IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.8409 of 2019

Puducherry Mother Theresa
Post Graduates Research &
Institute of Health Science Non-teaching
Staffs Association
Rep. By its Secretary V.Raman .. Petitioner

Vs.

1. Union of India,
Rep. By the Chief Secretary to Government
cum-Chief Vigilance Officer,
Chief Secretariat,
Puducherry.

2. The Secretary to Government,
Health Department,
Chief Secretariat,
Puducherry.

3. The Director of Health Services,
Family and Health Department,
Puducherry.

4. The Dean,
Mother Theresa Post Graduate & Research
Institute of Health Science (Government
of Puducherry Institution)
Indira Nagar, Gorimedu,
Puducherry - 605 006. .. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, issuance of a Writ of Mandamus, directing the respondents to terminate the services of the employees of the 4th respondent, who were appointed through backdoor method, and initiate departmental action against the officials who have made backdoor appointments and recover the payments made to such appointees from the salary of the erring officials on the basis of the representation of the petitioner dated 21.09.2017.

For Petitioner : Mr.M.Gnanasekar

O R D E R

(Order of this Court was made by SUBRAMONIUM PRASAD, J.)

The petitioner association by way of this public interest litigation has prayed for a writ of mandamus, directing the respondents to terminate the services of the employees of Mother Theresa Post Graduate & Research Institute of Health Sciences (Government of Puducherry Institution), Indira Nagar, Puducherry, on the ground that they have been appointed through backdoor method, and initiate departmental action against the officials, who have made the backdoor appointments and recover the payments made to such appointees from the salary of the erring officials.

2. The petitioner states that respondent No.4 viz., Mother Theresa Post Graduate & Research Institute of Health Science (Government of Puducherry Institution), Indira Nagar, Puducherry, is an autonomous institution of the Government of Puducherry. According to the petitioner, respondent No.4 is making appointments without following service rules regarding appointment. According to the petitioner, respondent No.4 is appointing persons on contract basis. The petitioner association has filed G.O.Ms.No.22, Department of Personnel and Administrative Reforms (Personnel Wing) dated 27.02.2009, which is the Puducherry Casual Labour (Engagement and Regularisation) Scheme, 2009. Clauses 1 to 9 of the said Government order reads as under.

> "This scheme shall be called "The Government of Puducherry Casual Labourers (Engagement and Regularization) Scheme, 2009" and shall come into effect from the date of its publication in the 'official gazette.
>
> 2. On and from the date of coming into force and operation of the scheme all the provisions of the government orders on the subject issued in the past shall stand superceded.
>
> 3. The scheme is applicable to all casual labourers, except those charged to specific works or schemes, working in departments of the Government of Puducherry and their attached subordinate offices, subject to their eligibility as per the provisions of this scheme.
>
> 4. The casual labourers who are under engagement for a period not less than 8 hours a day shall be termed as "full lime casual labourers" and the casual labourers who are under engagement for a period less than '8 'hours a day shall be termed, as "part-time casual labourers". All other designations e.g. daily

wager, CLR- etc., will be discontinued, from the date of notification of this scheme.

5. No casual labourer will be engaged for attending to work of a regular nature, for which a regular post exists or can be created.

6. Engagement of casual labourers may be done only for-work which is of casual, seasonal or intermittent in nature or for work, which is not of a full time nature, or for which regular posts-cannot be created.

7. There will be a complete bah on engagement of casual workers for performing duties of Group "C" posts.

8. No casual labourer will be engaged for work beyond 200 days in a year.

9. All instances of engagement of casual labourers shall be Notified to the Employment Exchange, subject to the concurrence of the Finance Department and after taking the previous approval of the government whenever such engagement is decided to be of utmost necessity."

3. The petitioner also places reliance on a Circular of the Government of Puducherry Finance Department dated 05.10.2017 and the same reads as under

No.G.2401/1/2017-18/FI (B)
GOVERNMENT OF PUDUCHERRY
FINANCE DEPARTMENT
* * * * *

Puducherry, dated the 2nd January, 2018.

CIRCULAR

Sub: Finance Department - Expenditure Management-Economy measures and Rationalization of Expenditure to face the emerging financial challenges - Reg.

***

Government of India has been time and again stressing the need to Curb unproductive expenditure, especially the Revenue expenditure associated with non-productive consumptions which does not translate into durable economic assets / infrastructure. The sharp increase in the committed expenditure of the Government of Puducherry due to revision of pay & pension and Dearness Allowance / Dearness Relief rates, gradual increase in borrowings to meet developmental needs leading to high debt servicing obligations, increased cost of power purchase etc, have necessitated to prune the unproductive expenditure and to pu t in place appropriate economy measures for strict observance by all the stakeholders in the Government including PSUs and all autonomous organizations under the administrative control of the UT Government in order to ensure both the financial stability and credit of the

Union Territory of Puducherry.

