IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.04.2017

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THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.36172 and 36173 of 2016 and
W.M.P. Nos.31130 to 31133 of 2016

1.S.Ramesh Kumar .. Petitioner in W.P. No.36172 of 2016

2.J.Muthamil Selvan .. Petitioner in W.P. No.36173 of 2016

-vs-

1.The Commissioner,
Hindu Religious and
Charitable Endowments Department,
Uthamar Gandhi Salai,
Nungambakkam,
Chennai-34.

2.The Joint Commissioner,
Hindu Religious and
Charitable Endowments Department,
Head Quarters-Suchindrum-629704,
Kanyakumari District.

3.The Deputy Commissioner/
Executive Officer,
Incorporated and
Unincorporated Devasthanams,
Suchindrum-629704,
Kanyakumari District. .. Respondents in both the petitions

Prayer in W.P. No.36172 of 2016:Petition is filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorari calling for the records of the impugned proceedings having ref. No.Na.Ka.No.45866/2016/U1 dated 07.10.2016 issued by the 1st respondent and quash the same.

Prayer in W.P. No.36173 of 2016:Petition is filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorari calling for the records of the impugned proceedings having ref. No.Na.Ka.No.45866/2016/U1 dated 07.10.2016 issued by the 1st respondent wherein the scale of pay already fixed for the petitioner is cancelled and quash the same.

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For Petitioners::Mr.Vadivelu Deenadayalan
for Ms.Kavitha Deenadayalan

For R1 ::Mr.M.Maharaja
Special Government Pleader(HR&CE)

For R2 and R3 ::Mrs.Hema Sampath,
Senior Counsel for
Ms.R.Meenal

COMMON ORDER

The writ petitions have been filed challenging the impugned proceeding bearing Ref.No.Na.Ka.No.45866/2016/U1 dated 07.10.2016 passed by the Commissioner, Hindu Religious and Charitable Endowments Department/the first respondent herein.

2.W.P. No.36172 of 2016: The case of the petitioner is that he was appointed for the post of Security (Kavalar) in Arulmigu Neelaganda Swamigal Thirukoil, Padmanabapuram, subject to the administrative approval of the Commissioner, Hindu Religious and Charitable Endowments Department/the first respondent herein with a scale of pay of Rs.600-10-720-15-1020 vide order dated 24.02.1995. However, the Deputy Commissioner/Executive Officer/Incorporated and Un-incorporated Devasthanams, the third respondent herein vide its letter dated 13.07.2005, sent a proposal to the first respondent to appoint the petitioner as Office Assistant, after creating the said post in the scale of pay of Rs.2610-60-3150-65-3540. Subsequently, the first respondent vide its proceedings Ref.Mu.Mu.No.48699/05/U1 dated 24.05.2006, based on the G.O. Ms. No.257 HR&CE Department dated 10.06.1998, has fixed the petitioner's pay scale at Rs.2610-60-3150-65-3540.

W.P. No.36173 of 2016: The case of the petitioner is that he was appointed in the post of Special Security (Sirappu Kavalar) with the Hindu Religious and Charitable Endowments Department with the scale of pay of Rs.525-10-755-15-935 vide order dated 21.03.1996 issued by the third respondent, based on the order dated 13.03.1996 issued by the first respondent, who has regularised the service of the petitioner vide order dated 13.03.1996. Based on the G.O. Ms. No.257 HR&CE Department dated 10.06.1998, the pay of certain temple employees serving under the control of the third respondent, were given revised scale of pay with effect from 01.07.1997. However, the name of the petitioner and similarly placed another person's name were missing in the list of approved pay bill of eligible candidates, sent by the third respondent to the first respondent for fixing

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the revised scale of pay. On noticing the omission of the petitioner's name, the third respondent vide its letter 23.07.2004 requested the first respondent to bring the petitioner in the selection grade temple's post, which is applicable to the post of Security in the scale of pay of Rs.2610-60-3150-65-3540 with effect from 01.07.1997. After examining the proposal of the third respondent regarding the revision of pay for the petitioner, the first respondent vide its proceedings dated 29.10.2004 stated that since the name of the petitioner, who is working as Special Security, was missing in the approved pay bill extended to the other similarly placed persons, the third respondent was permitted to re-fix the petitioner's pay scale on par with the Security post, which is Rs.2610-60-3150-65-3540 in accordance with G.O. Ms. No.257, HR & CE Department dated 10.06.1998.

