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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on: 06.07.2023

Pronounced on: 25.09.2023

CORAM:

THE HONOURABLE **DR.JUSTICE ANITA SUMANTH**
AND
THE HONOURABLE **MR.JUSTICE R.VIJAYAKUMAR**

W.A.(MD)No.1293 of 2013

and

M.P(MD)No.2 of 2013

1.The Executive Officer,
Deputy Commissioner,
Incorporated and Unincorporated Devaswom,
Suchindram, Kanyakumari District.

2.The Manager,
Arulmigu Azhagamman Temple,
Vadiveeswaram, Nagercoil.

...Appellants

/Vs./

1.G.R.Arumugam Pillai

2.The Commissioner,
Hindu Religious Charitable Endowment Department,



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Chennai.

3.The State of Tamil Nadu,
represented by its Secretary,
Tamil Nadu Development Culture and
Religious Endowments Department,
Fort St.George, Chennai -9.

...Respondents

PRAYER:- Appeal - filed under Clause 15 of Letters Patent, to set aside
the order dated 15.04.2013 made in W.A.(MD)No.2406 of 2007.

For Appellant	: Mr.M.Vivek Kumar for Mr.H.Thayumanasamy
For R1	: Mr.R.Murali
For R2 and R3	: Mr.S.P.Maharajan Special Government Pleader

JUDGMENT

(Judgment of the Court was delivered by **DR.ANITA SUMANTH, J.**)

The Writ Petitioner is an Othuvar. He was appointed on
23.05.1983 in the Arulmigu Azhagamman Temple, Vadeeswaram,
Nagercoil (in short 'Temple'/'Temple in question'), initially on temporary



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basis, thereafter, made permanent. The Temple comes under the control of the Hindu Religious and Endowments Department (in short 'HR & CE department'/ 'department') and the service rules in connection therewith.

2. His pay was fixed on 03.03.1990 in the scale of 70-4-110-5-160, revised during the year 1993 to 110-10-200-15-230 and during the year 2006 to 600-30-900-250. The Temple was brought under the category of '*Thunai Kovil*' by proceedings dated 11.10.2006 within the overall management of the Suchindram Devaswom.

3. The definition of 'temple' under the Hindu Religious and Charitable Endowments Act, 1959 (in short 'HR&CE Act'/'Act'), is under Section 2 (20) reading as follows:

“(20) “temple” means a place by whatever designation known, used as a place of public religious worship and dedicated to, or for the benefit of, or used as of right by, the Hindu community or of any section thereof, as a place of public religious worship;”

4. Section 6(12) defines '*incorporated Devaswom*' to mean '*the Devaswoms mentioned in Schedule-I*' and Section 6(23) to mean '*the Devaswoms mentioned in Schedule-II*'. With the passing of The States



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Reorganisation Act of 1956 and the transfer of territory from Travancore-Cochin to Madras, the Schedules to the Travancore-Cochin Hindu Religious Institutions Act 1950 (in short '1950 Act'), relating to incorporated and unincorporated Devaswoms were incorporated in the TN HR&CE Act.

5. In 1974, the Tamil Nadu HR&CE (Third Amendment) Act was passed whereby reference to the 1950 Act was omitted and Schedules I and II inserted in the Tamil Nadu Act listing the incorporated and unincorporated Devaswoms in this Act itself. It is thus that the Act continues to use the term 'Devaswom' as a throwback to those days instead of 'Devasthanam' more prevalent in this State.

6. The term Devaswom connotes a group that manages several Temples under one umbrella. Under the Schedules to the Act, temples have been classified as major, minor, sub and petty Temples and include Madams and other religious institutions.



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7. Under the TN HR & CE Act, all incorporated Devaswoms are set out under Schedule-I. This includes the Suchindram Devaswom which comprises of 93 Temples of which the Temple in question, is part. It is a major Temple.

