
(1996) 09 AP CK 0030

In the Andhra Pradesh High Court

Case No : Writ Appeal No. 1377 of 1995 and W.P. No. 10567 of 1992

M. Sudarsanam and Others

APPELLANT

Vs

Tirumala Tirupati Devasthanams and Others

RESPONDENT

Date of Decision : 12-09-1996

Acts Referred:

Andhra Pradesh State and Subordinate Service Rules, 1962 — Rule 48
Tirumala Tirupati Devasthanams Employees Service Rules, 1989 — Rule 5

Citation : (1996) 4 ALT 835

Hon'ble Judges : Lingaraja Rath, J;C.V.N. Sastri, J

Bench : Division Bench

Advocate : N.K. Annapurna Devi, V.V.S. Rao, Samineni Kishore, K.N. Jwala and A. Bhaskarachary, for the Appellant;

Final Decision : Allowed

Judgement

Lingaraja Rath, J.—These writ appeals and the writ petitions relate to the same set of facts and hence are disposed of by this common judgment.

2. Writ Appeal No. 231 of 1994 has been filed questioning the judgment in Writ Petition No. 9949 of 1988, dated 27-7-1992 and Writ Appeal No. 1377 of 1995 has been filed as against the judgment in Writ Petition No. 16563 of 1992, dated 22-2-1993 which was disposed of following the judgment in W.P.No.9949 of 1988 dated 27-7-1992. Writ Appeal No. 109 of 1994 has been filed by the Tirumala Tirupati Devasthanams against this very same judgment in W.P.No.9949 of 1988 dated 27-7-1992. The petitioners in W.P.No.10567 of 1992 and Writ Petition No. 5815 of 1993 are also appellants in Writ Appeal No. 231 of 1994. The two writ petitions were filed claiming the same relief as in W.A.No.231 of 1994.

3. For the sake of convenience, in this judgment, the parties are referred as are arrayed in W.A.No.231 of 1994. The respondent in W.A.1377 of 1995, Sri S. Parthasarathy is independently referred by name. His case being identical to respondents 2,3 and 4, the facts relating to them applies to him also.

4. The facts leading to the appeal are that the respondent No. 2 was appointed as Helper in respondent No. I Devasthanam on 26-9-1979 and the respondents 3 and 4 were appointed as NMR Helpers on 7-12-1979. By the time they were appointed they possessed ITI Certificate in the mechanism of Radio and Television. They filed W.P.No.9949 of 1988 seeking the relief of retrospective absorption as Radio Mechanics/Technicians in the Radio and Broadcasting wing of the respondent No.I as they were qualified to be absorbed in those 35 posts. The learned single Judge was of the view that as the respondents 2, 3 and 4 had been sponsored by the Employment Exchange as the ITI passed candidates and the requisition from the Employment Exchange was not against any specific post but the sponsoring was made to fill up vacancies as Radio Mechanic, they were entitled to have been absorbed at least in the post of 40 Assistant Technician Grade-I which is the last post which requires ITI qualification. Taking the view, the learned single Judge directed respondents 2, 3 and 4 to be regularised as Assistant Technician Grade-I from 26-9-1979 and to count their seniority accordingly in their posts. He also directed corresponding monetary benefit to them from 5-7-1988 viz., the date when the writ petition was filed. The appellants are persons who are earlier appointees than the respondents 2, 3 and 4 to the post of Helper and had been promoted subsequently either as Assistant Technician Grade-I or Grade-II and have preferred this appeal (W. A.No.231 of 1994) with the leave of the Court as by the impugned order their seniority is put in jeopardy because of retrospective grant of seniority and absorption to those respondents. The Tirumala Tirupati Devasthanams has preferred appeal (W.A.No.109 of 1994) assailing the judgment on merits.

5. Mr. V.V.S. Rao, learned Counsel appearing for the appellants has urged, in pressing the appeal, that the W.P.No.9949 of 1988 was liable to have been thrown out because of the gross delay in approaching this Court and that the respondents were also guilty of waiver and acquiescence. They also did not have the qualification for absorption as Assistant Technician Grade-I as is claimed by them. The learned Counsel for the Tirumala Tirupati Devasthanams has also assailed the judgment on the same lines.