2. Therefore, in view of the current tight financial scenario, in addition to the various measures already in force, it is necessary to strictly follow the below listed expenditure control and rationalization measures to ensure the financial stability and credit of the Union Territory of Puducherry:

a) Expost facto approval:

i. It is noted that various departments / autonomous bodies, as a matter of routine are following ex-post facto approval route to bypass budget / expenditure controls { i.e. to execute the scheme or work without budget allocation or sufficient funds in the relevant head} leading to liability and a fait accompli situation, which cannot be reversed. Such actions in the current financial scenario would undermine the financial discipline and fiscal prudence. Therefore, any award of works, execution of schemes and procurements of goods and services shall have to be done with the prior administrative approval and expenditure sanction of the expenditure sanctioning authority based on fund availability and fund certification, in strict compliance with GFR provisions.

ii. No fresh financial commitments should be made on items which
are not provided for in the approved budget. Similarly, PSUs/ Corporations/ Boards and other Autonomous bodies should not create any contingent liability on the Government through loans obtained by them directly from the Banks / Financial Institutions.

b) Public Works:

In order to prevent creation of new liabilities without budgetary support, any proposal for new works should be referred to Finance Department along with details of liability for ongoing works / completed works / works already sanctioned and the fund availability in the budget. No tenders should be floated without administrative approval based on fund availability & fund certification by the Department/Finance Department, as the case may be.

c) Office expenses:

i. A moderate 10% cut in the expenditure on office expenses including telephone charges, fuel expenses, refreshments etc.

d) Staff car:

i. Purchase of new vehicles against the replacement of condemned vehicle should be deferred except essential utility vehicles, such as ambulance, fire tenders, etc.

ii. Outsourcing of vehicles should be curtailed. Staff cars should be parked near office buildings so as to reduce the dead mileage to the maximum extent possible. These vehicles should not be allowed to be parked at the residence of the drivers under any circumstance.

e) Procurement of Goods and Services:

i. Restriction's on purchase of banned items would continue. However, necessary exemption can be taken in the case of Centrally Sponsored Schemes (CSS) / Central Sector Schemes or other approved schemes which specifically permit the procurement of such items for implementation of the scheme.

ii. All the procurements of goods and services should be made through GeM Portal, as per MHA's letter No. 1 5 0 3 9 /168/2017-UT (Coord) dated 0 4 /1 0 /2 0 1 7 and as per the guidelines issued by Finance Department vide I.D.Note dated 21.09.2017. Procurement through GeM is mandatory, if the goods and services are available on GeM portal. This will help to procure goods and services at a lower / competitive price through a fair and transparent manner in compliance with Rule 149 of GFR, 2017.

f) Festival. Fairs and Exhibitions:

The practice of holding meetings, conferences, functions etc., at hotels may be discontinued. Further, the conduct of events / shows which is not part of any approved scheme/programme may be avoided.

g) Air travel:

Air travel to be restricted to Economy Class and the tickets to be procured in the lowest fare available in Economy class. The officers may be advised to book the air tickets directly from the airlines website, as far as possible.

h) Save Electricity:

Expenditure on consumption of electricity should be reduced by a minimum of 5% by all offices and public buildings with reference to the consumption during the corresponding month of the previous year, through efficient utilization and saving of power, like by switching off lights and other appliances including ACs / fans/ computers etc. when officers are not in the office room or when not required. Likewise, PWD / Electricity Department / all Local Bodies should ensure that public lighting systems are properly switched off during day times.

i) Creation and filling up of posts:

i. The ban on creation of new posts shall continue.

ii. There shall be restrictions on filling up of direct recruitment "vacancies. However, the vacancies in Technical and Non Technical operational posts arising in the normal course can be filled up by transfer, promotion, deputation, adjustment of staff rendered surplus leave vacancies etc.,. Approval of Chief Secretary should be invariably obtained through Finance Department for any relaxation restriction.

iii Large number of staff may be rendered surplus as a result of completion of certain schemes / projects and there is often considerable pressure for carrying such surplus staff indefinitely on the pay roll. Such cases should be subjected to strict scrutiny and their continuance should not be allowed indefinitely.

iv. Surplus staffs available in various departments and organizations due to winding up of certain activities of the departments must be suitably redeployed in the other departments, where it is essentially required through work study review.

j) Casual Labour: The engagement of voucher paid staff for routine official work should be avoided.

