
(2001) 09 AP CK 0084

In the Andhra Pradesh High Court

Case No : WA No's. 1516 and 1555 of 1997 and 32 of 1998

Executive Officer, Tirumala Tirupathi Devasthanams, Tirupathi	APPELLANT
Vs	
TTD Co-op. Stores Employees Union and Another	RESPONDENT

Date of Decision : 07-09-2001

Acts Referred:

Citation : (2001) 6 ALD 75

Hon'ble Judges : S.B. Sinha, C.J;V.V.S. Rao, J

Bench : Division Bench

Advocate : B. Adinarayana Rao, SC for TTD, for the Appellant; Adv.-General and Government Pleader for Endowments, G. Vidyasagar, G. Kalyam Ram and M. Ramachandra Reddy, for the Respondent

Final Decision : Allowed

Judgement

S.B. Sinha, C.J.—These writ appeals are directed against the common judgment and order dated 27-12-1995 passed by a learned single Judge in Writ Petition Nos.12389 of 1992, 5038 of 1992 and 11887 of 1993.

2. As the common questions are involved in all these appeals, they were heard together and are being disposed of by this common judgment.

3. The fact in Writ Appeal No.1516 of 1997 can be briefly narrated for the purpose of deciding the questions.

4. Writ Petition No.5038 of 1992 out of which Writ Appeal No.1516 of 1997 arises was filed by the erstwhile Tirumala Tirupati Devasthanams Stores Employees Association seeking writ of mandamus to direct the respondents to implement G.O. Ms. No. 1025, Revenue (Endt-III), dated 21-12-1990 and the consequential order of absorption dated 10-4-1991 issued by the second respondent therein.

5. The second respondent-Tirumala Tirupati Devasthanams (for short "T.T.D.") was running stores under the name of "Devasthanam Provision Stores" for selling provisions to TTD. On 14-6-1937, the TTD Board adopted a draft scheme to

convert "Devasthanam Provision Stores" as a co-operative society, called as TTD. Co-operative Stores, which was being managed by a Committee consisting of Executive Officer as President, seven members from TTD and four members from employees of TTD. TTD was purchasing all the articles required by it from the TTD Co-operative Stores only. In 1976, the TTD has decided to purchase the major items of provisions like Ghee, Sugar, Rice and Saffron, from market instead of TTD Co-operative Stores, resulting in great financial loss to the later.

6. In 1986, TTD also stopped purchasing other items like, Cardmoms, Almond, Cashew-nut, Dried Grapes, etc., from the TTD Co-operative Stores, in terms of the recommendations of the Justice Challa Kondaiah Commission. In 1988, the Board of TTD has resolved not to take over the management of the TTD Co-operative Stores. In 1990 the Board of TTD Co-operative Stores resolved to close down the stores and requested the TTD to absorb its employees of all cadres of stores into TTD service under direct recruitment. On 4-7-1990, TTD has accepted the proposal of absorption of stores employees against vacancies earmarked for direct recruitment in corresponding equivalent cadres of TTD service. TTD therefore requested the Government to accord permission for absorption of the Stores employees in TTD service.

7. On 21-12-1990, the Government had issued G.O. Ms. No.1025 and accorded permission to absorb stores employees into TTD service.

8. The validity of said GO, was challenged by some employees of TTD in Writ Petition No.17740 of 1990 wherein stay of absorption was granted, which was later vacated. The said order was confirmed in Writ Appeal Nos.441 and 442 of 1991. On 10-4-1991, TTD issued proceedings absorbing the services of stores employees into TTD service, but regular postings were not made.

9. The grievance of the writ petitioners is that inspite of orders of absorption, the TTD had not issued posting orders and on the other hand it proceeded to fill up the vacancies by direct recruitment.

10. The learned Advocate-General appearing on behalf of the appellant herein inter alia submits that as co-operative society is a distinct legal entity, their employees cannot be said to have any right whatsoever for regularisation of their services.

11. By reason of G.O. Ms. No.1025, Revenue (Endts. III) Department, dated 21-12-1990, the State directed as follows:

After careful consideration of the proposals of the Executive Officer, Tirumala Tirupati Devasthanams contained in his letter 4th read above, the Government, hereby accord permission to Executive Officer, TTD to suitably absorb the TTD Co-operative Stores Employees i.e., Superintendents, UD Clerks and LD Clerks in TTD service against the vacancies earmarked for direct recruitment in LD cadre and in respect of other lower staff against the vacancies earmarked for direct recruitment in corresponding equivalent cadres in TTD service as resolved by the

Specified Authority TTD in its resolution No.277, dated 4-7-1990.

