
(2002) 02 AP CK 0080

In the Andhra Pradesh High Court

Case No : Writ Petition No. 24709 of 1996 and WA No. 1328 of 1997

R. Subbulu Naidu and Others

APPELLANT

Vs

Govt. of A.P. and Another

RESPONDENT

Date of Decision : 11-02-2002

Acts Referred:

Citation : (2002) 2 ALD 546 : (2002) 2 ALT 160 : (2002) 3 LLJ 340

Hon'ble Judges : Ar. Lakshmanan, C.J;I. Venkatanarayana, J

Bench : Division Bench

Advocate : Advocate General for M. Adinarayana Raju, SC for TTD, for the Appellant; Govt. Pleader for Revenue Counsel and P.V.S.S.S. Rama Rao, for the Respondent

Final Decision : Allowed

Judgement

Dr. Ar. Lakshmanan, C.J.—The writ appeal and the writ petition involving common questions of fact and law were heard together and are being disposed of by this common judgment.

2. Writ Appeal No. 1328 of 1997 was filed by Tirumala-Tirupathi Devasthanams (for short TTD) against the judgment dated 11-3-1997 in WP No.10149 of 1993. Respondents 1 to 4 herein, who claim to be working as NMR Coolies in TTD Cooperative Stores Ltd., Tirupathi, filed the said writ petition seeking a writ of mandamus directing the appellants to implement the orders issued by the Government in G.O. Ms. No. 1025, Revenue (Endt.III) Department, dated 21-12-1990 and the consequential proceedings by the TTD in Roc.No;B3-5541/90, dated 10-4-1991 under which the Government of Andhra Pradesh and the TTD have decided to absorb the employees of TTD Co-operative Stores into TTD Service.

3. Writ Petition No.24709 of 1996 was filed by fifteen NMR workers working in TTD Stores also seeking for a direction to the State Government and the TTD for implementation of the aforesaid G.O. Ms. No.1025, dated 21-12-1990 and the

consequential proceedings dated 10-4-1991 issued by the Executive Officer, TTD.

4. By consent of both the parties, the writ appeal and the writ petition were heard together.

5. The brief facts leading to the controversy are : The respondents-employees in the writ appeal were employed as NMR workers in TTD Co-operative Stores which was wound up and closed with effect from 30-3-1993. The State Government and the TTD considered the question of absorbing the employees of TTD Co-operative Stores into the service of the TTD. The Government after examining the issue, issued orders in G.O. Ms. No.1025, dated 21-12-1990 according permission to the Executive Officer, TTD to suitably absorb the employees working in TTD Co-operative Stores i.e., Superintendents, U.D. Clerks, L.D. Clerks in TTD service against the vacancies earmarked for direct recruitment in L.D. 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. Pursuant to the said orders of the Government, the Executive Officer, TTD issued orders dated 10-4-1991 ordering that the employees of the TTD Co-operative Stores as detailed in the annexure appended to the said proceedings be absorbed in TTD subject to the terms and conditions specified therein. The case of the respondents-employees is that their names were also included in the annexure appended to the said proceedings specifying that they are to be absorbed as NMRs on the existing wages being paid to them in Stores and as such they are also entitled to be absorbed into TTD service. As the said orders were not implemented, the respondents-employees have filed the writ petition directing the respondents therein to implement the same and to pass necessary consequential orders.

6. In the counter-affidavit filed by the TTD it was contended that the Government have accorded sanction for absorption of all the erstwhile employees of the TTD Co-operative Stores into TTD service in G.O. Ms. No.1025 and that accordingly TTD issued the proceedings dated 10-4-1991. It was, however, contended that the said orders do not by itself confer any vested right on the respondents for absorption into TTD service. It was also contended that there are 304 persons working on NMR basis in TTD itself without being absorbed into regular service and if the cases of the respondents herein is considered for taking them into TTD service on regular basis, it would create a difficult situation in TTD as its own employees are working as NMRs without being regularised or absorbed. Further, if any NMR worker is to be taken into TTD, the approval of the Board or Government is required.

