



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

and

THE HONOURABLE MRS.JUSTICE R.THARANI

W.A.[MD]Nos.1283 & 1284 of 2019

and

C.M.P.[MD]Nos.10952 & 10955 of 2019

against

WP(MD)Nos.13922 & 22848 of 2017

W.A.[MD]No.1283 of 2019:

The Joint Commissioner / Executive Officer,
Hindu Religious and Charitable
Endowments Department,
Head Quarters, Suchindram,
Kanyakumari District.

: Appellant/3rd Respondent

Vs.

1.C.Hari Padmanaban

: Respondent/Writ Petitioner

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

3.The Commissioner,
Hindu Religious and Charitable Endowments,
Uththamar Gandhi Salai, Nungambakkam,
Chennai - 600 034.

: Respondents/1st & 2nd Respondents

PRAYER: Writ Appeal is filed under Clause 15 of the Letters Patent, praying to set aside the order passed in W.P.[MD]No.13922 of 2015 dated 23.09.2019.

Prayer in WP(MD). 13922 of 2015 :

Writ Petition is 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 1.7.97 and consequently increased salary as per VI Per commission from 1.7.07 in par with similarly placed candidates and may consequently grant all the service benefits to the petitioner.



For Appellant : Mr.K.Sathiya Singh
Standing Counsel
For Respondent No.1 : Mr.K.P.Narayanakumar
For Respondents 2&3 : Mr.A.K.Baskara Pandian
Special Government Pleader

W.A. [MD]No.1284 of 2019:

1.The Joint Commissioner,
Hindu Religious and Charitable
Endowments Department,
Head Quarters, Suchindram,
Kanyakumari District.

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

:Appellants/2nd & 3rd Respondents

Vs.

1.Purushothaman

2.The Commissioner,
Hindu Religious and Charitable Endowments,
Uththamar Gandhi Salai, Nungambakkam,
Chennai - 600 034.

: Respondent/1st Respondent

PRAYER: Writ Appeal is filed under Clause 15 of the Letters Patent, praying to set aside the order passed in W.P.[MD]No.22848 of 2017 dated 23.09.2019.

Prayer in WP(MD). 22848/ 2017 :

Writ Petition is 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 W.P.Nos.36172 & 36173 of 2016 and the recommendation made by the 2nd Respondent dated 31.01.2009 and 23.02.2012.

For Appellant : Mr.K.Sathiya Singh
Standing Counsel
For Respondent No.1 : Mr.K.P.Narayanakumar
For Respondent No.2 : Mr.A.K.Baskara Pandian
Special Government Pleader

COMMON JUDGMENT

**[Common Judgment of the Court was delivered by
T.S.SIVAGNANAM, J.]**

By consent, these Writ Appeals are taken up for final disposal at the admission stage itself.

<https://hcservices.ecourts.gov.in/hcservices/>



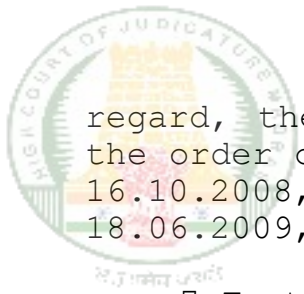
2.Heard the learned Counsel on either side.

3.These appeals by the Joint Commissioner / Executive Officer, HR & CE Department, Suchindram, Kanyakumari District, is directed against the orders in W.P.[MD]Nos.13922 of 2015 and 22848 of 2017 both dated 23.09.2019. The appellant was arrayed as the third respondent in the writ petitions. The first respondent / writ petitioners prayed for issuance of Writs of Mandamus directing the appellant and the Commissioner HR & CE Department, to fix the pay scale of the first respondent as per the Fifth Pay Commission recommendation from 01.07.1997 and consequently increase the salary as per the Sixth Pay Commission recommendation from 01.07.2007 on par with similarly placed candidates and grant consequential service benefits.

4.The first respondent / writ petitioners are working as security Guards / Special Security and posted in the temple under the control of the appellant, over 22 years as of 2017. The Executive Officer / Deputy Commissioner, on 31.01.2009 recommended to the Principal Secretary and Commissioner HR & CE Department to re-fix the scale of pay of the writ petitioners and 13 other employees in the scale of Rs.2610-60-3150-65-3540. This recommendation was considered by the Secretary to Government and proceedings have been issued to submit appropriate proposal which has been submitted by the appellant. In the meantime, one Mr.S.Ramesh Kumar and J.Muthamil Selvan filed W.P.Nos.36172 and 36173 of 2016, praying for re-fixation of their scale of pay. Those writ petitions were allowed issuing directions. With the above facts, the first respondent / writ petitioners approached the Writ Court for re-fixation of their salary and extending the benefits of the Fifth and Sixth Pay Commission. The learned Single Bench took note of the decision rendered in W.P.Nos.36172 & 36173 of 2016 dated 17.04.2017 and disposed of the writ petitions by issuing a positive direction to re-fix the salary of the first respondent / writ petitioners.

