

* HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

+ Writ Petition Nos.18988, 21755 and 39189 of 2014,
2165, 5031, 6213, 6628, 7491 and 30743 of 2015,
Contempt Case No.1494 of 2015 and WP No.20776 of 2016

% Dated 14.09.2016

WP No.18988 of 2014

Gade Basaveswara Rao and others

...Petitioners

Vs.

\$ The Government of AP., rep. by
The Principal Secretary,
Health Medical and Family Welfare Department,
Secretariat Building,
Saifabad, Hyderabad and others.

...Respondents

! Counsel for the Petitioners: Tarlada Rajasekhara Rao,
Gade Venkateswara Rao,
Y. Sudhakar and
G. Jagadeeshwar

^ Counsel for the Respondents: GP for Medical and Health

< Gist :

> Head Note:

? Cases Referred:

1. (1987) 2 SCC 165
2. (2006) 4 SCC 1

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

* * * *

Writ Petition Nos.18988, 21755 and 39189 of 2014,
2165, 5031, 6213, 6628, 7491 and 30743 of 2015,
Contempt Case No.1494 of 2015 and WP No.20776 of 2016

WP No.18988 of 2014

Between:

Gade Basaveswara Rao and others

...Petitioners

and

The Government of AP., rep. by
The Principal Secretary,
Health Medical and Family Welfare Department,
Secretariat Building,
Saifabad, Hyderabad and others.

...Respondents

JUDGMENT PRONOUNCED ON : 14.09.2016

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO :

1.

Whether Reporters of Local newspapers
may be allowed to see the Judgments?

:

YES
2.

Whether the copies of judgment may be
Marked to Law Reporters/Journals?

:

YES
3.

Whether Their Ladyship/Lordship wish to
see the fair copy of the Judgment?

:

YES

HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

Writ Petition Nos.18988, 21755 and 39189 of 2014,
2165, 5031, 6213, 6628, 7491 and 30743 of 2015,
Contempt Case No.1494 of 2015 and WP No.20776 of 2016

Common Order:

This batch of cases relating to the outsourced employees in public health sector portray the grim picture and consequences of globalisation. The petitioners attempt to continue in employment while the Government, through respondents, disengages their services at their will and pleasure calling them as outsourced employees.

2. The petitioners state that they were appointed on contract basis through a 'Zilla Samakhya' in Government General Hospital, Guntur by undergoing the process for selection in the year 2000-01. It is their further case that when G.O.Ms.No.3 dated 12.01.2011 was issued enhancing the remuneration for the personnel working on contract and outsourcing basis and it was not implemented, they filed W.P. No.22146 of 2011. The said Writ Petition was disposed of directing the respondents to consider the representation dated 11.03.2011 and dispose of the same. When an order was passed on 04.10.2011 rejecting the representation, the petitioners filed W.P. No.31131 of 2011 for setting aside the proceedings and this Court allowed the said Writ Petition by an order dated 17.04.2012. However, against the said order, Writ Appeal No.39 of 2012 was preferred and no stay was granted in the said Writ Appeal. In Contempt Case No.227 of 2014 filed seeking implementation of the order in W.P. No.31131 of 2011 dated 17.04.2012, this Court gave a direction for implementing the order and in spite of the same the orders were not implemented on the ground that G.O.Ms.Nos.250 and 146 are not applicable to the petitioners and stand in the way of implementation.

However, when the respondents tried to discontinue the services of the petitioners by directing them to serve under 'Arogyasree scheme' in order to deprive them of their past service by issuing proceedings in RC No.2171/HDS/2014-Outsourcing dated 30.06.2014, nineteen (19) petitioners filed W.P. No.18988 of 2014. While so, when the respondents issued a notification dated 25.07.2014 through the President, Zilla Samakhya, Guntur, Writ Petition No.21755 of 2014 was filed. Thus several Writ Petitions are pending in relation to the petitioners.

3. A counter affidavit was filed by the third respondent stating that in view of the requirements of the hospital, the services of certain technical persons were utilised by the 'Hospital Development Society' from the available funds through third party agency, Zilla Samakhya, Guntur who is the fifth respondent. Their services were utilised for running the sophisticated equipment like CT Scan, which was installed 15 years back without sanctioning any post, X-ray, ECG, Audiogram machines in various departments and laboratories of Government General Hospital, Guntur. Several letters were addressed to the Director of Medical Education, Hyderabad and the Principal Secretary, HM & FW, AP, Hyderabad for sanction of new posts, but no sanction order was received. However, on the directions of the Collector and District Magistrate, Guntur and the Chairman, Hospital Development Society, Government General Hospital, Guntur, a letter was addressed to the President, Zilla Samakhya for termination of the staff on outsourcing basis vide proceedings dated 27.06.2014. Accordingly, their services were terminated on the afternoon of 30.06.2014 as there is no prior approval of the Finance Department and there is no approval of the successor Government. A note file was circulated to the Collector and District Magistrate, Guntur and Chairman of

Hospital Development Society for utilisation of the services of the existing technical staff through Zilla Samakhya, Guntur and payment of honorarium through Arogyasree Scheme since their services are required and very essential to the institution to provide uninterrupted patient care and for operation of sophisticated equipment in the departments of Radiology, Cardiology, ENT, Neurology and Laboratories etc. The Collector and District Magistrate, Guntur and Chairman of Hospital Development Society issued orders for making temporary arrangements for a period of six months for selecting technical persons on merit basis and treating the already working persons as fresh candidates without any claim or right on their working in the past in terms of G.O.Ms.No.146 Finance Department dated 27.06.2014. When the petitioners filed W.P. No.31131 of 2011, a counter affidavit was filed stating that the services of the petitioners were utilised on honorarium basis as per the needs of the department as there are no specific funds allocated by the Government. The honorarium is also being paid through Zilla Samakhya, Guntur from the available funds of Hospital Development Society, Guntur which are generated locally by way of auction of cycle stand, commercial canteen, laboratory tests, investigation fee, internship fee and paramedical training fee. The discontinuance of the existing outsourcing staff is in implementation of the Government orders in G.O.Ms.No.250 GAD (SR) Department dated 01.06.2014, G.O.Ms.No.146 Finance (HR-I) Department dated 27.06.2014 and the note orders of the Collector and District Magistrate, Guntur. A paper publication was made for appointment of outsourcing employees on 25.07.2014. This Court, by an order dated 01.08.2014, granted interim suspension of the said notification, as a result of which the petitioners are continuing.

