

(2014) 06 AP CK 0080

Andhra Pradesh High Court

Case No: Writ Appeal No. 1954 of 2013

Tirumala Tirupati Devastnanam

APPELLANT

Vs

Ch. Vasudeva Sarma

RESPONDENT

Date of Decision: June 25, 2014

Hon'ble Judges: L.N. Reddy, J; Challa Kodanda Ram, J

Bench: Division Bench

Advocate: A.K. Jayaprakash Rao, Advocate for the Appellant; K.V. Satyanarayana,
Advocate for the Respondent

Judgement

L. Narasimha Reddy, J.

This writ appeal arises out of an order, dated 27.09.2013 in W.P. No. 25413 of 2001. The sole respondent filed the writ petition.

2. The brief facts are that the respondent was initially engaged as a Volunteer on 01.09.1997, in the course of construction of a Kalyana Mandapam at Tanuku and after completion of the construction on 25.02.1988, the maintenance thereof was entrusted to a local administrative committee. The committee is said to have engaged the respondent as Assistant Manager on ad hoc basis. Through order, dated 13.01.1989, the committee dispensed with the service of the respondent. Thereupon, the respondent filed W.P. No. 863 of 1989. The writ petition was allowed through order, dated 27.09.1994 directing reinstatement of the respondent. In compliance with the said order, the appellant reinstated the respondent into service as a workman through order, dated 21.08.1985.

3. In the year 2001, the respondent was entrusted with the duty in the Vaikuntam Que Complex at Tirumala. Through memo, dated 04.08.2001, the respondent was required to work at Sri Venkateswara Poor Home, Akkarampalle, Tirupati. In that memo, he was described as "unabsorbed workman (Class-IV)". Challenging the said memo, the respondent filed W.P. No. 25413 of 2001 with a prayer to direct the appellant to fit him in an appropriate cadre in the establishment of Devasthanam in pursuance of the judgment, dated 27.09.1994 in W.P. No. 863 of 1989 and to declare

the description of him as "unabsorbed workman (Class-IV)" as illegal.

4. In the affidavit filed in support of the writ petition, the respondent stated that he was subjected to harassment after W.P. No. 863 of 1989 was allowed and that he was denied the benefit of increments and pay scale. He has also stated that describing him as "unabsorbed workman" is contrary to the order of this Court in W.P. No. 863 of 1989.

5. The appellant filed a counter affidavit opposing the writ petition. It was stated that initially the appointment of the respondent was only as workman, that too by the local committee and in compliance with the direction issued by this Court in W.P. No. 863 of 1989, he has been reinstated into service as workman through order, dated 21.08.1995. It was pleaded that the benefit of the pay scale was extended to the respondent through another proceedings of the same day. They stated that the respondent did not challenge any of these proceedings and describing him as "unabsorbed workman" was only in the context of his not having been made permanent. Across the Bar, it was stated that the services of the respondent herein were absorbed through proceedings, dated 10.10.2007 along with those of 150 other candidates.

6. Through the order under appeal, the learned Single Judge declared that the respondent is in the cadre of LDC and he is entitled to be put in the relevant time scale with effect from the date on which his services were terminated i.e., 13.01.1989. The relief of backwages and attendant benefits was also granted. Six months time was stipulated for implementation.

7. Sri A.K.Jayaprakash Rao, learned counsel for the appellant submits that the relief claimed in the writ petition was totally untenable. He submits that in a way, the respondent wanted implementation of the order passed by this Court in W.P. No. 863 of 1989, which in fact stood complied with through order of reinstatement, dated 21.08.1995. He submits that if the respondent had any grievance about his having been reinstated as workman on 21.08.1995, he ought to have made out an issue of it, either by filing contempt case or by filing a writ petition and that he did neither, obviously because there was no issue at all. Learned counsel further submits that the only basis for filing of the present writ petition was the memo dated 04.08.2001, insofar as it described the respondent as unabsorbed workman and if the grievance was only about absorption, that stood attended to with the order of absorption, dated 10.10.2007 passed during the pendency of the writ petition. He contends that not only there does not exist any record to disclose that the respondent has ever been appointed as LDC but also there is not even a pleading in either of the writ petitions, to that effect. He submits that the relief granted by the learned Single Judge is contrary to law and the scope of the writ petition.

8. Sri K.V.Satyanarayana, learned counsel for the respondent, on the other hand, submits that the respondent was holding the post of Assistant Manager, when he was terminated on 13.01.1989 and once this Court allowed W.P. No. 863 of 1989 and directed the reinstatement, it ought to have been only against that post, or its equivalent post. He submits that the reinstatement of the respondent as workman on 21.08.1995 is contrary to the order of this Court in W.P. No. 863 of 1989 and taking note of the same, the present writ petition was allowed by the learned Single Judge. He submits that the plea of the appellant that there is no post of Assistant Manager in the cadre cannot be treated as a valid excuse and appointing the respondent as workman is not only contrary to law, but also the judgment of this Court in W.P. No. 863 of 1989.

