



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.07.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P(MD)Nos.11332, 11333, 11334 & 11335 of 2021

WEB COPY

Baskar ... Petitioner in W.P(MD)No.11332/2021
Vasantharaj ... Petitioner in W.P(MD)No.11333/2021
Sumathi ... Petitioner in W.P(MD)No.11334/2021
Devi ... Petitioner in W.P(MD)No.11335/2021

vs.

1.The Commissioner,
Hindu Religious and Charitable Endowment Department,
Chennai - 600 034.

2.The Joint Commissioner,
Arulmighu Mariamman Temple,
Samayapuram,
Trichy District.

... Respondents in all W.Ps'

Common Prayer: Writ Petitions are filed under Article 226 of the Constitution of India for issuance of Writs of Mandamus, directing the respondents to regularize the petitioners' service with effect from the date of joining of the petitioners with the second respondent Temple with backwages, attendant benefits and continuity of service.

For Petitioner	: Mr.K.K.Samy
(In all W.Ps')	
For Respondents	: Mr.K.S.Selva Ganesan
(In all W.Ps')	Government Advocate

COMMON ORDER

The petitioners has filed the present Writ Petitions, to direct the respondents to regularize their services with effect from the date of their joining with the second respondent Temple with backwages, attendant benefits and continuity of service.

2.According to the petitioners, on seeing the Notice Board displayed in the second respondent Temple, the petitioners applied for the posts of Watchman, Watchman, Thiruchutru and Thiruchutru respectively. The Board of Trustees of the second respondent conducted an interview and in the meeting held on 31.01.2011, passed a resolution selecting the petitioners to the above mentioned posts. By the letter, dated 14.02.2011, the second respondent sent the proposal to the first respondent for approval of the appointment of the petitioners. The first respondent approved the appointment of the petitioners. Following the same, the second respondent issued

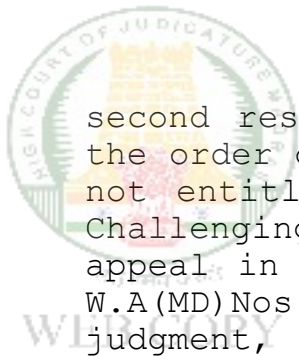


appointment orders to all the petitioners on 25.02.2011. The petitioners joined as Watchman, Watchman, Thiruchutru and Thiruchutru respectively in the second respondent Temple on 27.02.2011. While so, the Manager of the second respondent did not allow the petitioners to sign the Attendance Register. The petitioners sent representations and filed writ petition in W.P(MD) No.7745 of 2011. This Court, by common order, dated 27.06.2012 dismissed the writ petitions. Aggrieved against the said order of dismissal, the petitioners filed writ appeals in W.A(MD)No.760 of 2012 and W.A(MD)Nos.94 and 95 of 2014. A Division Bench of this Court, by the judgment, dated 26.04.2017 dismissed the writ appeals in W.A(MD)Nos.94 & 95 of 2014 and the another Division Bench of this Court, by the judgment, dated 10.02.2021, dismissed the writ appeal in W.A(MD)No.760 of 2012. The petitioners have come out with the present writ petitions for a direction to the respondents to regularise their services with effect from the date of joining on the second respondent temple with back wages, attendant benefits and continuity of service.

3.The learned counsel appearing for the petitioners contended that there cannot be any oral termination. The petitioners cannot suffer for the mistake committed by the Officials. The oral termination is opposed to public policy. The learned counsel appearing for the petitioners further submitted that as per the judgment of the Hon'ble Apex Court in **National Buildings Construction Corporation vs. S.Raghunathan and others** reported in **1998(7) SCC 66: (1999) 1 M.L.J 27 (SC)**, the Doctrine of Legitimate Expectations can be invoked, as petitioners were selected and appointed by following due process of selection. According to the learned counsel appearing for the petitioners, the petitioners are not terminated and they are continuing to discharge their duties in the posts to which, they are appointed even today, and prayed for allowing the writ petitions.

4.Heard the learned counsel appearing for the petitioners and the learned Government Advocate appearing for the respondents and perused the materials available on record.