4. Even before this Writ Petition, when there was a threat to their continuance, the petitioners filed W.P. No.18988 of 2014 and this Court, by an order dated 01.08.2014, directed the respondents to continue them in service. As a result of such order they have been continuing. During their continuance, when the enhancement of remuneration provided in G.O.Ms.No.3, dated 12.01.2011 was not extended to the petitioners, they filed W.P. No.39189 of 2014 and this Court by an order dated 30.12.2014 directed the payment of enhanced remuneration. A similar Writ Petition was filed in W.P. No.2165 of 2015. When the respondents wanted to replace the Zilla Samakhya which is the outsourcing agency by another agency, W.P. Nos.5031 and 6213 of 2015 were filed. When payment of remuneration was not made on the ground of some audit objections, yet another Writ Petition No.7491 of 2015 was filed.

5. Thereafter, a curious incident seems to have occurred which led to the filing of W.P. No.20776 of 2016. The petitioner therein, who claims to have studied cardiology technician course was appointed on 28.11.2009 by the Hospital Development Society, Government General Hospital, Guntur, as ECG technician on consolidated remuneration of Rs.1500/- per month, but no order of appointment was given to him. Thereafter, the remuneration was enhanced to Rs.4,000/- per month. He has been leading the battle on behalf of himself and others in the above cases. It appears from record that he took leave for nearly four months and after recovering from illness, he requested the Superintendent of the Hospital to allow him to duty by submitting a fitness certificate on 28.03.2016, but he was not allowed to join. In those circumstances, he filed W.P. No.11435 of 2016 and pending disposal of the Writ Petition, when he was allowed to join duty on 28.04.2016 the Writ Petition was dismissed as

infructuous. While so, when he was on duty on 01.05.2016 during the shift from 2.00 pm to 8.00 pm and when he was taking the ECG to one patient, the RMO of the hospital came along with his relative and demanded him to take ECG, for which he stated that he will take within 10 minutes as he was attending to another patient. On that, the doctor got enraged, used filthy language and tried to beat him with the stick of the security guard, and in spite of the same, he attended to the patient referred by the doctor and later on applied for the footage of recorded incident in the CCTV camera. Apprehending some trouble, the doctor thought of removing him from service. A proceeding was issued on 10.05.2016 stating that one complaint was received against him regarding his misbehaviour and negligence in discharging his duties and a committee was constituted. The petitioner attended the enquiry and sought for a copy of the complaint alleged to have been made against him on 09.05.2016 and also the reports of the doctors in order to furnish proper explanation, however, the same were not furnished. The complainant did not attend the enquiry. He requested the committee to forgive him. When he came to the hospital on 17.05.2016 at about 1.30 pm for discharging his duties, the security guard did not allow him on the ground that the Superintendent of the hospital and the doctor who was involved in the earlier incident instructed him not to allow him. He sought information under the provisions of the Right to Information Act through the third respondent with regard to the order of termination, proceedings of enquiry and footage of CCTV Camera on 01.05.2016, but no information was furnished to him. Challenging discontinuance of his services, he filed the above Writ Petition No.20776 of 2016.

6. A counter affidavit is filed in this case stating that the alleged incident that occurred on 01.05.2016 was not brought to the notice of the Superintendent of the hospital either by the said doctor or by the petitioner. However, on 16.05.2016 the petitioner lodged a complaint before the Superintendent of Police, Guntur Urban against the said doctor with regard to the incident. In the meanwhile, on 09.05.2016, a patient was brought to the hospital for treatment and the Casualty Medical Officer advised to take ECG and requisition was issued to the ECG Technician/petitioner for getting ECG. The patient died while taking treatment. With regard to that incident, the wife of the patient lodged a complaint stating that the petitioner was negligent in taking the ECG in spite of her pleading to take ECG immediately in view of the condition of the patient. She sought action against the petitioner in order not to repeat such incidents in future. In view of the same, the Superintendent of the Hospital issued instructions to a doctor, who incidentally happened to be the same doctor who was involved in the incident on 01.05.2016, to conduct a preliminary enquiry and submit report. He submitted a preliminary enquiry report stating that the allegations against the petitioner were correct and thereon a committee was constituted with four members on 10.05.2016. The written statements from seven persons including the petitioner were obtained. The committee submitted a report recommending action against the petitioner stating as follows:

- (i) he did not follow the instructions of his superiors,
- (ii) his behaviour towards patients and doctors is rude and
- (iii) his services may be discontinued so that such lapses will not occur in future.

In view of the report and recommendation of the enquiry committee on 16.05.2016, a letter was addressed to the outsourcing agency on 19-5-2016 for discontinuing his services.

7. He filed a reply affidavit stating that the copy of the complaint or the report dated 09.05.2016 of the CMO and other PG doctors were not furnished to him. The complainant herself did not attend the enquiry. The alleged statements of the persons were not recorded except the statement of the petitioner. In spite of his specific request under the Right to Information Act, he was not furnished with information. He further states that the purpose of ECG procedure for poison consumed patient is for confirmation of death and it is not for the purpose of treatment and the entire episode is created against him. He further states that he was not appointed by the outsourcing agency, he has been continuing for several years and the involvement of the outsourcing agency is only to deny them the regularization of their services. W.P. Nos.5031 and 6213 of 2015 are pending in this regard. He gave the list of 13 cases pending with regard to the outsourcing employees. He ultimately stated that he was targeted for espousing the cause of other employees.

8. Another curious case of outsourcing employee is involved in W.P. No.6628 of 2015. In the said case, the petitioner states that he was appointed as MNO (Male Nursing Orderly) in the NTR Area Hospital, Anakapalli in the year 1995 on payment of an amount of Rs.200/- per month, his salary was being increased from time to time and he was being paid an amount of Rs.6,455/- per month after deducting the amount towards Employees State Insurance and Provident Fund. He was assisting the duty doctors and also discharging the duties in the X-ray room by keeping the beds clean and providing stretcher to the patients. He gained experience in providing bandages to the patients who came to the hospital with wounds. He has been rendering his services without any remarks

from 1995 till 1st March 2015 and he is the senior most MNO in the Hospital. He was appointed in a sanctioned vacancy. While so, on 01.03.2015, he was informed by the Hospital Superintendent that his services were terminated as the Member of Legislative Assembly of Anakapalli Constituency wanted to appoint a person of his choice as MNO in his place. He states that he was over aged for employment anywhere and the oral termination is bad.

