



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on
30.04.2019Delivered on
23.09.2019

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THE HONOURABLE MR. JUSTICE R. MAHADEVAN**W.P (MD) Nos. 13922 of 2015**
and 22848 of 2017

C. Hari Padmanaban ... Petitioner in WP (MD) No. 13922/2015
Purushothaman ... Petitioner in WP (MD) No. 22848/2017

Vs.

1. The State represented by
the Secretary to Government,
Hindu Religious and Charitable Endowments
Department,
St. George Fort, Chennai.

2. The Commissioner,
Hindu Religious and Charitable Endowment,
Nungambakkam,
Chennai - 34.

3. The Joint Commissioner/Executive Officer,
Incorporated and Un-Incorporated Division,
Suchindram Post,
Kanyakumari District.

... Respondents in
WP. (MD) No. 13922/2015

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

2. The Joint Commissioner,
Hindu Religious and Charitable Endowment Department,
Head Quarters, Suchindram
Kanyakumari District.



3.The Deputy Commissioner/Executive Officer,
Incorporated & Unincorporated Devasthanams
Suchindram, Kanyakumari District. ... Respondents
in WP.(MD)No.22848/2017

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Prayer in WP.(MD)No.13922 of 2015: Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Mandamus directing the respondents to fix the pay scale of the petitioner as per V Pay Commission from 1.7.1997 and consequently, increased salary as per VI Pay Commission from 1.7.2007 in par with similarly placed candidates and consequently, grant all the service benefits to the petitioner.

Prayer in WP(MD)No.228484 of 2017: Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Mandamus directing the respondents to refix the salary of the petitioner as 2610-60-3150-65-3540 from 01.07.1997 in the light of the order passed in WP Nos.36172 & 36173 of 2016 and the recommendation made by the 2nd respondent dated 31.01.2009 and 23.02.2012.

For Petitioners	:	Mr.K.P.Narayanakumar in WP(MD)No.13922 of 2015
	:	Mr.S.Satheesh Kumar in WP(MD)No.22848 of 2017
For R1 & R2	:	Mr.V.R.Shanmuganathan, SGP
For R3	:	Mr.K.Sathiya Singh
in Both WP's		

COMMON ORDER

In view of the commonality of issues involved, these two writ petitions are considered and decided by this common order.

2.The relief sought in WP(MD)No.13922 of 2015 is for a writ of mandamus, directing the respondents to fix the pay scale of the petitioner as per the V Pay Commission from 01.07.1997 and enhance the salary as per the VI Pay Commission from 01.07.2007 on par with similarly placed candidates. In the same lines, WP(MD)No.22848 of 2017 has been preferred seeking a direction to the respondents to refix his salary in the scale of Rs.2610-60-3150-65-3540 from 01.07.1997, based on the recommendations of the third respondent dated 31.01.2009 and 23.02.2012 and also in the light of the order dated 17.04.2017 passed by this Court in WP Nos.36172 and 36173 of 2016.



3. Brief facts:-

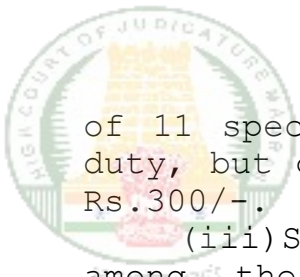
3.1 The petitioner in WP(MD)No.13922 of 2015 was appointed as Special Watchman at Arulmighu Boothanathaswamy Temple, Kanyakumari District, as per the proceedings of the Deputy Commissioner/Executive Officer in Na.Ka.No.950/95/A2 dated 15.03.1995 and his scale of pay was Rs.600-10-720-15-1020. Thereafter, he was transferred to Arulmigu Nagarajaswamy Temple, Nagercoil. Subsequently, his service was regularised from the date of his appointment with pay scale of Rs.525-10-755-15-934, by the Principal Secretary-cum-Commissioner, HR&CE, Chennai, vide proceedings No.Na.Ka.77833/05-1/U1 dated 16.10.2008. Though the second respondent, vide communication dated 23.02.2012 bearing Na.Ka.No.4845/2012/A2, made a recommendation to the Commissioner, HR&CE Department, Chennai, to refix the scale of pay of the Special Security/Security in Rs.2610-60-3150-65-3540, the salary of the petitioner was increased to Rs.700-3000 with the grade pay of Rs.300/- as per the proceedings dated 31.01.2013 in Se.Mu.Na.Ka.No.4246/2010/A2, which is not in accordance with the existing rules or Pay Commission schedule. Hence, this writ petition.