7. By the order under appeal, the learned single Judge directed the authorities to forthwith implement the orders issued in G.O. Ms. No.1025, dated 21-12-1990 and the consequential proceedings dated 10-4-1991 issued by the Executive Officer, TTD. The learned Judge has also directed the TTD to absorb the respondents herein as NMRs only on the existing wages. The learned Judge

further directed the TTD and the Government to sympathetically consider the question of payment of wages for the period from 1-4-1993 upto the date of their absorption.

8. Feeling aggrieved, the TTD has filed the above writ appeal.

9. We have heard Sri Anantha Babu, learned Advocate-General appearing for the TTD and Sri P.V.S.S. Ramarao, learned Counsel appearing for the respondents in the writ appeal and the learned Government Pleader appearing for the State. We have also heard Sri S.V. Bhatt, learned Counsel appearing for the petitioners in WP No.24709 of 1996.

10. The learned Advocate-General submitted that the learned single Judge has misconstrued the scope of the proceedings of the Executive Officer dated 10-4-1991 and the orders of the Government issued in G.O. Ms. No.1025, dated 21-12-1990, which preceded it. According to the learned Advocate-General, the learned single Judge has overlooked the following crucial aspects:

(1) The offer of employment to the erstwhile employees of the Cooperative Stores was on compassionate grounds.

(2) The proposal put up to Government was limited to absorbing stores employees who were suitably qualified in vacancies available to direct recruits in the respective cadres.

(3) The working of the appropriate proceedings is clearly inapplicable to NMRs as there is no cadre for NMRs nor any posts reserved for direct recruits among them.

(4) Employment as an NMR is totally different from regular employment.

11. The learned Advocate-General submitted that the GO merely permits the TTD to act according to its own proposal. He further submitted that the learned single Judge was misled by the mention of all employees of stores in the annexure appended to the proceedings of the Executive Officer and nothing prevents TTD from employing persons whose services were availed as NMRs by the stores unit and that mere mention of their names in the annexure confers no enforceable right on the said persons as they are not within the ambit of the operative portion of the proceedings. Our attention was drawn to G.O. Ms. No.1025, dated 21-12-1990 and the consequential order passed by the TTD dated 10-4-1991.

12. We have carefully perused the G.O. Ms. No.1025, dated 21-12-1990 as also the consequential proceedings of the TTD dated 10-4-1991. It is seen that as per the recommendations of the Commission headed by Justice Challa Kondaiah, the TTD has accelerated the direct purchase of various items necessary for TTD by withdrawing the items such as cashew nuts, cardamom and almonds in addition to rice, sugar candy already withdrawn earlier from the purview of TTD Co-operative Stores and is making direct purchase from public limited corporations from the year 1987 onwards and that as a result of reduction of the purchases, the volume of business of the stores has come down. In the GO it was also

pointed out that Justice Challaiah Kondaiah Commission has also reported that since the stores is facing loss in business, the employees of the TTD Co-operative Association have represented to the TTD Management for their absorption in TTD either by reappointment or transfer or whatever method convenient to the administration ensuring job security and pay protection and that they have prepared to forego their promotion, bonus etc. and to continue in TTD by payment of employer's share of contribution as well as that of employees towards EPF scheme so as to become eligible for pension. Thus, they are prepared to accept any condition to be imposed. Further the employees Joint Council of Association of TTD in their letter addressed to the Executive Officer, TTD expressed that their association has no objection in absorbing the TTD Co-operative Staff against the vacancies that are earmarked for direct recruitment i.e., upto LD cadre without causing any impediment to the interest of existing TTD employees in each cadre. At this stage, it is useful to reproduce Para 5 of the GO for better appreciation of the stand taken by the appellants, which reads thus :

After careful consideration of the proposals of the Executive Officer, Tirumala Tirupati Devasthanams contained in his letter 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.

13. A careful perusal of the entire GO would clearly show that it does not refer to absorption of NMRs at all. It would further indicate that it was intended to absorb only those candidates who have been working regularly into the TTD against the vacancies earmarked for direct recruitment.

