



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 24.08.2017

CORAM:

WEB COPY

**THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN**

W.A.[MD].No.380 of 2016
and
C.M.P. (MD) .No.2483 of 2016

GVK Emergency Management and Research Institute,
Kasturbha Gandhi Hospital for Women and Children,
Chennai - 600 005.

Rep. by State Head

[Cause title amended vide Court order,
dated 10.02.2016 made in CMP(MD)

No.1074 of 2016 in W.A.SR(MD)

No.37146 of 2015].

... Appellant/3rd Respondent

Vs.

1.S.Shenbagamoorthi

... 1st Respondent/Petitioner

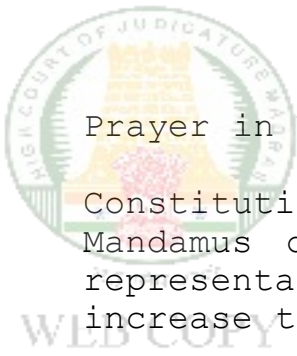
2. The Home Secretary,
Department of Home Affairs,
Secretariat, St. George Fort,
Chennai.

3. The Director,
Department of Health and Welfare,
3rd Floor, DMS, Annex New Building,
259, Anna Salai, Teynampet,
Chennai - 600 006.

4. The Regional Officer,
District Manager,
108- Ambulance,
Balarengapuram G.H.Campus,
Madurai.

... Respondents 2 to 4/
Respondents Nos. 1, 2&4

PRAYER : Writ Appeal is filed under Clause 15 of the Letters Patent, against the order dated 26.06.2015 passed by the learned Single Judge in W.P. (MD) No.10593 of 2015.



Prayer in WP(MD). 10593/ 2015 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a writ of Mandamus directing the respondents to consider the petitioner's representation dated on 12.6.2015 to reduce the working time and increase the salary of the petitioner.

For Appellant : Mr.M.Jerin Mathew

For Respondents : No appearance
* * *

JUDGMENT

[Judgment of the Court was delivered by **G.R. SWAMINATHAN, J.**]

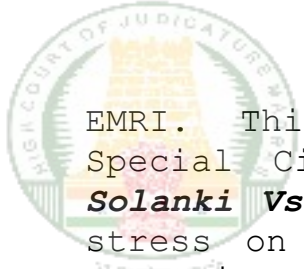
This writ appeal is directed against the order dated 26.06.2015 made in W.P(MD).No10593 of 2015 filed by the first respondent herein.

2.The first respondent was appointed as Emergency Medical Technician (EMT) on 28.10.2008 by the appellant. His probation was declared to be completed and was confirmed in service. The grievance of the first respondent is that he has to put in 12 hours daily duty in the 108 Ambulance service run by the appellant. His job is to give first aid to the patients and treatment to them after getting instructions from the doctors and also take them safely to the hospital. His salary is also not adequate. Therefore he had submitted a representation dated 12.06.2015, for reduction of the working time and increase in salary. Since the said representation was not considered, he filed W.P(MD).No10593 of 2015.

3.The learned Single Judge by an order dated 26.06.2015, directed the appellant herein and also the third respondent herein to consider the said representation and pass appropriate orders in accordance with law. The learned single Judge specifically did not express any opinion on the merits of the matter. Aggrieved by this direction, the present appeal has been filed.

4.Heard the learned counsel appearing for the appellant.

5.The learned counsel for the appellant contended that the writ petition ought to have been dismissed *in-limine* on the ground of maintainability. He referred to the unreported decision of the Andhra Pradesh High Court in W.P.No.10504 of 2009 in **Y.Rajagopal Vs. Government of Andhra Pradesh, EMRI Institute**, in which, it was held that EMRI is neither a State nor agency of the State within the meaning of Article 12 of the Constitution of India and therefore, the Writ petition would not lie against



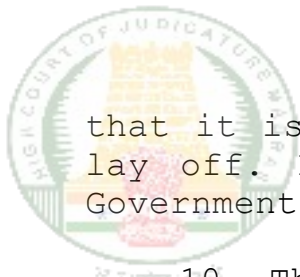
EMRI. This decision was followed by the High Court of Gujarat in Special Civil Application No.8973 of 2010 (**Haresh Jadavbhai Solanki Vs. State of Gujarat and others**). He would also lay much stress on the fact that the appellant being a registered Co-operative Society, the Writ petition was not lie in view of the Larger Bench decision reported in **2006 (4) CTC 689-Marappan Vs The Deputy Registrar of Co-operative Society**.

