

(1998) 12 AP CK 0081

In the Andhra Pradesh High Court

Case No : Writ Petition No. 2148 of 1997 and Batch

B. Satyanarayana and others

APPELLANT

Vs

Tirumala Tirupathi Devasthanam and others

RESPONDENT

Date of Decision : 10-12-1998

Acts Referred:

Constitution of India, 1950 — Article 14, 226
Industrial Disputes Act, 1947 — Section 25

Citation : (1999) 2 ALD 268(1) : (1999) 1 ALT 383 : (1999) 1 APLJ 130

Hon'ble Judges : S.R. Nayak, J

Bench : Single Bench

Advocate : M/s. K. Venkata Ramaiah, K. Vasudeva Reddy, Prattipati Venkateshwarlu, M. Ramalingeswara Rao and K. Jayakumar, for the Appellant; Mr. A.K. Jayaprakash Rao, SC for T.T.D, for the Respondent

Judgement

1. The question which substantially arise for consideration and decision in all these writ petitions are similar. Hence, these writ petitions were clubbed and heard together and they are being disposed of by this common order.

2. Although the petitioners in this batch of writ petitions prayed for reliefs differently, what the petitioners essentially pray is for issuance of a writ of mandamus to the administration of the Tirumala Tirupathi Devasthanams (for short "the TTD") either to continue their services or to regularise their services in the posts held by them before termination of their services. Let the Court first state the undisputed facts. The petitioners came to be engaged in the establishment of the TTD (Kalyana Mandapam) either as watchmen or scavengers or attenders or Sweepers, either on daily-wage basis or casual or temporary basis. It is an admitted position that when the services of the petitioners were engaged during the years 1988, 1989 and 1990, their initial engagement was not against any existing vacancies or sanctioned posts. In other words, their engagements were extra-cadre in nature. According to the management, the services of the petitioners were disengaged with effect from 3-9-1996, whereas according to some of the petitioners their services were

continued till December, 1997. This controversy need not be gone into by the Court for the purpose of deciding these writ petitions. In the case of some petitioners, in pursuance of the earlier direction issued by this Court to consider the cases of the petitioners for regularisation in terms of law and relevant regulations, their cases were considered and the same were rejected. The said action was also assailed in WP No. 23553 of 1998.

3. Assailing the validity of the action of the administration of the TTD, in terminating the services of the petitioners, learned Counsel appearing for the petitioners contended that the action smacks of arbitrariness and was in violation of principles of natural justice; that the petitioners are workmen within the meaning of that term as defined in the Industrial Disputes Act (for short "the Act") and since they had put in more than 240 days of service before termination of their services, the administration of the TTD ought to have complied with the mandatory provisions of Section 25-F or 25-N of the Act, as the case may be, and that since admittedly that was not done, the action of the administration in terminating the services of the petitioners should be held to be illegal and invalid. The learned Counsel would also point out that in some cases, the administration itself chose to regularise the services of the similarly situated daily-wagers and casuals and the refusal to extend the same treatment to the petitioners tantamounts to an invidious discrimination and violates Article 14 of the Constitution of India. The learned Counsel for the petitioners would also contend that the plea taken by the administration of the TTD in the counter that there was no need to continue the services of the petitioners was apparently an incorrect statement, and the very fact that they thought it necessary to entrust the same work to contractors in the month of February, 1998 shows that there was need for the services of the petitioners.

4. On the other hand, Sri. A.K. Jayaprakash Rao, learned Standing Counsel for the administration of the TTD would submit that if the law laid down in the Judgment of this Court in G. Sudhakar and 98 others Vs. L.I.C. of India, Divisional Office, Saifabad, Hyderabad and others, , were to be applied, no case is made out to issue a writ of mandamus either for regularisation of the services of the petitioners or to continue the petitioners in service. The learned Standing Counsel would maintain that since the petitioners came to be appointed on daily wage basis to meet the then temporary needs of the administration, they do not have any vested right to the reliefs as prayed for in the writ petition.

