IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 10.06.2024

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THE HONOURABLE Ms. JUSTICE P.T. ASHA

W.P.No.3305 of 2016
&
W.M.P. Nos. 2705 of 2016 & 8725 of 2022

J.Uma Maheswari ...Petitioner

Vs.

1.The Commissioner,
H.R. & C.E. Administrative Dept.,
Nungambakkam, Chennai – 600 034.

2.The Joint Commissioner,
H.R. & C.E. Administrative Dept,
Dr. Balasundaram Road,
Coimbatore.

3.The Executive Officer,
Arulmighu Venugopalwswamy Temple,
Sullivan Street,
Coimbatore -1.

4.The Fit Person / Board of Trustees,
Arulmighu Venugopalaswamy Temple,
Sullivan Street,
Coimbatore Nagar Taluk & District. ...Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ in the nature of Writ of Certiorari calling for the records of the 1st respondent dated 07.09.2015 made in suo motu revision No.24/2015/D2 and quash the same.

For Petitioner	:	Mrs. G.Thilakavathi Senior Counsel for Mr. R.Gopinath
For Respondents 1 and 2	:	Mr. S.Ravichandran Additional Government Pleader (HR & CE)
For Respondents 3 and 4.	:	No Appearance

ORDER

The Writ Petition has been filed challenging the order passed in suo motu revision made by the 1st respondent and to quash the same. The brief facts which has preeceded the filing of the above Writ Petition is that the petitioner had been initially appointed as a Daily wager in May 2012. Thereafter on 21.06.2012, she was appointed as a

Computer Typist by order of the 2nd respondent under the approved schedule of post. Prior to the appointment, suitable resolution of the 3rd respondent was also made on 11.06.2012 setting out the requirement of the Temple to fill up the schedule of post and on the basis of the resolution passed by the 3rd respondent, the 2nd respondent had passed the orders on 21.06.2012. The 2nd respondent / Joint Commissioner had exercised the powers granted to him under Rule 14 framed under Section 116 (2) (xxiii) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, herein after called the Act.

2. The petitioner would submit that she had been working in the said post and while so to her utter shock and surprise she had received a notice directing her to be present before the 1st respondent for enquiry on 30.06.2015. This enquiry was on the basis of a suo motu revision initiated by the 1st respondent. The 1st respondent had initiated these proceedings taking exception to the appointment of the petitioner and others by the Joint Commissioner.

3. In response to the above notice, the petitioner had submitted her explanation stating that she has satisfied the eligibility criteria for appointment to the said post. It is also submitted that the Joint Commissioner was the competent person and the pay scale has been fixed as per G.O.Ms.No.183 dated 29.08.2011 and not as per G.O.Ms.Nos.257 or 305 dated 02.07.2011 as stated in the suo motu revision.

4. However, without considering the explanation and the fact that the Joint Commissioner has acted only within the powers available to him, the 1st respondent by order dated 07.09.2015 had set aside the appointment order dated 21.06.2012 stating that the Joint Commissioner had violated the Rules and encroached into powers of the Commissioner and therefore directed recovery of the amounts paid to the petitioner in 40 instalments with effect from 01.11.2015. Aggrieved by this, the petitioner has come forward with the above Writ Petition.

5. The 3rd respondent has filed a counter affidavit inter alia contending that the petitioner had joined duty on 21.06.2012 only as a temporary employee and therefore the Joint Commissioner had committed an error in fixing pay on par with the permanent employees.

6. Heard the learned counsels and perused the records.

7. The proceedings of the 3rd respondent dated 21.06.2012 which is called in question in the suo motu revision clearly states that the said order has been passed invoking the powers granted to the 2nd respondent, the Joint Commissioner under Rule 14 framed under the provisions of Section 116 (2) (xxiii) of the Act.

8. It is also seen that even prior to this appointment, the resolution had been passed by the temple giving reasons and the necessity for appointing the petitioners and others in the sanctioned post. The resolution also sets out the fact that the payment of salary to

these persons would not exceed even 37.15 % of the total income of the Temple. It is only after receipt of this resolution that the Joint Commissioner has accorded his approval on 21.06.2002.

9. It is also seen that the pay fixation has been made as per G.O.Ms.No.183 dated 29.08.2011. The suo motu revision has been initiated on the basis that the Joint Commissioner has accorded permission to fix time scale to temporary employees and that he has failed to consider that the pay scale sanctioned in G.O.Ms.257 dated 30.06.2010 and G.O.Ms.305 dated 23.07.2010 would be applicable only to permanent employees.

10. It is the contention of the 1st respondent / Commissioner that the Joint Commissioner has sanctioned pay scale under G.O.Ms.No.257 and 305. The Joint Commissioner is accused of regularising the services of temporary employees by granting them a regular time scale of pay. The resolution passed by the 3rd respondent dated 11.06.2013 would clearly show that the petitioner and the others had been fitted

into sanctioned post and thereafter given the regular time scale of pay and the 2nd respondent has not granted approval taking into consideration G.O.Ms. Nos. 257 and 305.

11. The Board of Trustees have taken into consideration all the parameters and recommended the appointment of the petitioner and others into sanctioned post and for grant of regular time scale of pay. The 2nd respondent has approved the same through his proceedings dated 21.06.2012. Therefore, the very basis on which suo motu revision has been initiated is fallacious.

12. It has been fairly admitted that the Joint Commissioner has not exceeded powers granted to him, since Rule 14 framed under Section 116 of the Act gives power to the Joint Commissioner to pass the above order which has been questioned in the suo motu revision. It is also brought to the notice of this Court that in connected matters the impugned orders has been set aside.

13. Considering the above facts and circumstances of the case, the Writ Petition is allowed and the impugned order is set aside. Consequently, the connected miscellaneous petitions are closed. No costs.

14. It is made clear that the petitioner shall be forthwith given necessary restoration of her service and the same shall be reported to this Court. Post the matter under the caption *"For Reporting Compliance"* on 27.06.2024. It is needless to state that the amounts recovered from the petitioner on the basis of the impugned order shall be refunded to her within a period of 8 weeks from the date of receipt of a copy of this order.

10.06.2024

Index : Yes/No
Internet : Yes/No
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