

EXECUTIVE OFFICER ETC. ETC.

v.

E. TIRUPALU AND ORS. ETC. ETC.

MARCH 26, 1996

[J.S. VERMA AND B.N. KIRPAL, JJ.]

*Service Law :*

*Tirumala Tirupati Devasthanams—Appointment of attenders—Inmates and ex-inmates of Shri Venkateshwara Balamandir eligible for consideration without their names being sponsored by employment exchange—Written test and interview held for selection—Some of ex-inmates not selected filing writ petition claiming appointment on the ground of preference—Held, rules do not provide for automatic appointment of inmates/ex-inmates—Candidates who were considered for appointment and not found fit for selection cannot claim appointment.*

Inmates and ex-inmates of Shri Venkateshwara Balamandir, an Orphanage for orphans and destitute children, established by the Tirumala Tirupati Devasthanams, were eligible for consideration to be appointed in the service of the Devasthanams as per rules of recruitment in vogue, without their names being sponsored by the Employment Exchange. In the year 1991 there were 297 vacancies for the post of attenders for which 2944 candidates sponsored by the Employment Exchange and 193 candidates being inmates and ex-inmates of the Balamandir, including the respondents, were considered. Selections were made by holding written test and interview, and 53 inmates/ex-inmates of the Balamandir were selected besides the other candidates.

The respondents, who were ex-inmates of the Balamandir and could not be selected, filed writ petitions before the High Court claiming that they ought to have been treated at par with the inmates and given preference in appointment under the Devasthanams. The stand of the Devasthanams was that there could not be any automatic employment given to all the inmates and ex-inmates and the rules only provide that amongst the equals, inmates would be given preference. The High Court allowed the writ petitions. Aggrieved, the Devasthanams filed the present appeals.

**Allowing the appeals, this Court**

**HELD : 1.** The High Court erred in issuing the direction which had the effect of granting appointment to the respondent even though they were considered but were not found to be fit for selection. In the circumstances, no relief could have been granted to the respondents. [911-D-E]

**2.** The very fact that interviews for selection of attenders were held shows that the suitability of the candidates for appointment had to be judged and that appointment of the inmates/ex-inmates was not automatic. [911-B]

**3.** On the facts of the present case, the distinction between inmates and ex-inmates of the Balamandir loses all relevance because out of the 193 inmates/ex-inmates considered for appointment 53 were selected; and in comparison to the candidates who were selected the respondents were obviously not found to be equally meritorious. [911-B-C]

**CIVIL APPELLATE JURISDICTION :** Civil Appeal Nos. 4507-4514 of 1996 Etc. Etc.

From the Judgment and Order dated 17.11.94 of the Andhra Pradesh High Court in W.P. Nos. 13123, 20032, 20161, 20499, 18205, 12498/93, 16449/94 and 7927 of 1992.

A. Subba Rao for the Appellants.

L.N. Rao, T.N. Rao, V. Jagapahti, S. Udaya Kr. Sagar and Ms. Suman Bala Rastogi for the Respondents.

The Judgment of the Court was delivered by

**KIRPAL, J.** The Tirumala Tirupati Devasthanams, the appellant herein, started Sri Venkateshwara Balamandir which is an Orphanage for orphans and destitute children for providing free boarding, lodging, clothing and education upto the age of 18 years so as to enable them to acquire good education and get employment. According to the appellants when an inmate/ex-inmate of the Balamandir is qualified and eligible to a post in Devasthanams, he is considered along with other inmates as per the rules of recruitment in vogue. The Executive Officer of the Devasthanams on 23.4.1980 recorded proceedings, inter alia, to the effect that every Balamandir candidate should be given maximum education and when he

has completed the same, he should be provided with the employment in Devasthanams as a matter of routine without reference to employment Exchange. It was further recorded that till they are given jobs in Devasthanams, they will be continued in the Balamandir.

At the request of the appellant, the Government exempted the inmates/ex-inmates of the Balamandir from the purview of Employment Exchange by order dated 5.6.1982. The ex-inmates are those who are discharged from the Balamandir. Rule 5 of the Rules framed by the Devasthanams deals with discharge from the Balamandir and Rules 6, which deals with personal records and Rule 8 which refers to disqualification from being entitled to any benefit, are as under :

5: *Discharge*

(a) All the inmates who attain the age of 18 years shall be discharged at the end of the academic year in which they complete the age of 18 years;

(b) In case the parent/guardian of the inmate requests for premature discharge of the inmate such request will be considered on personal grounds. If the Management considers that such request is genuine and justifies the premature discharge of the inmates, the discharge may be considered.

