

IN THE H IGH COURT OF JUDICATURE AT MADRAS

DATED : 27.07.2015
(Reserved on 06.02.2015)

CORAM

THE HONOURABLE Mr. JUSTICE T.RAJA

W.P.No.8999 of 2006

The Management of Christian
Medical College (CMC Association, Vellore),
Ida Scudder Road,
Vellore - 4.
Rep. By its Secretary

... Petitioner

Vs.

1. Government of Tamil Nadu,
Rep. By the Secretary to Government,
Labour and Employment Department,
Fort St. George,
Chennai - 600 009.

2. Deputy Inspector of Labour,
No.10, Ponniamman Koil Street,
Sainathapuram, Vellore.

... Respondents

PRAYER: Writ Petitions filed under Article 226 of the Constitution of India praying to issue a writ of declaration to declare that the Motor Transport Workers Act does not apply to the petitioner Institution.

For Petitioner : Mr.Sanjay Mohan
for M/s.S.Ramasubramanian and Associates

For Respondents : Mr.R.Govindasamy, AGP

ORDER

The petitioner/Management of Christian Medical College (CMC Association, Vellore), has filed the present writ petition seeking issuance of a writ of declaration to declare that the Motor Transport Workers Act does not apply to the petitioner Institution.

2. Learned counsel appearing for the petitioner submitted that the petitioner Institution is running a Medical College, Nursing College and Research Institution and they have been doing humanitarian, charitable and educative service for the benefit of sick and injured persons as a whole. The Hon'ble Supreme Court has also recognized the Institution as an Educational Institution in the case of Christian Medical College Hospital Employees' Union and another v. Christian Medical College Vellore Association and others (1988 1 LLJ 263), therefore, it is bound to run a Hospital, for, the University regulations require that a Medical College and College of Nursing should have a hospital attached to them because practical training is an essential requirement for every medical student and a nursing student. Hence, they established a Hospital, known as Christian Medical College and Hospital with a branch of eye Hospital, Mental Health Centre, a Rural Health Centre, where the students of the Medical College and the College of Nursing obtain practical training throughout their educational course. Further, the petitioner institution engages a team of professional doctors, nurses, teachers, research scholars, students etc., and they have been doing service to the sick and injured persons. Therefore, for such activities, the petitioner institution is owning and plying few vehicles in the name of the General Superintendent and thus, he pleaded, these vehicles are owned by the petitioner institution and not by any individual and they are not using these vehicles for the purpose of any business or engaged in carrying passengers or goods for the purpose of any business.

3. When the matter stood thus, he pleaded, the Assistant Inspector of Labour, Vellore, issued a letter dated 16.09.1968 stating that the rules and regulations under the Motor Transport Workers Act, 1961, have not been followed and therefore, immediate steps should be taken to comply with the legal requirements. Rebutting the said letter of the Assistant Inspector of Labour, Vellore, learned counsel further submitted that the Institution being the medical college engaged in teaching, research and in the care of the sick and injured persons, by no stretch of imagination, the petitioner institution or any section thereof can be deemed to be a Motor Transport Undertaking, otherwise, more than 5500 employees working in the Institution will be faced with lots of difficulties and innumerable problems if such employees are brought under a separate enactment as stipulated in the Motor Transport Workers Act.

4. Terming the enforcement of separate conditions of service as provided in the Motor Transport Workers Act as unwarranted and

unjustified, learned counsel stated, the petitioner preferred an appeal dated 16.09.1969 against the notice issued by the Assistant Inspector of Labour, Vellore, however, in the meanwhile, the said Inspector issued a show cause notice dated Nil for non-compliance with the provisions of the Act and as against such notice, the petitioner, vide reply dated 25.09.1968, reiterated that the Motor Transport Workers Act does not apply to the petitioner Institution. However, the same was rejected by the Assistant Inspector of Labour, Vellore, vide his letter dated 26.09.1968. Subsequently, the petitioner Institution, by letter dated 03.10.1969 addressed to the Commissioner of Labour, Madras, sought for exemption from the compliance with the said Act, by reiterating their earlier stand that the Institution is an Educational Institution and the vehicles maintained by them are for the convenience of the staff and students to make them more useful to the suffering public. However, the Chief Inspector of Motor Transport, vide his order dated 10.11.1969, rejected the contention of the petitioner. Thereafter, the second respondent issued another show cause notice dated 02.11.1978 calling upon the petitioner for explanation for complying with the provisions of the Motor Transport Workers Act. On receipt of such notice, the petitioner, vide letter dated 28.11.1978, replied stating that the petitioner Institution cannot be deemed to a Motor Transport Undertaking and as such, the said Act does not apply to them. Thereafter, the petitioner, vide their letter dated 07.12.1978, addressed to the Deputy Commissioner of Labour, Madras, requested to pass orders confirming that the petitioner Institution is not a Motor Transport Undertaking within the meaning of the Act and thereby requested to drop further proceedings.

