

CASE NO.:
Appeal (civil) 7962 of 2004

PETITIONER:
Tirumala Tirupati Devasthanams

RESPONDENT:
K. Jotheeswara Pillai (D) by LRs & others

DATE OF JUDGMENT: 03/05/2007

BENCH:
G.P. Mathur & A.K. Mathur

JUDGMENT:
J U D G M E N T

G. P. MATHUR, J.

This appeal, by special leave, has been preferred against the judgment and order dated 21.1.2003 of a Division Bench of Andhra Pradesh High Court by which the writ appeal preferred by the appellant was dismissed and the judgment and order dated 20.11.1997 of a learned Single Judge, by which the writ petition filed by the respondents was allowed with certain directions, was affirmed.

2. The original writ petitioners before the learned single Judge worked for certain periods with the appellant Tirumala Tirupati Devasthanams as Nominal Muster Rolls (for short 'NMR') employees. A circular was issued by the appellant on 25.7.1990 wherein it was mentioned that in case of any vacancies, ex-employees should be appointed in order of seniority. The five writ petitioners were temporarily appointed as Attenders by the appellant on 17.8.1992 on the basis of aforesaid circular being ex-employees. After verification of the records and other documents it was found that all the five writ petitioners were overage and were not eligible for appointment and accordingly their services were terminated on 16.4.1993. This order was challenged by the employees by filing Writ Petition No. 5176 of 1993, which was allowed only on the ground that the action had been taken against the writ petitioners without issuing any notice and without giving an opportunity of hearing. The order of termination dated 16.4.1993 was set aside leaving it open to the appellant to take fresh action after giving notice to the concerned employees. The appellant then issued notices to the concerned employees on 26.10.1993 and after considering their reply, passed an order on 30.12.1993 terminating their services on the ground that they were over age and, therefore, ineligible for appointment. The employees then filed writ petition No. 3885 of 1994 challenging the order of termination dated 30.12.1993. A learned Single Judge of the High Court allowed the writ petition and set aside the order of termination of service and directed the appellant to reinstate the employees (respondents herein) with continuity of service and full back wages. The main ground which weighed with the learned Single Judge was that though the writ petitioners were appointed as direct recruits on 17.8.1992, but the fact that they had earlier worked for some time on NMR could not be ignored. It was also held that the appellant had practiced invidious discrimination among persons belonging to the same class inasmuch as by proceedings dated 6.4.1993 exemption had been granted to 51 persons from age and educational qualifications and on 4.5.1990 exemption had been granted to five persons who were under age. After mentioning the said facts the learned Single Judge held as under: -
".....Nothing is placed before the Court

to show as to why such a discretion could not be exercised by the board of trustees in the case of the petitioners. In fact, the decision of the Board of Trustees refusing to exercise the power of exemption is not laid before the Court for perusal. There is only a reference to that effect in the impugned order.

In the result, the writ petition is allowed. The impugned order is quashed. A writ of mandamus shall issue to the respondents to reinstate the petitioners 1 to 4 into service with continuity of service and with full back wages. Further, the respondent is directed to consider the case of the petitioner No. 5 as to whether he is entitled to be exempted from the operation of age qualification vested in the trustees under rule (I) of the general rules in G.O. Ms. No. 1060, Revenue, (Endt.I) department, dated 24.10.1989 within a period of one month from the date of receipt of a copy of this order. No costs.

The rule nisi has been made absolute as above."

The writ appeal filed by the appellant was summarily dismissed by the Division Bench of the High Court by a brief order.

3. Learned senior counsel for the appellant has submitted that the service conditions of the employees working in Tirumala Tirupati Devasthanams are governed by the Tirumala Tirupathi Devasthanams Employees Service Rules, 1989 (hereinafter referred to as "the Rules") and under Rule 11 no person, who has completed the age of 28 years, is eligible for appointment by way of direct recruitment and in these circumstances the appointment order issued in favour of the contesting respondents (writ petitioners) was clearly illegal and the same was rightly set aside. Learned counsel has also submitted that the High Court has clearly erred in directing the appellant to grant exemption from eligibility criterion in favour of the respondents as, in law, no such direction can be issued.

4. Learned counsel for the respondents has supported the judgments of the High Court and has submitted that in the facts and circumstances of the case the view taken by the High Court is perfectly correct.

5. Rules 1, 2, 3 and 11 of the Rules read as under: -

"1. These rules may be called Tirumala Tirupathi Devasthanams Employees Service Rules, 1989.

2. They shall apply to every employee of Tirumala Tirupathi Devasthanams except to the Officers or Staff taken on contract basis and officers or staff taken on deputation from the Government or other organizations.

3. Unless the context otherwise requires: -

(i) 'Act' means the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987.

(ii) Words and phrases used but not defined in these rules shall have the same meaning assigned to them in the Act, the rules framed thereunder or in respect of rules specified under Rule 4.

11. Age. : - No person shall be eligible for appointment to the service by direct recruitment to any post in the service of Tirumala Tirupathi Devasthanams in Annexure-II if he has completed the age of 28 years or the age prescribed therefor in the said Annexure as on the 1st July of the year, in which the notification for recruitment is issued :

Provided that the orders issued by Government from time to time regarding the general relaxation of the age and age relaxation in respect of person belonging to reserved categories such as Scheduled Caste, Scheduled Tribe and Backward Class shall apply."