8. While this is so, G.O.Ms.No.141, dated 21.05.2004 came to be issued providing for revision of scale of pay in respect of various categories of employees in the Temples. The purpose of the revision and the effective date of revision, being 01.07.1997 have been set out in the Abstract to the Government Order, that reads as follows:

“தமிழ்நாடு அரசு
சுருக்கம்

இந்து சமய அறநிலைய ஆட்சித் துறை – முதலநிலைத் திருக்கோயில் மற்றும் முதலநிலையில்லாத திருக்கோயில் பணியாளர்கள் – திருத்திய ஊதிய விகிதங்கள் – 1.7.97 முதல் நிர்ணயிக்கப்பட்டது – விடுபட்ட பதவிகளுக்கு ஊதியவிகிதம் நிர்ணயம் செய்தல் – ஆணை வெளியிடப்படுகிறது.

தமிழ் வளர்ச்சி பண்பாடு மற்றும் அறநிலையத் (அநி4 – 1)
துறை

அரசாணை (நிலை) எண்.141 நாள்.21.05.2004.

.....

.....”

ஆணை.



9. The Government Order in so far as it relates to Othuvvars

reads as follows:

5. அரசாணை (நிலை) எண்.257, தமிழ் வளர்ச்சி - பண்பாடு மற்றும் அறநிலையத்துறை, நாள் 10.6.1998 - ல், விடுபட்ட மற்றும் திருத்தம் செய்யவேண்டிய பணியிடங்களுக்கும், ஊதிய விகிதம் நிர்ணயம் செய்ய ஆணையர் அனுப்பியுள்ள அனைத்து செயற்குறிப்புகளையும் ஒருங்கிணைத்து அரசு கவனமுடன் பரிசீலித்து, கீழ்க்கண்டவாறு ஊதிய விகிதம் நிர்ணயம் செய்து அரசு ஆணையிடுகிறது.

வ. எண்	புதவி	ஊதிய விகிதம்
3.	(வெளித்துறை) எழுத்தர்/ வழக்கு எழுத்தர் /உதவி எழுத்தர் /சிற்பெழுத்தர் /வசூல் எழுத்தர் /தட்டச்சர் /ஓதுவார் (முதுநிலைத் திருக்கோயில்கள்) அமீனா (சிறப்பு)	3200-85-4900
.....		
8.	ஓதுவார் (முதுநிலை அல்லதா திருக்கோயில்கள் மற்றும் துணைக்கோயில்கள்	2000-60-2300-75-3 200

10. The Writ Petitioner made a representation seeking revision of his pay scale in terms of the above Order that came to be rejected on 02.03.2005. The request was reiterated before the Commissioner, HR &



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CE Department, through the Executive Officer of Suchindaram Devasthanam, who recommended the same. After nearly a year, the Commissioner by a proceeding dated 20.09.2006 directed the Executive Officer to promote the Writ Petitioner and one M.Balasubramaniam, also an Othuvar, in line with G.O.Ms.No.141.

11.The Executive Officer, thereafter, by proceeding dated 12.10.2006, proceeded to upgrade/enhance the post of Othuvar fixing the pay scale for the Writ Petitioner and M.Balasubramaniam in the pay scale of 2000-60-2300-65-3200. An undertaking was sought and obtained from the Writ Petitioner to the effect that he would not seek any further benefit in respect of his employment.

12.Since there was no action to implement the order as aforesaid, the Writ Petitioner filed W.P(MD)No.2406 of 2007 seeking a Mandamus directing the State and the officials of the HR & CE Department to fix his pay scale as 3200-85-4900 with effect from 01.07.2007 with all consequential benefits.



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13. Pending Writ Petition, the other beneficiary, M. Balasubramaniam, under proceeding dated 11.10.2006, had received an order of rejection of his request for fixation of salary in terms of G.O. Ms. No. 141 and thus, had approached this Court in W.P.(MD) No. 2180 of 2007 seeking to quash that order. That Writ Petition came to be allowed on 23.01.2012.

