



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.02.2020

CORAM:

THE HONOURABLE MRS. JUSTICE J.NISHA BANU

W.P.(MD) Nos.16059, 16060,16058 and 17791 of 2013 and

MP (MD) No.2 of 2013 in

W.P.(MD) No.16059 of 2013

WMP(MD) No.9452 of 2016 in W.P.(MD) No.16058 of 2013

MP(MD) No.1 &2 of 2013 in W.P.(MD) No.16058 to 16060 of 2013

MP(MD) No.1 of 2014 in W.P.(MD) No.16058 of 2013

WEB COPY

P.Sivamuruganandam	...Petitioner in WP(MD)No.16059/2013
K.Mayilvahanan	...Petitioner in WP(MD)No.16060/2013
A.Meenakshi Sundaram	...Petitioner in WP(MD)Nos.
	16058 & 17791/2013

Vs

1. The Secretary,
Tamil Development, Religious Endowment
and Information Department,
St.George Fort,
Chennai.

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

...Respondents in all WPs(MD)

COMMON PRAYER in WP(MD)Nos.16059,16060 & 16058 of 2013: Writ Petitions filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records of the impugned order passed by the first respondent in G.O.Ms.No.350 Tamil Development, Religious Endowment and Information (H.R.4.2) Department dated 22.10.2012 in so far as the petitioners are concerned and quash the same as illegal.

PRAYER in W.P(MD) No.17791 of 2013: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling the entire records pertaining to the order issued by the first respondent in the letter No.17402/அந்-4-1/2012-2 dated 18.10.2013 and quash the same and direct the respondents to pay the salary for the Assistant Executive Engineer post with the implementation of sixth pay commission.



For Petitioners
(in WP(MD)Nos. 16059 & 16060/2013) : Mr.V.P.Rajan
For Petitioner
(in W.P.(MD)No.16058 & 17791 of 2013) : Mr. A.Kannan

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For Respondents in all Wps(MD) : For R1- Mr.S.Dhayalan
Government Advocate
For R2
- Mr.V.R.Shanmuganathan
Special Government Pleader

COMMON ORDER

Challenging the impugned order passed by the first respondent in G.O.Ms.No.350 Tamil Development, Religious Endowment and Information (H.R.4.2) Department dated 22.10.2012 and the order issued by the first respondent in letter No.17402/அந்-4-1/2012-2 dated 18.10.2013, these Writ Petitions have been filed.

2. The case of the petitioners is that they were initially appointed in Subramania Swamy Temple, Ramanatha Swamy Temple and Meenakshi Sundareswar Temple in the post of Supervisor, Overseer and draftman respectively. The above posts are common cadre services on account of fact that all appointments were made based on the diploma qualification in civil electrical and mechanical. The respondents used to follow PWD norms in the matter of promotion, pay fixation, etc., Since the petitioners completed Bachelor of Engineering with prior approval from the competent authority, requested the respondents to re-designate their post as Assistant Engineer following the PWD norms. The re-designation is not a promotion and the same is only to encourage the employee to get monetary benefit on completion of higher study. The Trust Board is the only competent authority in the matter of appointment, promotion and pay fixation to its employee and as such the trust board of the temples in which the petitioners are working passed resolution for re-designation dated 09.12.1994 and 10.04.2000 respectively. Thereafter, the first respondent issued G.O.Ms.No.290 dated 11.08.2004 for granting re-designation and fixed the pay. Subsequently, the trust board of the respective temples passed resolutions for granting next promotion to the post of Assistant Executive Engineers by resolution dated 21.03.2009 and 12.12.2008, based on which, the second respondent promoted them as Assistant Executive Engineers. All of a sudden, the 1st respondent passed G.O.Ms.No.360 dated 22.10.2012, cancelling the re-designation for the reason that PWD norms will not apply to the temple employees. The said order is under challenge in the present Writ Petitions.



