(2016) 02 KL CK 0021

In the High Court Of Kerala

Case No : W.P.(C) Nos. 23075 (H), 23148-P, 24575-V and 35325-M of 2014

K.O. Raveendran APPELLANT

Vs

State of Kerala and Others RESPONDENT

Date of Decision : 03-02-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 02 KL CK 0021

Hon'ble Judges : K. Vinod Chandran, J.

Bench : Single Bench

Advocate : V. Rajendran, Advocate, for the Appellant; M.A. Fayaz, Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

K. Vinod Chandran, J.—1. The petitioners in these four writ petitions are employees of four Special Grade Devaswom Temples being the Sree Peralasseri Temple, Sree Mammiyoor Mahadeva Temple, Sree Pisharikavu Temple and Sree Kadampuzha Bhagavathi Temple. The trustees of all the four Temples along with the trustees of one other temple being the Sree Thirumandhamkunnu Temple approached the Government with a similar prayer of pay-revision as per the pay entitlement of Government employees from 01.07.2009 onward. Since the prayers are identical and the government and the Board had considered the issue together, the various documents are referred to from WP(C) No. 23075 of 2014.

2. The trustees of Sree Peralasseri Devaswom filed Ext. P1 application before the Commissioner, Malabar Devaswom Board, for revision of pay of the Temple employees, as per the entitlement of the Government employees, with effect from 01.07.2009. The other temples too made similar prayers. However, the Commissioner rejected the prayer by Ext. P2, on the ground that there is a pay structure, established and sanctioned by the Malabar Devaswom Board, for the employees under the Board and no deviation can be made therefrom. The rejection was as per Ext. P2, against which, the trustees then moved the

Government with Ext. P3.

3. On a report being called from the Devaswom Board, the Commissioner issued Ext. P4. The specific contention in Ext. P4, against the claim for pay-revision, was that such a revision effected to certain Temples would in fact cause disparity in the pay drawn by the employees in the other Temples, which do not have the income of a Special Grade Temples. The trustees again submitted a representation as per Ext. P5. The Government then passed Ext. P6, wherein the pay scales applicable to Government employees as brought out in GO(P) No. 85/11/Fin dated 26.02.2011 was made applicable to the employees of the five special grade temples. However, in Ext. P6, it was specifically stated that the revision would only have prospective effect.

4. Again, the employees of all the Temples together made a representation at Ext. P7. There again, Ext. P8 order was passed by the Government, permitting the pay scales of the Government employees to be adopted with respect to the Temple employees also, but however ensuring that the pay and allowances payable to the employees in the 5 Temples do not exceed 30% of the annual income of each Temple. The petitioners were before this Court, challenging Ext. P8 to the extent it did not grant the request of retrospective effect to such pay scales from 01.07.2009 onward. This Court by Ext. P9 relegated the matter to the Government. The Government issued Ext. P10 order dated 11.08.2014, rejecting the claim for retrospective effect, on the ground that the retrospective effect granted would result in huge additional financial burden on the temples.

5. The learned Counsel for the petitioners argued that the documents produced in the writ petition itself would indicate that in none of the Temples, the pay-revision effected would exceed 30% of the total income of that Temple in a particular year. It was also argued that the contention taken by the Commissioner in Ext. P4 that there should be equalization of pay scales to all Temple employees, would go against the categorization made on the basis of the income of each Temple. Further, it was submitted that, there is no rationale in the opinion that the pay scale of employees in Temples, wherein there is more income generated, should also be equalized with those Temples in which there is less income. The generation of more income would entail more work to be carried on within the Temple and un-equals cannot be treated equally, is the argument.

6. The learned counsel appearing for the Malabar Devaswom Board would contend that the appointments made to the Temples are by the trustees themselves and that the amounts generated in a Temple cannot be easily frittered away on the ground of astronomical pay revisions effected. It is also submitted that the Commissioner has the authority under Rule 10 of the Madras Hindu Religious And Charitable Endowments Act, 1951, to consider such pay revisions and no Temple or Board of Trustees could implement a pay-revision, without the prior approval of the Commissioner. The learned Standing Counsel would also place reliance on the decision reported in Retired Teacher''s and

Employees Union and Others v. State of Kerala and Others [2012 (1) KHC 323] to contend that the fixation of a date is the exclusive premise of the Government and when a pay revision is implemented, no employee can challenge the fixation of a particular date, from which the revision has been made effected.

7. The finding in Ext. P4 of WP(C) No. 23075 of 2014 relating to equalization of the pay scales with other Temples having lesser income, cannot be countenanced since even the Board has categorized the Temples on the basis of the income generated. The Temples, which are the subject matter of consideration in the above writ petitions, are all Special Grade Temples, having considerable income, which indicates that there is more inflow of devotees and the workload of such temple employees are also more. There is no rationale in contending that the employees in all the temples should be paid at the same rates, when obviously the work varies and so does the burden depend upon the number of devotees offering prayers at the temple. It has been correctly argued that there can be no treatment of un-equals as equals.