(c) Any inmate who fails or is detained in any class will be discharged forthwith.

(d) Indiscipline will not be tolerated. The Manager, Bala Mandir will report cases of indiscipline to the Devasthanams Educational Officer. The Devasthanams Educational Officer will give warning for not more than two occasions during the whole career to the inmate. A third case of indiscipline may result in discharge. Absence from prayer without permission of the Manager will be treated as indiscipline.

(6) *PERSONAL RECORDS*

"Dossiers" will have to be maintained for each inmate giving out and particulars of admission, medical check-up report, and progress report and cases of discipline etc., In short, should be a

personal record of the concerned inmate during his stay in the Bala Mandir.

(a) The personal record will be reviewed by the Devasthanams Educational Officer once in a year.

(b) The personal records will be taken into consideration while considering the inmates case for giving preference in appointment in TTD.

(c) The personal record will be received by the Dev. Educational Officer once in a year.

(d) As far as possible the inmates of Bala Mandir will be absorbed in the various institutions of the TTD subject to their being eligible and suitable.

#### (8) *DISQUALIFICATION*

If an inmate is ordered to be removed on the ground of punishment or on the ground of admission furnishing false information such inmate shall not be entitled to any benefit as an inmate of the Bala Mandir. An entry shall be made against this name in the admission register and other relevant registers to indicate the disqualification.

The above enclosures, therefore, placed before the Management committee and Board for its approval of the "norms formulated now in regard to S.V. Bala Mandir, Tirupati."

The respondents being ex-inmates of the Balamandir, who have filed separate writ petitions in the High Court of Andhra Pradesh, had been discharged from the said Institution though they had not completed their education. In the year 1991, there were 297 vacancies for the post of Attenders. According to the counsel for the appellant, the practice of the appellant was that all the inmates of the Balamandir are considered for appointment if they are qualified without their having to make any application. The qualification required for being appointed as an attender is that the candidate should have passed class VIII. The ex-inmates were also entitled to be considered for appointment and though they were not required to apply through the Employment Exchange they were required to

apply directly. Names were also sponsored by the Employment Exchange and for the 297 vacancies, 2944 candidates were sponsored by the Employment Exchange and 193 candidates were the inmates and ex-inmates of the Balamandir, including the respondents who were considered. As the number of candidates were more than the number of vacancies, selection took place by the Authorities by holding written test and interview. It is stated that out of 193 inmates/ex-inmates of the Balamandir, only 145 appeared at the written test and interview and 53 from amongst them were selected for the post of Attenders.

The respondents, not having been selected for the aforesaid posts of Attenders, filed different writ petitions which were disposed of by the common judgment which is impugned in these Appeals. The contention of the respondents before the High Court was that they should be treated at par with inmates and they should also be given preference in appointment under the Devasthanams. On behalf of the applicant the recruitment was made by selection from eligible candidates and it was brought to the notice of the High Court that on 30/31.3.1994, the Devasthanam passed a Resolution relating to ex-inmates. The suggestion of the Sub-Committee, which was put before the Devasthanams Board, is as under :

"1. (i) The inmates of S.V. Bala Mandir who are discharged except on the following grounds discharged except on the following grounds need not be considered as ex-inmates for sending call letters for the interviews and for such other benefits, if any.

(a) Inmates with good personal record and discharged on successful completion of education and after attaining the age of 18 years of age.

(b) Inmates with good personal record but discharged on failure in any class.

(11) The orders issued by the then Executive Officer, TTDs in Memo Roc. No. E3/10110/79, dated 23.4.1980 regarding the appointment of inmates of S.V. Bala Mandir in TTDs service without subjecting them for any selection and also to continue them in the orphanage till they are given jobs in T-T- Devasthanams may be nullified so as to avoid court litigations."

On this suggestion, the following resolution was passed on 30/31.3.1994 :

"Proposal at (1) may be approved except that inmates discharged on failure in any class may not be considered as ex-inmates. Proposal (II) also approved."

The High Court in our opinion rightly, came to the conclusion that the aforesaid Resolution of 30/31.3.1994 had no application to the present case presumably because the selection had been made for appointment to the 297 vacancies in the year 1991. The High Court then gave the following direction:

"From the above discussion it follows that the cases of the former inmates will have to be considered on the basis of the position obtaining under the resolution No. 307, dated 27.10.1984 and their cases have to be considered in terms of clauses (b) and (d) of Rule (6).