k) Travelling Allowance: Deputation for training courses involving course fee and for which TA/DA h as to be paid by the Government may be curtailed.

l) Acquisition of Land: Land should be procured or acquired strictly in conformity with the requirement of building programme. Mere purchase or acquisition of land with a view to taking up construction of buildings in distant or indefinite future should be avoided. No projects should be started without land availability and budget allocation and without the explicit approval of the Planning and Finance Departments.

m) Public Sector Undertakings:

i. The release of funds to the Government Undertakings/Autonomous Bodies should be strictly according to budget provision and immediate needs and after full justification for release with reference to existing instructions on the subject. The Administrative Departments shall have to satisfy themselves on the proper utilization of funds by the organizations for the purpose for which it was released and ensure proper submission of UCs duly certified by the Director / Secretary of the Department concerned. The Departments should also ensure the timely completion of accounts and audit by the PSUs and its submission to the Deputy Accountant General, C&AG Office, Puducherry.

ii. No engagement of staffs in PSUs / Corporations / Boards/ other autonomous bodies, shall be made without the approval of Government.

iii. The Administrative Departments shall ensure that all Grant-in-aid institutions under their control increase their receipts / revenues through efficient management and operations and bring down costs through reduction in manpower or discontinuing loss making ventures.

iv. It is noticed th a t Departments implementing schemes through PSUs / Boards / Societies / other autonomous bodies are drawing funds from the Consolidated Fund and allowing the autonomous bodies to park the same in bank accounts without utilization for a long time. In such cases, as there is no immediate need for utilization, such cash balances must be maintained in the Government account (Civil Deposits), as per Circular issued by DD (Ways & Means).

v. All PSUs/Corporations/ Boards/other Autonomous Bodies shall strictly align their financial rules and practices in conformity with the rules and practices existing in the Government, through necessary amendments in the Memorandum of Association / Articles of Association / Bye-laws/Rules/ Regulations etc. and pending amendment of these documents, the financial rules and practices existing in the Government shall apply mutatis mutandis to all PSUs/Boards/Societies / Corporations/ Autonomous Bodies etc. under the control of Government of Puducherry.

n. Rushing of Expenditure:

i. Rush of expenditure on procurement should be avoided during the last quarter of the fiscal year and in particular the last month of the year so as to ensure that all procedures are complied with and there is no infructuous or wasteful expenditure or parking of funds. Officers in charge are advised to specifically monitor this aspect during their reveiws.

ii. In the last month of the financial year, payments should be made only for the goods and services actually procured and for reimbursement of expenditure already incurred. Hence, no amount should be released in advance (in the last month0 with exception of the following:

-- Advance payment of contractors under terms of duly executed contracts so that Government would not renege on its legal or contractual obligations.

-- Any loans or advances to Governments servants etc. or private individuals as a measure of relief and rehabilitation as per service conditions or on compassionate grounds.

-- Any other exceptional case with the approval of the concerned administrative Secretary. However, a list of such cases may be sent by HOD to the Finance Department by 3oth April of the following year for information.

0) Achievements of revenue targets:

The departments should carefully monitor the targets towards revenue receipts fixed for the financial year and ensure that there is no shortfall in the collection. Where the scales of fees / receipts have not been revised for some time, these should be revised immediately taking into account the increase in costs.

p) PFMS:

Departments / Autonomous Bodies receiving fund directly from Ministries of the Government of India though PFMS for implementation of Central Sector schemes, should immediately intimate the details of receipt of funds to Planning Department and Finance Department.

3. These instructions are only illustrative and not exhaustive. The departments are free to adopt other austerity measures in areas of their choice.

4. This Circular shall mutatis mutandis apply to all the PSUs, Corporations, Boards, Societies and other Autonomous Bodies under the Government of Puducherry, irrespective of whether they receive any Grant-in-Aid from Government or not. The Managing Directors / Chief Executive Officers shall be responsible for strict compliance of provisions of GFR.2017 and instructions contained in this Circular.

5. Secretaries /Heads of Departments/Heads of Offices and Accounts Officers shall be individually and collectively responsible for ensuring strict compliance of the contents of this Circular. Finance Department will also scrutinize the budget proposals of the various departments taking into account these economy measures and Director of Accounts & Treasuries shall apply necessary control to ensure the compliance of this Circular.

Sd/-
(Dr.V.CANDAVELOU)
COMMISSIONER-CUM-SECRETARY (FINANCE)

1. All Secretaries /Special Secretaries, Chief Secretariat, Puducherry.
2. All Additional/Joint/Deputy/Under Secretaries, Chief Secretariat, Puducherry.
3. All the Heads of Departments (As per list)
4. All Public Sector Undertakings/Autonomous Institutions (As per list)"

4. The petitioner association contends that the appointment have been made in contravention to the law and directions issued by the Government. The petitioner association therefore, prays

for termination of the services of the persons employed in the 4th respondent Institution.