5.From the materials on record, it is seen that it is a case of the petitioners that they were appointed in the posts of Watchman, Watchman, Thiruchutru and Thiruchutru respectively in the second respondent Temple by the Board of Trustees after following due process of selection. Their appointments were approved by the first respondent. They joined duty, but the Manager of the second respondent Temple did not allow them to sign the attendance register. The petitioners filed writ petition in W.P(MD)No.7745 of 2011 for Mandamus to direct the second respondent to permit the petitioners to sign the attendance register. This Court, by order, dated 27.06.2012, considering the contention of the learned counsel appearing for the petitioners as well as the stand taken by the



second respondent, dismissed the writ petition holding that unless the order of termination is declared as illegal, the petitioners are not entitled to the relief sought for in the said writ petition. Challenging the said order of dismissal, the petitioners filed writ appeal in W.A(MD)No.760 of 2012 and some of the petitioners filed W.A(MD)Nos.94 and 95 of 2014. A Division Bench of this Court, by the judgment, dated 26.04.2017, dismissed the writ appeals in W.A(MD) Nos.94 & 95 of 2014, by passing the following order:-

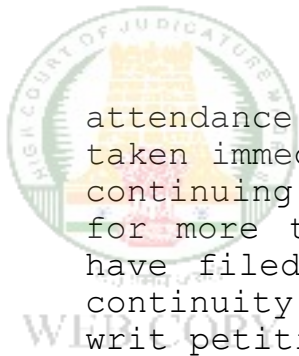
"2. These Writ Appeals are directed against the order, dated 27.06.2012 made in W.P(MD)Nos.7744 & 7747 of 2011.

3.The appellants filed the Writ Petitions seeking a direction tot he second respondent to permit them to sign the Attendance Register.

4. The above said Writ Petitions were dismissed on the ground that unless the termination is declared as illegal, a direction cannot be given for restoration of the appellants in service. Furthermore, the respondents 1 and 2 took a specific stand that without calling for applications from the Employment Exchange and without any advertisement and without conducting interview, the appellants claimed to have been appointed and such appointment is wholly illegal. Thus, we are in entire agreement with the view expressed by the learned Single Judge, in W.P(MD) Nos.7744 to 7748 and 9490 of 2011. Accordingly, the impugned order does not call for any interference by us. Hence, there Writ Appeals are dismissed. No costs."

Another Division Bench of this Court, by the judgment, dated 10.02.2021, following the judgment of this Court, dismissed the writ appeal in W.A(MD)No.760 of 2012. From the common order, dated 27.06.2012 made in W.P(MD)No.7745 of 2011 as well as the judgments, dated 26.04.2017 and 10.02.2021 made in the writ appeals, it is seen that this Court has held that unless the order of termination is declared as illegal, the petitioners are not entitled to the relief sought for in the above proceedings. The petitioners have not taken any steps for declaration of their termination as illegal. On the other hand, in the present writ petitions, in one place they have stated that they are not terminated and continuing to discharge their duties till date. In another place, the petitioners have stated that oral termination is illegal and there cannot be any oral termination.

6.In the present writ petitions, the petitioners are seeking regularisation of their services, back wages and continuity of service from the date of their appointments. According to the petitioners, they were appointed on 27.02.2011. If the petitioners are permitted to discharge their duties without signing the



attendance register and not paid with salary, they ought to have taken immediate steps for payment of salary by proving that they are continuing their duties till date. According to the petitioners, for more than 10 years, they worked without salary and now, they have filed the writ petitions for regularisation, back wages with continuity of service. In view of the order passed in the earlier writ petitions and writ appeals filed by the petitioners, unless the order of termination is declared as illegal, the petitioners are not entitled to the relief sought for in the present writ petitions. Further, the petitioners are seeking to issue Writs of Mandamus without making any representation to the respondents for the relief sought for in the writ petitions. A writ of Mandamus can be issued only when the respondents failed to discharge their duties in considering and passing orders on the representations given by the petitioners, when they are legally bound to do so.

7.For the above reasons, all the Writ Petitions fail and they are liable to be dismissed as devoid of merits. Accordingly, these Writ Petitions are dismissed. No costs.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

ps

Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1.The Commissioner,
Hindu Religious and Charitable Endowment Department,
Chennai - 600 034.

2.The Joint Commissioner,
Arulmighu Mariamman Temple,
Samayapuram,
Trichy District.

+2 CC to M/s.K.K.SAMY, Advocate (SR-21595[F] dated 08/07/2021)

+1 CC to M/s.SPL GP (SR-21938[F] dated 09/07/2021)

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