



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:15.02.2021

CORAM:

THE HONOURABLE **MR.JUSTICE M.DHANDAPANI**
W.P. (MD)Nos.1041 to 1045 and 994 of 2011
and
W.M.P. (MD) .Nos.1, 1, 1, 1 and 1 of 2011

Jajudha Devi ... Petitioner in W.P.(MD).No.1041 of 2011

S.Sivakarmi(died)
1.Nirmaladevi
2.Rajaram
3.Karthik
(Petitioners 1 to 3 are substituted
as per the order of this Court in
W.M.P.(MD).No.2237 of 2021, dated
15.02.2021.) ... Petitioners in W.P.(MD).No.1042 of 2011

G.Lakshmi ... Petitioner in W.P.(MD).No.1043 of 2011
Mahalakshmi ... Petitioner in W.P.(MD).No.1044 of 2011
Panchavarnam ... Petitioner in W.P.(MD).No.1045 of 2011
Subbulakshmi ... Petitioner in W.P.(MD).No.994 of 2011

Vs.

- 1.The Secretary,
Ministry of Hindu Religious and Charitable
Endowment Administrative Department,
St. George Fort,
Chennai.
- 2.The Principal Secretary and Commissioner,
Hindu Religious and Charitable
Endowment Administrative Department,
Nungampakkam High Road,
Chennai.
- 3.The Joint Commissioner / Executive Officer,
Arulmigu Ramanathaswamy Temple,
Rameswaram. ... Respondents in all W.Ps.

Common Prayer: Writ Petitions are filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the entire records pertaining to the order in Na.Ga.No.748/98/m2, dated 23.12.2010 and quash the same and direct the respondents to implement 4100 - 10000 scale of pay as per



the sixth pay commission which is equivalent to 2160-60-3150-65-3540 of the present scale of pay to the petitioners by fixing a time frame.

(in all WP's)

For Petitioners : Mr.R.Ramasamy

For R1 & R2 : Mr.R.Murugaraj

Government Advocate

C O M M O N O R D E R

These writ petitions have been filed challenging the impugned order passed by the third respondent, dated 23.12.2010 and to quash the same and consequently, direct the third respondent to implement the scale of pay of Rs.4100 - 10000, as per the sixth pay commission, which is equivalent to Rs.2160 - 60 - 3150 - 65 - 3540, the present scale of pay to the petitioners.

2. Since the issue involved in all these Writ Petitions are identical, they have been taken up together and disposed of by this common order.

3. The case of the petitioners is that the petitioners were appointed as "Panipen" in the third respondent Temple on different dates, in the scale of pay of Rs.525-10-755-15-935. Subsequently, the third respondent has fixed the scale of pay in the post of "Kooty" at Rs.2610-60-3150-65-3540. Thereafter, the third respondent has modified the scale of pay at Rs.2500 - 7800 + 550 and passed an order of recovery. Challenging the same, the present writ petition has been filed.

4. The learned counsel appearing for the petitioners would submit that though the petitioners were initially appointed as "Panipen" and their scale of pay was rightly fixed, the third respondent, on his own, fixed the scale of pay in the post of "Kooty". Thereafter, the third respondent again modified the scale of pay as per G.O.Ms.Nos.257 and 305, dated 23.07.2010, that too, without issuing any notice and call for explanation from the petitioners, on his own, re-fixing the scale of pay and ordered for recovery, is bad in law and hence, he prayed for allowing of these writ petitions.

5. The learned Government Advocate appearing for the respondents would submit that the re-fixation was done as per G.O. (Ms.)Nos.257 and 305, dated 23.07.2010 and without challenging the above said Government Orders, filing these writ petitions is unsustainable one and accordingly, he prayed for dismissal.



6. Heard the learned counsel for the petitioners, learned Government Advocate appearing for the respondents and perused the materials available on record.

7. The facts in the present case are not in dispute. Admittedly, all these writ petitioners were appointed as "Panipen" in the same temple in different dates. Initially, their scale of pay was fixed at Rs.525-10-755-15-935 and thereafter, their scale of pay was revised in the post of "Kooty" at Rs.2610-60-3150-65-3540. Admittedly, the scale of pay was fixed as per G.O.(Ms.) Nos.257 and 305, dated 23.07.2010 and the petitioners were appointed as "Panipen". Hence, fixing the scale of pay in the post of "Kooty" is an error on the part of the third respondent, for which, this Court find fault with the third respondent. However, subsequently, the re-fixation was modified as per G.O.(Ms.) Nos.257 and 305, dated 23.07.2010. Hence, this Court cannot interfere with the re-fixation. However, the order of recovery is bad in law, in view of the decision of the Hon'ble Apex Court, in the case of State of Punjab & Ors. - Vs - Rafiq Masih (White Washer), etc., (2015 (4) SCC 334) wherein the Apex Court held thus :-

"13. First and foremost, it is pertinent to note, that this Court in its judgment in Syed Abdul Qadir case [Syed Abdul Qadir v. State of Bihar, (2009) 3 SCC 475 : (2009) 1 SCC (L&S) 744] recognised, that the issue of recovery revolved on the action being iniquitous. Dealing with the subject of the action being iniquitous, it was sought to be concluded, that when the excess unauthorised payment is detected within a short period of time, it would be open for the employer to recover the same. Conversely, if the payment had been made for a long duration of time, it would be iniquitous to make any recovery. Interference because an action is iniquitous, must really be perceived as, interference because the action is arbitrary. All arbitrary actions are truly, actions in violation of Article 14 of the Constitution of India. The logic of the action in the instant situation, is iniquitous, or arbitrary, or violative of Article 14 of the Constitution of India, because it would be almost impossible for an employee to bear the financial burden, of a refund of payment received wrongfully for a long span of time. It is apparent, that a government employee is primarily dependent on his wages, and if a deduction is to be made from his/her wages, it should not be a deduction which would make it difficult for the employee to provide for the needs of his family. Besides food, clothing and shelter, an employee has to cater, not only to



the education needs of those dependent upon him, but also their medical requirements, and a variety of sundry expenses. Based on the above consideration, we are of the view, that if the mistake of making a wrongful payment is detected within five years, it would be open to the employer to recover the same. However, if the payment is made for a period in excess of five years, even though it would be open to the employer to correct the mistake, it would be extremely iniquitous and arbitrary to seek a refund of the payments mistakenly made to the employee."

18. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service)

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work again in an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."

8. In the light of the above, this Court is of the considered view that the recovery of higher scale of pay, granted by the third respondent on his own volition, which is sought to be recovered from the petitioners is wholly impermissible and no recovery can be made in the light of the decision of the Hon'ble Apex Court in *Rafiq Masih's* case.



9. For the reasons aforesaid, these writ petitions are allowed in part by confirming the re-fixation of pay, as ordered in the impugned order, but setting aside the recovery of the amount already paid to the petitioners. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(T & P)

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/ /2021

Sub Assistant Registrar(CS)

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To

1.The Secretary,
Ministry of Hindu Religious and Charitable
Endowment Administrative Department,
St. George Fort,
Chennai.

2.The Principal Secretary and Commissioner,
Hindu Religious and Charitable
Endowment Administrative Department,
Nungampakkam High Road,
Chennai.

3.The Joint Commissioner / Executive Officer,
Arulmigu Ramanathaswamy Temple,
Rameswaram.

+1 CC to M/s.V.RAGHAVACHARI, Advocate (SR-5792[F] dated
17/02/2021)

W.P. (MD)Nos.1041 to 1045 and 994 of 2011

15.02.2021

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TR(06.05.2021) 5P 5C