9. A counter affidavit was filed by the second respondent on 24.03.2015 stating that the petitioner worked under an agency called 'Jai Victory Integrated Society for Youth Organization in Urban and Rural Service' at Anakapalli, and they appointed him as a Cook. Though he was appointed as a cook by the diet contractor, his services were utilised by the third party agency as Male Nursing Orderly/Ward Boy. His services were terminated in the month of September 2013 itself, but the proceedings were issued by the Commissioner of AP Vaidya Vidhan Parishad, Hyderabad only in December 2013. He was not a regular employee and he was not appointed in a sanctioned post. His services were terminated in view of the termination of agency of diet contractor. The services of Cook/Mali/Gardener/Telephone Operator and Junior Sanitary Worker were also discontinued by the Commissioner of AP Vaidya Vidhan Parishad, Hyderabad by proceedings dated 19.02.2014. However, the matter is pending before the Deputy Commissioner of Labour, Visakhapatnam.

10. This Court, by an order dated 07.04.2015, directed the second respondent to utilise the services of the petitioner, if there is any requirement of services of Male Nursing Orderly/Ward Boy, however the

second respondent was directed to take up the matter with the Directorate for securing the man power requirement in the Hospital by regular employees. When the said order was not complied with, Contempt Case No. 1494 of 2015 was filed. A counter affidavit was filed therein reiterating the averments made in the earlier counter affidavit stating that, after termination of his services as a Cook, he joined as security guard under 'Agile Sanitation and Security Services' and those services were also terminated because of his unsatisfactory services. It was further stated that one Male Nursing Orderly, K. Appa Rao retired from service on 31.03.2015 and he brought a recommendation letter from the local MLA to utilise his services, however, he was not taken as MNO as the Superintendent is not the competent authority to appoint or terminate the services of regular employee/outsourcing employee. It was further stated that the Medical Superintendent, Area Hospital, Anakapalli, Visakhapatnam addressed a letter requesting the Commissioner, AP Vaidya Vidhan Parishad, Hyderabad on 04.11.2013 seeking sanctioning of man power i.e., Doctors, Paramedical Staff and Administrative Staff for smooth running of the hospital and the Hospital Development Society also passed a resolution to fill up the Paramedical staff. The matter is pending with the Commissioner.

11. Another case in W.P. No.30743 of 2015 relates to a challenge made to the order of termination of the services of the petitioners on 10.09.2015 by the Superintendent of Government General Hospital, Kurnool. 21 petitioners filed the said Writ Petition stating that they came from very poor families, most of them belong to weaker sections of the society and were appointed through outsourcing agencies, respondents 3 to 6, as data entry operators, dark room assistants, Bio-medical

engineer/technician, staff nurses and lift attendants on 13.04.2015, 01.06.2015 and 19.04.2015. However, when their services were terminated on 11.09.2015 pursuant to note orders of the District Collector dated 10.09.2015 and when a notification was issued on 11.09.2015 inviting applications, the present Writ Petition was filed. Even after issuing a notice on 19.07.2016 by this court, none of the respondents responded.

12. On the above facts in the above cases, the following points arise for consideration:

- i) Whether the functions of the technical staff in Government Hospitals can be outsourced by requisitioning the employees through outsourcing agency?
- ii) Whether the petitioners are entitled for continuance of their services irrespective of change in the contractor as had been done in past years?
- iii) Whether the petitioners are entitled for regularisation of their services?

13. The practise of making appointments at the whims and fancies of the officers or unofficial heads of departments became a common practice and it ultimately led to the demand for regularization of services. The Government earlier formulated a scheme in G.O.Ms.No.212, Finance and Planning (FW.PC.III) Department, dated 22.04.1994 and after cases for implementation of the said Government Order were filed before this Court and the Hon'ble Supreme Court, the Government enacted the Andhra Pradesh (Regulation of Appointments to Public Services and Rationalisation of Staff Pattern and Pay Structure) Act, 1994. The statement of objects and reasons appended to the Bill stated as follows:

“The irregular appointments are adversely affecting the interest of several thousands of unemployed persons

who have registered in the employment exchange and awaiting their turn for orders. It is also adversely affecting the interests of Scheduled Castes, Scheduled Tribes and Backward Classes who have reservation in employment since the NMR appointments are not taking care of the reservation for these categories. Government have constituted District Selection Committees and some adhoc Selection Committees besides the Andhra Pradesh Public Service Commission to take up recruitment in accordance with law in Government Departments. Irregular appointments are depriving these legitimate recruiting bodies from performing their functions. Irregular appointments in excess of sanctioned strength will also result in industrial undertakings becoming unviable and eventually sick. When a unit goes sick, it results in retrenchment and even winding-up, thus, adversely affecting the interests of the existing employees who are recruited against sanctioned strength and through authorised process of selection. Similarly unauthorised appointments over and above the sanctioned strength in Government Department..... looking after the existing employees who have been recruited through proper channel. The Act will, therefore, protect the interests of candidates in employment exchanges, reserved categories, the existing employees who were recruited through proper channel and the legitimate functions of the recruiting agencies.

From the above, it can be seen that the financial position of the State arising out of excessive expenditure on staff is so alarming that it cannot be tackled by ordinary administrative actions and instructions. It is, therefore, thought that a time has come when we have to provide for deterrent action for illegal and irregular appointments by enacting a law. It has accordingly been decided to enact to law to achieve the following objects, namely:-

- (a) totally banning such appointments in the institutions covered by legislation;
- (b) imposing stringent penalties for making appointments by public servants in violation of the law;
- (c) to protect public servants from being held for contempt for non-compliance of the orders of Tribunal or High Court and also for abatement of pending cases claiming regularisation of services which are already filed before the Courts of law by making a suitable provisions therefor; and
- (d) to protect the interests of candidates registered with employment exchange, the reservation rights of Scheduled Castes, Scheduled Tribes and Backward Classes, the rights of the existing employees who are recruited through proper channel and the functions of Andhra Pradesh Public Service Commission, District Selection Committees and other Selection Committees constituted by the Government.

The legislation will prevent further deterioration of finances of the State and at the same time conserve the resources for the welfare and developmental activities.”

