
(2004) 06 AP CK 0014

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 3641 of 1996 and 1593 of 1997

D. Nagulu Naidu

APPELLANT

Vs

Executive Officer, TTD

RESPONDENT

Date of Decision : 18-06-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2005) 1 ALD 643 : (2004) 2 APLJ 407

Hon'ble Judges : G. Rohini, J

Bench : Single Bench

Advocate : Ghanta Rama Rao, for the Appellant; V. Meenakshi, for the Respondent

Judgement

G. Rohini, J.—One Sri D. Nagulu Naidu is the petitioner in these two writ petitions. In WP No. 3641 of 1996 the petitioner is assailing the proceedings of the Respondent - Tirumala Tirupathi Devasthanams (TTD) dated 30-1-1996 whereunder the petitioner was held to be not entitled for appointment as Electrician in the service of TTD.

2. Pending the said writ petition, by proceedings dated 12-7-1996 the petitioner was appointed as Electrician with effect from the date of his acquiring I.T.I., qualification. However, subsequently the said order of appointment was withdrawn by the TTD vide proceedings dated 19.12.1996. Challenging the said proceedings dated 19-12-1996, the petitioner filed WP No. 1593 of 1997.

3. The facts which are common to both the writ petitions may be noted in brief:

The petitioner was initially appointed in the year 1979 as NMR Skilled Electrician in Tirumala Tirupati Devasthanams Museums at Tirupathi on temporary basis. Some of the temporary employees of TTD including the petitioner herein filed WP No. 17190 of 1987 seeking regularization of services from the date of their initial appointments and for payment of regular scale of pay as well as all consequential benefits. This Court by order dated 1-2-1988 granted interim directions to pay

the salary in regular pay scale attached to the concerned post held by the petitioners therein. It appears that though the said interim directions were implemented with regard to many of the petitioners in the said writ petition, so far as the petitioner herein the scale of pay was not granted. The petitioner filed WP No. 10454 of 1988 seeking a direction for regularization of services in the category of Electrician from the date of his initial appointment in terms of G.O. Ms. No. 296, Revenue (Endowments-III) Department, dated 19-4-1988. By order dated 8-7-1988 in WPMP No. 13093 of 1988 interim orders were granted directing the respondent TTD to pay the salary to the petitioner in the scale of Rs. 1150-2100 attached to the post of Electrician forthwith.

4. It is to be noted that by that time the Government issued G.O. Ms. No. 296, dated 19-4-1988 directing that the services of the persons appointed on NMR Basis/Casual Labour Basis/Consolidated Pay Basis in TTD during the period from 1-1-1979 to 31-3-1984 shall be regularized with immediate effect without insisting that their appointments should be through the medium of employment exchange and also relaxing the rule of reservation as required under the rules in force. In terms of the said orders, the Executive Officer of TTD issued proceedings dated 30-10-1990 absorbing the petitioner as a Helper with effect from 19-4-1988 in the Electrical Department in TTD. Thereafter, by proceedings dated 18-6-1992, the petitioner along with several other Helpers in the Electrical Department was promoted as Assistant Wireman (Electrical) in the scale of Rs. 780-20-1000-25-1275. On such promotion, the petitioner was ordered to work in S.V. Museum, Tirupathi till a substitute was posted.