5. It is further submitted that since there was no reply, the petitioner sent another letter dated 13.12.1978 to the Deputy Commissioner of Labour, Madras, requesting for renewal of licence for the years 1978 and 1979 without prejudice to their contention that the petitioner Institution is not covered under the Motor Transport Workers Act, 1961. However, the Inspector of Labour, Vellore, subsequently, issued another show cause notice dated 15.02.1979 to show cause as to why the action should not be taken for non-compliance with the provisions of the Act. The petitioner vide their letter dated 01.05.1979 reiterated that the provisions of the Motor Transport Workers Act and the Rules made thereunder do not apply to the petitioner Institution, as the drivers engaged only for transportation of the staff and students, therefore, the same would not come under the purview of the Motor Transport Workers Act.

6. Besides, it is further submitted by the learned counsel for the petitioner that the respondent has to test the Institution whether it is a Transport Undertaking or not, for, a Motor Transport Undertaking, that is engaged in carrying passengers alone would fit within the meaning of Section 2(g) of the Motor Transport Act, in other words, if it is engaged in the business of carrying passengers for hire or reward would be a Motor Transport Undertaking. But, when it is an admitted fact that the petitioner is a Medical College and it would fall in the pursuit of education in the medicine and not in the pursuit of the activities of a Motor Transport Undertaking, the respondents ought to have provided exemption from the purview of the Motor Transport Workers Act.

7. Taking support from the judgment of the Hon'ble Apex Court in the case of Christian Medical College Hospital Emoloyees' Union and another v. Christian Medical College Vellore Association and others (1988 1 LLJ 263), learned counsel submitted that in the said judgment, the Hon'ble Apex Court held that the petitioner Institution as a minority Institution, therefore, Sections 9A, 10, 11A, 12 and 33 of the Industrial Disputes Act are applicable to the minority educational institution like the Christian Medical College and Hospital, Vellore, hence, the petitioner is not a Motor Transport Undertaking, he pleaded.

8. Refuting the various allegations of the learned counsel for the petitioner, learned Additional Government Pleader appearing for the respondents urged this Court to dismiss the writ petition on the ground that the petitioner is estopped from taking a different stand, when they had already enjoyed exemption as a Transport Undertaking, therefore, they cannot file the present writ petition seeking to declare that the Motor Transport Workers Act cannot be applied to them.

9. Heard both sides.

10. It is seen from the typed set of papers filed by the learned Additional Government Pleader appearing for the respondents that the Government, vide G.O.Ms.No.37, Labour and Employment Department, dated 11.02.1992, by accepting the recommendation of the Commissioner of Labour, granted exemption to all the Educational Institutions in the State of Tamil Nadu from the provisions of the Motor Transport Workers Act, 1961, and the Rules made thereunder for a further period of three years. After expiry of the exemption period, vide G.O.(D).No.939, Labour and Employment Department, dated 21.07.1995, the Government once again granted exemption to all the

Educational Institutions in the State of Tamil Nadu from the provisions of the said Act for a further period of three years. Likewise, on receipt of another request for continuance of exemption for a period of further three years from the provisions of the Act and Rules, the Government, vide G.O.(D).No.1164, Labour and Employment (H1) Department, dated 28.12.1999, accepted such request in respect of all the Educational Institutions in the State of Tamil Nadu. However, the Commissioner of Labour in the memorandum dated 08.12.2003 declined to grant further exemption on the expiry of the exemption granted in G.O.(D)No.1164, dated 28.12.1999. For better appreciation, relevant portion of the said memorandum is extracted hereunder:

"The Inspectors of Labour are informed that the Government in G.O.(D)No.1164, Labour and Employment Department, dated 28.12.1999, exempted all Educational Institutions from the application of the Motor Transport Workers Act, temporarily for a period of three years from the date of publication of the G.O. in the Tamil Nadu Government Gazette. The G.O. published in the Tamil Nadu Government Gazette dated 05.07.2000 and hence the period of three years had already expired on 04.07.2003.

No further extension has been granted by the Government and no educational institution has sought for further extension.

In the above circumstances, the Inspectors of Labour are requested to enforce the Motor Transport Workers Act to the educational Institutions for which the Act is applicable."

A mere perusal of the above said memorandum depicts that pursuant to the expiry of the exemption granted vide G.O.(D)No.1164, dated 28.12.1999, no further extension was granted and thereupon, all the Inspectors of Labour were requested to enforce the Motor Transport Workers Act to all the Educational Institutions. When such being the position, the petitioner Institution ought to have challenged the memorandum dated 08.12.2003 refusing to give further exemption. Therefore, on this score, this Court, without going into the merits of the various contentions raised by the learned counsel for the petitioner, is inclined to dismiss the writ petition.