The Act prohibited the appointment of persons on daily wage basis and regulated the temporary appointments. Thereafter, GO (P) No.112, Finance and Planning (FW.PC.III) Department dated 23.07.1997 was issued regularizing and absorbing part-time employees. Another G.O.Ms.No.94, General Administration (Ser.A) Department, dated 28.03.2003, framing new recruitment policy and issuing guidelines thereunder in respect of Government departments, Government undertakings, autonomous institutions, local bodies and all such institutions receiving grants-in-aid for salaries from the State Government was issued. As per the said State Government Order, the gazetted and non-gazetted posts under Group-I and II of A.P. Subordinate Service Rules were treated as core-functional posts which will be identified by the implementation committee of each department. It was also stated that the existing permanent posts in all categories including non-core categories shall be treated on par with core-functional posts and continued on permanent basis, however in future no new posts in the non-core functional categories shall be made permanent. The direct recruitment shall be restricted only in the case of vacancies arising against existing permanent posts in all the departments. The direct recruitment or contractual appointments in Group-III, IV and Class-IV posts shall be deferred till the adjustment of all already available direct recruits against future permanent vacancies. It was directed that from 1st April 2003 all the departments shall maintain separate rosters for permanent and temporary posts of all core-functional categories in order to identify direct recruitment and promotion vacancies. The recruitment of vacancies of core-functional temporary posts shall be filled up through contractual appointments on a fixed tenure basis. Regarding support services it was

stated that there are two types of outsourcing of support services; the first one is the outsourcing of functionaries and the second one is outsourcing of functions. In the first case the department was given liberty to enter into a contract with the agency to provide certain number of technical support functionaries e.g., computer professionals, surveyors or draftsmen for a specific period. In the second case the department was given liberty to outsource the functions e.g., catering, house keeping, security etc., to a service provider agency for a fixed period of time for a mutually negotiated amount. The Government reviewed the said position and ordered that regular direct recruitment in Group-III, IV and Class-IV categories against existing temporary vacancies shall be discontinued forthwith. It was made clear that in future no further direct recruitment shall take place for such non-core functions or posts. It was also stated that each department shall calculate their likely direct recruitment vacancies in permanent or temporary categories for the next one year and obtain approval of the Government in consultation with the Finance Department as per the Rules of Business for filling them up as per the prescribed mode of recruitment i.e., regular recruitment or contract appointment or outsourcing as the case may be. The Finance Department could forward the requisition to the concerned recruitment agencies for regular recruitment or contract appointment as the case may be or authorise the concerned department to outsource the support services in accordance with the guidelines issued in Annexure-II to the said order. The Annexure-II provided the guidelines for outsourcing of support services. The guidelines included the redeployment of existing permanent and temporary staff and absorption of surplus staff. The Government Order provided for making amendments to A.P. State and Subordinate

Service Rules 1996 and other relevant rules. G.O.Rt.No.4271, Finance Department, dated 01.11.2008 was issued, issuing comprehensive guidelines for payment of remuneration to the contract/outsourcing persons by first of every month and also to avoid confusion regarding selection of outsourcing agencies. Now, G.O.Ms.No.151, Finance Department, dated 08.08.2016 is issued containing comprehensive guidelines on outsourcing of functions and functionaries.

14. In this batch of cases we are not concerned with the general policy of outsourcing of Group-III, IV and Class-IV posts as such. The core issue is with regard to employment of staff in Government Hospitals as support staff for the doctors, like the petitioners, who have been discharging the duties for operation of sophisticated equipment in the departments of Radiology, Cardiology, ENT, Neurology, Laboratories etc. The doctors require the assistance of well trained people in proper discharge of their duties. Now it is well established that the right to proper medical care is a fundamental right available to the citizens. When the Government is running Government Hospitals for the welfare of the people, it is the primary duty of the Government to render effective services in the health sector. No part of the service within the hospital can be called as unimportant or in the language of the Government a 'non-core operation'. The counter affidavits filed by the medical Superintendents in the above cases clearly show that there were proposals for filling up of the vacancies/sanctioning of posts, but instead of giving permission and filling up of the vacancies through proper channel, the services of the outsourcing personnel are being utilized. The counter affidavit filed by the Superintendent of Government General Hospital, Guntur, in W.P.

No.21755 of 2015 reveals the pathetic state of affairs. The relevant extracts from the counter affidavit are worth reproducing:

“4. It is submitted that, the services of those persons were utilizing are taken to run the sophisticated equipment like CT Scan (example CT Scan Machine was installed 15 years long, no posts of CT Tech.has not been sanctioned so far) X-ray, ECG, Audiogram Machines in various departments and Laboratories of Govt. General Hospital, Guntur and to provide better patient care, with the approval of the Chairman, Hospital Development Society, Govt. General Hospital, Guntur.

.....

11. It is submitted that, as per the directions and circular instructions No.GNT/Outsourcing/2014, dated 30.06.2014 of the Collector and District Magistrate, Guntur and Chairman, Hospital Development Society, Govt. General Hospital, Guntur a letter was addressed to the President, Zillasamakhya, Guntur to provide the services of certain technical persons to utilize at Govt. General Hospital, Guntur for a period of 6 months up to 31.12.2014 on outsourcing basis and payment of honorarium from the Arogyasree Funds of Govt. General Hospital, Guntur.

12. It is submitted that, earlier the petitioner Sri G. Basaveswara Rao and other 17 members, who are working under Hospital Development Society, Govt. General Hospital, Guntur has filed a writ petition No.22146 of 2011 to pay the minimum wages in accordance with G.O.Ms.No.3, Finance (SMPC) Department, dated 12.01.2011 and the Hon'ble Court was pleased to dispose of the above writ petition directing the respondents to dispose of the representation dated 11.03.2011. This office has informed to the petitioners that they have not covered under the above GO. The petitioners filed a fresh writ petition No.31131 of 2011 for implementation of minimum wages as per the above said GO.

13. Further, this office has filed counter affidavit in the Hon'ble High Court of Andhra Pradesh, Hyderabad by stating that the services of petitioners are utilizing on honorarium as per the needs of the departments, and there are no specific funds allocation by Government towards the honorarium. The honorarium is being paid through Zilla Samakhya, Guntur from the available funds of Hospital Development Society, Guntur which are generated locally by way of auction of Cycle Stand, Commercial Canteen, laboratory Tests, Investigations Fee, Internship Fee and Paramedical Trainings Fee.”

Thus, these outsourced persons are manning sophisticated equipment and were attending to important duties. The following extract of the counter

affidavit of another medical Superintendent in C.C. No.1494 of 2015 arising out of WP No.6628 of 2015 also reveals the present state of affairs.