3. The learned counsel for the petitioner submitted that the respondent has passed the impugned order without giving any opportunity to the petitioners. The learned counsel further submitted that the petitioners are enjoying in the present post for the last eight years, in view of the stay granted by this Court. It is submitted that the re-designation is not a promotion and the same is only to encourage the employee to get monetary benefit on completion of higher study. It is further submitted that the petitioners possessed sufficient qualification and experience for holding the post of Assistant Engineer and they have also cleared the departmental examinations conducted by Tamil Nadu Public Service Commission, for next promotion to the post of Assistant Executive Engineer. The learned counsel further submitted that re-designation given to one Muthukumar, who was working as Assistant Engineer at Vadapalani, Chennai, has not been cancelled. The learned counsel brought to the notice of this Court that the first respondent cancelled the re-designation without getting prior approval from the trust board, which is the only competent authority under Section 55 of the HR & CE Act, in the matter of appointment, promotion and fixation of salary. Hence, the learned counsel prayed this Court to set aside the impugned order in G.O.Ms.No.360 dated 22.10.2012 passed by the first respondent.

4. On the other hand, the learned Government Advocate appearing for the respondents submits that the petitioners are only temple servants and they are non-Government servants. The temple employees are governed by the amended rules under the power conferred in clause xxiii of sub section (2) of Section 116 of Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (Tamil Nadu Act 22 of 1959) of the Tamil Nadu Hindu Religious Institutions (Officers and Servants) Service Rules, 1964, which is amended in G.O.Ms.No.255, TD, RE & I Department (RE-4-2) dated 28.06.2010 and they are not Government servants. The learned Government Advocate further submits that the technical staff of Public Works Department of Tamil Nadu State Government cannot be compared with the technical staff working in the temples of the Hindu Religious and Charitable Endowments Department. The service rules of the Public Works Department shall not apply to the temple servants. Hence, there is no need to interfere with the impugned order passed by the first respondent.

5. Heard both sides and perused the documents.

6. On a perusal of the documents shows that the impugned order has been passed by the first respondent, without giving any opportunity to the petitioners. Further, it is to be noted that the petitioners are having prescribed qualification and sufficient experience for holding the present post of Assistant Engineer and



they have also cleared departmental examinations conducted by Tamil Nadu Public Service Commission, for next promotion to the post of Assistant Executive Engineer. When that being so, the cancellation of re-designation order was passed by the first respondent stating that the technical staff of temples under the Hindu Religious and Charitable Endowments Department are not equivalent to the technical staff of Public Works Department of Tamil Nadu State Government and the service rules of the Public Works Department shall not apply to the temple servants. It is pertinent to note that the impugned order has been passed after eight years of the petitioners' considerable service in the re-designated post and as of now, the petitioners were rendered 10 years of service, in view of stay granted by this Court. That apart, the learned counsel brought to the notice of this Court that re-designation granted to one Muthukumar, Assistant Engineer, Vadapalani, Chennai is still in force. Taking into consideration of, the reasons stated in the impugned order for cancellation of re-designation, the act of non-issuance of Notice to the petitioners, the period of delay in passing such a cancellation order, qualification possessed by the petitioners and experience rendered by the petitioners in the re-designated post, and the discrimination shown by the first respondent in one Muthukumar's case, this Court is inclined to interfere with the impugned order passed by the first respondent.

7. In view of the above discussions, the impugned order passed by the first respondent in G.O.Ms.No.350 Tamil Development, Religious Endowment and Information (H.R.4.2) Department dated 22.10.2012 is hereby set aside and remanded the matter back to the authorities concerned to pass fresh orders by considering all the previous orders, Trust resolutions and as well the orders passed by this Court and Honourable Apex Court. Such exercise shall be completed within a period of twelve weeks from the date of receipt of copy of this Order.

8. With the above directions, the Writ Petitions in W.P. (MD) Nos.16059, 16060,16058 are allowed and in view of the orders passed in these Writ Petitions, the Writ Petition in W.P.(MD) No.17791 of 2013 is closed. No costs. Consequently, connected Miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-II)

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Sub Assistant Registrar(CS)



To

1. The Secretary,
Tamil Development, Religious Endowment
and Information Department,
St.George Fort,
Chennai.

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

+1cc to K.GOVINDARAJAN, Advocate SR.No.5458

+2cc to MR.KANNAN, Advocate SR.No.4934, 4933

Common order made in
W.P. (MD) Nos.16059, 16060,16058 and 17791 of 2013 and
MP (MD) No.2 of 2013 in
W.P.(MD) No.16059 of 2013
WMP(MD) No.9452 of 2016 in W.P.(MD) No.16058 of 2013
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MP(MD) No.1 of 2014 in W.P.(MD) No.16058 of 2013
06.02.2020

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