14. As already noticed, the Specified Authority TTD in its Resolution No.277, dated 4-7-1990 approved the proposal of the Executive Officer for the absorption of the employees of erstwhile TTD Co-operative Stores wherein it was resolved to close the stores and request the TTD to absorb the employees of the stores into TTD service. Consequently, the Government in G.O. Ms. No.1025, dated 21-12-1990 accorded permission to the Executive Officer, TTD to absorb the employees of the TTD Cooperative Stores i.e.. Superintendents, UD Clerks and LD Clerks in TTD service against the vacancies earmarked for the direct recruitment in LD cadre and in respect of other lower cadre employees as against the vacancies earmarked for direct recruitment corresponding to their equivalent cadre in TTD service. Further, the Commission headed by Justice Challa Kondaiah who studied the administration of TTD in his report stated thus :

It should always be remembered that the TTD Co-operative Stores is not the institution of TTD but it is a separate institution. The bulk purchases from the stores is by TTD and the purchases by the others are negligible. Because of the

bulk purchases by the TTD, the TTD Co-operative Stores is getting huge amounts by way of handling charges and profit.

It is the interest of the institution that is paramount and prudence lies in excluding the unnecessary expenditure. Therefore, as far as practicable, the TTD should purchase the provisions etc., items required for the temples directly through a honest Marketing Officer or a Purchasing Committee following the necessary procedure which will save money for the TTD annually. This also helps to supply provisions straight to the temple and avoid maintaining stores separate for each temple.

15. In view of the recommendations of the Commission, the TTD resorted to direct purchase by withdrawing three items i.e., cashew nuts, cardamom, almonds from the purview of TTD Co-operative Stores from the year 1987 onwards. As a result of withdrawing of the purchases by TTD from the TTD Co-operative Stores, the volume of business has considerably come down. In the above circumstances, the staff of the Co-operative Stores submitted a Memorandum to the Government requesting to convert the existing Co-operative Stores into TTD Departmental Stores by absorbing all the staff members numbering 200 into TTD service on which the Government called for remarks. When detailed proposals were submitted to the Board of Trustees for taking a decision on the question of absorption of TTD Co-operative Stores employees into TTD service, the Board in its Resolution No.162, dated 31-5-1988 initially resolved not to absorb the TTD Co-operative Stores employees into TTD service and this decision of the Board was intimated to the Government, However, again on a representation of the local MLA and on the letter dated 12-4-1990 of the Government, the subject-matter was examined and was placed before the Specified Authority, TTD and the Specified Authority in its Resolution No.277, dated 4-7-1990 approved and resolved to request the Government to accord permission for the proposals. The Government thereafter issued G.O. Ms. No.1025, dated 21-12-1990 according permission to the Executive Officer of the TTD to 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.

16. It was argued by the learned Counsel appearing for the respondents-employees that the expression "absorption" was used in G.O. Ms. No.1025, dated 21-12-1990 and in the proceedings of the Executive Officer, TTD dated 10-4-1991 and, therefore, the NMR employees are also entitled to seek for absorption.

17. We find no merit in the said contention. In our opinion, the expression "absorption" was loosely used in the order of the Government and in the proceedings of the Executive Officer. A reading of the G.O. Ms. No.1025 would make it amply clear that it is not a case of absorption of employees concerned into TTD service but it is a case of appointing them as fresh recruits in the

service of TTD on humanitarian grounds duly observing the relevant rules. The absorption as contemplated in G.O. Ms. No.1025 and the consequential proceedings dated 10-4-1991 should be against a clear regular vacancy available in TTD, which is meant for a direct recruit. Admittedly, there are no posts categorised as NMRs meant for direct recruits.

18. In fact the Government in G.O. Ms. No. 296, Revenue (Endts. III) Department, dated 19-4-1988 with respect to TTD at Para 5 observed thus :

Government further observe that the procedure adopted by the TTD in making temporary appointments initially as NMRs and seeking regularisation later is highly irregular and objectionable inasmuch as appointments have been made, defying the ban orders, without notifying vacancies to Employment Exchange and by not observing rule of reservation. What is more reprehensible is that some of the persons appointed are reported to be unqualified for the posts.

19. Further by order dated 11-10-1990 in WP No.7680 of 1988, this Court clearly observed as follows :

The first respondent (TTD) shall not regularly fill up any vacancies henceforth on NMR basis/casual labour basis on consolidated pay bills without complying with the requirement of notifying the vacancies to the Employment Exchange and observing the rule of reservation - 14%, 4% and 25% in favour of Scheduled Castes, Scheduled Tribes and Backward Classes respectively.