“9. It is further submitted that, I being the Medical Superintendent, Area Hospital, Anakapalli, Visakhapatnam District requesting the Commissioner, APVVP, Hyderabad vide Rc.No.Spl/E/DCHS/12-13 dated 04.11.2013 requiring man power i.e., Doctors, Paramedical Staff and Administrative Staff. I am herewith enclosing the copy of the letter. It is further submit that, in obedience of the orders of this Hon'ble Court in WPMP No.8823 of 2015 in WP No.6628 of 2015 dated 07.04.2015 I requested the Commissioner, APVVP, Hyderabad vide D.O.Rc.No.99/MS/AH/AKP/2015, dated 23.11.2015 to fill up the vacant posts of Doctors, Nursing, Para Medical, MNO's and Class-IV posts for smooth running of the hospital and to avoid adverse remarks by the public. It is further submitted that, Hospital Development Society passed a resolution to fill up the Para Medical Staff. Therefore, I requested the Commissioner, Hyderabad may kindly be sanctioned the Para Medical Posts immediately as it is very essential for smooth running of the hospital.”

15. In fact, two learned Judges of this Court, in their orders in these cases, on earlier occasions have expressed the need for identifying the vacancies and filling them up on permanent basis. The observations of Justice B. Chandra Kumar, J in W.P. No.31131 of 2011 are as follows.

“Medical aid to a common man is an obligation of the state and non-providing of the required medical aid amounts to denying the right to life to all the patients who approach the concerned Government hospital. Denying minimum wages to the workmen also amounts to denying the right to life of the workers. The Government should be the model employer and cannot and should not deny the minimum wages to the employees, whether employed directly or through the third party agencies or contractors.”

The observations of another learned Judge of this court, Justice Nooty Ramamohana Rao, J in the interim order dated 06.02.2015 in W.P.M.P. No.2894 of 2015 in W.P. No.2165 of 2015 are also apposite:

“The complaint in this Writ Petition is that the 1st respondent State Government is selectively implementing

the policy decision announced by it through their G.O.Ms. No. 3, Finance (SMPC-II) Department, dated 12.01.2011, revising the remuneration payable to the personnel working on contract/outsourcing basis.

The allegation in the instant case is that since the petitioners have not joined the 15 personnel, who have filed Writ Petition No. 31131 of 2011, the financial benefit extended to the petitioners in that Writ Petition has not been extended to the petitioners herein. The learned Assistant Government Pleader for Medical, Health and Family Welfare (Andhra Pradesh), who has accepted notice on behalf of Respondents 1 and 2, would submit that only for the outsourcing employees and the employees engaged on contract basis, the financial assistance contemplated by the said G.O.Ms.No. 3 is available but not for the personnel like the petitioners, who have been engaged by the Hospital Development Society, the 3rd respondent herein.

I am at a loss to understand as to how the State Government, which is keen and bent upon providing quality medical care and health to its citizens, is not in a position to review the requirement of manpower with regard to the government hospitals. The 3rd respondent in the instant case is a Hospital Development Society constituted for the general hospital at Guntur. The Government General Hospital at Guntur is a teaching hospital attached to the Government Medical College there. It provides quality medicare and health to thousands of patients, on regular basis. Therefore, it requires essentially certain manpower to render appropriate assistance to the health care providers functioning there. For instance, from the order contained in G.O.Ms.No. 3, dated 12.01.2011, I could notice the posts, such as Drivers, Office Subordinates (Attender)/Last Grade Servants, Lift Operators and Data Entry Operators, apart from other ministerial posts, such as Junior Assistants, Junior Steno and Typist were also mentioned. If a hospital is having multiple floors, patients are required to be ferried from one floor to another either for receiving medical attention and treatment or for undergoing investigations. All patients may not be in a position to walk or move about very well. Some of them have to be confined to a wheel chair and some others to a stretcher. They have to be moved around by an Attender or a Last Grade Servant attached to one ward or the other in the hospital. Similarly, if a lift facility is provided, such a lift has got to be necessarily provided with a lift operator, so as to avoid any untoward incident happening in the lift car. When these servants are essentially needed, the State Government should make every endeavour to recruit qualified and suitable personnel on regular basis. Against the perennially required employment, an outsourcing or contract employment method cannot be adopted, on an annual basis. Contractual or outsourcing methods of employment can be resorted to in circumstances, such as

for a short term gap or for a limited period, where a regular incumbent proceeds on approved leave for long periods, such as maternity leave, sick leave, etcetera, but contractual or outsourcing employees cannot be engaged on an annual basis against an essentially required post in a teaching hospital.

It is time to realize that the outsourcing employees and the contractual employees may not be the best-equipped and suitable personnel. When there is no dearth of talent available in the society, a non-governmental organization cannot be left to handpick some men of their choice and sponsor them for holding posts in public employment.

Therefore, Respondents 1 and 2 will review the manpower requirements of the Government General Hospital at Guntur within a maximum period of three months from today and take all necessary steps within a further period of three months thereafter to fill them up by adopting regular method of recruitment, so that outsourcing and contractual employment in the said teaching hospital can be done away with and the regular employees can be held accountable for the quality of their services to be rendered.

In the meantime, Respondents 1 and 2 will also ensure that the revision of remuneration announced through G.O.Ms.No. 3, Finance Department, dated 12.01.2011 is not denied to any individual working in any of the hospitals, not necessarily the Government General Hospital at Guntur only, on the ground that he is not a party to one Writ Petition or the other. Respondents 1 and 2 owe a duty to ensure that litigation is not encouraged and this Court should not be burdened with all people flocking one after the other only to get the coverage of the benefit announced by the State Government through G.O.Ms.No. 3. Therefore, Respondents 1 and 2 will also take suitable and appropriate measures for implementation of the benefit contained in G.O.Ms.No. 3, dated 12.01.2011 and hold the pay drawing officer accountable and responsible individually for the failure to adhere to the said norm. This aspect must be adverted to in the counter-affidavit to be filed in the matter within a period of three months from today.

Post after three months.

Registry to communicate a copy of this order immediately to the respondents and also to the learned Government Pleader for Medical, Health and Family Welfare (Andhra Pradesh)."

In spite of those observations, the Government appears to have not taken any steps but continued its outsourcing system detrimental to the interest of the personnel like the petitioners and the patients seeking medical help. It is clear that the Government is not acting in filling up the posts. In view of the constitutional mandate to provide medical relief to the citizens, it is incumbent upon the Government to fill up the vacant posts in the Government Hospitals. The Government cannot avoid its duty on the ground of lack of finances.

16. In the light of the above situation, the policy of the Government to take the services of the outsourcing staff for critical services in the Health sector has to be examined. Normally when a general policy decision is communicated to the Heads of Departments, the Heads of Departments have to apply their mind and take a decision with regard to its implementation independently and cannot leave it to the District authorities to take their own decisions. It appears that Hospital Development Societies are existing in the Districts and the respective District Collectors are heading them. There are no funds to such societies as is evident from the Guntur example. In the absence of posts and funds, the Hospitals are being run somehow or other for their existence sake. Naturally even poor people are flocking to the private Corporate hospitals for better services.