5.Mr.Sathya Singh, learned Counsel appearing for the appellant submitted that the orders passed in the writ petitions have been modified by the Hon'ble Division Benches in W.A.Nos.2014 of 2019 filed against W.P.No.36172 of 2016, vide judgment dated 04.07.2019 and W.A.No.2819 of 2019 against W.P.No.36173 of 2016, vide judgment dated 03.09.2019. Therefore, it is submitted that the order and direction issued in the writ petition calls for interference.

6.Mr.K.P.Narayana Kumar, learned Counsel for the respondent / writ petitioners submitted that the case of the writ petitioners is not solely based upon the decision in the case of the said S.Ramesh Kumar and J.Muthamil Selvan, but independently, the writ petitioners have placed the materials before the Writ Court regarding the recommendations made by the authorities including the appellant for bringing them into regular time scale and consequential re-fixation of service benefits on par with the Pay Commission Recommendations. In this



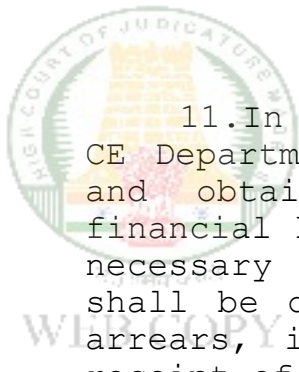
regard, the recommendation made by the appellant dated 04.04.2007, the order of regularisation passed by the Commissioner HR & CE dated 16.10.2008, the recommendation of the appellant dated 31.01.2009 and 18.06.2009, were referred.

7. Further, the learned Counsel has also referred to the audit report which would show that there are sufficient funds for payment of the revised scales of pay in terms of the aforementioned recommendations. Therefore, it is submitted that the case of the respondent / writ petitioners require to be considered and the authorities should take minimum action as both of them have been working for more than 22 years with a paltry salary. As the order passed in the writ petition which have been referred to by the learned Single Bench have been modified and directions have been issued by the Hon'ble Division Bench in the writ appeals referred to, the writ petitioners cannot solely rely upon the orders passed in the writ petition as they are no longer in existence.

8. We find that the judgment of the Hon'ble Division Benches was passed on 04.07.2019 and 03.09.2019. We post a question to the learned Counsel for the appellant as to why these decisions were not placed before the Hon'ble Single Bench when the writ petitions were heard. It is submitted by the learned Counsel for the appellant that the orders in the writ petitions were reserved on 30.04.2019 much prior to the judgments of the Hon'ble Division Bench.

9. However, we note that the case of the respondent / writ petitioners were solely based upon the orders passed in the case of S. Ramesh Kumar, but highly predicated on the recommendations of the appellant and the Commissioner, HR & CE Department. Therefore, we are of the considered view that the order and direction issued by the Writ Court requires to be modified and appropriate directions be issued to the Commissioner, HR & CE Department, to bring finality to the matter at the earliest.

10. In the light of the above, the writ appeal is partly allowed and the order and direction issued in the writ petitions are modified by directing the Commissioner, HR & CE Department, to take note of the recommendations of the appellant dated 31.01.2009 and 18.06.2009, which are in terms of the directions issued Commissioner, in his proceedings dated 16.08.2008 by which, the services of the writ petitioners were regularised. In the said order, there is a specific direction to the appellant to send appropriate recommendation for fixation of the salary of the first respondent / writ petitioners at the appropriate scale within fifteen [15] days. In fact, the appellant has promptly complied with the same and sent the recommendations on 31.01.2009 followed by further proceedings dated 18.06.2009. It is not clear as to why the Commissioner, HR & CE Department has not initiated appropriate action in this regard.



11.In the light of the above, we direct the Commissioner, HR & CE Department, to take forward the proposal sent by the appellant and obtain appropriate orders for extending the appropriate financial benefits to the writ petitioners and if necessary, obtain necessary orders from the Government and the appropriate amount shall be disbursed to the respondent / writ petitioners including arrears, if any, within a period three months from the date of receipt of a copy of this order.

12.Accordingly, the Writ Appeal is partly allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

MR

To

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

2.The Commissioner,
Hindu Religious and Charitable Endowments,
Uththamar Gandhi Salai, Nungambakkam,
Chennai - 600 034.

+2 CC to Mr.K. SATHIYA SINGH, Advocate (SR-99733, 99732[F] dated 20/11/2019)

+1 CC to Mr.K.P. NARAYANA KUMAR, Advocate (SR-99784[F] dated 20/11/2019)

+1cc to Mr.K.P.Krishnadass, Advocate Sr.No.99749

Common Judgment made in
W.A. [MD]Nos.1283 & 1284 of 2019
Dated: 20.11.2019

VB(07.01.2020) 5P 7C