20. It may further be noticed that in Memorandum No.27850/Endts.III/A2/91-1, dated 10-4-1991 while lifting the ban imposed on the TTD, the Government directed the TTD to ensure that the rule of reservation is implemented scrupulously. It is argued by the learned Advocate-General appearing for TTD that at present there are 304 persons working on NMR basis in the TTD organisation itself, without being absorbed into regular service and if the cases of the NMRs of TTD Co-operative Stores is considered for taking into TTD service on regular basis, it would certainly create a difficult situation in the TTD as its own NMR workers are still working without being regularised and absorbed in regular vacancies. Further, if any NMR is to be taken into TTD service, the approval of the Board as well as the Government is required. We find much force in the said submissions. In proceedings dated 10-4-1991 the Executive Officer while directing implementation of the orders issued in G.O. Ms. No.1025 clearly requested the Secretary, TTD Co-operative Stores, Tirupati and the Deputy Executive Officer(s), TTD to take necessary further action for issue of postings only after satisfying the terms, conditions and guidelines subject to the approval of the Board of Trustees on which the erstwhile TTD Co-operative Stores employees were to be absorbed. It was specified therein that the employees of the Co-operative Stores sought to be absorbed into TTD service would be treated as junior most in the cadre of LDC and the service rendered by them in the Co-operative Stores will not be counted for the purpose of promotion/selection etc., benefits in TTD and that they will start their service in TTD afresh.

21. It was vehemently argued by the learned Counsel for the respondents that the employees of the Co-operative Stores were ordered to be absorbed into TTD on compassionate grounds in view of the closure of the Co-operative Stores and in the annexure to the proceedings dated 10-4-1991 the names of the NMR workers were duly mentioned and they were ordered to be absorbed in TTD after their services were dispensed/discharged on the closure of the stores. The learned Counsel further submitted that the post in which they are to be respectively absorbed have been specified in the said annexure. Therefore, it is submitted that the appellant-TTD shall be directed to absorb the respondents-employees herein on compassionate ground view of the closure of the TTD. We are not inclined to accede to the said submission. The TTD stores was closed down on 30-3-1993 and by reason of the proceedings of the liquidator appointed u/s 64 of the A.P. Co-operative Societies Act, the employees who were continuing in stores were discharged. In our opinion, the proposal put up to the Government was limited to appointment of suitable qualified ex-stores employees in vacancies available to direct recruits in TTD in the respective categories. The offer of employment to them was on compassionate grounds. Employment of persons as NMRs is totally different from regular employment. In our considered opinion, the proceedings dated 10-4-1991 are clearly inapplicable to Ex-NMRs of erstwhile TTD stores as there is no cadre for NMRs nor any posts as such are reserved for appointment of direct recruit NMRs in TTD. Further, as rightly contended by the learned Advocate-General, the mere mentioning of NMRs in the annexure appended to proceedings dated 10-4-1991. which was an obvious mistake of the office of TTD, confers no enforceable right on them as they are not within the ambit of the operative portion of the orders issued by the Government in G.O. Ms. No.1025, dated 21-12-1990. When the order of the Government itself has not conferred any right on the Ex.NMRs of the erstwhile TTD stores for absorption into TTD service, the TTD cannot confer any such right on them in their consequential proceedings dated 10-4-1991 issued pursuant to the orders of the Government in G.O. Ms. No. 1025. Therefore, we are of the view that the respondents-employees have no enforceable legal right to seek for a writ of mandamus against the TTD. The absorption should be limited only to the vacancies earmarked for direct recruits in TTD and as such the Ex-NMR workers in TTD stores who are not employed on regular basis as per rules cannot claim for absorption in TTD. By reason of mere mention of their names in the proceedings dated 10-4-1991, the TTD cannot be compelled to absorb them into TTD service, which is not at all the intent of G.O. Ms. No.1025, dated 21-12-1990. The Writ Petition No. 10149 of 1993 is, therefore, devoid of any merit and is liable to be dismissed

22. For the reasons aforesaid, the Writ Appeal No.1328 of 1997 is allowed and the Writ Petition No.10149 of 1993 is dismissed as devoid of merits and the order of the learned single Judge in WP No. 10419 of 1993 is set aside. In view of the orders passed in WA No.1328 of 1997, WP No.24709 of 1996 also fails and it is accordingly dismissed. In the facts and circumstances of the cases, there shall be

no order as to costs.