
(1999) 08 AP CK 0060
In the Andhra Pradesh High Court
Case No : Writ Petition No. 5240 of 1998

T. Vykunta Rao

APPELLANT

Vs

Commissioner of Endowments and Others

RESPONDENT

Date of Decision : 12-08-1999

Acts Referred:

Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1966
— Section 31(5)
Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987
— Section 155(2)
Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Rules,
1987 — Rule 39, 41, 43, 48(2)
Endowments Rules, 1983 — Rule 39

Citation : (1999) 5 ALT 37

Hon'ble Judges : S. Ananda Reddy, J

Bench : Single Bench

Advocate : K.V. Satyanarayana, for the Appellant; G.P. for Respondent No. 1,
Metta Chandrasekhar Rao, SC, for the Respondent

Final Decision : Allowed

Judgement

S. Ananda Reddy, J.—This writ petition is filed praying for the issue of a writ of mandamus declaring the transfer and continuance of the 3rd respondent in the 2nd respondent institution as illegal and void and consequently direct the respondents to consider the case of the petitioner for promotion as Deputy Executive Engineer in the 2nd respondent institution.

2. The facts of the case are that the petitioner was appointed as Assistant Engineer on NMR basis on 01-05-1992 in Sri Venkateswara Swamy Vari Devasthanam, Dwarakatirumala, West Godavari District. The petitioner is a B. Tech (Civil) Degree Holder. Therefore, by proceedings dated 18-07-1994, the Executive Officer of the above said temple has appointed the petitioner as Assistant Engineer. Later by proceedings of the Commissioner, the 1st respondent herein, dated 04-07-1995, the petitioner was transferred to the

establishment of Sri Durga Malleswara Swamy Devasthanam, Vijayawada. The post of the Assistant Engineer held by the petitioner was re-designated as Assistant Executive Engineer with effect from 21-12-1996. Thereafter the petitioner made a representation to the 2nd respondent herein to consider his case for promotion as Deputy Executive Engineer in the establishment of Sri Durga Malleswara Swamy Devasthanam, Vijayawada, as according to the petitioner he is qualified to hold that post. As per the cadre strength approved by the 1st respondent with reference to Sri Durga Malleswara Swamy Devasthanam in Engineering Section there is a post of Deputy Executive Engineer. As the petitioner is fully qualified to be considered for promotion he claimed that he should be promoted to the said post. But, because the said post was occupied by the 3rd respondent, the 2nd respondent did not consider the case of the petitioner. It is stated that the 3rd respondent, who is a B.E. (Mechanical) was appointed as Asst. Executive Engineer in the Irrigation Department and he was transferred from the said Department to the Office of Deputy Executive Engineer, Endowments Department, Guntur on deputation. Subsequently he was further transferred by the 1st respondent by his letter dated 25-5-1985 to Sri Durga Malleswara Swamy Devasthanam, Vijayawada. Since then he has been working in the said Devasthanam initially as Assistant Executive Engineer and later as he was promoted in his parent department, now he is holding the post of Deputy Executive Engineer. According to the petitioner the appointments to the posts in the Charitable and Endowment institutions are to be made either by the Trustees or by the Executive Officer. The 2nd respondent was the competent authority for appointing to the post of Deputy Executive Engineer of Sri Durga Malleswari Devasthanam. The petitioner made a representation to the 2nd respondent for his consideration. But the 2nd respondent by his proceedings dated 29-12-1997 informed the petitioner that he does not belong to this temple i.e., Sri Durga Malleswara Swamy Devasthanam since his parent institution is Sri Venkateswara Swamy Devasthanam and his case for promotion may be considered as and when vacancy arises in his parent institution. Aggrieved by the said action the petitioner has approached this Court.

3. The learned Counsel for the petitioner contended that the view taken by the 2nd respondent is incorrect. It is stated that Rules have been framed by the State Government in accordance with the powers conferred u/s 31(5) of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1966 (for short, Act 1966/Old Act). The said Rules cover the conditions of service of the persons appointed under the provisions of the Act. It is stated that Under Rule 39 of the said Rules, eight institutions named therein are considered as a single Unit for the purpose of recruitment, transfer, promotion, seniority and discharge for want of vacancies etc. When once the eight institutions, including the institution in which the petitioner is presently working as well as the institution in which he was originally appointed constitute as a single Unit, it is not open to the 2nd respondent to hold that the petitioner is not entitled for consideration for promotion to the post of Deputy Executive Engineer in Sri