17. Lot of debate is going on in respect of performance of public duties by private agencies. The article written by Herald J. Krent in the University of Miami Law Review titled "The Private performing the Public: Delimiting delegations to private parties" (1.1.2011) is informative. It was suggested that the exercise of private power at times violates the

constitutional principles of accountability. The exercise of authority by private parties may escape the checks and balances woven into the Constitution as a result individual liberty be compromised. However, it was suggested that private party discretion cannot be completely ruled out but subject to the examination of the scope, importance of area and nature of duties they perform. In the advanced country like United States no consensus was arrived on what functions are “core” that they cannot be contracted out by executive branch or delegated by the congress. As an example, it was said that the education was once supplied by private parties then became the province of the Government and now has to be in part privatised once again. It was opined by the Office of Legal Counsel (OLC) that information gathering, investigative and advisory functions that do not involve official actions affecting private party rights or private parties or “independent”, contractors. Similarly, purely ministerial and internal functions, such as building security, mail operations and physical plant maintenance which neither affect the legal right of third parties outside the Government nor involve the exercise of significant policy making authority can be performed by private persons.

18. The Congressional Research Service (US) submitted a report called “Privatization and the Federal Government: An Introduction” for members and Committees of Congress of United States on 28-12-2006 prepared by Mr.Kevin R.Kosar, Analyst in American National Government, Government and Finance Division. The following excerpts from the report are worth noting in the present context:

During the past two decades, the privatization of federal agencies and activities has been much debated. That said, privatization — here defined as *the use of the private sector in the provision of a good or service, the components of which include financing, operations (supplying, production, delivery),*

and quality control — is not a recent phenomenon. Since its founding in 1789, the federal government has used private firms to provide goods and services. Hence, privatization is of perennial interest to Congress.

Public choice theory is a near relation to free market economics. One of public choice theory's criticisms of government is that public bureaucracies should not be viewed as neutral vehicles for delivering government goods and services. Rather, it posits, individual bureaucrats should be viewed as self-interested actors, not public spirited civil servants. As each bureaucrat strives to achieve what he desires, he helps produce collective organizational pathologies, often termed "government failures." For example, according to public choice theory, the head of each administrative division of an agency should be expected to seek to obtain the maximum possible funding for his division. In order to justify this budget request, he will devise ways to increase projected costs. When each administrative head does this, the collective result is a greatly enlarged agency budget with funding priorities that are neither rational nor necessarily related to achieving the goals assigned to the agency by statute.

Both free market economists and public choice theorists typically believe that the nature of the goods or services to be produced determines whether the private sector or government should produce it. If the good is "non-excludable" (meaning that persons cannot be prevented from using it) and "non-rival" (meaning that one person's use of it does not diminish another person's use of it), then it is a "public good" and government should produce it. An example of this sort of good is national defense. As for goods that do not meet these criteria (e.g., computers, bullets, housing priced at below-market rates for occupancy by low-income persons), free market economists and public choice theorists tend to hold that private firms should be left to produce these items because they can do so most efficiently. Since public goods tend to be few, this perspective amounts to an advocacy of minimalist government, and one that would have the government use private firms as much as it can to help it produce public goods.

Criticisms of Privatization

Unlike "reinventing government," "performance-based organizations," or other recent government reform ideas, privatization remains much discussed in federal policy networks. That said, proponents' acclamation of privatization as a tool for improving the performance of government has not gone without rebuttal. Observers and opponents have raised numerous questions and issued assorted criticisms of privatization. Views include the following:

- The shifting of government work from government employees to private sector contractors has been criticized as a union-

busting strategy intended to weaken the political left by decreasing the number of unionized government employees.

- Contracting out may adversely affect women and minorities collectively, as they have “tended to find jobs in the civil service more readily than in the private sector.”
- Under the American theory of governance, political power originated with the people, who erected government and entrusted it to use this power in accordance with the law. Thus, the responsibility of those employed by government is to act in accordance with this fiduciary relationship. Accordingly, both the Constitution and federal law include oaths to be taken by elected officials and civil servants. Bureaucracies are not merely passive entities that execute the law as enacted. Bureaucracies interpret the law and sculpt policies. Thus, any effort to shift bureaucratic functions to the private sector may risk transferring away some governing discretion into the hands of private parties who are not accountable to the public and may not have its interests at heart.
- One of the objectives of creating a civil service was to provide government with a stable corps of committed employees. Federal workers were to be chosen on a rational basis, as opposed to the favor of an appointee, and provided with protections and good compensation and benefits that would encourage long tenures. It was hoped that this arrangement would develop in employees the often peculiar expertise required to carry out governmental activities and instill in them a commitment to the law. Privatization may “hollow out” agencies’ expertise, replacing them with short-term contract workers with little commitment to the public mission of the agency.
- Contracting out can promote iron triangles and other corrupt relationships between the federal government and the private sector. For example, Boeing Company reached a \$615 million settlement with the Department of Justice in May 2006. The company was investigated for its role in a contracting scandal. The company fired its chief financial officer — who attempted to persuade an Air Force official, who was overseeing a large federal contract that Boeing was bidding on — to take a job with the company. This same official was jailed after she admitted that she had used the Boeing executive to get a job for her daughter and future son-in-law with Boeing and improperly favored the company in awarding the contract.
- The premise of privatization is that the government will benefit when firms in a competitive market compete to provide it with products and services. Competitive markets, however, require a number of conditions to be met for them to function properly. To cite just two of them, (1) firms must not face barriers to entry in this market and (2) the buyer of the goods and services must possess sufficient information to empower it to make a rational purchase. If any of the conditions for competition are not met, the buyer — i.e., an agency — may be exploited. In short, markets can fail, especially if there are too few firms to compete for government contracts.

- Hiring private firms to carry out government work creates great management challenges for government administrators. Should an agency fail to have well-trained personnel and effective oversight procedures in place, its utilization of private providers can result in waste, fraud, and abuse.
- Government may benefit when private firms compete to provide a good or service; however, should the firm providing the service go out of business there may be a time lag before it can be replaced. The costs of this time lag can be formidable. For example, when a company operating charter schools in California became defunct in August 2004, the parents of 10,000 children had but a few weeks to locate new schools for their children.
- Privatization does not always lead to cost savings or better service. In some instances, private firms have had significantly higher cost overruns than government agencies in the performance of services. In other instances, private firms have performed work that has been criticized as being grossly inadequate.