The Executive Officer, Tirumala Tirupati Devasthanams shall take further necessary action in the matter accordingly.

12. By the proceedings in Roc. No.B3/ 5541/90 dated 10-4-1991 issued by the Executive Officer, TT Devasthanams, Tirupathi, it was directed :

In the meanwhile, Sri N. Reddenna and other (Assistants) in WPMP No.22759/ 90 and Sri K. Mohan and other (Attendees) in WPMP No.2263/91 have obtained interim directions of the High Court not to implement the above Government Order. But the High Court, in their order dated 2-4-1991, on the above writ petitions, has issued orders vacating the interim directions, so as to enable the TTD to absorb the TTD Cooperative Stores employees as per the orders of the Government.

In pursuance of these orders, the employees of the TTD Co-operative Stores as detailed in the Annexures are ordered to be absorbed in TTD after their services are dispensed/terminated/ discharged as per the provisions of the Co-operative Laws- consequent on the closure of the TTD Co-operative Stores subject to the availability of vacancies in the cadre of posts as detailed against each name, subject to the following terms and conditions and as per the guidelines. Regular postings in each cadre against the vacancies is incurred for direct recruitment in LD Cadre and in respect of other lower staff against the vacancies earmarked for direct recruitment in corresponding equivalent cadres in TTD service will be issued separately by the Establishment Wing after getting clearance from the Co-operative Stores, subject to availability of vacancies and the order of absorption comes into force only from the date of joining in TT Devasthanams.

13. Such appointment, however, was subject to the terms and conditions and guidelines as also subject to approval by the Board and the Trustees. Such guidelines are as under:

Terms, Conditions and Guidelines: (Subject to approval by the Board of Trustees)

1. They are treated as junior most in the cadre in LDC and below the services rendered in the TTD Co-operative Stores will not be counted for the purpose of promotion/selection etc., benefits in TT Devasthanams and they will start their services afresh in TT Devasthanams.

2. The rule of reservation shall be followed while absorbing the employees of TTD Co-operative Stores as they are appointed against the vacancies by way of direct recruitment.

3. The ratio between direct recruitment and promotion shall be followed taking into consideration, the recruitment and promotions made so far as per the ratio prescribed in the present rules. If the ratio intended for promotion has already been exhausted and if the ratio for the direct recruitment has not been complied with the absorption shall be made by way of direct recruitment.

4. The employees of TTD Co-operative Stores are purely absorbed on compassionate grounds in view of the closure of the TTD Co-operative Stores and hence it is not by way of public interest.
5. The rules in force in TTD will be followed for the purpose of regularisation and probation etc., service benefits. The period of probation starts from the date of joining the TT Devasthanams.
6. They will be placed in the minimum of scale into which they are absorbed and the question of protecting the remaining pay will be examined separately.
7. They are not entitled for bonus.
8. The decision of TTD is final either to continue EPF Schemes/Gratuity or making them eligible for permission after collection of pension and gratuity contribution.
9. In respect of those who do not satisfy the qualification, age, etc., their absorption is subject to approval by the Board of Trustees and the Executive Officer reserves the right to take such action as deemed fit.
10. They will be governed by TTD Service Rules and other rules as applicable to the regular employees of TTD with effect from the date of joining in TT Devasthanams.
11. These orders are issued subject to further conditions that they should abide by the option exercised previously and on giving an undertaking prescribed; pursuant to these orders to abide by the conditions stipulated herein.
14. Along with the said memo, the names of the persons who were to be absorbed in the categories mentioned against their names were specified.
15. By reason of the impugned Memo, the benefits thereunder had however, been denied to the writ petitioners. It was submitted that the vacant posts should have been advertised.
16. The learned Advocate-General would also contend that having regard to the fact that the concerned employees were to be appointed on compassionate grounds, they cannot claim any right to be appointed against particular posts.
17. Mr. Nooty Ramamohana Rao, learned Counsel appearing for the respondents, on the other hand, would submit that the fact situation obtaining in this case should be considered in proper perspective. The learned Counsel would contend that having regard to the fact that the State has come out with a policy decision and keeping in view the factual backdrop, the equity is in favour of the respondents and there does not exist any bar as has been rightly held by the learned single Judge, in regularising their services.
18. Strong reliance has been placed by Mr. Ramamohan Rao on the decisions of the Apex Court in State of Karnataka and Another Vs. B. Suvarna Malini and Another etc., and in Gujarat Agricultural University Vs. Rathod Labhu Bechar and Others, .

