IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.07.2023

CORAM :

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P.No.10575 of 2016
and W.M.P.No.9269 of 2016

1.T.Periasamy
2.M.Sivakumar
3.S.Jayarani
4.G.Sampath
5.K.Ramasamy
6.L.Ramachandran
7.R.Lakshmi Narasimhan
8.M.Periasamy
9.S.Jayarani .. Petitioners

vs

1.The Government of Tamil Nadu
Rep. By its Secretary,
Hindu Religious & Charitable Endowment Department,
Fort St.George, Chennai - 09.

2.The Commissioner
HR & CE Department,
119, Uthamar Gandhi Salai,
Nungambakkam, Chennai – 600 034.

3.The Joint Commissioner
HR & CE Department,
Uttamarkoil Compound,
Pichandar Koil Post, Manachanallur Taluk,
Trichy – 621 216.

4.The Executive Officer / Assistant Commissioner
Arulmigu Vekkaliamman Thirukoil,
Uraiyur, Trichy – 3. .. Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of mandamus directing the first respondent to grant / the benefit to the employees of the fourth respondent temple under G.O.Ms.No.469 dated 25.09.1998 by assessing the temple in terms of the income from Fazli Year 1410 onwards as per the representation made by the petitioners herein dated 13.02.2012.

For Petitioners	:	Ms.G.Thilakavathi, Senior Counsel for Mr.R.Gopinath
For Respondents	:	Mr.S.Yashwanth Additional Government Pleader (HR & CE) for R1 to R3

ORDER

Writ petition has been filed in the nature of a mandamus seeking a direction against the second respondent, the Commissioner of HR & CE Department at Chennai to grant benefit to the employees of the fourth respondent temple, Arulmigu Narasimaswamy Thirukoil Namakkal under G.O.No.469 dated 25.09.1998 by assessing the temple in terms of income from Fazli year 1410 onwards consequent to the representation dated 13.02.2012 made by petitioners.

2. The writ petitioners are employees of the fourth

respondent temple. Among the petitioners, there are also legal representatives of deceased employees. The fourth respondent temple comes under the control of the HR & CE Department. The temples which come under the control of HR & CE Department have been classified into different grades in accordance with the annual income received.

3. The respondents have also appointed Executive Officers for the temples in accordance with the grades. There are also Deputy Commissioners who are also appointed again relating to income of the temple. The Board of Trustees are the competent authorities to have administrative control over the employees of the fourth respondent temple. If there are no Board of Trustees, then the second respondent / Commissioner, HR & CE causes appointment of the Executive Officer as a fit person to administer the temples.

4. There had been various Government Orders passed relating to the benefits which are payable to the employees. Very often, it may not be a fixed salary but proportional to the income received by the temple. But the general guideline is that the total expenditure involved in payment of emoluments or benefits or

salaries to the employees, should not exceed 35% of the annual annual income gained by the temple. This is to maintain a leverage for provision of other expenses involved with the temple and its festivals to be conducted. This is the standard norm which has been maintained.

5. It was under these circumstances, that G.O.No.469, Tamil, Culture & Development of HR & CE Department dated 25.09.1998 came to be passed. The primary object of that Government Order was to ensure that the employees are paid in a scale which is proportionate to the income of the temple with a caveat that the total emoluments or benefits paid to all the employees together, should not exceed 35% of the annual income of the temple.

6. The grievances of the petitioners is that they have not been paid the said benefits in accordance with the aforementioned G.O.Ms.No.469 dated 25.09.1998. Seeking a mandamus to be issued for payment of benefits in accordance with the aforementioned Government Order, the present writ petition has been filed.

7. A counter had been filed by the second respondent / the Commissioner HR & CE Department at Chennai, wherein, it had been stated that the Executive Officers of upgraded temples were directed to fix salary on par with the salary of senior grade temple employees with effect from 21.11.2007. It is also stated that the salaries had been revised and salaries are being paid accordingly. It had also been stated that several aspects will have to be taken into consideration, namely determining the number of employees to be appointed and also the benefits of salary, emoluments be paid by them. These conditions were also related to the income generated by the temple, also from the properties of the temple. The number of worshippers who actually visit the temple, both on normal days and on festive occasions was also a relevant factor. It had been stated that the aforementioned Government Order had been passed to streamline the administration.

8. However, there cannot be any denial or dispute that the said Government Order is to be applied not only in letter but also in spirit to the employees of the fourth respondent temple. There have been earlier instances where employees of similarly placed temples have come to Court claiming the benefit of G.O.No.469.

9. One such order which is relied on by learned Senior Counsel on behalf of the petitioners is the order of a learned Single Judge in *W.P.No.3549 of 2011* dated 17.08.2011, *[A.Subramaniam and Ors vs The Government of Tamilnadu, Rep. By its Secretary HR& CE Department and others]*. The issue there was also quite similar the fourth respondent temple therein was Arulmigu Vinayakar Temple in Pollachi at the then Coimbatore District. A mandamus sought to direct the implementation of G.O.(Ms.)No.469 dated 25.09.1998.

