in vogue. The 2nd respondent – Assistant Commissioner of Endowments sanctioned petitioner's salary through budget.

He was not paid salaries regularly by the 1st respondent – Executive Officer of the Elamarru Group Temples. He was paid salary upto March, 1994. The petitioner was not paid salary in spite of repeated requests. The petitioner was orally terminated from service on 06.01.2001. The termination is illegal, as no notice was served and no enquiry was conducted prior to his termination. Even the Deputy Commissioner of Endowments, Kakinada issued orders on 12.02.1995 and 22.02.2002 deputing the petitioner to assist the Festival Officer during the festival period. The petitioner got issued a notice on 13.09.2000 for payment of his arrears of salary from April, 1994 to September, 2000. The action of the respondents is arbitrary and illegal in not paying petitioner's salary and terminating the petitioner orally from service as Record Assistant. Being aggrieved, the petitioner filed the present writ petition. Finally, he prays to allow the writ petition.

6. Per contra, Sri G.Vivekananda, learned counsel appearing for the 1st respondent – Temple, would contend that the petitioner was appointed as Record Assistant by the 1st respondent without any sanctioned post of Record Assistant. Even the 1st respondent is not competent to appoint the petitioner as Record Assistant and as per rules, only the Commissioner of Endowments is competent to appoint the Record Assistant. The petitioner was paid salary upto April, 1994 and thereafter, the petitioner's whereabouts

were not known until issuance of legal notice by the petitioner on 13.09.2000. When the petitioner was absent for duties from 01.04.1994 to 04.06.1994, the respondents contemplated to issue show-cause notice of removal, but his whereabouts were not known. As the petitioner himself voluntarily absented from attending duties, he was not paid salary. The learned counsel further contended that absence from duty in the beginning may be misconduct, but when absence is for a longer period, it may amount to voluntary abandonment of service and in that eventuality, the bonds of service come to an end automatically without requirement of any order to be passed by the employer. In support of his contention, he placed his reliance on the Judgment of Hon'ble Apex Court rendered in Special Leave Petition (C) Nos.24220-24221 of 2007 dated 06.09.2013, wherein it is held that absence for a very long period may amount to voluntary abandonment of service, which comes to an end without passing any order. Therefore, as the petitioner abandoned his duties for longer period without applying any leave, he has not paid salary from April, 1994. There is no irregularity or illegality in non-payment of salary to the petitioner. Hence, the petitioner is not entitled for any relief from this Court.

7. The learned Assistant Government Pleader would contend that the petitioner has illegally appointed as Record Assistant by the 1st respondent, without any sanctioned vacancy. The Commissioner of Endowments alone is

competent authority to appoint any person in the post of Record Assistant. Hence, there is no merit in the case and the writ petition is liable to be dismissed.

8. In the facts and circumstances of the case, having regard to the contentions of the learned counsel and in considered view of this Court, it is found that the petitioner was appointed as Record Assistant illegally by the 1st respondent, without any sanctioned vacancy and as per rules, the Commissioner of Endowments alone is competent to make an appointment to the post of Record Assistant. However, the petitioner was paid salary upto April, 1994 and thereafter he voluntarily absented from duties, and his whereabouts were not known until issuance of legal notice by the petitioner on 13.09.2000. The learned counsel for the 1st respondent – Temple rightly submitted that voluntary abandonment of service and in that eventuality, the bonds of service come to an end automatically without requirement of any order to be passed by the employer as held by the Hon'ble Apex Court in Special Leave Petition (C) Nos.24220-24221 of 2007 dated 06.09.2013. Hence, the petitioner is not entitled for any relief much less arrears of salary from April, 1994 to September, 2000 and also reinstatement.

9. Accordingly, the Writ Petition is dismissed. No order as to costs.

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

JUSTICE M.GANGA RAO

03-08-2018
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