

(2014) 10 KL CK 0192
In the High Court Of Kerala
Case No : WP (C).No. 18569 of 2013 (U)

K.R. Krishnakumar

APPELLANT

Vs

The Guruvayoor Devaswom Managing Committee

RESPONDENT

Date of Decision : 16-10-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 10 KL CK 0192

Hon'ble Judges : A.K. Jayasankaran Nambiar, J

Bench : Single Bench

Advocate : N. Manoj Kumar and Jayasree Manoj, Advocate for the Appellant; V. Krishna Menon and P. Gopal, Advocates and Devi C. haridas, S.C, Advocate for the Respondent

Judgement

A.K. Jayasankaran Nambiar, J.—The petitioners were working as Scavengers in the Comfort Stations and Cloak Room of the Guruvayoor Devaswom from July, 1993 onwards. It is the case of the petitioners that in 2002, when steps were taken to disengage them, they had approached this Court through O.P. No. 9211/2000, which was disposed by Ext. P1 judgment dated 31.7.2000 making it clear that the Devaswom was free to fill up the sanctioned posts by appointing Class IV employees of the Devaswom. It was, however, made clear that no fresh NMR workers could be appointed to those posts, either sanctioned or not sanctioned. In a writ appeal that was preferred against the said judgment, a Division Bench by Ext. P2 judgment dated 19.12.2000, while dismissing the appeal, directed the Devaswom to consider accommodating the petitioners while resorting to direct recruitment, if necessary, by giving them the benefit of age relaxation. It is the case of the petitioners that thereafter repeated representations were filed before the Devaswom authorities seeking a re-engagement or consideration of their candidature while effecting direct recruitment to the various posts under the Devaswom. According to the petitioners, the respondent Devaswom flouted the directions of this Court in Exts. P2 and P6 judgments by continuing to resort to re-engagement of workers

for temporary spells and deciding not to go in for a direct recruitment. The immediate provocation for the filing of the present writ petition arose consequent to Ext. P12 decision of the respondent Devaswom whereby, it was found by the Devaswom that the case of the petitioners, who were engaged during the period from 1993 as NMR workers on temporary basis and thereafter denied employment with effect from 2000, need not be considered for regularization in the services under the respondent Devaswom. Ext. P12 is impugned in the writ petition inter alia on the ground that the actions of the respondent Devaswom in regularizing the services of various temporary employees who were re-engaged by the Devaswom for the temporary spells was illegal in that, while regularizing the said employees, the respondent Devaswom had not adhered to the obligations that were required of them pursuant to Exts. P2 and P6 judgments. The petitioner would also point out that some of the persons who have obtained the benefit of the orders of regularization are persons who were petitioners in Exts. P1, P2 and P6 judgments, and to that extent, they had been meted out a discriminatory treatment.

2. A statement has been filed on behalf of the 1st respondent, wherein, it is pointed out in paragraphs 6 and 7 as follows:

6. It is submitted that no regular appointments had been effected in the Devaswom for the past several years and the Devaswom was engaging workers/personnel on casual/temporary/contract basis against the various posts. As the persons engaged against these posts were working on casual basis for the past several years and had become overaged to be considered for regular appointment elsewhere, several of these workers had represented before the GDMC to consider their claim for regularization in service as against the posts they were working. The GDMC had appointed a sub-committee to study the matter and had also obtained legal opinion. On the basis of the report of the sub-committee and the legal opinion furnished the GDMC as per its decision dated 25.11.2010, decided to regularize the services of all those casual employees who were working as on 25.11.2010 and had completed two or more years of service. It is pertinent to state here that this decision was taken on the basis of the judgment of the Hon'ble Supreme Court reported in AIR - 2006 SC - 1806. The decision was taken as a "one time measure" and subject to approval by the second respondent. It is submitted that the Guruvayur Devaswom Commissioner as per his order 24.02.2011 however accorded sanction to regularize only those employees who had completed ten years service as on 25.11.2010. Accordingly Ext. P7 order had been issued to regularize the service of the casual employees who had completed ten years service as on 25.11.2010. It is further submitted that the GDMC took decisions to regularize the employees who had completed ten years service on later dates as well and issued orders evidenced by Exts. P8 to P11. As the petitioners were never in service on 25.11.2010 they were not entitled to be considered for regularization.

7. The petitioners had submitted a representation on 08.03.2012 before the

GDMC praying for permanent appointment. GDMC on 23.02.2013 vide resolution number 146, evidenced by Ext. P12, had rejected their application. There is no illegality or infirmity in the decision of the GDMC. It is submitted as stated in the preceding paragraphs the petitioners were not considered for regularization as they were not in service as on 25.11.2010. The petitioners cannot be heard to say that they should be extended the benefit of being regularized in service when they were not in service as on 25.11.2010. Further they do not meet the requirement specified by the second respondent, viz., continuous casual service of ten or more years as on 25.11.2010. The petitioners are thus not entitled either in law or on facts to seek regularization of their services."

3. I have heard Sri. N. Manoj Kumar, the learned counsel appearing on behalf of the petitioners as also Smt. Devi. C. Haridas, learned counsel appearing for respondents 1 and 2.

4. On a consideration of the facts and circumstances of the case as also the submissions made across the Bar, I find that this is a case where the petitioners are essentially impugning an order of the respondent Devaswom, regularizing the services of employees who were working under the Devaswom on a particular cut-off date. This being a policy decision of the Devaswom, to regularise the services of casual employees, who were working as on 25.11.2010 and had completed ten or more years of service under the Devaswom, will not normally be interfered with by this Court in exercise of its powers under Article 226 of the Constitution of India. No doubt, even policy decisions of the Devaswom would be amenable to judicial review if it is demonstrated that the policy decision is illegal or irrational. The facts in the instant case, however, do not warrant such an interference. This is because essentially, the petitioners are challenging an order of regularization that was made applicable to employees who were working in the services of the Devaswom as on 25.11.2010, subject to the condition that they had completed ten years of service as on 25.11.2010. Thus, the regularization was extended only to a class of employees, namely, those who were in employment as on the cut-off date and had also completed ten years of service as on that cut-off date. The petitioners would, no doubt, contend that the benefit of regularization was since extended even to those persons who had not completed ten years of service as on 25.11.2010 but had completed such service only by subsequent dates. It is not in dispute, however, that even those employees were in the services of the Board as employees on 25.11.2010. Thus, the regularization was a benefit that was extended to persons who were employees under the Devaswom on the cut-off date. The petitioners, who were not casual employees under the Devaswom on the cut-off date, could not, therefore, aspire for the benefit of a regularization which was contemplated only in respect of a particular category of persons. In fact, the rights conferred to the petitioners in terms of Exts. P2 and P6 judgments was only a limited right to be considered for the purposes of employment under the Devaswom in the event of the respondent Devaswom resorting to direct recruitment or an engagement of workers. In the grant of regularization to existing employees found to be working

under the Devaswom, the petitioners cannot be aggrieved since they were admittedly not employees, either temporary or casual, under the Devaswom as on that date. If the petitioners had any grievance with regard to their non-engagement, and against a fresh engagement being offered to others, then they ought to have impugned the said engagement of employees by the Devaswom, in appropriate proceedings. That admittedly not having been done by the petitioners, I do not think it is open to the petitioners to impugn the orders of the respondent Devaswom, granting regularization to a set of employees who were found to have been in the employment of the Devaswom for a considerable period of time and actually working under the Devaswom on the cut-off date reckoned for the purposes of regularization. As no valid grounds have been made out in the writ petition to sustain a challenge against the actions of the respondent Devaswom, I am of the view that the writ petition fails, and it is accordingly dismissed.