

HIGH COURT OF ANDHRA PRADESH AT AMARAVATHI

MAIN CASE No: W.A.Nos.609 & 948 of 2022

PROCEEDING SHEET

Sl. No.	DATE	ORDER	OFFICE NOTE
05.	21.02.2024	<u>GN,J & VGKR, J</u> 1. Heard Sri S. Satyanarayana Prasad, learned Senior Counsel, along with Sri S. N. Chidhambara Sastry, learned Counsels appearing for the Appellants. 2. The Respondent No.12 in W.A.No.609 of 2022 arising out of W.P.No.7490 of 2019 has filed a Counter Affidavit enclosing therewith a list of Appointees numbering 58 who have been appointed, in anticipation of, they acquiring the qualification entitling them to hold the post. In other words, the appointments have preceded the actual act of appointee securing the qualification. 3. The learned Senior Counsel would submit that the Appellant-Tirumala Tirupathi Devasthanam has merely implemented a policy framed by the Government, whereby, such a relaxation has been made only in respect of persons applying for employment on compassionate grounds.	

		4. In that view, we can only express shock at the nature of the policy. It is unheard of and probably unknown to service jurisprudence, that a person without possessing the requisite qualification, can be permitted to hold a post in anticipation of him securing the post. It is not even a case of awaiting marks of any qualifying degree in an examination which would entitle the person to apply. But for this policy, the appointees would not have been even eligible to make an application for appointment, but unfortunately, people who are ineligible even to apply, have been not only permitted to apply but also have been appointed. An eligibility criteria is fixed with the object of ensuring that the person who is appointed is capable of discharging duties attached to the said post. To draw an analogy it tantamount to asking a student of MBBS to perform surgeries in the hope that he would one day acquire the decree requiring competence to practice as a surgeon. 5. It is also submitted that this practice has been prevailing in all the departments and at this stage we can only strongly deprecate that this	
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		methodology appointing ineligible and unqualified persons is not a prerogative vested with the employer. The moment rules are framed in consonance with the provisions of Article 309, the State has ceded its power to act arbitrarily. That apart, Articles 14 and 16 are framed in a manner in order to ensure that equal opportunity is given to all eligible and thereby ensure that the best of the talent is available to the employer. All these devious methods (we call it 'devious' as we find no other justification for the same) have only ensured back door entry to the posts which otherwise is governed by Rules put in place by the Legislature stipulating the eligibility criteria, etc. 6. The action in our considered opinion even at this stage appears to be in the teeth of the law laid down by the Constitutional Bench of the Hon'ble Apex Court in Secretary, State of Karnataka and Ors. Vs. Umadevi and Others¹, wherein, the Constitutional Bench has not only declared such appointments as illegal, but has also prohibited such employments in the future to. But unfortunately,	
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¹ (2006) 4 SCC 1

		the actions complained of and before this Court today, clearly demonstrate a conduct that can be called as contumacious and clearly in contempt of the law laid down by the Apex Court in Uma Devi's case [<i>supra</i>]. We could at this stage to make a useful reference to the observations of the Hon'ble Apex Court as found in Para 51 which reads as under: <i>“The argument that the right to life protected by Article 21 of the Constitution of India would include the right to employment cannot also be accepted at this juncture. The law is dynamic and our Constitution is a living document. May be at some future point of time, the right to employment can also be brought in under the concept of right to life or even included as a fundamental right. The new statute is perhaps a beginning. As things now stand, the acceptance of such a plea at the instance of the employees before us would lead to the consequence of depriving a large number of other aspirants of an opportunity to compete for the post or employment. Their right to employment, if it is a part of right to life, would stand denuded by the preferring of those who have got in casually or those who have come through the back door. The obligation cast on the State under Article 39(a) of the Constitution of India is to ensure that all citizens equally have the right to adequate means of livelihood. It will be more consistent with that policy if the courts recognize that an appointment to a post in</i>	
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		<i>government service or in the service of its instrumentalities, can only be by way of a proper selection in the manner recognized by the relevant legislation in the context of the relevant provisions of the Constitution. In the name of individualizing justice, it is also not possible to shut our eyes to the constitutional scheme and the right of the numerous as against the few who are before the court. The Directive Principles of State Policy have also to be reconciled with the rights available to the citizen under Part III of the Constitution and the obligation of the State to one and all and not to a particular group of citizens. We, therefore, overrule the argument based on Article 21 of the Constitution”.</i> 7. In fact, proceeding further, we also note the observations in Para 54 where the Hon’ble Apex Court has clearly expressed its angst, wherein it has declared that decisions which run counter to the principle settled by it, shall stand denuded of the status of a precedent. 8. A reading of Para 54 would further amplify that the Constitutional Bench has not merely eroded the basis and foundation of cases settled in the past, but has also placed a caveat on Courts passing similar directions in the future to. Despite the Constitutional Bench settling the law in categorical	
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		terms, we find that appointments made would reflect a scant regard to the law that was settled and still holds the field. 9. In that view, we direct the Appellants to intimate by Written Notice to the 58 persons whose names are found in Para 14 of the Counter regarding the allegations leveled by the 12th Respondent and it is made clear that such of those persons who wish to be heard by this Court regarding legality of their appointment are entitled to make an application. In the event of the persons named in Para 14 of the Counter choosing not to appear and justify their appointment, it would be construed by this Court that they have no grounds to canvass. The Appellants shall issue communication to the 58 named people in writing and also enclose a copy of this order and acknowledgment of the said communication to 58 persons shall be placed before this Court by the next date of hearing. 10. List the matter on 01.03.2024. 11. The offending circular appears to be Circular, dated 05.10.2018, at Para 'C' Sub-Para 'e' reads as follows:	
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