Durga Malleswara Swamy Devasthanam on the ground that the parent institution of the petitioner is Sri Venkateswara Swamy Devasthanam, Dwarakatirumala. The learned Counsel also contended that the Rules framed in G.O.Ms.No. 1478, dated 17-11-1986 though under the Old Act it was held that they are applicable even after the Amended Act and it was so held by this Court in W.P.No. 13820 of 1996 dated 16-12-1996. It is, therefore, contended that the petitioner's claim has to be considered in the light of the said Rules. It is also contended that the 1st respondent has no power to post the 3rd respondent under the 2nd respondent on deputation. It is stated that the 3rd respondent when he was posted under the 2nd respondent was holding the post of Assistant Executive Engineer and the 1st respondent has no power to transfer the said 3rd respondent to one of the eight institutions which constitute a single unit. The learned Counsel specifically referred to the Annexure-III of the Rules of 1983 where the mode of recruitment to Class-II posts are specified. Category-2 in Class-II is the post of Additional Assistant Engineer, which is re-designated as Assistant Executive Engineer. The mode of recruitment is only by way of direct recruitment or by promotion from Category-3. Similarly with reference to the post of Deputy Executive Engineer specified in Category-1 of Class-II, is to be filled only either by direct recruitment or by promotion from Category-2 and not by transfer or deputation. It is also stated that in Category-1 of Class-I to the post of Superintendent there is a provision that it can be filled either by promotion from the Category-2 of Class-I or by loan of services of Superintendents of Endowment Department. Therefore, it is contended that the only post where it can be filled by deputation is only the post of Superintendent and not any other posts. Hence it is contended that the filling of the vacancy by the 3rd respondent is illegal and unsustainable.

4. The next contention of the learned Counsel is Rule 48 of the Rules refers to the application of the provisions of the Fundamental Rules to the employees of the eight institutions. There is specifically mentioned that as per the said Rule 48, Fundamental Rules 105 to 113-A in Chapter-11 are applicable. It is stated that the above reference to Rule 113-A seems to be apparently a mistake. Under Chapter-11 the fundamental rules are only 105 to 108-A. The Fundamental Rules that deal with deputation are in Chapter-12 i.e., from FR 109 to 127. As the Fundamental Rules under Chapter-12 are not made applicable as per the rules the deputation/transfer of the 3rd respondent to one of the eight institutions of the Unit is illegal and void. Apart from that, it is also stated that in the light of the Rules framed by the Government of Andhra Pradesh in G.O. (P) No. 10, dated 22-1-1993 the maximum period of deputation is only five years. According to the said Rules the initial period of three years shall be sanctioned by the Head of the Department if he is competent authority to order transfers and postings of his subordinates; otherwise the Government in the administration department not below the rank of Deputy Secretary has to pass orders. Insofar as the additional period of two years, it is only the Government which has to pass orders. According to the petitioner as no such orders were passed by the

Government and though the original orders were passed in the year 1985, the deputation as well as the continuation of the 3rd respondent is illegal, void and ab initio. It is also stated that the 3rd respondent was transferred to Sri Durga Malleswara Swami Devasthanam, Vijayawada as an Assistant Executive Engineer. Even after his promotion in his parent Department as Deputy Executive Engineer he is being continued in the post of Deputy Executive Engineer, even after completion of more than 14 years. The continuation of the 3rd respondent would seriously affect the promotion of the petitioner. Hence sought for cancellation of the order posting the 3rd respondent either on transfer or on deputation.

5. The learned Counsel for the petitioner relied upon the following decisions, in support of his case. P.S.R. Subrahmanyam and Others Vs. Commissioner of Endowments and Others, , P. Seshachalam Vs. The Executive Officer, Sri Varadaraja Swamy Temple and Others, and an unreported judgment in P. Gopi v. the Commissioner of Endowments in W.P.No. 13820 of 1996, dated 16-12-1996.

6. The claim of the petitioner is resisted by the 2nd respondent. The 2nd respondent filed a counter stating that there is no vacancy of Deputy Executive Engineer in the establishment of Sri Durga Malleswari Swamy Varla Devasthanam, Vijayawada. Further, it is also stated that the petitioner belongs to Sri Venkateswara Swamy Vari Devasthanam, Dwarakatirumala and he is eligible for promotion in his parent institution only, provided there is a vacancy. It is also stated that the 3rd respondent has been posted in the establishment of the 2nd respondent on deputation under Fundamental Rules 110 to 126. The 2nd respondent also admitted that the 3rd respondent belongs to the Irrigation Department. Later he was posted as (Assistant) Executive Engineer on deputation in the Department at Guntur and thereafter transferred to the 2nd respondent Devasthanam by the 1st respondent by his order dated 21-6-1985. As he was promoted in his parent Department to the post of Deputy Executive Engineer, he has been continuing in the existing vacancy of the Deputy Executive Engineer in the 2nd respondent-institution. The 2nd respondent has also stated that the vacancy in the religious institutions can be filled up with the Government servants on foreign service under F.R.No. 110 to 126 and therefore there is no illegality or irregularity in transferring the 3rd respondent as well as in continuing him in the post of Deputy Executive Engineer.