3.2 The petitioner in WP(MD)No.22848 of 2017 was appointed as Special Security on 03.04.1995 with the respondents. He has been working as such for the past 22 years and has been drawing a salary in the scale of Rs.525-10-755-15-935. While so, the third respondent made a recommendation to the Principal Secretary and Commissioner, HR&CE, Chennai to refix the scale of pay of the Special Security/watchman in the scale of Rs.2610-60-3150-65-3540 by communication dated 31.01.2009 bearing Na.Ka.No.634/2005/A2 and also made a similar request to the Commissioner, HR&CE Department, Chennai by communication dated 23.02.2012 bearing Na.Ka.No.4845/2012/A2. However, there was no response on the side of the respondents. Hence, this writ petition.

4.1 Upon notice, the Commissioner, HR&CE Department, Chennai, the second respondent, filed a detailed counter affidavit dated 31.07.2017 in WP(MD)No.13922 of 2015, wherein, it has been averred as follows:

(i)The temple, in which the petitioner was working, is not a senior grade temple and as such, the petitioner has no right to seek the scale of pay applicable to the Senior Grade temple employees.

(ii)The revision of pay scale to two persons viz., P.Radhakrishnan and J.Muthamil Selvan, out of 15 special watchmen, was initially omitted to be fixed. Thereafter, on the recommendation made, permission was accorded to fix their pay in the scale of Rs.2610-60-3150-65-3540, without considering the fact that those two persons were not senior grade temple employees. Following the said wrong fixation, another person, by name, S.Ramesh Kumar also claimed the same scale of pay, which was also accorded. Claiming the same benefit, some of the special watchmen approached this Court by filing WP(MD)Nos.7945 etc. batch of cases and the same were disposed of, vide order dated 02.09.2009. Pursuant to the same, the service



of 11 special watchmen was regularised from their date of joining duty, but only in the scale of pay of Rs.700-3000 with Grade pay of Rs.300/-.

(iii) Since there is disparity in the scale of pay prevailing among the 14 special watchmen, the second respondent, vide Rc.No.69304/2010/U1 dated 08.01.2013, has directed the third respondent to fix uniform time scale of pay of Rs.700-3000 with grade pay of Rs.300/- as against the pre-revised scale of pay of Rs.525-10-755-15-935. Accordingly, the scale of pay was revised in respect of 14 special watchmen and the order wrongly fixing the scale of the pay in Rs.2610-60-3150-65-3540 with respect to P.Radhakrishnan, Ramesh Kumar and J.Muthamil Selvan, was cancelled.

(iv) The petitioner cannot claim any right by citing a wrong fixation which is not in force. Stating so, the second respondent prayed to dismiss this writ petition.