5. Admittedly by that date the petitioner was not possessing the qualification of ITI which is a requisite qualification for the post of Electrician. However, in the year 1993 he acquired ITI qualification and thereafter he filed WP.No. 14282 of 1994 seeking a declaration that he is entitled to regular scale of pay attached to the post of Electrician with effect from his initial appointment as NMR on 12-8-1979 on par with other employees of TTD. He also sought a declaration that the proceedings dated 30-10-1990 absorbing him in the lower post of Helper is arbitrary and illegal. His contention in the said writ petition was that the respondent TTD ought to have regularized his services as Electrician in terms of G.O. Ms. No. 296, dated 19-4-1988 since he was initially engaged as NMR Skilled Electrician and since then he has been discharging the duties of Electrician. It was also contended that several others who were juniors to him were absorbed in the post of Electrician. The said writ petition was contested by TTD contending inter alia that the petitioner does not possess the requisite qualification to be appointed as Electrician and that he was only appointed as Helper, but not as an Electrician. The said writ petition was allowed by this Court by order dated 23-1-1995. This Court having noted the fact that the petitioner has already acquired the requisite qualification and that throughout the respondent extracted the work of an Electrician from the petitioner, directed the respondent-TTD to appoint the petitioner in the post of Electrician from the date on which his juniors were appointed or at least from the date of his extracting the work of- Electrician

after the petitioner acquired the requisite qualification for being appointed as an Electrician. It was also held that if the petitioner is appointed as such, he will not be entitled for the difference of salary up to the date of the said order however, he will be entitled for all other benefits like increments seniority and etc. Time for complying the said order was fixed as 3 months. Admittedly, the respondent-TTD did not prefer any appeal against the said order in WP.No.14282 of 1994 and the same has become final.

6. In pursuance thereof, the respondent TTD issued proceedings dated 30-1-1996 informing the petitioner that his claim has been considered in the light of the order in WP No. 14282 of 1994, but he was found ineligible for appointment as Electrician under the provisions of the Service Rules in G.O. Ms. No. 1060, Revenue (Endowments-I) Department, dated 24-10-1989 and that his juniors were not appointed or promoted as Electrician and that he never discharged the duties of an Electrician. In the said order, it was explained that as per G.O. Ms. No. 1060, dated 24-10-1989 the post of Electrician is a promotional post which is three steps above the post of Helper. It was also stated that the duties of an Electrician are different and that as per the remarks of the concerned officer the petitioner was not discharging all the work of the Electrician and that no junior to the petitioner was appointed or promoted as Electrician. Challenging the said order dated 30-1-1996, the petitioner filed WP No. 3641 of 1996.

7. While so, the respondent-TTD by order dated 17-5-1996 transferred the petitioner from Tirupathi to Tirumala. Challenging the said order, the petitioner filed WP No. 1064 of 1996. Pending the said WP, the petitioner sought for interim stay of the order of transfer. However, this Court by order dated 7-6-1996 ordered that the impugned order of transfer shall be subject to final orders in the writ petition. Aggrieved by the same, the petitioner filed WA No. 620 of 1996. The Division Bench by order dated 18-6-1996 while directing notice before admission, stayed the impugned proceedings of transfer. The Division Bench, having perused the counter-affidavit of the respondents and after hearing both the parties, by order dated 4-7-1996 initiated contempt proceedings against the respondents therein in exercise of the plenary power under Article 215 of the Constitution of India observing that the findings arrived at in the earlier writ petition were sought to be disputed by the respondents and attempt was made to say that the appellant never worked as an Electrician although such a finding was recorded in WP No. 14282 of 1994. The Division Bench expressed that persistent and defiant adherence to facts which were already adjudicated and compelling a person to go from litigation to litigation in itself constitutes wilful disobedience of the orders of the Court and directed the matter to be posted on 15-7-1996 for appearance of the Contemnors.

8. In the meanwhile, the Executive Officer, TTD issued proceedings dated 12-7-1996 appointing the petitioner as Electrician with effect from the date of his acquiring ITI. (Electrician Trade) qualification in the scale of pay of Rs. 2,195/-

Rs. 4,560/- and posted him as Electrician against the existing vacancy under the control of Divisional Engineer (Elec), TTD., Tirumala. The said fact was reported to this Court on 15-7-1996 and consequently the Division Bench closed the contempt proceedings and the writ appeal was also disposed of.