14. Learned Judge had therein considered the position that the rejection of Balasubramaniam's request was on the ground that he was appointed as a temporary employee and thus, the benefit under G.O. Ms. No. 141 would not be available to him.

15. However, in the counter affidavit to his Writ Petition, the respondents had deviated from their original stand stating that he was not entitled to the benefit, since he was employed in a minor Temple. They also referred to his undertaking that he would not claim any benefit claiming to be an Othuvar in a major Temple.



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16.The last submission was rejected on the ground that, that would not stand in the way of him establishing a proper right as per law. That apart, the learned Judge noted at para 9 of that order that Arulmigu Bagavathi Amman Temple, in which Balasubramaniam is employed, was not a minor Temple, but was a major Temple at Sl.No.68 of Schedule-I. This finds support from the response of the authorities under the Right to Information Act, 2005 to a query in this regard by that employee. Thus, there was a factual error in the respondents' defence.

17. In regard to the defence that Balasubramaniam was only a temporary employee, the Court brushed aside that argument on the ground that inconsistent stands were being taken by the HR & CE Department. That order had been set aside by the Court and the proceedings remitted with a direction to the Commissioner to consider his case by taking into account his uninterrupted service of more than 28 years and in light of G.O.Ms.No.141 dated 21.05.2004.



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18.The Commissioner was directed to give a specific finding as to whether he was to be treated as a temporary or permanent employee of that temple. Effect has been given to that order and by way of proceedings in Na.Ka.No.1158/2012/U1 dated 14.05.2012 the respondents have corrected the factual error in regard to the classification of the Bagavathi Amman Temple.

19.The benefit of G.O.Ms.No.141, dated 21.05.2004 has also been extended to that employee, with effect from 01.07.2006. That order has attained finality and the HR & CE Department has acceded to the following positions (i) that M.Balasubramaniam, whose service in the HR & CE Department is identical to that of this Writ Petitioner, is a permanent employee (ii) that said Balasubramaniam is entitled to the benefit of G.O.Ms.No.141, dated 27.04.2004. These conclusions would apply to the present Writ Petitioner as well.

20.On the aspect of effective date, there is one difference that is made out in the present case. While Balasubramaniam has been given



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the benefit of Government Order with effect from 01.07.2006, the Writ Court in this matter has extended the benefit of enhanced pay scale, ie., 3200-85-4900, with effect from 01.07.1997 being the effective date stipulated in GO Ms.No.141.

21.Learned Special Government Pleader would assail this direction stating that the Temple in question is not a major Temple. Again, this is a factually erroneous submission. The Temple in question figures at Sl.No.74 to Schedule-I and is classified as a major Temple.

22.We thus find parity on all aspects of the matter qua the case of M.Balasubramaniam. His case having found favour with the respondents, we see no reason to take a different view in the present matter. On the question of effective date, we are fully in agreement with the direction of Writ Court that the authorities having accepted that the employee is a permanent employee entitled to the benefit of G.O.Ms.No. 141, he would entitled to the benefits of the aforesaid order with effect from the date as stipulated in that Order itself.



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23.The State has consciously stipulated the effective date in the relevant GO and there is no justification for the authorities to deviate from the same. The only reason put forth to adopt a later date is by citing the case of M.Balasubramaniam. This can hardly be a reason as, once GO.Ms.No.141 is applicable to the case of the writ petitioner, as it admittedly is, the same should be applied in full, including the effective date as stipulated in that order itself.

24.This Writ Appeal is dismissed and the directions of the Writ Court at paragraph 12 are reiterated, the monetary benefits to be computed and paid over to the writ petitioner within a period of four weeks from the date of receipt of a copy of this order.

25.This writ petition throws up a larger issue of disparity in pay qua identical services that are rendered by classes of employees. In the present case, we are concerned with the services of Othuvars, an ancient community who sing the Panniru Thirumurai in temples. The term connotes one who sings with great devotional reverence and is also



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conferred as a title for trained musicians. Their services remain identical irrespective of whether they sing/chant in a major/minor/petty temple.