3.Based on the request of the petitioners, the Joint Commissioner, Hindu Religious and Charitable Endowments Department/the second respondent herein sent a proposal on 06.10.2010 to the first respondent to re-designate their post of Special Security/Security as Junior Grade Administrator. On reply to this proposal, on 22.10.2010, the first respondent sought some clarifications from the second respondent, which was later clarified vide letter No.3945/2010/D2 dated 24.11.2010, wherein, it was clearly stated that since there is no post with the nomenclature as Special Security and Junior Grade Administrator in the Government Service, the question of inclusion in the list of nomenclature of Government Servants may not arise. However, it was further requested by the second respondent that though the nomenclature of the post held by the petitioners does not exist in the Government service, the same should be modified for the purpose of administrative convenience, particularly, since there is no consequential monetary benefit arising out of it. This being the position, the first respondent issued the impugned proceedings bearing Ref.Na.Ka.No.45866/ 2016/U1 dated 07.10.2016 wherein the scale of pay of Rs.2610-60-3150-65-3540 fixed to the petitioners was cancelled, without any show cause notice to the petitioners. Therefore, the same being violative of the principles of natural justice, must go.

4.It is submitted by the learned counsel for the petitioners that the act of the first respondent in discriminating the petitioners by issuing the impugned order and refraining them from receiving their regular salary as fixed by the G.O. Ms. No.257 HR&CE Department dated 10.06.1998 without any show cause notice, is illegal and erroneous. When a decision of determining the petitioners' post on par with the Security/Special Security were taken and accordingly the scale of pay has been re-fixed, the same cannot be taken away without any reason particularly

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after a span of 10/12 years. He would further contend that since the respondents decided to fix the said pay scale of petitioners on par with the Security/Special Security posts in view of the nature of work being similar, the first respondent ought not to have issued the impugned proceedings taking away the already existing benefit extended to the petitioners. Adding further he would state that even after revising the scale of pay of the petitioners as per the said G.O. Ms. No.257 HR&CE Department dated 10.06.1998, the another G.O. Ms. No.305 dated 23.07.2010 has been passed vide proceedings dated 01.11.2010 by the first respondent herein re-fixing the scale of pay to the petitioners. In any event, when the scale of pay of the petitioners has been re-fixed by the respondents, it cannot be unilaterally or arbitrarily reduced without notice to the petitioners.

5.Learned Special Government Pleader appearing for the first respondent would submit that when the scale of pay of the petitioners were wrongly determined on the basis of G.O. Ms. No.257 HR&CE Department dated 10.06.1998, which has been quashed by this Court in W.P. Nos.13918 and 13919 of 2012 dated 10.10.2012, the question of issuing notice to the petitioners hardly arise. Placing on record the said order, he would submit that the said G.O. Ms. No.257 is ultra vires the expressed provisions of HR & CE Act and Rule 14 of the Service Rules made thereunder and therefore, the same is liable to be struck down. Hence, the revised scale of pay given to the petitioners cannot stand on a higher footing as pleaded by the learned counsel for the petitioners.

6.A detailed counter affidavits have been filed by respondents 2 and 3 each stating that when the services of the petitioners were not regularised at any point of time, keeping in mind that there was no income from the temple and the salaries for the staff had to be paid only from the temple's income, the impugned order has been passed. Therefore, when the service of the petitioners have not been regularised by any competent officer, the impugned order re-fixing the scale of pay of the petitioners without putting on notice, cannot go and it would not amount to violative of principles of natural justice.