8. The reliance placed on 2012 (1) KHC 323 also is feeble, since there the issue was with respect to the revision of pay for Government employees, where the pay master was the Government itself. Taking into consideration the financial constraints and the administrative exigencies, the employer, the Government, had fixed a date, which could not be interfered with by this Court under Article 226 of the Constitution of India, was the finding. However, in these cases, the pay master is the Temple administration itself, ie., the respective Devaswoms and the Trustees of such Devaswoms have decided to revise the pay scales with retrospective effect from 01.07.2009, specifically taking into consideration the financial status of the Temples and the income generated in the respective years.

9. The decision having been taken by the Trustees, who are the pay masters, the Government or the Board cannot interfere with the same on mere grounds of financial burden, when on facts it is established to be otherwise. This court had by an interim order dated 04.01.2016 directed the Board to file an affidavit disclosing the details of any grant made to the Temples herein, by the Board or the Government. An affidavit dated 03.02.2016 has been placed on record, from which it is also very evident that none of these Temples have been granted any grant-in-aid by the Government and that the Government or the Board does not have any financial liability with respect to the salary and allowances paid to these Temple employees or with respect to any other matter, concerning the affairs of the Temple.

10. The Board being a regulatory body, definitely would be entitled to look into the pay revisions made in the various Temples, ensuring that the same is not done in a manner, which runs against the interest of the Temple itself. No such finding can be rendered herein, with respect to any of the four Temples, since their financial status is said to be very sound and the resultant expenditure on revision is said to be within the 30% limit as prescribed even by the Government. The Commissioner has definitely the powers to look into the pay

revisions proposed, but the approval can be declined only on reasonable grounds where the existence of the Temple itself is put into jeopardy or there is wanton misuse of funds.

11. Admittedly, the date from which the pay revision claimed, being 01.07.2009, is the date from which the pay revision was implemented for the Government employees as per GO(P) No. 85/11/Fin. The revision effected cannot also be argued to be astronomical since the Government has on the recommendations of a Commission appointed to look into the issue, considered the various factors inter-alia the rise in cost of living and decided to implement such revision for its employees. The implementation as far as the Government employees were also made effective from a retrospective date, ie: 01.07.2009.

12. The implementation of such pay revision in the Special Grade Temples, specifically the 5 Temples referred to herein above, is also no more in dispute, since that has been done as per the Government Order produced as Ext. P8. The only question to be decided is as to whether the pay-revision can be effected retrospectively. In this context, one has to look at the income generated in each Temple and the percentage of such income utilized for payment of salary and allowances to the employees. In examining such percentage, one has also to keep in mind that the order at Ext. P8 of the Government, specifically indicated that the expenditure on account of pay and allowances payable to employees shall not exceed 30% of the annual income of each Temple. The 30% limit so fixed by the Government can be taken as a bench mark to decide as to whether for a particular year, the pay revision could have been applied to the employees of the four Temples who are the petitioners herein.

13. In WP(C) No. 23075 of 2014, with respect to Sree Peralasseri Devaswom, Ext. P1 indicates that in the year 2010, the expenditure on establishment. On implementation of the revision was 16.97% of the total income generated in that particular year. WP(C) No. 23148 of 2014, with respect to Sree Mammiyoor Devaswom, shows the establishment expenditure to be 15.11% of the total income generated in the year 2013 as indicated at Ext. P7. WP(C) No. 24575 of 2014, filed by Sree Pisharikavu Devaswom, evidences by Ext. P2, that the establishment expenditure would be 20% for the year 2010 and WP(C) No. 35325 and 2014 indicates the establishment expenditure will be 17.89% of the total income for the year 2010

14. The order of the Government, rejecting the retrospective effect of the pay revision, on the ground that the same would place additional financial burden on the Temples hence is not tenable. It has already been found that even the Government adopted a bench mark of 30%, of the total income, as permissible allocation for establishment purposes. The revision, now sought to be made retrospective, does not go beyond such bench mark in any of the Temples, looking at the income generated for each particular year and comparing it with the liability for salary and allowances to the employees.

In such circumstances, The Commissioner would have to examine as to whether from 01.07.2009 onward, the establishment expenditure with respect to salaries and allowances would be less that 30% of the income generated for that particular year. If that is found to be below the limit as approved by the Government itself, then necessarily retrospective effect can be granted for the pay revision. In conclusion, G.O.(Rt) No. 3773/2014/RD dated 11.08.2014, produced as Ext. P10, is set aside and the Commissioner is directed to consider the matter of retrospective promotion, only looking at whether for the respective years from 2009, the total expenditure incurred on establishment, ie., salary and allowances, fall within the 30% limit. The same shall be done within three months from today, after examination of the records and the financial statements of the respective Temples and written orders passed. The trustees shall disburse amounts of the arrears as expeditiously as possible to the employees of the Temple.

All the writ petitions would stand allowed. Parties shall suffer their respective costs.