4.2 Despite ordering notice to the respondents, there is no counter affidavit forthcoming in WP(MD) No.22848 of 2017.

5. The learned counsel for the petitioner in both the writ petitions submitted that the Secretary to Government, HR&CE Department, Secretariat, Chennai, sanctioned the pay scale of Rs.2610-60-3150-65-3540 with effect from 01.07.1997 in accordance with the V Pay Commission and based on G.O.Ms.No.257, Tamil Development, Religious Endowment and Information Department, Dated 10.06.1998, to one P.Radhakrishnan and J.Muthamil Selvan vide proceedings in Mu.Mu.No.5100/04/U1 dated 29.10.2004; based on the same, the said benefit was extended to S.Ramesh Kumar vide proceedings in Mu.Mu.No.48699/05/U1 dated 24.05.2006. The learned counsel also submitted that the said S.Ramesh Kumar and J.Muthamil Selvan filed WP Nos.36172 and 36173 of 2016 challenging the proceedings dated 07.10.2016 issued by the Commissioner, HR&CE Dept., Chennai, cancelling the pay scale of Rs.2610-60-3150-65-3540 and this Court by order dated 17.04.2017, allowed the writ petitions, setting aside the said proceedings issued against those persons; since the said order has not been complied with by the respondents therein, Contempt Petition Nos.1443 and 1444 of 2017 came to be filed, which compelled the respondents therein to re-fix the salary of those persons in the scale of pay of Rs.2610-60-3150-65-3540 from 1.7.1997. Hence, the learned counsel prayed to extend the said benefit to the petitioners herein. The learned counsel for the petitioner in WP(MD)No.13922 of 2015 submitted that the income of the third respondent temple is now, Rs.18,50,00,000/-, which is sufficient enough to meet the salary of the temple employees.

6. The learned Special Government Pleader appearing for the respondents 1 and 2 and the learned counsel for the third respondent made their respective submissions, in line with the averments made in the counter affidavit.

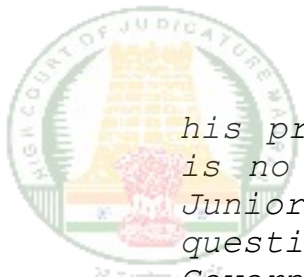


7. Heard the learned counsel appearing for the respective parties and perused the materials placed before this Court.

8. From the pleadings, counter affidavit, submissions and documents produced by the parties, it appears that on the resolution passed by the Board of Trustees of the Devaswoms and the proposal sent by the third respondent herein, permission was accorded for appointment of 15 special watchmen to safeguard the valuables of Devaswoms, in the time scale of Rs.525-10-755-15-935 for a period of one year. Accordingly, the third respondent had issued appointment orders to the 15 persons, out of which, one resigned and 14 persons have been working as such. Out of the said 14, two persons viz., P.Radhakrishnan and J.Muthamil Selvan were fixed in the scale of pay of Rs.2610-60-3150-65-3540, as per G.O.Ms.No.257, Tamil Development, Religious Endowment and Information Department, Dated 10.06.1998. Following the same, the salary of another person viz., Ramesh Kumar, was fixed in the said scale of pay. Subsequently, the said fixation order relating to those three persons, was cancelled and all the Special Security/Watchmen were fixed in the revised scale of pay of Rs.700-3000 with Grade pay of Rs.300/-. While so, challenging the order cancelling the fixation of pay in Rs.2610-60-3150-65-3540, S.Ramesh Kumar and J.Muthamil Selvan preferred WP.Nos.36172 and 36173 of 2016, which came to be allowed vide order dated 17.04.2017, the relevant portion of which reads as follows:

"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 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



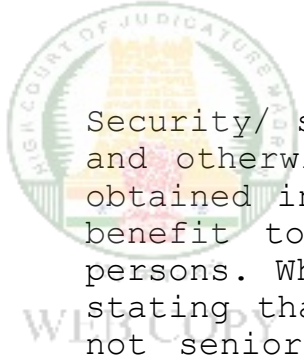
his proceedings dated 24.11.2010 stating that since there is no post with the nomenclature as Special Security and Junior Grade Administrator in the Government service, the question of inclusion in the list of nomenclature of Government servants may not arise and therefore, it was requested that though 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 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."

As against the aforesaid order, the respondents have filed writ appeals in WA.SR.Nos.73469 and 73470 of 2017 and the same are pending. In the mean while, the said order has been complied with by the respondents, after filing of Contempt Petition Nos.1443 and 1444 of 2017, at the instigation of the petitioners therein. Claiming the said benefit, the petitioners are now before this Court with the present two writ petitions.