26. The classification of temples as major, minor or otherwise, is solely for the purposes of logistical convenience and having regard to the revenue generated from the Temple. The consequences of such classification are thus limited and are not expected to impinge on, or have any other impact, including on the salary structures of the employees/staff whose services remain the same irrespective of the temple. Othuvars receive training from specialised Institutions/schools in Thirumurai and their services involve rendition of songs at the time of Aarthi and specific pujas in the temples. The expertise remains one and the same irrespective of which temple they serve.

27. The importance of Othuvars and the necessity to provide for their proper training and fixation of appropriate scales of pay has also caught the attention of the Division Bench in WP(MD)No.574 of 2014 in order dated 05.10.2017.



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28. Let this aspect of the matter be taken note of and necessary orders passed expeditiously to ensure that parity in pay is brought about among Othuvans in all temples in the State without reference to the classification of the temple itself in the schedules. The costs and expenses in this regard must come from the Funds provided for under Sections 96 and 97 of the Act being the 'Religious and Charitable Endowments Administration Fund' and 'Creation of Hindu Religious and Charitable Endowments Common Good Fund'.

29. We note in this connection that the Fund created under Section 97 is, in general, for the renovation and preservation of needy temples, their buildings and paintings, for the promotion and propagation of tenets common to all or any class of religious institutions and for any of the purposes specified in section 66 (1) of the Act.

30. Section 66 in turn provides for the appropriation of endowments in various specified circumstances. The reach of section 66 is wide and intended to fund those activities which have been identified



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by the State as fundamental for religious institutions, encompassing both spiritual and temporal needs.

31. The purposes are adumbrated as follows:-

- “(a) the grant of aid to any other religious institution which is poor or in needy circumstances ;*
- (b) the grant of aid to any religious purpose connected with the Hindu religion ;*
- (c) the propagation of the religious tenets of the institution ;*
- (d) the recitation of Divya Prabhandam and Thevaram and the like ;*
- (e) the establishment and maintenance of schools for the training of archakas, adyapakas, vedaparayanikas and othuvars and for the study of Divya Prabandhams, Thevarams and the like, including the study of Indian languages for that purposes ;*
- (f) the establishment and maintenance of a University or college or other institution in which the main features shall be the provision for the study of Hindu religion, philosophy or sastras or for imparting instructions in Hindu temple architecture ;*
- (g) the establishment and maintenance of educational institution where instruction in the Hindu religion is also provided ;*
- (h) promotion of fine arts and architecture;*
- (i) the establishment and maintenance of orphanages for Hindu children ;*
- (j) the establishment and maintenance of asylums for persons suffering from leprosy ;*



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*(k) the establishment and maintenance of poor homes for destitute, helpless and physically disabled persons ; and
(l) the establishment and maintenance of hospitals and dispensaries for the benefit of pilgrims.”*

32.Clause (d) extracted above specifically refers to the recitation of Divya Prabhandam and Thevaram, identified as one fundamental avenue that requires support and encouragement. We thus find that the statute has dealt with this aspect of the matter in both letter and spirit and all that remains is for this to be implemented. It is time for the State to demonstrate the will that the Statute promises. List under the caption 'to report compliance' on 27.11.2023.

33.No costs. Consequently, connected Miscellaneous Petition is closed.

[A.S.M.J.] & [R.V.J.]
25.09.2023

NCC :Yes/No
Index :Yes/No
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To

1. The Commissioner,
Hindu Religious Charitable Endowment Department,
Chennai.
2. The Secretary,
The State of Tamil Nadu,
Tamil Nadu Development Culture and
Religious Endowments Department,
Fort St. George, Chennai -9.



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DR.ANITA SUMANTH, J.
AND
R.VIJAYAKUMAR, J.

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Pre-Delivery Judgment delivered in
W.A.(MD)No.1293 of 2013

Dated:
.09.2023