6.This Court is not inclined to accept these submissions of the learned counsel appearing for the appellant for more reasons than one. It may be stated at the very outset that by the Constitution (Ninety Seventh amendment) Act 2011-Part IXB has been incorporated into the constitutional text. This part specifically deals with the cooperative societies.

7.The Honourable Supreme Court of India in the decision reported in **2015 (8) SCC 1 -Vipulbhai M.Chaudhary Vs. Gujarat Co-operative Milk Marketing Federation Ltd., and others** observed that constitutional status has now been conferred on cooperative societies. A learned Single Judge of this Court in the decision reported in **2007 (2) MLJ 1100 - S.Sukumar Vs.Dharapuram Public Servants' Co-operative Thrift and Credit Society Ltd.,** and in **2007 (2) CTC 480 - P.V.Bose Vs. The Vice Chairman, Bharathiar,** after referring to the Marappan case held that Writ Petitions would lie against the Co-operative societies under certain special circumstances. A Division Bench of this Court in the decision reported in **2007(3) CTC 17 -Special Officer Nazareth Urban Co-operative Bank Limited Vs. J.Thavasingh** and a three Judges Bench in the decision reported in **2007 (5) CTC 1 - M.Kempraj Vs. Prakashgoklaney** held that Writ Petitions can be maintained against the cooperative societies even in matters relating to service under certain circumstances. In the present case, the Writ Petitioner complains of being forced to put in minimum 12 hours work. There are many statutes governing the service conditions of the employees.

8.There are Statutory provisions dealing with the maximum working hours per day or per week. Of course, in this case, there is no stipulation with regard to the maximum number of hours of work to be put in employers of EMRI. But, on the very face of it, calling upon an Emergency Medical Technicians to work for more than 12 hours appears to be a little shocking. However, the learned Single Judge did not express any opinion on this aspect.

9.Admittedly, the appellant is running EMRI entirely with the funds provided by the State Government. The terms of employment would read that the employment of the Writ Petitioner is co-terminus with the contract of the appellant with the Government of Tamil Nadu. In the event of termination on the said contract, the liability of the appellant would only be to provide due notice and



that it is not liable to pay any compensation for retrenchment or lay off. Providing Emergency Care is certainly the duty of the Government. It is a public duty.

10. Therefore, we are of the view that that the appellant is discharging a public function. More so, when the entire operations are funded by the State Government. That is why the learned Single Judge directed not only the appellant, but also the third respondent herein to

consider the Writ Petitioner's representation. The third respondent herein has not chosen to prefer any appeal. In view of the 97th amendment of the Constitution conferring Constitutional status on the Cooperative societies and in view of the nature of functions discharged by the appellant and more particularly considering the complaint voiced by the Writ Petitioner that he has to put in more than 12 hours work daily, we are not inclined to follow the decision rendered by the Andhra Pradesh High Court in **Y.Rajagopal Vs. Government of Andhra Pradesh** and the decision of the Gujarat High Court rendered in **Haresh Jadavbhai Solanki Vs.State of Gujarat and others**. We hold that the Writ Petition against the appellant is very much maintainable.

11.Secondly, the direction is only to consider the representation of the Writ Petitioner. The rights of the appellant have not been touched. The appellant cannot take away the right of his employee to move a judicial forum for redressal of his service grievance. Whether it be a proceeding under Article 226 of the Constitution of India or the proceedings before the Labour Court, the appellant will have to necessarily answer the issues raised by the Writ Petitioner. In the present case, the learned Single Judge merely directed disposal of the Writ Petitioner's complaint. In no way the appellant can be said to have been prejudiced by such a direction. The right of the appellant has not been affected. Hence the appellant cannot maintain this intra Court appeal. It is not the Writ Petition but this Writ Appeal which is not maintainable.

12.We are therefore of the view that the Writ Appeal is liable to be dismissed and it stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-II)

/True copy/

Sub Assistant Registrar



To

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Is/msa

AE/KP/SAR1/15.09.2017/5P/4C

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