

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

WVMP.No.273 of 2017 in WPMP.No.52454 of 2016 in
WP.No.42538 of 2016

and

WP.No.42538 of 2016

COMMON ORDER :

The petitioner herein was employed as Archaka in the 1st respondent religious institution on 29.08.2008. He was later promoted as Mukya Archaka on 05.07.2011. Since he possessed the qualification of 'Archaka Pravara', he was promoted to the next higher post of Upa Pradana Archaka on 21.11.2012 and was put on probation for a period of two years.

2. Subsequently, on 01.07.2016, he was placed on suspension as a measure of punishment for a period of two months from that date on the ground on insubordination.

3. Thereafter, on 03.07.2016, another show-cause notice was issued to him by the 1st respondent to show-cause why he should not be reverted from the post of Upa Pradana Archaka to the post of Mukya Archaka on the ground that he did not have two years' service in the cadre of Mukya Archaka.

4. The petitioner gave explanation to the same on 09.07.2016 stating that he was discharging the duties of the Office of Upa Pradana Archaka and though he was suspended for two months, his conduct may be condoned and he may not be imposed any further punishment of reversion.

5. On 13.10.2016, the 1st respondent passed the impugned order stating that the petitioner had completed two years period of probation in the post of Upa Pradana Archaka only on 21.11.2012 by which date on 01.07.2013, the 4th respondent had become eligible for promotion to the said post and since the 4th respondent was senior to the petitioner, the petitioner is liable to be reverted. It is also further stated that petitioner also deserves the punishment of reversion on the ground that he threatened the Temple-Inspector for calling explanation for his unauthorized absence and a police complaint was also registered against the petitioner.

6. Assailing the same, the present Writ Petition is filed.

7. On 07.12.2016, the Writ Petition was admitted and in WPMP.No.52454 of 2016, interim suspension of the impugned order dt.13.10.2016 was granted.

8. Notice sent to the 4th respondent was served, but there is no representation on behalf of 4th respondent.

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9. WVMP.No.273 of 2017 is filed to vacate the order dt.07.12.2016 passed in WPMP.No.52454 of 2016 in WP.No.42538 of 2016.

10. The counsel for petitioner contended firstly that the 1st respondent cannot review his own order promoting the petitioner on

21.11.2012 since there is no such power of review conferred on the 1st respondent.

11. Smt. K. Lalitha, counsel appearing for 1st respondent, is unable to show any provision in the Rules relating to powers of the 1st respondent which entitles him to review the orders of promotion already made by him.

12. The counsel for petitioner also contended that nowhere in the service rules contained in the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Archakas and Other Office Holders and Servants Qualifications and Emoluments Rules, 2001, introduced vide G.O.Ms.No.261 Revenue (Endowments-I) dt.20.05.2002, a minimum period of service in the post of Mukya Archaka is prescribed for promotion to the post of Upa Pradana Archaka; and that the very basis of the show-cause notice that the petitioner did not have minimum two years' service in the post of Mukya Archaka prior to his promotion as Upa Pradana Archaka, is contrary to the Rules.

13. A perusal of the Services Rules referred to above, corroborate the stand of the counsel for petitioner and show that no minimum period of service in the cadre of Mukya Archaka is prescribed for promotion to the post of Upa Pradana Archaka.

14. The stand taken in the counter-affidavit by the 1st respondent is that the 4th respondent acquired the requisite qualification of pass in

‘Archaka Pravara’ examination on 24.04.2013 before 01.07.2013, the date on which the petitioner completed his probation and became eligible to draw the scale of pay in the post of Upa Pradana Archaka; and it is stated that since the 4th respondent is also qualified and senior to petitioner, the petitioner is entitled to be reverted and the 4th respondent accommodated in the post of Upa Pradana Archaka.

15. This stand of the 1st respondent cannot be countenanced for the reason that on 21.11.2012 when petitioner was promoted to the post of Upa Pradana Archaka, though the petitioner was junior to 4th respondent he alone possessed the qualification of pass in ‘Archaka Pravara’ examination, and the 4th respondent did not have that qualification. Therefore, the question of the 4th respondent becoming eligible for promotion to the post of Upa Pradana Archaka on the basis of his seniority and his subsequent pass in the said exam on 24.04.2013 does not arise. As on 21.11.2012, the petitioner was rightly promoted to the post of Upa Pradhana Archaka.

16. Lastly, the petitioner had already been punished on 01.07.2016 by imposition of punishment of suspension for a period of two months for the misconduct of arguing with the temple inspector. He cannot be punished again by the impugned order by reverting him from the post of Upa Pradana Archaka for the same reason.

17. It is not disputed by the learned Standing Counsel for 1st respondent that the police case initiated against the petitioner was never pursued and that a certificate dt.03.08.2017 was issued by the

Circle Inspector, Jaggayyapet that no criminal case is pending against him.

18. In this view of the matter, the action of the 1st respondent in reverting the petitioner through the impugned order dt.13.10.2016 is illegal, arbitrary and violative of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987, and the Rules referred to above.

19. Accordingly, the impugned order dt.13.10.2016 passed by the 1st respondent is set aside. The 1st respondent is directed to restore the petitioner to the post of Upa Pradana Archaka and pay wages from 13.10.2016 till date and also consequential benefits to petitioner within a period of three (03) months from the date of receipt of copy of the order.

20. The 1st respondent shall also pay costs of Rs.2,000/- to the petitioner.

21. Accordingly, the Writ Petition is allowed, and WVMP.No.273 of 2017, which was filed to vacate the order dt.07.12.2016 passed in WPMP.No.52454 of 2016 in WP.No.42538 of 2016, is dismissed.

22. As a sequel, miscellaneous petitions pending if any in this Writ Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 29.01.2018

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