11. That apart, on the same point, the Commissioner of Labour issued another memorandum dated 03.01.2003. Relevant portion of the said memorandum is extracted hereunder:

"The Government in their letter 4th cited have informed that they have examined the request of the Indian Institute of Technology, Chennai, and other Educational Institutions to exempt them from the provisions of the Motor Transport Workers Act, 1961, and decided not to grant them exemption from the provisions of the Motor Transport Workers Act, 1961. They have also marked copy to the IIT Chennai and 9 Colleges for whom applications were received in this regard.

All the Inspectors of Labour are instructed to initiate speedy action to register all the educational institutions in their jurisdiction and make inspections periodically and also inform the action taken in this regard."

From the above said memorandum, it is clear that the Commissioner of Labour, on receipt of request from IIT, Chennai and nine other Colleges to exempt them from the provisions of the Motor Transport Workers Act, 1961, declined to grant such exemption and thereupon instructed all the Inspectors of Labour to initiate speedy action to register all the Educational Institutions in their jurisdiction and then make periodical inspection.

12. Therefore, when such being the categorical allusion from the Commissioner of Labour, the petitioner ought to have challenged the said memorandum, however, without doing so, they cannot straight-away come to this Court seeking writ of declaration to declare that the Motor Transporters Workers Act, 1961, does not apply to them. Accordingly, on this score alone, the writ petition is liable to be dismissed and thus, the same is dismissed. No Costs. Consequently, connected W.P.M.P.No.9962 of 2006 is closed.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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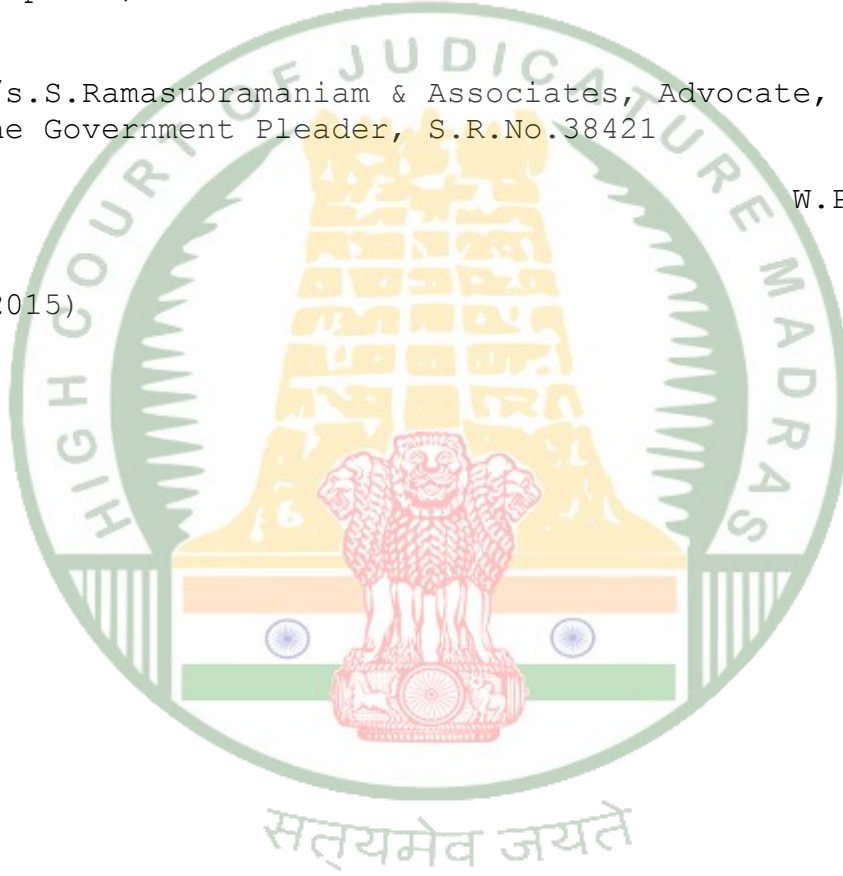
1. The Secretary to Government,
Labour and Employment Department,
Fort St. George,
Chennai - 600 009.

2. Deputy Inspector of Labour,
No.10, Ponniamman Koil Street,
Sainathapuram, Vellore.

+1cc to M/s.S.Ramasubramaniam & Associates, Advocate, S.R.No.38600
+1cc to the Government Pleader, S.R.No.38421

W.P.No.8999 of 2006

AK(CO)
CA(16/09/2015)



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