5. Heard the learned counsel for the petitioner and perused the material on record.

6. When this Court pointedly asked the learned counsel for the petitioner as to whether the petitioner is relying on G.O.Ms.No.22 dated 27.02.2009, which is only a scheme for appointment, the learned counsel for the petitioner stated that he is not relying on the same.

7. As regards the circular dated 05.10.2017, it can be seen that the circular gives a direction against creation of posts of regular / casual / daily rated nature in Government Departments. A reading of the writ petition would show that it is not the allegation of the petitioner that the respondent No.4, is creating posts of regular / casual / daily rated nature in the respondent No.4 institution.

8. The prayer of the petitioner is for termination of the employees appointed in respondent No.4 Institution, on the ground that the appointment of these persons is through backdoor, which is not permitted. The petitioner states that the appointment of such persons is contrary to the judgment of the Hon'ble Supreme Court in Uma Devi Vs State of Karnataka, reported in 1996 (4) SCC 1. Virtually in a public interest litigation, the petitioner is challenging the appointment and seeking termination of those persons who have been appointed by respondent No.4. Instant public interest litigation is therefore, nothing but a service litigation.

9. It is well settled that a public interest litigation is not maintainable in service law.

10. The Hon'ble Supreme Court in Duryodhan Sahu Vs. Jitendra Kumar Mishra, reported in 1998 (7) SCC 273, has clearly laid down that a public interest litigation is not maintainable in service law.

11. The Hon'ble Supreme Court in Ashok Kumar Pandey Vs. State of West Bengal, reported in 2004 (3) SCC 349, at para 16 observed as under.

> "As noted supra, a time has come to weed out the petitions, which though titled as public interest litigations are in essence something else. It is shocking to note that Courts are flooded with large number of so called public interest litigations where even a minuscule percentage can legitimately be called as public interest litigations. Though the parameters of public interest litigation have been indicated by

this Court in large number of cases, yet unmindful of the real intentions and objectives, Courts are entertaining such petitions and wasting valuable judicial time which, as noted above, could be otherwise utilized for disposal of genuine cases. Though in Dr. Duryodhan Sahu and Ors. v. Jitendra Kumar Mishra and Ors. (AIR 1999 SC 114), this Court held that in service matters PILs should not be entertained, the inflow of so- called PILs involving service matters continues unabated in the Courts and strangely are entertained. The least the High Courts could do is to throw them out on the basis of the said decision. The other interesting aspect is that in the PILs, official documents are being annexed without even indicating as to how the petitioner came to possess them. In one case, it was noticed that an interesting answer was given as to its possession. It was stated that a packet was lying on the road and when out of curiosity the petitioner opened it, he found copies of the official documents. Whenever such frivolous pleas are taken to explain possession, the Court should do well not only to dismiss the petitions but also to impose exemplary costs. It would be desirable for the Courts to filter out the frivolous petitions and dismiss them with costs as afore-stated so that the message goes in the right direction that petitions filed with oblique motive do not have the approval of the Courts."

12. The same view has been taken by the Hon'ble Supreme Court in B.Singh (Dr) Vs. Union of India reported in 2004 (3) SCC 363, at para 16. Again the said view has been reiterated by the Hon'ble Supreme Court in Gurpal Singh Vs. State of Punjab, reported in 2008 (5) SCC 136, at para 7.

13. Even taking it for granted that a writ petition is maintainable, it is to be further stated that the petitioner has not chosen to implead those employees who will be directly affected, by the outcome of this writ petition. The employees of Respondent No.4, whose appointments are under challenge, are necessary parties. Not impleading them, is fatal to the writ petition. It is trite law, that if necessary parties are not impleaded in a lis, then the lis has to be dismissed, on this ground alone.

14. Even though Code of Civil Procedure is not strictly applicable to writ petitions, but the principles underlying Code of Civil Procedure, which is based on principles of natural justice, are applicable to the writ petition. Order I Rule 9 of Code of Civil Procedure reads as under:

> 9. Misjoinder and nonjoinder— No suit shall be defeated by reason of the misjoinder or nonjoinder of parties, and the Court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it:
>
> [Provided that nothing in this rule shall apply to nonjoinder of a necessary party.]

15. Proviso clearly states that non-joinder of necessary parties, would entail in dismissal of the suit.

16. The Hon'ble Supreme Court, in several judgments held that a writ petition under Article 226 of the Constitution of India cannot be entertained, if necessary parties, whose rights would be affected are not impleaded as parties.