.....

It can be expected that privatization will remain a controversial idea. Any attempt to improve the federal government's provision of goods and services through privatization likely may elicit concerns over the intentions and possible consequences of the proposal. Meanwhile, implicit in the debate about privatization lurks the old and nettlesome question — "Which activities are essential to the state and should remain directly accountable to the elected representatives of the people and which may be carried out by the private sector?"

The debate is going on all over the world. Studies are being conducted. But the Government in its enthusiasm introduced the concept of 'outsourcing of functionaries and functions' without much study and the result is not improvement of services but insecurity of employment and concomitant ills.

19. The State of Andhra Pradesh framed 'Andhra Pradesh State and Subordinate Services Rules, 1996' and it provides for constitution of gazetted and non-gazetted posts under the State Government into various State and Subordinate Services and are governed by the Andhra Pradesh State and Subordinate Service Rules (General Rules) and the Special Rules as well as adhoc rules issued by the Government. In Rule 1(c) it was clearly held as follows.

“(c) These rules shall apply to the State and Subordinate Services and to the holders of posts, whether temporary or permanent included in any State or Subordinate Service except to the extent otherwise expressly provided:

- (i) by or under any law for the time being in force;
- (ii) in respect of holders of any post, appointed by contract or agreement subsisting between such holders and the State Government.”

Nowhere it was provided that outsourcing is one of the methods of recruitment. In the light of the above Rules, the issuance of G.O.Ms.No.94, General Administration Department, dated 28.03.2003 followed by G.O.Ms.No.151, Finance Department, dated 08.08.2006, appears to be a contradiction in terms. Since there is no challenge in the present batch of Writ Petitions to the said Government Orders and the present issue related to the engagement of services of certain persons through outsourcing method in the medical and health department, this Court purposely refrains from expressing its view on the validity of the above State Government Orders, but confines its examination of entrusting the duties of nursing and technical staff in the Government Hospitals through outsourcing method. Now it is well established that the right to life and personal liberty enshrined in Article 21 includes the right to health. In *Vincent Panikurlangara v. Union of India*¹, the Hon'ble Supreme Court referred to Article 47 in Part IV of the Constitution which reads as follows.

“47. Duty of the State to raise the level of nutrition and the standard of living and to improve public health.- The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.”

¹ (1987) 2 SCC 165

After referring to the said Article it held that maintenance and improvement of public health have to rank high in the obligations of the State as these are indispensable to the very existence of the community and on the betterment of these depends the building of the society of which the Constitution makers envisaged. The maintenance and improvement of public health naturally includes the employment of right people for the right job. Though the district authorities may insist upon qualifications for the persons requisitioned through outsourcing method, it may not ensure the effective discharge of duties by such people. Mere discharge of duties is not enough and it should be effective. In order to be effective one has to gain experience through long years of service. Adhocism cannot be encouraged where medical care is required. The people employed in such field should have security of employment and proper conditions of service. The absence of these requirements may lead to unhealthy practices by such persons which may result in negligence of duties and fleecing of poor people in the society. Article 43 of the Constitution of India in Part-IV is also relevant in relation to employees recruited. The said Article reads as follows.

“43. Living wage, etc., for workers.- The State shall endeavour to secure, by suitable legislation or economic organisation or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the State shall endeavour to promote cottage industries on an individual or co-operative basis in rural areas.”

However, the State is free to secure the services through the recognized methods, including contractual appointment in respect of administrative, sanitation and security services. Outsourcing cannot be a method of recruitment but the State can enter into a direct contract with the

employees in respect of those services. In the background of this, this Court has no hesitation to hold that the practice adopted by the State by securing the services of technical staff and nursing staff for the regular hospital duties through outsourcing method is not only contrary to the service rules but also to the objects envisaged while enacting the Andhra Pradesh (Regulation of Appointments to Public Services and Rationalisation of Staff Pattern and Pay Structure) Act, 1994, scheme of affirmative action under the Constitution, equality of opportunity and the provisions of the Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959.

20. Coming to points (ii) and (iii) framed above relating to the rights of the petitioners, the decisions of the Supreme Court show the path. A Constitution Bench of the Hon'ble Supreme Court in *Secretary, State of Karnataka v. Umadevi (3) and others*², considered the claim of persons seeking employment for absorption, regularisation or permanent continuance of temporary, contractual, casual, daily-wage or adhoc employees appointed/recruited and continued for long in public employment de hors the constitutional scheme of public employment. The Hon'ble Supreme Court observed that the power of a State as an employer is more limited than that of a private employer inasmuch as it is subjected to constitutional limitations and cannot be exercised arbitrarily. It also observed that if rules have been made under Article 309 of the Constitution, then the Government can make appointments only in accordance with the rules and the State is meant to be a model employer. The Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 was enacted to ensure equal opportunity for employment seekers.

² (2006) 4 SCC 1

Taking note of those observations, the Hon'ble Supreme Court considered the claim of the temporarily engaged daily wage employees appointed in the Commercial Taxes Department in Karnataka who worked for more than 10 years seeking permanency and benefits of regular employees and another batch of cases relating to cancellation of appointments of casual workers/daily wage workers seeking regularization. In view of the conflict of judgments between the two three-judge bench decisions of the Hon'ble Supreme Court, the matter was referred to the Constitution Bench. The Hon'ble Supreme Court categorically held that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, the temporary employee could not claim to be made permanent on the expiry of his term of appointment. The High Courts acting under Article 226 of the Constitution of India, should not ordinarily issue directions for absorption, regularization or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. The Hon'ble Supreme Court held further as follows.

“47. When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognized by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in concerned cases, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It

cannot also be held that the State has held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek a positive relief of being made permanent in the post.

.....
49. It is contended that the State action in not regularizing the employees was not fair within the framework of the rule of law. The rule of law compels the State to make appointments as envisaged by the Constitution and in the manner we have indicated earlier. In most of these cases, no doubt, the employees had worked for some length of time but this has also been brought about by the pendency of proceedings in Tribunals and courts initiated at the instance of the employees. Moreover, accepting an argument of this nature would mean that the State would be permitted to perpetuate an illegality in the matter of public employment and that would be a negation of the constitutional scheme adopted by us, the people of India. It is therefore not possible to accept the argument that there must be a direction to make permanent all the persons employed on daily wages. When the court is approached for relief by way of a writ, the court has necessarily to ask itself whether the person before it had any legal right to be enforced. Considered in the light of the very clear constitutional scheme, it cannot be said that the employees have been able to establish a legal right to be made permanent even though they have never been appointed in terms of the relevant rules or in adherence of Articles 14 and 16 of the Constitution.”

