

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

W.P.M.P.No.48709 of 2015 and W.V.M.P.No.213 of 2016

in

W.P.M.P.No.39239 of 2015

in

W.P.No.30342 of 2015

and

W.P.No.30342 of 2015

ORDER:

The petitioner has filed this Writ Petition seeking a Writ of Certiorari to quash the order dt.31-12-2014 in S.A.No.1 of 2013 of the 1st respondent confirming the order dt.16-09-2013 in A.P.S.E. case No.3 of 2010 in favour of 3rd respondent.

2. Petitioner claims to be a Charitable Society registered under the Societies Registration Act, 1860 and claims to have been recognized as Charitable Society by the statutory authorities.

3. The 3rd respondent was employed as Director in AWARE Health and Research Foundation, which is also managed by the petitioner-Society. The services of the 3rd respondent were terminated on 01-02-2010 by the petitioner on certain allegations.

4. The 3rd respondent assailed the same before the 1st Appellate Authority (the 2nd respondent) under the A.P.Shops and Establishments Act, 1988 (for short “the Act”) invoking Section 48(1) of the Act. He sought a sum of Rs.8,89,942/- under various heads and also sought reinstatement as an alternative.

5. Counter-affidavit was filed by petitioner contending that the provisions of the Act would not apply since it is not a “commercial establishment” and that it is a non-profitable Charitable Rural Development Organization registered under the Indian Societies Registration Act, 1860. It supported the order of termination of services of the 3rd respondent.

6. Before the 2nd respondent, the 3rd respondent marked Exs.A-1 to A-8 while the petitioner marked Exs.R-1 to R-5.

7. The 2nd respondent framed the following issues:

“(i) Whether the establishment of the opposite party is an ‘establishment’ within the meaning of the present Act to come within the purview of jurisdiction of this Authority?”

(ii) Whether the applicant can invoke both sections 47 and Section 50 of the Act simultaneously?

(iii) If yes, whether the termination order dated 1-2-2010 issued by the opposite party is valid under section 47 r/w Rule 20? And

(iv) To what relief the applicant is entitled for?”

8. On Issue No.1, the 2nd respondent held:

“18. The applicant has worked under the same AWARE GROUP represented by the same Chairman and has been transferred from one service center to the other at the convenience of the employer. Even Ex.A-1 which is also same as R-2 shows that the copy of termination was sent to the Chairman AWARE Health & Research Foundation, AWARE MACS Ltd. and Bliss Foundation of AWARE which indicates that all the branches are inter connected and form a single entity as an establishment. Ex.A-5(6) was issued by the same Chairman wherein it could be gathered that the Administrative

Officer is in control of the activities of the AWARE. Similarly Ex.A-5(7), Ex.A-5(8), Ex.A-5(10) indicates that all these organizations fall under the same AWARE GROUP. The organization has been rendering services through AWARE MACS Ltd by issuing loans and recovering them and also rendering services on various issues including environmental problems, pollution, global warming and other associated problems like problems of soil erosion, deforestation, floods, draughts, diseases etc. The organization is affecting recoveries by the Chairman himself which could be gathered by careful perusal of Ex.A-5(14). The AWARE Hospitals collects fees from the beneficiaries of those who receives services from AWARE Hospitals and also collects charges for services like X-Ray, Ultrasound, ECG and Lab services and even targets have been fixed for OPD and IPD Pharmacy as could be seen from Ex.A-5(22). This fact is evident from perusal of Para-10 of Ex.A-5(18). Services are rendered through AWARE MACS LTD. Thus the establishment is rendering material services to the community which is an essential attribute of business and trade. There is a systematic relationship of master and servant between the organization and its employees. There is contract of employment and all the employees including the applicant are working for hire and are under effective control of the opposite party. There is a provision for payment of gratuity employees covered under the PF Act. The Chairman has effective control of transferring the employees from one branch to the other, the Chairman even exercised the power to fine the employees when some of the employees including the applicant failed to recover money from those obtained loans which clearly indicates the systematic relationship of master and servant.”

9. On the issue whether 3rd respondent can invoke Sections 47 and 50 of the Act simultaneously, a finding was given that Rule 20 of the A.P. Shops and Establishments Rules, 1990 which prescribes the procedure for terminating the services of an employee for alleged misconduct was not complied with by petitioner and that there was violation of principles of natural justice and fair play. It was also held

that the order of termination of services of petitioner did not speak anything about the findings of the Disciplinary Authority and there is no whisper of any irregularities or negligence of work or spreading rumours or use of un-parliamentary language which were alleged to be subject matters for discussion in the Disciplinary Committee. It held that the reasons given for terminating the services of 3rd respondent were totally different from the charges framed against him and which were considered by Disciplinary Committee. It therefore held that the termination order dt.01-02-2010 issued by petitioner is invalid and set it aside. It directed the petitioner to reinstate the 3rd respondent into employment with immediate effect with all consequential benefits like continuity of service, back wages and all attendant benefits and it declined to grant monetary benefit sought by 3rd respondent.

10. The petitioner has assailed the same in S.A.No.1 of 2013. The appellate authority (1st respondent) also confirmed the findings of the 2nd respondent. It relied upon the judgment of this Court dt.06-12-2010 in W.P.No.30426 of 2010 wherein this Court had held that the petitioner was covered under the provisions of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 and that R.W.1 examined on behalf of petitioner admitted this fact. It rejected the contention that petitioner is a recognized Charitable Organization and that the Act was not applicable to it on the ground that 3rd respondent was employed in AWARE Hospitals, which charges

fee for the services rendered including diagnostic services, and that targets are fixed to employees to boost the finances of the hospitals. It therefore held that the petitioner was not indulging in a purely charitable activity and is a “commercial establishment” coming within the purview of the Act.

11. Challenging the same, this Writ Petition is filed.

12. In W.P.M.P.No.39239 of 2015 on 18-09-2015, this Court passed the following interim order:

*“There shall be interim suspension as prayed for, on condition of the petitioner depositing a sum of Rs.8,00,000/- (Rupees eight lakhs only) within twelve weeks from today. In default, the interim order shall stand vacated. The said deposit of the amount shall be kept in a fixed deposit in any nationalized bank till further orders. Withdrawal of the said amount would be subject to further orders to be passed in the Writ petition.
Notice.”*

13. W.P.M.P.No.48709 of 2015 has been filed by the petitioner to modify the said order and W.V.M.P.No.213 of 2016 has been filed to vacate the said order.

14. Heard Sri K.Ashok Reddy, learned counsel for Writ petitioner and Sri D.S.N.V. Prasad Babu, learned counsel for Smt.D.Lalitha Prasad, learned counsel for 3rd respondent.

15. Learned counsel for petitioner contended that the petitioner is not a “commercial establishment” and the provisions of the Act do not apply.

16. Admittedly, both the 2nd respondent as well as 1st respondent have concurrently held that the evidence adduced before them did not establish that the petitioner was not a “commercial establishment”. This concurrent findings of fact based on appreciation of evidence on record cannot be said to be perverse.

17. It is further contended that the 3rd respondent could not establish that he was not gainfully employed after termination of his services. But admittedly no suggestion was even made to the 3rd respondent that he was gainfully employed after his termination. Therefore this contention of the petitioner is also rejected.

18. I, therefore, do not find any merit in the Writ Petition warranting interference in exercise of jurisdiction under Article 226 of the Constitution of India.

19. Accordingly, the Writ Petition is dismissed. W.V.M.P.No.213 of 20016 as well as W.P.M.P.No.48709 of 2015 are also dismissed. No costs.

20. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 07-11-2016

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