5. Adverting first to the prayers of the petitioners for regularisation, suffice it to state that this Court recently had an occasion to deal with the law governing the relief of regularisation. The Court after considering the opinions of the Supreme Court in 1996 VIII AD 680 (SC) , in Ashwani Kumar and Others Vs. State of Bihar and Others, , in P. Ravindran and Others Vs. Union Territory of Pondicherry and Others, and in P. Rama Krishna v. State of Kerala (1996) 1 SCC 565; concluded in G. Sudhakar v. Life Insurance Corporation of India (supra) in paragraph-7 of the judgment thus:

"What could be gathered from the above decisions of the Supreme Court is that in order to grant relief of regularisation, two conditions, called conditions precedent should co-exist. The first condition is that the entry of the applicant for the writ on temporary or ad hoc basis should be against a existing vacancy. The second condition is that his appointment was made after going through the selection procedure laid down by the relevant recruitment rules. In the present case, admittedly the appointments of the petitioners on daily wage basis/ad hoc basis/temporary basis were made de hors the relevant Statutory Recruitment Rules. On that short ground, the petitioners are not entitled to the relief."

6. Admittedly, in the instant cases, the petitioners do not satisfy these two conditions, called, "conditions precedent" by the Supreme Court. Therefore, issuing writ of mandamus to the administration of the TTD to regularise the services of the petitioners does not arise.

7. Now coming to the contention of some to the petitioners that in terminating the services of the petitioners the administration of the TTD breached the mandatory provisions of Section 25-F or 25-N of the Act, as the case may be, it is relevant to note at the threshold that the questions whether the activity carried on by the TTD could be termed as an "industry" and whether the petitioners could be treated as "workmen" within the meaning of those terms, as defined in the Act, are mixed questions of fact and law, and those questions have to be answered on the basis of the evidence to be led by the parties in an appropriate adjudication. In other words, they are incidence of fact. In order to record finding on these jurisdictional facts, production of evidence and appreciation of the same become necessary. Further-more, from the pleadings, there seems to be controversy regarding the continuous service of 240 days put in by the petitioners. Therefore, I do not think it appropriate for this Court to investigate into the facts and decide on these jurisdictional issues, in a summary proceeding under Article 226 of the Constitution of India. Therefore, the claim of the petitioners that the TTD is an "industry" and that they are "workmen" and they are entitled to the protection of Section 25-F or 25-N of the Act is kept open to be agitated by the petitioners before the jurisdictional Industrial Court, if they are so advised to pursue the remedies before the Industrial Court. Since the petitioners were admittedly engaged on casual or daily wage basis, it was permissible for the administration of the TTD to dispense with their services when it found that there was no need to continue the services of the petitioners. That is the settled position in law.

8. Meeting the argument of the learned Counsel for the petitioners that the very fact that in the month of February, 1998 the works for which the petitioners were engaged earlier were entrusted to the contractors shows that there was need for the services of the petitioners, suffice it to state that even assuming that there was need for the services of the petitioners, it was very much within the realm of power of administration of the TTD to decide their own affairs in the premise of feasibility, expediency and costing and decide whether the earlier method should

be continued or new method be adopted. Therefore, discontinuation of the services of the daily wagers and casuals and entrustment of the works done by them to the contractors by the TTD cannot be found fault with. The Court cannot overstep its power and act like a supreme manager in the realm of administration of the TTD. The crux of the matter is whether the petitioners in these writ petitions have made out any legally permissible ground so as to enable them to writ of mandamus. Writ of mandamus cannot be issued unless it is shown that the applicants for the writ have enforceable right against the respondents and the respondents have a reciprocal obligation to respect the rights of the applicants. Such a situation is not obtaining in the instant cases.

9. Lastly, advertent to the argument of discrimination, suffice it to slate that even assuming that the TTD regularised the services of certain ineligible persons, that would not justify a claim by another ineligible person, as settled by the decisions of the Supreme Court in *State of Orissa Vs. Durga Charan Das*, , and in *Gursharan Singh and others etc. Vs. New Delhi Municipal Committee and others*, .

10. Before concluding, I make it very clear that if the petitioners institute Industrial Disputes before the jurisdictional Labour Court for the reliefs, such Labour Court shall decide the disputes strictly on merits and in accordance with the provisions of the Industrial Law without being influenced, in any way, by any of the observations made in this order.

11. In the result, the writ petitions fail and they are accordingly dismissed. No costs.