9. It is relevant to note that the respondent TTD preferred an appeal before the Supreme Court against the order of the Division Bench dated 4-7-1996 in WA No. 620 of 1996. The said appeal (Civil Appeal No. 14221 of 1996) was disposed of by the Supreme Court by judgment dated 7-11-1996. The Supreme Court while setting aside the impugned order of the Division Bench dated 4-7-1996, observed that the Division Bench was not justified in exercising the power under Article 215 of the Constitution of India when the appeal before it was in relation to the legality or otherwise of the refusal of the learned Single Judge to pass interim order of suspension of the order of the transfer.

10. Thereafter, the respondent-TTD issued proceedings dated 19-12-1996 stating that in pursuance of the orders of the Supreme Court dated 7-11-1996 setting aside the orders of the Division Bench, the order of appointment as Electrician issued to the petitioner on 12-7-1996 in pursuance of the orders of the Division Bench are withdrawn and thereafter the petitioner is deemed to have been continued as Assistant Wireman and he was allotted to Electrical Division, Vijayawada to work under the Divisional Engineer (Electrical) at Vijayawada. Aggrieved by the said proceedings dated 19-12-1996, the petitioner filed WPNo.1593 of 1997.

11. Despite service of notice, the respondent TTD did not choose to file any counter-affidavit in WP No. 3641 of 1996.

12. In WP No. 1593 of 1997, the Executive Officer of TTD, filed a counter-affidavit stating that the petitioner was originally engaged by the then Museum Officer as Skilled Electrician on daily wages. There was no post of Electrician in the establishment of TTD. The only post available was Helper (Elec). The petitioner was absorbed in the said post and the scale attached to the post was extended to him. As per the remarks of the Museum Officer, the petitioner was attending to the maintenance of electrical works only, but he was not discharging the duties of an Electrician which is a higher post. It is further stated that no junior to him was either promoted or appointed as Electrician and therefore in compliance with the orders in WP No. 14282 of 1994, a speaking order dated 30-1-1996 was passed. Subsequently, on administrative reasons, he was transferred to Tirumala on 17-5-1996. However, in view of the interim orders granted the said order of transfer was cancelled. Thus, it is contended that the petitioner, who has never discharged the duties of Electrician but was only discharging the duties of Helper, is not entitled for higher scale of pay attached to the post of Electrician. It is further stated that due to fear of contempt, the petitioner was appointed as Electrician on 12-7-1996 and an affidavit was filed in to the Court and got the contempt rule discharged. It is also stated that insofar as the contempt proceedings against the Executive Officer were set aside, the

orders of appointment dated 12-7-1996 issued under fear of threat of contempt is withdrawn. It is also stated that before the Supreme Court both the petitioner and the respondent filed affidavit stating that the writ petitioner was appointed as Electrician in pursuance of the orders of the Court on the show-cause notice initiating suo motu contempt proceedings and in pursuance of the same the Hon"ble Supreme Court held that there is no contempt.

13. I have heard the learned Counsel for both the parties and perused the material on record.

14. As can be seen from the facts narrated above, though initially the claim of the petitioner for appointment to the post of Electrician was negated by order dated 30-1-1996 which is questioned in WP No. 3641 of 1996, during the pendency of the said writ petition the respondent-TTD issued fresh proceedings dated 12-7-1996 appointing the petitioner as Electrician with effect from the date of his acquiring qualification. Of course, the said order dated 12-7-1996 was subsequently withdrawn by order dated 19-11-1996 which is assailed in WP No. 1593 of 1997.

15. Having regard to the subsequent events which had the effect of nullifying the order impugned in WP No. 3641 of 1996, I am of the view that it would be appropriate to deal with the latter Writ Petition (WP No. 1593 of 1997) first, since if the order dated 19-11-1996 which is impugned in the said writ petition is found to be illegal and unsustainable, the appointment of the petitioner as Electrician under the order dated 12-7-1996 stands goods and consequently the cause in WP No. 3641 of 1996 does not survive for adjudication. On the other hand, if the proceedings dated 19-11-1996 are upheld, then it would be necessary to go into the question relating to the legality and validity of the order dated 30-1-1996 which is the subject-matter of WP No. 3641 of 1996 and to decide the same on merits.

