

**THE HONOURABLE SRI JUSTICE A.V.SESHA SAI**

W.P.No.41329 of 2015

Oral Order :

This writ petition is filed under Article 226 of the Constitution of India challenging the proceedings in Roc.No.Pen1/383/P&GT/2015 dated nil.11.2015 issued by the 2<sup>nd</sup> respondent-the Chief Accounts Officer, Tirumala Tirupathi Devasthanams, Tirupathi.

The petitioners herein are the retired lecturers in various colleges under the jurisdiction of the respondent-Devasthanams. The 2<sup>nd</sup> respondent-Chief Accounts Officer issued the notice in Roc.No.Pen1/1071/P&GT/2015 dated nil-10-2015 asking the petitioners to explain as to why the amounts of pension alleged to have been paid excessively should not be recovered. In response to the said notice, the petitioners herein submitted their explanations, stating that proposed action would be in total violation of law laid down by the Hon'ble the Supreme Court in the judgment in the case of **STATE OF PUNJAB AND OTHERS V. RAFIQ MASI, WHITE WASHER**<sup>[1]</sup>. Eventually,

the 2<sup>nd</sup> respondent-Chief Accounts Officer issued the impugned proceedings, rejecting the explanations submitted by the petitioners and sought to recover the excess amount of pension in monthly installments from the dearness relief portion of the petitioners and also informed “ that the recovery of excess pension paid, commenced from October-2015 continues”.

Heard Sri Siva, learned counsel for the petitioners and Sri Siva Raju Srinivas, learned Standing Counsel for the respondent-Tirumala Tirupathi Devasthanams.

It is vehemently contended by the learned counsel for the petitioners that the impugned proceedings are highly illegal, arbitrary, unreasonable and opposed to the judgment of the Hon’ble Supreme Court in RAFIQ MASIH’s case (1 supra).

On the other hand, learned Standing Counsel would contend that there is absolutely no illegality nor infirmity in the impugned proceedings, as such the present writ petition is not maintainable under Article 226 of the Constitution of India.

There is no dispute with regard to the factum of

the petitioners responding to the show cause notice, issued by the respondents, by way of filing explanations. There is also no dispute with regard to the reality that the writ petitioners herein specifically stated in their explanations about the law laid down by the Hon'ble Supreme Court in RAFIQ MASIH's case ( 1 supra). A perusal of the impugned proceedings would candidly disclose that the 2<sup>nd</sup> respondent neither adverted to the contents of the explanation offered by the petitioners nor made any effort to examine the issue as per the law laid down by the Hon'ble Supreme Court in RAFIQ MASIH's case ( 1 supra). It is also evident from the impugned proceedings that except stating that the legal department has advised to recover the excess amounts of pension, the impugned order does not contain any other reason for arriving at the impugned conclusions. In view of the same, this Court is of the considered opinion that the issue in the present writ petition requires reconsideration by the respondent-authorities by taking into consideration the explanations submitted by the petitioners and also the law laid down by the Hon'ble Supreme Court in RAFIQ MASIH's case ( 1

supra).

For the above reasons, the writ petition is allowed setting aside the impugned proceedings in Roc.No.Pen1/383/P&GT/2015 dated nil.11.2015 issued by the 2<sup>nd</sup> respondent and the matter is remitted back to the 2<sup>nd</sup> respondent for consideration afresh, in light of the explanations offered by the petitioners and the law laid down by the Hon'ble Supreme Court in RAFIQ MASIH' s case ( 1 supra). The petitioners herein are also entitled to file additional material, if any to the show cause notice, within a period of four weeks from the date of receipt of copy of this order and it is open for the respondents to pass appropriate orders afresh, after giving notice and opportunity of being heard to the petitioners. Till the above exercise attains finality, no further recovery shall be made from the petitioners herein.

With the above directions, the writ petition stands allowed. Miscellaneous petitions pending, if any, shall stand closed. No costs.

JUSTICE

A.V.SESHA SAI

Dt: 25-2-2016

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[\[1\]](#) 2015(4) SCC 334