However, in respect of the appointment of duly qualified persons in duly sanctioned vacant posts made irregularly having continued to work for 10 years or more without the intervention of the orders of the Courts or Tribunals, it was held that the regularization of the services of such employees have to be considered on merits. In the instant case, the correspondence from the Superintendents of the Hospitals show that there was a request for sanctioning of posts or filling up of sanctioned posts, but the Government thought it fit to outsource the services in an important sector like health sector. So far as the mode of recruitment is concerned, it is clear that the services of the petitioners are outsourced through a contractor and they were not regularly selected candidates. The Constitution Bench decision of the Hon'ble Supreme Court in Umadevi

(3)'s case (supra) is not disturbed till today and in view of the same, no relief can be granted to the petitioners for regularisation of their services.

21. Now, coming to the point of continuance of services of the petitioners, it is clear that the petitioners in the first batch of cases have been continuing in service for several years initially on consolidated remuneration and later on through an outsourcing agency. This clearly shows that there is need for the staff. Now, the Hon'ble Supreme Court clearly held that regularization of services through back door method is not permissible. However, the Government can take into consideration the experience gained by the petitioners while making recruitment to the said posts.

22. In view of this situation, it is hereby held that the services of Nursing Staff and Paramedical Staff in the Government Hospitals cannot be outsourced as it is contrary to Article 21 of the Constitution of India and the service rules applicable to the services. Accordingly, Writ Petition Nos.18988, 21755 and 39189 of 2014, 2165, 5031, 6213, 7491 and 30743 of 2015 are disposed of by directing the respondents to identify the permanent sanctioned vacancies in the Government Hospitals in the State of Andhra Pradesh and take steps for filling up of those vacancies on priority basis, within a period of six (6) months from the date of receipt of a copy of this order, through the regular channels of recruitment provided under A.P. State and Subordinate Service Rules and the persons who are continuing on outsourcing basis as on today shall be allowed to continue in their respective posts with liberty to apply for the said posts by giving due weightage to their service rendered already, till appointments are

made to those posts. The outsourcing system should be abolished forthwith.

23. So far as W.P. No.6628 of 2015 is concerned, there is evidence to show that the petitioner has been working as Male Nursing Orderly since 2012 in the Hospital. The Male Nursing Orderly post is a Class-IV post which can be filled up by direct contract with the employee when there is need for the said services without the medium of a contractor. In the circumstances, W.P. No.6628 of 2015 is disposed of by directing the respondents to continue the services of the petitioner under a direct contract without the medium of an outsourcing agency, if the services of a Male Nursing Orderly are required in the Hospital and a sanctioned post exists. An appropriate order shall be passed by the second respondent in this regard. It is also open to the second respondent to fill up the said post by direct recruitment in which event, the petitioner is entitled to apply if he fulfils the qualifications. The Writ Petition is, accordingly, disposed of with the above direction.

24. In view of the observations of the second respondent that though the petitioner was appointed as a Cook by the Diet Contractor, his services were utilised as Male Nursing Orderly and in the absence of any relationship between the respondents and the petitioner and in view of disposal of the Writ Petition as aforesaid this Court feels that no further proceedings are required in the Contempt Case and the Contempt Case No.1494 of 2015 is, accordingly, closed.

25. So far as W.P. No.20776 of 2016 is concerned, the record shows that the petitioner has been in the forefront in filing of various cases as stated above on behalf of the persons working on outsourcing basis, but

he himself states that he has been working since 2009 on a consolidated pay initially and thereafter through Zilla Gram Samakhya. There are no service rules governing the outsourced employees. In spite of the same an enquiry was held in respect of a complaint against him. The record filed along with the counter affidavit by the respondents clearly shows that there was a complaint from the wife of the patient on 09.05.2016. Though she did not attend the enquiry, the four member enquiry committee gave findings as follows.

“A patient by name Muppalla Bullibabu, S/o Subba Rao, 47 years, Resident of Devarapalli village, Parchur Mandal, Prakasam District was admitted in the Casualty of Government General Hospital, Guntur on 09.05.2016 at 3.49 PM with a history of consuming unknown poison. A memo was sent from Casualty to Sri G. Basaveswara Rao, ECG Technician (Outsourcing) for taking ECG. The Casualty Medical Officer Dr. M. Vinanda Anuhya, General Medicine Post Graduates Dr. M. Vikas Reddy, Dr. J. Neeharika and Duty Assistant Physician Dr. C. Vasavi stated that the above technician had refused to take ECG for Muppalla Bullibabu and certain other patients. Even though the wife of the deceased Smt. Muppalla Anitha herself approached the ECG Technician and requested for help, Sri G. Basaveswara Rao refused to take ECG which resulted in tense atmosphere in the Casualty. The statement of Smt. Muppalla Anitha, wife of the deceased and statements of Casualty Medical officer, Duty Assistant Physician and Staff Nurses and the relevant audio clippings and video clippings are herewith enclosed for your perusal.

In the circumstances stated above the enquiry committee opines that:-

1. He did not follow the instructions of his superiors.
2. His behaviour towards patients and doctors is rude.
3. His services may be discontinued, so that such lapses will not occur in future.”

Even though it was alleged that one of the members of the enquiry committee was involved in an altercation with him on 01.05.2016, but the unanimous opinion of other three members would clearly show the negligent conduct of the petitioner and hence no relief can be granted as sought for by the petitioner and the Writ Petition is accordingly dismissed. However, this will not prevent the petitioner from filing an appropriate

representation before the District Collector who is the Chairman of the Hospital Development Society for considering his case sympathetically taking into consideration the long service rendered by him and the petitioner is given two weeks time for filing the representation from the date of receipt of a copy of this order and the District Collector shall consider the same and pass appropriate orders within eight weeks thereafter.

26. Accordingly, W.P. Nos.18988, 21755 and 39189 of 2014, 2165, 5031, 6213, 6628, 7491 and 30743 of 2015 are disposed of, Contempt Case No.1494 of 2015 is closed and W.P. No.20776 of 2016 is dismissed as indicated above. There shall be no order as to costs. As a sequel thereto, the miscellaneous applications pending, if any, shall stand closed.

Date: 14th September, 2016
Nsr

A. RAMALINGESWARA RAO, J