In view of the above, writ petition No. 13123 of 1993 has to be allowed and accordingly, it is allowed.

Accordingly, Writ Petition Nos. 7927/92, 20032/93, 20161/90, 20499/94, 18205/93, 12498/98 and 16449/94 are also allowed. No costs."

On behalf of the appellant, it is contended that all the respondents were considered for being appointed to the post of Attenders but they were not found fit. Most of the persons who were selected were those who had been sponsored by the Employment Exchange. The thrust of the argument of Mr. A Subba Rao, learned counsel for the appellant was that there could not be any automatic employment given to all the inmates and ex-inmates and that clause 6(b) of the Rules only meant that if all things are equal, then the inmates will be given preference for appointment under the Devasthanams. In the present case, the effect of allowing the writ petitions filed by the respondents was that the appellants were now directed to appoint the respondents as attenders even though they had not been found fit for such appointments. It may here be noticed that one of the prayers in the writ petitions was that the non-selection of the petitioners should be treated as arbitrary and discriminatory and the appellants herein should be directed to appoint the writ petitioners in accordance with the existing

rules regarding appointments of candidates to the balamandir. While disposing of the writ petitions, the High Court held that the Writ Petitions were allowed. The implication of this was that the reliefs prayed for in the Writ Petitions stood granted in toto.

It is quite evident, from the facts enumerated hereinabove that on prejudice could be regarded to have been caused to the respondents by their being regarded as ex-inmates. The total number of vacancies which were available were more than the total number of candidates who were inmates and ex-inmates. It is unfortunate that these in-house candidates were not selected. Clause (b) of Rule 6 which refers to preference being given to the inmates in appointment in the Devasthanams does not and cannot imply that irrespective of the merits of the candidates, the inmates have to be given appointments. The appellants have rightly resorted to the procedure of making selection from the inmates, ex-inmates and general candidates who were eligible, by holding written test/interviews and clause 6 can only mean that with the merits of the candidates being equal, preference would be given to the inmates of the Balamandir.

The reference by the High Court to the proceedings of the Executive Officer on 23.4.1980 is also mis-placed. The passage on which reliance is placed is as follows :

"Some of the present inmates of S.V. Bala Mandir, Tirupati have appeared for interview on 12.2.1980 for appointment in TTD though they are still studying in the college.

The Special Officer, S.V. Bala Mandir, Tirupati is informed that the case of the present inmates of S.V. Bala Mandir, Tirupati for appointment in TTD will be considered after their completion of studies. Every Bala Mandir candidate should be given maximum education he would like to have. As and when he finished the education, he would be provided employment in TTD as a matter of routine without reference to Employment Exchange. Till they are given jobs in TTD, they will be continued in the Bala Mandir.

Every year, the Special Officer, S.V. Bala Mandir, Will send a list three or four months in advance about all the candidates who would be completing education or completing their age and eligible for employment."

The aforesaid proceedings merely state that interviews were held for appointment under the Devasthanams even as far back as in 1981. It further states that the present inmates will be considered for appointment after their completion of studies and they will be given employment as a matter of routine without reference to the Employment Exchange. The very fact that interviews were held even in 1991 shows that the suitability of the candidates for appointment had to be judged and that appointment of the inmates/ex-inmates was not automatic. On the facts of the present case, the distinction between inmates and ex-inmates loses all relevance because 193 inmates/ex-inmates were considered for appointment and 53 of them were selected. In comparison to the candidates who were selected, the respondents were obviously not found to be equally meritorious. Counsel for the respondent has not been able to show that at any point of time, there was a promise or an obligation on the part of Devasthanams to give employment to the inmates, even if it is presumed that the ex-inmates like the respondents have to be treated at par with the inmates. Under these circumstances, the High Court clearly erred in issuing the direction which had the effect of granting appointment to the respondents even though they were considered but were not found to be fit for selection. The High Court ought to have held that there could be no automatic employment of inmates and ex-inmates by the appellant and that they had to go through a process of selection. There was a selection in the year 1991 when the respondents were considered but were found not to be fit for selection and no relief could have been granted to the respondents.

“ The appeals are, accordingly, allowed. The impugned Judgment of the High Court is set aside, the effect of which is that the writ petitions filed by the respondents shall stand dismissed. There shall be no order as to costs.

Appeals allowed.