9. Concededly, based on G.O. Ms. No.257 dated 10.06.1998, the salary of the three persons viz., Radhakrishnan, Muthamil Selvan and Ramesh Kumar, out of 14 Special Security/Security, was revised in the scale of pay of Rs.2610-60-3150-65-3540. Based on the same, recommendations were forwarded by the third respondent in respect of the petitioners herein. Though the said fixation was cancelled vide order dated 07.10.2016, the same was set aside by the order of this Court dated 17.04.2017 passed in WP.Nos.36172 and 36173 of 2016, filed by S.Ramesh Kumar and J.Muthamil Selvan. Aggrieved over the same, the respondents filed writ appeals in WA.SR.Nos.73469 and 73470 of 2017, which are pending till date. However, in order to avoid adverse proceedings in Contempt Petition Nos.1443 of 1444 of 2017, the respondents have complied with the said order.

<https://hcservices.courts.gov.in/hcservices> regard to the aforesaid admitted facts, this Court is of the view that when the respondents have granted the scale of pay of Rs.2610-60-3150-65-3540 to two persons out of 14 Special



Security/ security, in obedience of the order of this Court, unless and otherwise the said order is set aside or an order of stay is obtained in the writ appeals, they ought to have extended the same benefit to the petitioners herein, who are the similarly placed persons. Whereas, the respondents attempted to deny the said claim, stating that the temples in which the petitioners are working, are not senior grade temples. Such attempt cannot be countenanced by this Court, as the temples are stated to have sufficient means to meet out the expenses of their employees. It is needless to mention that if, among those who were appointed on the same date, fixing higher scale of pay to two persons, denying the same benefit to the others would amount to discrimination.

11.It is also to be borne in mind that the Special Security/Security are playing a pivotal role to protect the temples and preserve its valuables. They are performing as the first line of defense for temples against external threats, intrusion and vulnerabilities to the properties and its devotees by taking precautionable measures to deter crime including trespassing and burglaries. They are observing the environment and giving protection by setting the monitoring equipment and building control. They are doing surveillance activity and responding to an incident quickly and in the right way. Their duties and responsibilities are verbally expressing and enforcing the rules and regulations for guests to enter into the temple premises; explaining procedure for checking hazardous material prior to entrance in a lobby; administering first aid in the case of an emergency; preventing risk and detecting crime and watching out for looming danger and reporting any crime they may encounter. As such, their services to the temples and its valuables is indispensable.

12.In such view of the matter, these writ petitions are disposed of, directing the respondents to consider the case of the petitioners in the light of the order of this Court dated 17.04.2017 in WP.Nos.36172 and 36173 of 2016 and refix their salary in the scale of pay of Rs.2610-60-3150-65-3540 with effect from 1.7.1997 as per the V Pay Commission and revise the same, as per the VI Pay Commission and settle the monetary benefits with arrears, in accordance with law. The said exercise shall be completed within a period of four weeks from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar(CS-I)

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Sub Assistant Registrar(CS)



To

1. The Secretary to Government,
Hindu Religious and Charitable Endowments Department,
St. George Fort, Chennai.

2. The Commissioner,
Hindu Religious and Charitable Endowments Department,
Nungambakkam, Chennai -34.

3. The Joint Commissioner,
Hindu Religious and Charitable Endowment Department,
Head Quarters, Suchindram
Kanyakumari District.

4. The Deputy Commissioner/Executive Officer,
Incorporated & Unincorporated Devasthanams
Suchindram, Kanyakumari District.

5. The Joint Commissioner/Executive Officer,
Incorporated & Unincorporated Division
Suchindram, Kanyakumari District.

+1CC TO THE SPECIAL GOVERNMENT PLEADER SR.No.89420, 89421

order in
W.P(MD) Nos.13922 of 2015
and 22848 of 2017
23.09.2019

DB(CO)

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