9. The available service particulars of the respondent and the various developments that have taken place in relation to him have already been furnished in the preceding paragraphs. W.P. No. 863 of 1989 filed by the respondent was allowed and a direction was issued to reinstate him into service. Such reinstatement took place on 21.08.1995. The relevant portion of the order reads:

"Pursuant to the above High Court orders, the case of the petitioner Ch.Vasudeva Sarma has been examined in detail and he is taken back to duty as work-man as ordered by the High Court, Hyderabad subject to the disposal of the writ appeal to be filed by TTDs. The orders issued earlier vide Proc. 3rd and 4th read above are hereby cancelled."

10. On the same day, the benefit of minimum of the pay scale was extended to the respondent. In case, he had any specific grievance about his being reinstated as workman, the respondent ought to have approached this Court by filing a contempt case, alleging that the reinstatement does not accord with the judgment in W.P. No. 863 of 1989. Either such an event did not take place, or the event, if occurred, did not lead to any relief. Thereby, the respondent acknowledged the reinstatement as workman. It was only in the year 2001, that the respondent approached this Court by filing a fresh writ petition.

11. It is not as if the appellant has changed the position or designation of the respondent in the year 2001, to his detriment.

12. Except that he was described as "unabsorbed workman", neither his emoluments were reduced nor his position was downgraded. His description as "unabsorbed workman" was in the context of several workmen making claims for absorption and some of them having been extended such benefit in compliance with the orders. If the prefix "un" were to have been removed, there would not have been any grievance for the respondent to approach this Court.

13. During the pendency of the writ petition, an important and substantial development has taken place. Along with about 150 other workmen in the Devasthanam, the respondent was also regularized in the post of last grade

workman, through order, dated 10.10.2007. Not only the benefit of full-fledged scale of pay with allowances was extended, but also the respondent was made as a permanent member of the cadre. For one reason or the other, this development was not mentioned in the writ petition. Added to that, the respondent did not challenge the order, dated 10.10.2007, through which he was regularized as a workman. As long as that appointment continues, the respondent could not have claimed any further relief.

14. We have carefully gone through the affidavit filed in the writ petition. It is almost in equivocal terms. The respondent did not spell out as to the post, against which he was specifically appointed much less did he file an order to that effect. Added to that, in paragraph 7 of the affidavit filed in support of the writ petition, the respondent stated as under.

"I further beg to submit that I am entitled to increments also which are not being paid to me. When I was appointed as a "Workman" by the respondent by its order, Dt. 14-8-1995, the minimum pay scale was 1375-25-1475-30-1625-40-1825-50-2075-60-2375. The said pay scale has been revised as follows in 1999. 2550-50-2750-60-3050-80-3450-3550-120-4550. Even now I am now being paid the basic salary of Rs. 2550/- plus allowances which is unjust. Even though I am a "Workman" I am entitled for increments according to the pay scale. Reference to me as unabsorbed workman is contrary to this Hon"ble Court's order, Dt.27-9-94 in W.P. No. 863 of 1998. By proceedings in Roc. No. B7/9102/89, dated 21-08-95, I have been paid an amount of Rs. 1,02,232/-. On 11-07-2001 the respondent has issued proceedings to which I gave a reply. Till now the respondent has not favoured me with a reply. There is difference in duties between a "workman" and "unabsorbed" workman."

15. From a perusal of this, it becomes clear that the grievance of the respondent, if at all, was about non-extension of the increments for the post of workman. There was no specific prayer that he must be absorbed or appointed as LDC. It needs to be noted that the post of LDC occurs in the establishment of Devasthanam and a specific procedure is prescribed for appointment of candidates against it. It is asserted by the learned counsel for the appellant that no ad hoc or NMR appointments were made to the post of LDC and invariably the persons appointed on ad hoc or temporary basis were absorbed in Class-IV category. When such is the nature of the establishment in the Devasthanam, we do not find any basis for the learned Single Judge to assume that the respondent has been holding the post of LDC. The curious part of it is that the learned Single Judge has travelled beyond the scope of the writ petition and in a way granted the relief referable to W.P. No. 863 of 1989, which the learned Single Judge who decided that writ petition did not feel it appropriate to grant. For all practical purposes, the relief granted in the present writ petition is nothing but addition of something more to what was granted in W.P. No. 863 of 1989.

16. Therefore, we allow the writ appeal and set aside the order under appeal.

17. The miscellaneous petition filed in this writ appeal shall also stand disposed of. There shall be no order as to costs.