16. Therefore, the first question that falls for consideration is whether the respondent-TTD having passed the order dated 12-7-1996 appointing the petitioner to the post of Electrician with effect from the date of his acquiring qualification, is justified in withdrawing the said order suo motu ?

17. The only reason mentioned in the proceedings dated 19-12-1996 was that in pursuance of the orders of the Supreme Court setting aside the orders of the Division Bench of the High Court dated 4-7-1996 the order of appointment dated 12-7-1996 is withdrawn. Even in the counter-affidavit the same explanation has been offered. It is also stated that due to fear of contempt proceedings the petitioner was appointed as Electrician on 12-7-1996. May be that the respondent-TTD issued the order of appointment dated 12-7-1996 under threat of contempt, but the said order dated 12-7-1996 does not reflect the same. Nowhere, it was mentioned that the order of appointment was issued in pursuance of the orders of the Division Bench in WA.No.620 of 1996. It is also interesting to note that though the respondents was fully aware of the fact that

the order dated 30-1-1996 was the subject-matter of a pending writ petition the appointment was not even made subject to the result of the said writ petition. The order dated 12-7-1996 was unambiguous and made it clear that the appointment of the petitioner was unconditional. The said order was also implemented. If that be so, undoubtedly the petitioner acquired a vested right to hold the post of Electrician, and before withdrawing such an order on any ground whatsoever, it is obligatory on the part of the respondent to afford an opportunity to the petitioner to contest the proposed action. Admittedly before issuing the proceedings dated 19-12-1996 the, petitioner was not issued any notice. Therefore, the action of the respondent in withdrawing the order of appointment was clearly in violation of the fundamental principles of the natural justice.

18. Moreover, the Executive Officer of TTD having issued the order of appointment dated 12-7-1996 cannot sit in appeal over his own order nor can he review or revise the same in the absence of any express power conferred under law. Nothing has been placed before me to show that the Executive Officer of TTD is empowered to exercise the power of review or revision suo motu and vary the earlier order passed by him.

19. It is also relevant to note that what was set aside by the Supreme Court was only the order of the Division Bench initiating contempt proceedings under Article 215 of the Constitution of India. The Supreme Court never expressed any opinion with regard to the entitlement of the petitioner for appointment to the post of Electrician. Therefore, it cannot be said that consequent to the orders of the Supreme Court it was inevitable for the respondent-TTD to withdraw the order of appointment already issued. In the circumstances, I am unable to accept the contention of the respondent-TTD that the proceedings dated 19-11-1996 were issued in pursuance of the order of the Supreme Court. As rightly submitted by the learned Counsel for the petitioner the action of the respondent-TTD in withdrawing the order of appointment under the guise of the order of the Supreme Court is not bona fide and cannot be upheld. Thus, viewed from any angle the order dated 19-11-1996 cannot be sustained the same being not only arbitrary and illegal but also without jurisdiction.

20. As already expressed above, once the proceedings dated 19-11-1996 are set aside the order of appointment dated 12-7-1996 stands good. In view of the said subsequent order dated 12-7-1996 the earlier proceedings dated 30-1-1996, which are impugned in WP.No.3641 of 1996, are deemed to be superseded. It is also relevant to note that the order dated 12-7-1996 appointing the petitioner as Electrician with effect from the date of his acquiring qualification was in conformity with the directions issued in WP No. 14282 of 1994 which has become final. Therefore, the cause in the writ petition does not survive and since the proceedings dated 30-1-1996 do not exist at all nothing remains for adjudication on merits. Thus, in the light of the later events WP No. 3641 of 1996 is rendered infructuous and no further orders are necessary.

21. WP No. 3641 of 1996 is accordingly disposed of. WP No. 1593 of 1997 is

allowed setting aside the impugned proceedings dated 19-11-1996.

22. There shall be no order as to costs.