Rule 4 gives a long list of rules made by the Government of

Andhra Pradesh in respect of the employees of the State Government which have been made applicable to Tirumala Tirupathi Devasthanams employees, which includes Fundamental Rules and Subsidiary Rules issued thereunder, Andhra Pradesh Civil Services (Conduct) Rules, 1964, Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1963, etc. Rule 11 of the Rules clearly provides that no person shall be eligible for appointment to the service by direct recruitment to any post in the service of Tirumala Tirupathi Devasthanams in Annexure-II if he has completed the age of 28 years or the age prescribed therefor in the said Annexure as on 1st July of the year in which the notification for recruitment is issued. It also provides for general relaxation of age in accordance with the orders issued by the Government and also in respect of persons belonging to reserved categories such as Scheduled Castes and Scheduled Tribes and backward classes. Thus the Rules make complete provisions regarding qualification and age for direct recruitment and also in respect of category of persons to whom relaxation can be granted which would be in accordance with the Government Orders. The Rules do not mention anywhere that while making direct recruitment any services rendered as an NMR employee has to be taken into consideration or some relaxation in age is to be granted on its basis. The writ petitioners had worked for a brief period as NMR employees in 1984-86. It was after a gap of more than six years that they were appointed by way of direct recruitment on 17.8.1992. Under the Rules they were clearly ineligible for being given any appointment as admittedly they were over age.

6. Learned Single Judge allowed the writ petition mainly on the ground that on two earlier occasions the appellant had granted exemption from age and qualifications and no material was placed before the High Court as to why such a discretion could not be exercised by the appellant in favour of the concerned employees, namely, the writ petitioners. The learned Single Judge has also issued a writ of mandamus to the appellant to consider whether writ petitioner No. 5 was entitled for exemption from the requirement of age limit having regard to certain GOs issued by the Revenue Department of the State Governments.

7. In our opinion the reasons given by the learned Single Judge for allowing the writ petition are wholly untenable in law. Merely because on two earlier occasions the appellant granted exemption from eligibility criterion in respect of some employees cannot be a ground to grant relief to the writ petitioners. Even if some concession had been shown to some employees in the past it would not confer any right upon anyone seeking employment in future to claim exemption from eligibility criterion as a matter of right. In K.V. Rajalakshmiah Setty and another vs. State of Mysore and another AIR 1967 SC 993, it was held as under in paragraph 12 of the Report: -

"12. There is some force in some of the contentions put forward on behalf of the State of Mysore. It is not necessary to test them as we find ourselves unable to uphold the contention of the appellants. No doubt some concession had been shown to the first batch of 41 persons and the batches of persons who had come in after the batch of 73 persons also received some concession, but after all these were concessions and not something which they could claim as of right. The State of Mysore might have shown some indulgence to this batch of 63 persons but we cannot issue a writ of mandamus commanding it to do so. There was no service rule which the State had transgressed nor has the State evolved any principle to be followed in respect of persons who were promoted to the rank of Assistant Engineers from surveyors. The indulgence shown to the different batches of persons were really ad hoc and we are not in a position to say what, if any, ad hoc indulgence should be meted out to the appellants before

us."

Therefore, the view taken by the learned Single Judge that by not granting exemption from age criterion the appellant had indulged in invidious discrimination is clearly erroneous law.

8. The learned Single Judge has also issued a writ of mandamus directing the appellant to consider the case of writ petitioner No. 5 as to whether he was entitled for exemption from age qualification. As already mentioned the Rules do not make any provision for granting exemption except to the limited extent as provided in the second para of Rule 11. The principles, on which a writ of mandamus can be issued, are well settled and we will refer to only one decision rendered in *The Bihar Eastern Gangetic Fishermen Cooperative Society Ltd. vs. Sipahi Singh* AIR 1977 SC 2149, where this Court observed as under: -

"A writ of mandamus can be granted only in a case where there is a statutory duty imposed upon the officer concerned and there is a failure on the part of that officer to discharge the statutory obligation. The chief function of a writ is to compel performance of public duties prescribed by statute and to keep subordinate tribunals and officers exercising public functions within the limits of their jurisdiction. It follows, therefore, that in order that mandamus may issue to compel the authorities to do something, it must be shown that there is a statute which imposes a legal duty and the aggrieved party has a legal right under the statute to enforce its performance." There being no statutory provision or rule providing for exemption from eligibility criterion, the learned Single Judge clearly erred in issuing a writ of mandamus against the appellant directing it to consider the case of writ petitioner No. 5 for granting him exemption from the rule providing for upper age limit for fresh appointment.

9. In view of the discussion made above the impugned judgments of the High Court cannot be sustained and must be set aside. The appeal is accordingly allowed. The judgment and order dated 20.11.1997 passed by the learned Single Judge and the judgment and order dated 21.1.2003 of the Division Bench are set aside and the writ petition filed by the contesting respondents is dismissed.

10. No order as to costs.