



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.11.2020

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.(MD)Nos.3284 and 18095 of 2015

and

M.P.(MD)Nos.1,1,2 & 2 of 2015

WEB COPY

M.Kannan

... Petitioner in both W.Ps.

Vs.

- 1.The Commissioner,
The Hindu Religious Charitable Endowment,
119, Uthamar Gandhi Street,
Nungambakkam, Chennai-34.
- 2.The Joint Commissioner,
Arulmigu Nellaiappar Gandhimathi Amman Thirukovil,
Tirunelveli-2.
- 3.The Assistant Commissioner,
Office of the Assistant Commissioner,
The Hindu Religious Charitable Endowment,
Tirunelveli.
- 4.The Executive Officer,
Arulmigu Nellaiappar Arultharum Gandhimathi Amman Thirukovil,
Tirunelveli.

...Respondents in both W.Ps.

Prayer in W.P. (MD)No.3284 of 2015: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the impugned order passed by the fourth respondent in Na.Ka.No.60/2015/A6, dated 29.01.2015 rejecting the petitioner's Service as "Othuvar" of the 4th Respondent Temple and to quash the same as illegal and direct the respondents to reinstate the petitioner in service as "Othuvar" and to regularize the service of the petitioner.

Prayer in W.P.(MD)No.18095 of 2015: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the impugned employment notification in Se.Ve.Order No.430 of 2015, dated : nill on the file of the third and fourth respondents herein and quash the same as illegal as far as one of the said post of othuvar is concerned and direct the respondents to resume the service of the petitioner to the post of Othuvar as has been served by the petitioner for more than 240 days.



For Petitioner : Mr.J.Ashok in WP(MD)Nos.3284 of 2015
Mr.K.R.Laxman in WP(MD).18095 of 2015

For R1 to R3 : Mr.K.P.Narayana Kumar
(in both WPs) Special Government Pleader

For R4 : Mr.R.R.Kannan
(in both W.Ps.)

COMMON ORDER

The orders dated 29.01.2015 and 27.09.2015 passed by the Executive Officer of the fourth respondent temple are under challenge in the present writ petition. Further direction is sought to reinstate the petitioner in service as Othuvar and regularise the services of the petitioner.

2.The learned counsel appearing for the petitioner states that the petitioner was appointed in the fourth respondent Arulmigu Nellaiappar Arultharum Gandhimathi Amman Thirukoil as Othuvar in December 2013. The petitioner was appointed on daily wage basis. The daily wages are calculated and the monthly amounts was paid.

3.The grievances of the petitioner are that all along, he is working as daily wage employee in the post of Othuvar and suddenly, the services are terminated. Thus, the order impugned is sought to be quashed.

4.The learned counsel for the petitioner has made a submission that the fourth respondent has not provided any opportunity to the writ petitioner to defend his case. Thus, the order is liable to be scrubbed. The petitioner, due to some unavoidable circumstances, was not in a position to attend duty on some occasions and that was not considered and the respondent has terminated his service without following the procedures contemplated.

5.The learned counsel appearing on behalf of the respondents opposed the contention by stating that the petitioner, while continuing as daily wage Othuvar, due to health reasons, the petitioner was unable to attend daily poojas and accordingly, not attended duty. The daily poojas are conducted in the temple without any Othuvar. Thus, the devotees are unsatisfied. He was appointed only on daily wage basis and steps are to be taken to appoint regular Othuvar by following the procedures and Rules in force. It is brought to the notice of the authority that the petitioner was acting in violation of the temple Agamas and the customs of the temple are not followed properly. Frequent such violations are brought to the notice of the authorities. Under those circumstances, the Executive Officer passed an order stating that the services of the petitioner is unable to be utilised and another Othuvar on daily wage basis is engaged for the purpose of continuing poojas in a peaceful manner and as per the customs and practice prevailing in the temple.



6.This Court is of the considered opinion that the petitioner was engaged only as daily wage Othuvar. Thus, he cannot claim any right to regularise his services. Once initial appointment is not in accordance with law, regularisation or permanent absorption cannot be granted. All appointments to the post of Othuvars are to be done strictly in accordance with the Rules in force and by following the procedures contemplated. Equal opportunity in public employment is the constitutional mandate. All eligible person, who all are aspiring to secure, are to be considered at the time of undertaking the process of selection through open competitive process. Thus, the authority competent are bound to provide equal opportunity to all the eligible candidates to participate in the selection process. Mere temporary daily wage employment cannot be a ground to seek permanent absorption or regularisation of the services. Admittedly, the petitioner was engaged as daily wage employee. He was irregular in attending the daily poojas and the authorities competent received frequent complaints against him. Thus, they have engaged another Othuvars on daily wage basis.

7.This being the factum, this Court is of the considered opinion that the claim of the petitioner for reinstatement or for regularisation cannot be considered in view of the Judgment of the Constitution Bench of the Hon'ble Supreme Court of India in the case of ***Uma Devi Vs. State of Karnataka*** reported in **(2006) 4 SCC page 1**. The Apex Court, in an unequivocal terms, held that the regularisation or permanent absorption cannot be granted in violation of the Rules. The daily wage employee has no right to seek regularisation in violation of the Rules. When the initial appointment was not in accordance with the Rules in force, then, the appointment is to be construed as irregular or illegal.

8.This being the principles settled, this Court is of the considered opinion that the claim of the petitioner cannot be considered at all. However, the petitioner is at liberty to participate in the process of selection, if any notification is issued for selection to the post of Othuvar by the competent authorities.

9.With these observations, these Writ Petitions stand dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(Writs)

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/ /2020

Sub Assistant Registrar(CS)



To

- 1.The Commissioner,
The Hindu Religious Charitable Endowment,
Nungambakkam, Chennai-34.
- 2.The Joint Commissioner,
Arulmigu Nellaiappar Gandhimathi Amman Thirukovil,
Tirunelveli.
- 3.The Assistant Commissioner,
Office of the Assistant Commissioner,
The Hindu Religious Charitable Endowment,
Tirunelveli.

+1 CC to M/s.R.R.KANNAN, Advocate (SR-23285[F] dated 30/11/2020)

+1 CC to M/s.GP (SR-23353 & 23354 [F] dated 30/11/2020)

W.P.(MD)Nos.3284 and 18095 of 2015
27.11.2020

ck(CO)

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