10. It is also to be mentioned that yet another Government Order had been introduced in G.O.(Ms.)No.54 dated 09.04.2003. The purpose of both the Government Orders were practically the same. It provided for payment of salary and recognition of the employees for the assistance and services rendered by them. The only caveat which was placed was that the total emoluments should not exceed 35% of the income of the temple.

11. As a document filed with this writ petition, the percentage proportional to the income of the temple had been placed and it is seen that it does not exceed 35% in any particular

year.

12. The learned Single Judge in aforementioned W.P.NO.3549 of 2011 had held as follows :-

> *"The employees of the 4th respondent temple have approached this Court seeking a mandamus, to pay revised scale of pay as per G.O.(Ms).No.469 Tamil Nadu Development & Culture and Religious Endowment Dept., dated 25.09.1998 and G.O.(Ms)No.54 dated 09.04.2003 with effect from 25.09.1998.*
>
> *2.It is the case of the petitioners that they are employees of the 4th respondent temple which is controlled by the respondents 1 to 3. The temple was enlisted as per G.O.(Ms) No.469 Tamil Nadu Development & Culture and Religious Endowment Dept., dated 25.09.1998. As per the said G.O., the second respondent is required to appoint an Executive Officer to the 4th respondent temple in the cadre of Assistant Commissioner (HR & CE) and the salary and allowance of all the employees are liable to be refixed, by considering the status of the temple. However, the said G.O. was not implemented. Therefore, a proposal was given by the Board of Trustees of the temple on 15.05.2005 to take appropriate steps to implement the G.O.(Ms).No.469 Tamil Nadu Development & Culture and Religious Endowment Dept., dated 25.09.1998. By considering the said representation of the temple employees association, the first respondent approved and granted permission to implement the pay revision as per G.O.(Ms).No.54 dated 09.04.2003.*
>
> *3. A perusal of the above said G.Os would reveal that the first respondent is bound*

to implement the pay revision. It is contended by the learned Government Advocate that so far, the Assistant Commissioner is not appointed as per G.O.(Ms).No.469 Tamil Nadu Development & Culture and Religious Endowment Dept., dated 25.09.1998 and therefore, the pay revision could not be done. However, it is seen that G.O. was passed in the year 1998 and the respondent cannot sleep over the matter for more than 12 years and contend that the Assistant Commissioner has not been appointed and therefore benefits could not be given to the employees. The default of the respondent cannot be put against the petitioners. When the G.O has been passed. The respondents are bound to implement the same. Therefore, the respondents are directed to implement the G.O.(Ms).No. 469 Tamil Nadu Development & Culture and Religious Endowment Dept., dated 25.09.1998 and G.O.(Ms).No.54 dated 09.04.2003.

4. Moreover, this Court already passed an order in W.P.No.34944 and 34945 of 2005 on 14.11.2005 to implement the aforesaid G.Os and based on the order passed by this Court, the employees of that temple were already given benefits. The employees of the 4th respondent temple, namely the petitioners, already gave a representation on 04.01.2011 to implement the Gos.

5. In view of that, the respondents are directed to implement the above G.Os within a period of 12 weeks from the date of receipt of a copy of this order.

With this direction, the writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed."

13. Written instructions have been forwarded on behalf of the respondents and the learned Government Advocate pointed out

that the total expenditure for each Fazli year varied between 4 % to 11 % from the Fazli year from 1408 till 1416. The ratio laid down above would directly apply to the petitioners herein.

14. The Government Order had been passed in the year 1998 and as observed by learned Single Judge, the respondents cannot sleep over a Government Order continuously. Direction was therefore issued that the employees of the temple, who had given a representation for implementation of the Government Order, should be extended with such benefit and an outer limit of 12 weeks was granted to the respondents therein to implement the Government Order.

15. Even though objections have been raised still, it is seen from the calculations in this case also that the outer limit of 35% is not exceeded and, therefore, I have no hesitation in issuing a mandamus to the respondents to act in accordance with the representation given by the petitioners dated 30.02.2012 and in accordance with G.O.No.469 dated 25.09.1998.

16. The respondents may issue notice to the petitioners herein, if any clarifications are required and afford an opportunity

of personal hearing, examine the accounts of the temple particularly with respect to the income generated and thereafter pass suitable orders. The orders should be passed in confirmity with the observations of this Court within a period of sixteen weeks from the date of receipt of a copy of this order.

17. In view of above, writ petition stands allowed. No costs. Connected miscellaneous petition is closed.

24.07.2023

Index:Yes/No
Neutral Citation:Yes/No
ssm

To

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C.V.KARTHIKEYAN,J.

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