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Review Application (Writ) No.27 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

<i>Reserved on</i>	<i>20.04.2023</i>
<i>Pronounced on</i>	<i>28.04.2023</i>

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

Review Application (Writ) No.27 of 2023

- 1.The Government,
Rep. by its Secretary,
H.R. & C.E. Department,
Fort St. George, Chennai – 600 009.
 - 2.The Commissioner,
Hindu Religious & Charitable Endowment Department,
Uthamar Gandhi Salai,
Nungambakkam, Chennai – 600 006.
 - 3.The Joint Commissioner,
H.R. & C.E. Department,
Dr. Balasundaram Road,
Coimbatore – 18.
 - 4.The Joint Commissioner/Executive Officer,
Arulmigu Thirumuganatha Swamy,
Thirukoil, Thirumurugam Poondi,
Avinashi Taluk,
Thiruppur District – 641 652.
- ... Petitioners/Respondents

Vs.

1.S. Vellathal



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2.K. Chithra

... Respondents/Petitioners

3.The Board of Trustees/The Fit Person,
Arulmigu Thirumuganatha Swamy,
Thirukoil, Thirumurugam Poondi,
Avinashi Taluk,
Thiruppur District – 641 652.

... Respondent/Respondent

Prayer : Review Application filed under Section 114 r/w Order 47 Rule 1 of C.P.C., praying to review the order dated 05.12.2022 made in WP.No.6558 of 2017 and consequently take up the Writ Petitioner to be heard on merits.

For Petitioners : Mr.M. Rajendran,
Additional Government Pleader

For R1 & R2 : Mrs.G. Thilagavathi,
Senior Counsel
for Mr.R. Gopinath

ORDER

This Review Application is filed against the final order passed in WP.No.6558 of 2017 dated 05.12.2022.

2. The petitioners herein, seek for review of the final order, owing



to the following observations made therein:-

..... “2. Based on a suo motu revision made by the Commissioner of H.R. & C.E. Department in Suo Motu Revision No.14/2015 D2 dated 07.09.2015, the respondents claim that the scale of pay payable to the two employees, who were arrayed as respondents 3 and 4 in that suo motu revision, requires to be revised. On the basis of the orders passed in this suo motu revision by the Commissioner, the fourth respondent had issued the present impugned order dated 19.10.2015, stating that there was excess payment of salary to the petitioners herein, which requires to be recovered in 40 monthly instalments. Challenging this order for recovery, the present writ petition has been filed.

3. Today, when the matter was called, the learned Additional Government Pleader, on instructions, submitted that the original order passed by the Commissioner in Suo Motu Revision dated 07.09.2015 has already been cancelled. Hence, the present impugned recovery order dated 19.10.2015, which is issued pursuant to the order passed in the Suo Motu Revision dated 07.09.2015, has to be necessarily set aside.....”



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3. The learned Additional Government Pleader appearing for the Review Petitioners, would submit that he had not made any submission with regard to the cancellation order passed in Suo-Motu Revision dated 07.09.2015 by the Commissioner of H.R. & C.E. Department. In support of such a submission, the learned Additional Government Pleader produced a copy of the written instructions given to him, which supports his contention.

4. Neither the learned senior counsel for the respondents herein nor myself, are able to recollect, as to under what circumstances such a statement of the learned Additional Government Pleader was recorded, which led to allowing the Writ Petition. In this background, the Writ Petition was once again heard.

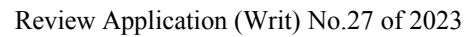
5. The order impugned in the Writ Petition emanates from a *Suo-Motu* Revision order passed by the fourth petitioner/Joint Commissioner under Section 21 of the Tamil Nadu Hindu Religious and Charitable



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Endowments Act, 1959 (hereinafter referred to as 'the Act'). Such an order was passed in the case of employees namely S.Sarathy and V.Murali in Suo-Motu Revision No.14/2015 D2 dated 07.09.2015. In consequence to this order passed in the case of S.Sarathy and V.Murali, the Executive Officer of the Temple, the fourth petitioner herein, had placed reliance on the said order and sought for recovery of the excess salary paid to the petitioners therein.

6. The genesis of the case, prompting the Joint Commissioner, to invoke powers under Section 21 of the Act, emanates from fixation of time scale of pay to the temporary employees of the Temple, which fixation was held to be illegal and irregular, insofar as it relates to the employees S.Sarathy and V.Murali. The mischief played by the fourth petitioner herein, is by applying this Suo-Motu Revision passed in the case of S.Sarathy and V.Murali to the first and second respondents herein.



8. While that being so, merely because an order under Section 21 of the Act, has been passed in the case of some other employees, it will not empower or enable the fourth petitioner herein, to apply such an order to the first and second respondents herein and seek for recovery of the alleged excess payments. Unless and until, the order of approval of pay revision is interfered with, no recovery can be made. Consequently, the impugned order passed by the fourth petitioner herein dated 19.10.2015, for recovery, cannot be sustained.



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9. Since the fourth petitioner herein, had placed reliance on the *Suo-Motu* order of the Commissioner dated 07.09.2015, for the purpose of passing the consequential order dated 19.10.2015, the first and second respondents have challenged the order of the Commissioner dated 07.09.2015 also.

10. In the light of the above findings, such an order would not affect any of the rights that had accrued on the first and second respondents herein and no civil consequences would also arise there from, touching upon the grant of the time scale of pay to the first and second respondents herein and hence, no interference is required to the order dated 07.09.2015.

11. Accordingly, the earlier order passed in WP.No.6558 of 2017 dated 05.12.2022, is hereby recalled. Consequently, the prayer in the Writ Petition, insofar as it challenges the order of the fourth petitioner herein, dated 19.10.2015, is hereby quashed. In case, any recovery has



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been made by the fourth petitioner herein, pursuant to the order dated 19.10.2015, the same shall be refunded to the first and second respondents forthwith, in any event, within a period of two (2) weeks from the date of receipt of a copy of this order.

12. With the above directions, the prayer in the Writ Petition in WP.No.6558 of 2017, stands allowed. This Review Application is ordered accordingly.

28.04.2023

Speaking/Non-speaking Order

Index : Yes/No

Internet: Yes/No

Neutral Citation: Yes/No

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Note: Issue Order Copy Today



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To

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M.S.RAMESH,J.

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Order in
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