19. In *B. Suvarna Malini* (supra), the Apex Court held that the rules regularising the services of part-time lecturers cannot be said to be discriminatory on the ground that they are back door entrants and their regularisation affects the rights of regular entrants and moreover when the regularisation is made as a legislative one time measure.

20. In *Rathod Lablu Bechar* (supra), the Apex Court while considering the eligibility clause, prescribing possession of qualifications by a worker at the time of appointment, contained in the proposed scheme of regularisation of daily rated labours of Gujarat Agricultural University, held that the workers working in post for long number of years without any complaint by itself is sufficient qualification and the eligibility condition can be relaxed in favour of such worker. The Apex Court also held that the scheme for absorption of the daily rated workers having been framed in phased manner, financial viability is not a ground to disentitle the claim of the workman.

21. Mr. Vidya Sagar, learned Counsel appearing on behalf of the respondents in WA No.1555 of 1997, drew our attention to the fact that the G.O. Ms. No. 1025, Revenue (Endowments III) Department, dated 21-12-1990, whereby and whereunder the Executive Officer was permitted to absorb the employees of the Co-operative Stores, was challenged before this Court by the TTD in WP No.9267 of 1991 and the same was dismissed by this Court by reason of an order dated 2-8-1991. The writ appeal preferred there against marked as WA No.937 of 1991 was also dismissed by an order dated 19-8-1991. The matter was carried to Supreme Court by way of SLP which was also dismissed in limine. The learned Counsel would therefore contend that the decision in the aforementioned writ petition and the writ appeal are binding on the regular employees of TTD. The learned Counsel would further contend that another batch of writ appeals being WA Nos.960 to 962 of 1996, was dismissed on 20-8-1996 and that thereafter only the proceedings were issued implementing the order passed in WPNos.5038 of 1992.

22. The learned Advocate-General, in reply, would contend that the decision in the earlier litigation would not operate as *res judicata* as against the appellant herein inasmuch as there the scheme itself was attacked. It was submitted that the learned single Judge erred in issuing the directions which are unwarranted having regard to the fact that they could be appointed only from the order of appointment and not from 1-4-1993.

23. Ordinarily, an employee has no right of regularisation of service, but as noticed from the factual matrix hereinbefore, an agreement was entered by and between the appellant and the co-operative society. Pursuant to and in furtherance of the said agreement, TTD Co-operative Stores was closed on 30-3-1993. A liquidator was also appointed in terms of Section 64 of the Andhra Pradesh Co-operative Societies Act and the employees had been discharged for being absorbed in TTD, the appellant herein. Through the resolution No.512, the concerned employees specified in the list enclosed therewith were appointed in

the cadre of Attenders. Thereafter, a Writ Petition No. 11887 of 1993 was filed seeking declaration for absorption of the petitioners therein as LDCs/Assistants.

24. The factual matrix leading to issuance of G.O. Ms. No.1025, dated 21-12-1990 is not in dispute. The aforementioned G.O. Ms. No.1025, dated 21-12-1990 was, therefore, issued pursuant to the representation made by the TTD itself. Some of the employees, who were also holding the posts of Superintendents, Upper Division and Lower Division Clerks, were merely to be absorbed in TTD service against the vacancies earmarked for direct recruitment upto the cadre of LDCs. So far as other class IV employees are concerned, they were to be absorbed in TTD service against the vacancies earmarked for direct recruitment in corresponding equivalent cadre in TTD service in terms of resolution No.277 dated 4-7-1990.

25. As noticed hereinbefore, the validity of the aforementioned G.O. Ms. No.1025, dated 21-12-1990 and the consequent Memo issued pursuant thereto has been upheld. The appellant, therefore, is bound by the terms and conditions laid down in G.O. Ms. No.1025, dated 21-12-1990 aforementioned.

26. Pursuant to and in furtherance of the said policy decision, the persons, who have been working as Superintendents, Upper Division Clerks and Lower Division Clerks in the TTD Employees Co-operative Society, were to be appointed in the existing vacancies of Lower Division Clerks only. They could not have been appointed as Attenders.

27. We, therefore, find no fault with the impugned judgment in issuing a direction that the policy decision must be implemented. However that part of the directions to the effect that they should be absorbed by way of fresh appointment into the minimum scale into which the employees of the Co-operative Stores have been directed to be absorbed with effect from 1-4-1993 cannot be accepted, inasmuch as in terms of the policy decision of the State, it is evident that such resolutions were to be approved by the Board of Trustees. Having regard to the fact that the Board had adopted the resolution later on, the question of giving retrospective effect to the services of the writ petitioners does not arise.

28. The writ appeals are allowed to the extent indicated above. There shall be no order as to costs.