7. The learned Counsel also stated that the case of the petitioner cannot be considered directly for the post of Deputy Executive Engineer even assuming that there is a vacancy in the 2nd respondent's institution. Under the Rules a selection committee has to be constituted for promotion as contemplated Under Rule 51 and further a common seniority has to be prepared in respect of the existing officers of the unit of eight institutions and then only the claim for promotion to the post of Dy. Executive Engineer is to be considered according to the eligibility of the common seniority list. As there is no such either selection committee or the common seniority list the petitioner is not entitled for the relief claimed.

8. The learned Government Pleader for the 1st respondent opposed the claim of the petitioner by adopting the arguments of the 2nd respondent.

9. Having regard to the rival contentions and the material on record, the issue that falls for consideration is whether the 3rd respondent could be continued in the institution of Sri Durga Malleswara Swamy Devasthanam, Vijayawada as Dy. Executive Engineer, if not whether the petitioner is entitled for the relief that he should be considered for promotion to the post of Dy. Executive Engineer.

10. The facts as stated earlier are not in dispute. Admittedly, the 3rd respondent was appointed as Assistant Executive Engineer in the Irrigation Department. Later he was posted on deputation in the Endowments Department under the Deputy Executive Engineer, Guntur. While so the 1st respondent transferred him by his order dated 25-5-1985 to the establishment of the 2nd respondent. Since then he has been continuing in the said institution. The said 3rd respondent was even later promoted as Dy. Executive Engineer in his parent department and accordingly he is holding the post of Dy. Executive Engineer in the institution to which he was transferred by the 1st respondent. The grievance of the petitioner is that he is eligible for promotion to the post of Dy. Executive Engineer. As the 3rd respondent was illegally continuing in the said post he was deprived of the promotion. According to the petitioner the continuance of the 3rd respondent in the 2nd respondent Devasthanam is contrary to the Rules and therefore it should be declared that the 3rd respondent is not entitled to continue in the said post. The contention of the petitioner was that the 3rd respondent came on deputation to the Endowment Department. When once he was working in the Endowment Department on deputation, his transfer to the 2nd respondent institution where he is presently continuing is illegal and liable to be set aside. The contention of the petitioner is based on the Rules framed by the State Government. Rule 39 of the Endowment Rules, 1983 specifies eight institutions, namely (1) Sri Varaha Lakshminarasimhaswamy Devasthanam, Simhachalama (2) Sri Veera Venkata Satyanarayanawamy Devasthanam, Annavaram, (3) Sri Seetaramachandraswamy Devasthanam, Bhadrachalam, (4) Sri Venkateswara Swamy Devasthanam, Dwarakatirumala, (5) Sri Durga Malleswaraswamy Devasthanam, Vijayawada, (6) Sri Raja Rajeswaraswamy Devasthanam, Vemulawada, (7) Sri Lakshmi Narasimha Swamy Devasthanam, Yadagirigutta and (8) Sri Bhramaramba Mallikarjuna Swamy Devasthanam, Srisailam, constitute one Unit, and the said Rule says special provision for certain temples. As per Rule 43 the said eight institutions constitute one unit for the purpose of recruitment, transfer, promotion, seniority, discharge for want of vacancies etc. Rule 41 classifies the employees of the eight institutions into different classes and categories which are specified therein. The cadre strength of each classes and category of post in each of the eight-institutions shall be fixed by the Commissioner keeping in view the needs of the institution. Further, Rule 48 (2) provides for application of the fundamental rules which are as under:-

"The following provisions of the fundamental rules as in force from time to time

shall apply to the employees of the eight institutions.

F.Rs. 19 - 48 in Chapter IV

F.Rs. 44 to 48 (b) in Chapter V.

F.Rs. 49 in Chapter VI,

F.Rs. 52 to 55 in Chapter VIII,

F.R. 56 in Chapter IX,

F.Rs. 105 to 113(a) in Chapter XI."