7.It is contended by the learned counsel for R2 and R3 that the petitioners were appointed only as a Security and Special Security in the year 1995/1996. As they were only a temporary employees, even their services were not regularised and no order has been passed to this effect in the schedule of establishment, they could not be absorbed into any regular posts. Moreover, it will be a wrong procedure under Section 55(1) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 to accept such request for calling them as Office Assistant or posting them as Office Assistant. When the Government has disbursed Rs.3

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crores per year as a subsidy to meet the salary Rs.1 crore disbursement to cover the salaries of approved staff, the first respondent is not able to meet out the salary expenses of the petitioners as they are all working in an un-approved temples. Therefore, the impugned order does not warrant interference.

8.The petitioner in W.P. No.36172 of 2016 was appointed in the post of Security in Arulmigu Neelaganda Swamigal Thirukoil, Padhmanabapuram, subject to the administrative approval of the first respondent with a scale of Rs.600-10-720-15-1020 by order dated 24.02.1995. Likewise, the petitioner in W.P. No.36173 of 2016 was appointed in the post of Special Security (Sirappu Kavalar) with the Hindu Religious and Charitable Endowments Department with the scale of pay of Rs.525-10-755-15-935 vide order dated 21.03.1996 issued by the third respondent.

9.Subsequently, after 10 years of their services, the third respondent sent his proposal dated 13.07.2005 to the first respondent to appoint them in the post of Office Assistant after creating the said post in the scale of pay of Rs.2610-60-3150-65-3540. Thereafter, the first respondent vide his proceedings dated 24.05.2006, based on G.O. Ms. No.257, HR & CE Department dated 10.06.1998, fixed the petitioner's scale of pay as Rs.2610-60-3150-65-3540. Again, based on the request of the petitioners, the second respondent sent a proposal dated 06.10.2010 to the first respondent to re-designate their post of Special Security/Security as Junior Grade Administrator, who, in turn, sought for certain clarification on 22.10.2010 and thereafter, it was clarified by the second respondent in his proceedings dated 24.11.2010 stating that since there is no post with the nomenclature as Special Security and Junior Grade Administrator in the Government service, the question of inclusion in the list of nomenclature of Government servants may not arise and therefore, it was requested that though the said post as requested by the petitioners does not exist, the same should be modified for the purpose of administrative convenience.

10.When the matter stood as above, all of a sudden, the first respondent passed the impugned proceedings dated 07.10.2016 reducing the scale of pay of Rs.2610-60-3150-65-3540 fixed to the petitioners, that too without issuing any show cause notice calling for an explanation from them. Such an action of the first respondent will tantamount to violation of principles of natural justice. Secondly, when the salary of the petitioners were revised on the basis of G.O. Ms. No.257, HR & CE Department dated 10.06.1998 and also another G.O. Ms. No.305 dated 23.07.2010, it cannot be unsettled without any notice to them. Therefore, the impugned order passed has to go. Accordingly, the same is set aside and the respondents are directed to pay the original salary, namely, the salary which

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they were receiving on the date of issuance of G.O. Ms. No.257 dated 10.06.1998. It is needless to mention that the salary includes arrears also. Accordingly, the writ petitions are allowed. No costs.

Sd/-
Assistant Registrar(CS VII)

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Sub Assistant Registrar

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To

1.The Commissioner,
Hindu Religious and Charitable Endowments Department,
Uthamar Gandhi Salai, Nungambakkam,
Chennai-34.

2.The Joint Commissioner,
Hindu Religious and Charitable Endowments Department,
Head Quarters-Suchindrum-629704,
Kanyakumari District.

3.The Deputy Commissioner/Executive Officer,
Incorporated and Unincorporated Devasthanams,
Suchindrum-629704,
Kanyakumari District.

+1cc to M/S.R.Meenal, Advocate SR.23133
+4cc to Ms.Karitha Deenadayalan, Advocate SR.23167, 23168
+1cc to the Government Pleader SR.24083

W.P. No.36172 and 36173 of 2016

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