6. A preliminary objection had been raised by Mr. A. Bhaskarachary, learned counsel appearing for the respondents 2,3 and 4, of the W.A.No.231 of 1994 to have become infructuous in view of the subsequent events. It is submitted that the Radio Broadcasting wing of the respondent No.I has since been bifurcated into two wings, T.V. Section and P.A. System (Broadcasting). The respondents 2,3 and 4 having opted for the T.V. Section and the appellants having opted for the P. A. Section and the seniority list of both the sections having been separately prepared and published, there is now no competition between the appellants and the respondents 2,3 and 4 for which the appeal should be thrown out. The submission is refuted by Mr. V. V.S. Rao saying that the bifurcation is purported to have been made in pursuance of the resolution in Roc. No.B3-24403 /91 dated. 12-6-1991 of the Executive Officer, Tirumala Tirupati Devasthanams but that such bifurcation is illegal as the establishments are established and

recognised under the Tirumala Tirupati Devasthanams Employees Service Rules, 1989 in which, in the Schedule, the establishment is known as "Radio and Broadcasting Section". No bifurcating is contemplated under the Rules. Such power, if at all, can be exercised only by the Government under the statutory provisions under which the rule has been framed but is not available to be altered by the Tirumala Tirupati Devasthanams. He also submits that even if the appellants may now be in the P.A. wing yet promotion to the posts of Technician and other posts would be equally open to the persons of both the wings and when such consideration comes, the respondents 2, 3 and 4 will have larger advantage because of their higher seniority fixed.

7. So far as the question of the appellants being prejudiced in their promotional prospects are concerned, it is rightly pointed out by Sri. A. Bhaskarachary that the post of Technician requires, apart from the qualification of a pass in SSC examination, also a Diploma or a certificate of Electrician from a recognised institution or a pass in the examination conducted by the Government Board of Examiners for Cinema Operators or possession of a craftsman certificate (Mechanic) in Radio Servicing and Maintenance issued by the Director General of Resettlement and Employment, Government of India or by any other State Government after having studied in any institution of the State /Central Government or any institution recognised by the Central or State Government after having completed the prescribed period of practical training. It is not disputed that the appellants do not possess such qualifications or for that matter respondents 2,3 and 4 also do not possess such qualifications. Even so, 1989 Rules show the employees to be governed also by the provisions of, inter alia, Andhra Pradesh State and Subordinate Services Rules, 1962 which in Rule 48 vests power in the head of the department to relax the rules in favour of any class or category of persons or of any person who is serving or has served, etc. It is also brought to our notice by Smt. N.K. Annapurna Devi, learned Counsel appearing for the Tirumala Tirupati Devasthanams that in fact appellant No.1 has been since promoted on 19-2-1979 as Technician in relaxation of the rules in his favour. Rule 5(i) of the 1989 Rules provides the power of the Government in any of the rules referred to in Clauses 4(i) and 4(ix) to be exercised by the Board of Trustees and all powers vested in the Head of 15 the Department in the said rules to be exercised by the Executive Officer of the Tirumala Tirupati Devasthanams. That being so, the grievance of the appellants is justified as relaxation may be exercised in favour of the respondents 2,3 and 4 on the basis of their seniority at any time and they may gain earlier promotion. Besides, the submission of Sri V. V.S. Rao of the bifurcation being not sanctioned by the rules is *prima facie* well founded though we are not expressing any opinion thereon at this stage. Consequently we hold the appeal not have become infructuous.

8. The respondents 2,3 and 4 have been directed to be treated as Assistant Technician Grade-I respectively from 1979 as it was considered that as they had ITI qualification and as the sponsoring was not required to be made in respect of the post of Helper which posts also did not require ITI qualifications, the

intention of interviewing the respondents for appointment could not have been to the post of Helper. The qualification required for the post of Helper is a pass in V Class and practical experience in Electrical Operations and Maintenance of not less than three years. It was viewed that the only intention could have been to absorb respondents 2, 3 and 4 in appropriate posts for which ITT qualification was needed. As the first post to which such qualification was necessary is the post of Assistant Technician Grade-I, the direction was issued that they should be absorbed from 26-9-1979 viz., the date of appointment of respondent No. 2, as Assistant Technician Grade-I.