Therefore, the learned Counsel for the petitioner stated that insofar as the Fundamental Rules specified in Chapter-11, there is a mistake that instead of Fundamental Rule 108-A it was mentioned as 113(a). A verification of the Fundamental Rules also shows that the fundamental rules that fall under Chapter-11 are only 105 to 108 (a). Rule 113 admittedly falls in Chapter-12. From the above it is clear that the fundamental rules specified in Chapter-12 are not applicable. The claim of the respondents is that the 3rd respondent was deputed to the Endowments Department in terms of fundamental Rules 109 to 127, which fall under Chapter-12. When once fundamental rules mentioned in Chapter-12 are not applicable, equally the rule of deputation is also not applicable. Apart from this the 3rd respondent was admittedly came on deputation to the Endowments Department, not to the institutions which are specified in Rule-39. Admittedly he was working outside the unit of eight institutions. It is the contention of the learned Counsel that the officers or servants working within the unit of eight-institutions cannot be transferred outside and to that effect this Court has rendered a judgment in the case of P. Gopi v. Commissioner of Endowments (W.P.No. 13820/96). Equally a person working outside the unit of eight institutions cannot be transferred and posted into this unit. Though the present case is a converse to the case where this Court rendered its judgment, the said judgment equally applies. Therefore, the transfer of the 3rd respondent by the 1st respondent is illegal and liable to be set aside.

11. The next contention of the learned Counsel for the petitioner is that even assuming that the 3rd respondent can be posted within the unit of eight institutions on deputation, admittedly he was transferred and posted in the year 1985. The maximum period of deputation provided as per the G.O.(P). No. 10, Finance & Planning Department, dated 22-1-1993 is five years. Even for that period of five years also, the initial period of three years shall be sanctioned by the Head of the Department, who is competent to order transfer and postings. Thereafter the deputation also has to be extended by the Government. As the 3rd respondent came on deputation in the year 1985, the continuation either in the Department or in the Unit of eight-institutions beyond the period of five years is illegal and therefore he should not be allowed to continue in the 2nd respondent's institution. This Court in W.P. No. 13820/96 (P. Gopi's case) considered the issue whether a sweeper appointed in Sri Durga Malleswara

Swamy Devasthanam, Vijayawada (where the 3rd respondent herein is working) can be transferred to outside the Unit of eight-institutions. The petitioner in that case was appointed as sweeper and later he was promoted as Watchman and further promoted as a Record Assistant as well as Junior Assistant. The Commissioner of Endowments by order dated 06-07-1996 transferred him from Sri Durga Malleswara Swamy Devasthanam to Sri Swamy Hathiramji Mutt, which is an institution outside the Unit of eight institutions. When the same was questioned, this Court accepted the claim of the petitioner and held that the transfer of the said petitioner to outside the unit of eight institutions was held illegal and accordingly the impugned order was set aside. In the light of the said decision and also the rule position the 3rd respondent is not entitled to continue in the 2nd respondent institution.

12. The learned Counsel also relied upon certain other decisions. The first one is in the case of PSR Subrahmanyam (1 supra), In this decision the dispute was with reference to the powers of the Commissioner to transfer an employee from one religious endowment or institution to another within the unit of eight institutions. There the contention of the petitioner was that the Government did not frame any rules dealing with the transfer of the office holders and servants, as provided u/s 39. Therefore the transfers made by the Commissioner are not sustainable. The Division Bench of this Court rejected the said contention and upheld the orders of transfer relying upon the provisions of Section 39(1) whereby the Commissioner was specifically given power to transfer any office holder or servant attached to a charitable or religious institution or endowment from that institution or endowment to another institution or endowment. As there is no dispute with reference to the power of the Commissioner in the present writ petition the said case may not be of any assistance to the petitioner.

The other decision is in the case of P. Seshachalam (2 supra). Here the issue relates to the age of superannuation of an employee in the religious institution or endowment. There, the contention of the petitioner was that as no rules are framed under the New Act of 1987, the petitioner, who is a clerk of a temple is entitled to continue in office till he attains the age of 65 years. The said contention was rejected by this Court holding that the Rules framed under the Old Act are applicable in terms of the provisions of the General Clauses Act. Therefore, the rules framed under G.O.Ms.Nd. 1478, dated 17-11-1986 are applicable and the petitioner therein was not entitled to continue in office beyond the age of 58 years. This decision no doubt supports the claim of the petitioner that the Rules framed under the old Act are applicable even after the Old Act was repealed. Apart from this in the New Act, 1987, Section 155(2)(a) specifically saves the rules framed under the Old Act to the extent they are not in consistent with the New Act and those rules are deemed to have been made, issued, passed, taken or done by the appropriate authority under the corresponding provisions of this Act. In view of this specific provision de hors the earlier decision of this Court, the rules framed under G.O.Ms.No. 1478 dated 17-11-1986 are applicable to the petitioner. Further, the Rules framed and the

above G.O. does not give any power either to the Commissioner or to any other authority to appoint the persons in the posts specified in Class-II of Annexure-III by "deputation". All the posts specified therein are to be filled either by direct recruitment or by promotion from the next lower cadre. The rules also provide for filling up vacancy by loan of services from the Endowments Departments with reference to the category of posts under Class-1 (Ministerial branch) only, that too in respect of the first three categories of posts. Therefore, there is absolutely no provision under the Rules for the appointment of the 3rd respondent on deputation in any of the institutions constituted as a single unit Under Rule 39 of the Rules.

The learned Counsel also relied upon a decision of the Supreme Court in the case of C.M. Naidu v. State of Karnataka, 1977 (1) SLR 194 (SC). Here the issue was regarding the absorption into the Bangalore Municipal Services of Senior Health Inspectors of the Karnataka State Civil Services. Originally the Municipal Corporation passed a resolution for absorption of Senior Health Inspectors from the Karnataka State Civil Services, which was sanctioned by the State Government for appointment/ absorption of the Senior Health Inspectors into the Corporation cadre. Later the said sanction by the State Government was revoked on the ground that the said sanction is violative of the statutory cadre rules. This was questioned before the Supreme Court. The Supreme Court while upholding the withdrawal of the sanction, held that the category of Senior Health Inspectors, who are regular employees of the Corporation, can be drawn only by promotion from the Junior Health Inspectors and that too to the extent of only one half the number of posts. It is, therefore, obvious that without amendment of the Cadre and Recruitment Regulations, permitting appointment and absorption is really nothing but appointment of Senior Health Inspectors drawn from the State Directorate of Health Services as permanent Senior Health Inspectors under the Corporation, the appellants could not be absorbed as permanent Senior Health Inspectors in the Corporation establishment. Relying upon the said decision it is contended that the filling up of the post of Deputy Executive Engineer, which is one of the posts specified in Class-2 under Annexure-III, by "deputation" from other departments is contrary to the Rules and therefore the said posting of the 3rd respondent in the 2nd respondent-institution is illegal. I find merit in the said contention. There is absolutely no provision in the Rules for filling up of a post on "deputation" from other department. Therefore, the posting of the 3rd 3. 1977 (1) SLR 194 (SC). respondent in one of the eight institutions which constitute a unit, namely Sri Durga Malleswara Swamy Devasthanam, Vijayawada is illegal and unsustainable.

13. From the above, the continuance of the 3rd respondent in the post of Deputy Executive Engineer of Sri Durga Malleswari Swamy Devasthanam, Vijayawada is invalid for more than one reason specified earlier. Consequently the post has to be considered as vacant for being considered for promotion among the eligible Assistant Executive Engineers, working in the unit of eight-institutions.

14. In respect of the representation made by the petitioner to the 2nd respondent, the 2nd respondent conveyed to the petitioner that his claim for promotion can be considered only with reference to the parent institution and not in the institution where he is presently working. This view taken by the 2nd respondent is also contrary to the Rule 43 of the Rules framed in G.O.Ms.No. 1478, dated 17-11-1986.

15. On behalf of the 2nd respondent a contention was raised that there was no Selection Committee in accordance with the rules framed in G.O.Ms.No. 1478. Therefore, in order to consider the claim of the petitioner a Selection Committee has to be constituted. But the material papers filed by the petitioner show that the petitioner was selected by the Selection Committee constituted by the Commissioner of Endowments, Andhra Pradesh, Hyderabad in Dis.No. A3/22711/94, dated 24-5-1994. Therefore, there is no merit in the contention of the 2nd respondent. In any case, the claim of the petitioner for promotion to the post of Deputy Executive Engineer is to be considered only along with other eligible Assistant Executive Engineers, working in the unit of eight-institutions by the Selection Committee constituted by the 1st respondent. Therefore, the petitioner is not entitled for a direction to consider his case for promotion to the post of Deputy Executive Engineer by the 2nd respondent.

16. The writ petition is, accordingly, allowed to the extent indicated above. No costs.