9. After the appointments of the respondents 2, 3 and 4 respectively on 26-9-1979, 7-12-1979, and 7-12-1979 exemption orders were passed in their favour on 11-2-1980 exempting them from having the three years practical experience for appointment as Helpers, a requirement which was required under the Tirumala Tirupati Devasthanams' Office Holders and Servants (other than Hereditary Office Holders) Requirement Rules, 1978 issued in G.O.Ms. No. 1350, Revenue (Endowments-III), 2-8-1978. Thereafter on 28-9-1981 the services of the respondent No. 2 were regularised as Helper with probationary rights with effect from 26-9-1979. On 25-3-1982 the respondents 3 and 4 were regularised as Helpers mentioning that their appointments were fresh appointments on temporary basis. The provisional seniority list was published on 3-1-1987 in the Helpers category showing the respondents 3 and 4 to be below the appellants except appellant No. 7. It is of importance to note that since their appointment in 1979, no objections were raised by the respondents 2,3 and 4 at any time prior to 7-1-1986 to their appointment as Helpers. The first representation was made only on that date. As it is their case that they were interviewed for the higher post but were absorbed in a lower post for which they were aggrieved, it is normally expected that they would have ventilated their grievance of being rudely shocked by absorption in much lower posts than that of their expectation. There was no murmur by them not only when their appointments were made, but also when successive steps were taken by the Tirumala Tirupati Devasthanams to regularise their services. Their appointment as Helpers was again reiterated when the requirement of practical experience was condoned for appointment as helpers. No representation was made that they were not liable to have been appointed as Helpers at all. No representations were made when their services were regularised as Helpers. The first representation made on 7-1-1986 made the grievance that they had been called for appointment as Radio Mechanics in Tirumala Tirupati Devasthanams. Admittedly there are no posts of Radio Mechanics in the establishment as per the Schedule to the 1978 Rules. It is however explained that in the sponsoring letter by the Employment Exchange, the candidates were informed that they were being called for to fill up the posts of Radio Mechanics. In the same representation it was stated that they had been making their grievance to the Radio Engineers who were on deputation to Tirumala Tirupati Devasthanams and that they had promised to recommend the case of the respondents for consideration. It is thus admitted that they had never

made representations earlier to the Tirumala Tirupati Devasthanams but were only ventilating their grievance before the Radio Engineers who had promised to recommend their case. Even when the provisional seniority list was published on 3-1-1987, no objections were filed to the seniority list. It is only on 5-7-1988 that W.P. No. 9949 of 1988 was filed. There is absolutely no explanation for the gross delay and laches of nearly seven years from the date of the appointment till the date of the representation and nearly nine years when the writ petition was filed. On this count alone the writ petition is liable to be thrown out because of the gross delay and laches as also waiver and acquiescence. The respondents had willingly stood by the action of the Tirumala Tirupati Devasthanams and not only suffered the appointment but also the successive steps taken treating the appointment to have been validly made. Since the respondents by their conduct of waiver and acquiescence conceded to the rights exercised by the Tirumala Tirupati Devasthanams against them, they would have to be regarded as estopped to raise question regarding the invalidity of their appointment. We need not go into the case law cited by the learned counsel for the appellants on this score as the principle is too well settled.

10. As regards the question of lack of qualification by the respondents 2,3 and 4 are concerned, we need not go into that as the objection was not raised by the Tirumala Tirupati Devasthanams. But even so possession of higher qualification is not ipso facto bar to be interviewed for a lower post. There may be varied reasons for which the authorities may require persons with higher qualifications than the stipulated one. One reason may be that they want to recruit persons with better qualification as the Helpers are to be promoted ultimately as Assistant Technican Grade-I or Grade-II or even as Technicians, etc. If the respondents were dissatisfied, it was for them to have raised the objection and if not successful, to have quit the posts. Instead they held on to the post and attempted to raise the dispute before the Court long after. 11. In that view of the matter we find the judgment in W.P.No.9949 of 1988 dated 27-7-1992 to be not sustainable which is accordingly set aside.

12. In the result, all the appeals are allowed. Since the petitioners in W.P.Nos.10567of 1992 and 5815 of 1993 are also the appellants in W.A.No.231 of 1994 the writ petitions are disposed of accordingly. We however make no order as to costs.

13. While setting aside the judgment, however we direct no recovery proceedings to be initiated against respondents 2,3 and 4 and the respondent in W.A. No.1377of 1995 in respect of the amount received by them in pursuance of the judgment in their favour.