17. In Prabodh Verma v. State of U.P. reported in 1984 (4) SCC 251 the Hon'ble Supreme Court has held as follows:

> "20. The real question before us, therefore, is the correctness of the decision of the High Court in the Sangh's case. Before we address ourselves to this question, we would like to point out that the writ petition filed by the Sangh suffered from two serious, though not incurable, defects. The first defect was that of non-joinder of necessary parties. The only respondents to the Sangh's petition were the State of Uttar Pradesh and its concerned officers. Those who were vitally concerned, namely, the reserve pool teachers, were not made parties-not even by joining some of them in a representative capacity, considering that their number was too large for all of them to be joined individually as respondents. The matter, therefore, came to be decided in their absence. A High Court ought not to decide a writ petition under Article 226 of the Constitution without the persons who would be vitally affected by its judgment being before it as respondents or at least by some of them being before it as respondents in a representative capacity if their number is too large, and, therefore, the Allahabad High Court ought not to have proceeded to hear and dispose of the Sangh's writ petition without insisting upon the reserve pool teachers being made respondents to that writ petition, or at least some of them being made respondents in a representative capacity, and had the petitioners refused to do so, ought to have dismissed that petition for non-joinder of necessary parties. "
>
> 50.To summarize our conclusions:

(1) A High Court ought not to hear and dispose of a writ petition under Article 226 of the Constitution without the persons who would be vitally affected by its judgment being before it as respondents or at least some of them being before it as respondents in a representative capacity if their number is too large to join them as respondents individually, and, if the petitioners refuse to so join them, the High Court ought to dismiss the petition for non-joinder of necessary parties.

(2) The Allahabad High Court ought not to have proceeded to hear and dispose of Civil Miscellaneous Writ No. 9174 of 1978 — Uttar Pradesh Madhyamik Shikshak Sangh v. State of Uttar Pradesh [1979 All LJ 178] — without insisting upon the reserve pool teachers being made respondents to that writ petition or at least some of them being made respondents thereto in a representative capacity as the number of the reserve pool teachers was too large and, had the petitioners refused to do so, to dismiss that writ petition for non-joinder of necessary parties."

18. In K.H. Siraj vs High Court Of Kerala & Ors , reported in 2006 (6) SCC 395, the Hon'ble Supreme Court has observed as under.

"The writ petitions have also to fall on the ground of absence of necessary parties in the party array. Though the appellants/petitioners contend that they are only challenging the list to a limited extent, acceptance of their contention will result in a total re-arrangement of the select list. The candidates will be displaced from their present ranks, besides some of them may also be out of the select list of 70. It was, therefore, imperative that all the candidates in the select list should have been impleaded as parties to the writ petitions as otherwise they will be affected without being heard. Publication in the newspaper does not cure this defect. There are only a specified definite number of candidates who had to be impleaded namely, 70. It is not as if there are a large unspecified number of people to be affected. In such cases, resort cannot be made to Rule 148 of the Kerala High Court Rules. That Rule can be applied only when very large number of candidates are involved and it may be not able to pin point those candidates with details. In our view, the writ petitions have to fail for non-joinder of necessary parties also.

19. Similarly, in Ishwar Singh v. Kuldip Singh reported in 1995 Supp (1) SCC 179, the Hon'ble Supreme Court observed as under.

> "4. It is not disputed by the learned counsel for the parties that except Ishwar Singh, no other selected candidate was impleaded before the High Court. The selection and the appointments have been quashed entirely at their back. It is further stated that even Ishwar Singh, one of the selected candidates, who was a party, had not been served and as such was not heard by the High Court. We are of the view that the High Court was not justified in hearing the writ petition in the absence of the selected candidates especially when they had already been appointed. We, therefore, set aside the judgment of the High Court dated December 8, 1992 and send the case back for fresh decision after notice to the parties. The appeals are allowed in the above terms. No costs. "

20. In the light of the decisions and discussion, writ petition is dismissed. No Costs.

-s/d-
Assistant Registrar(CS-I)

True Copy

Sub-Assistant Registrar

ars/dm

To

1. The Chief Secretary to Government
cum-Chief Vigilance Officer,
Union of India,
Chief Secretariat,
Puducherry.

2. The Secretary to Government,
Health Department,
Chief Secretariat,
Puducherry.

3. The Director of Health Services,
Family and Health Department,
Puducherry.

4. The Dean,
Mother Theresa Post Graduate & Research Institute of Health Science (Government of Puducherry Institution)
Indira Nagar, Gorimedu,
Puducherry - 605 006.

+1 CC to Mr.M.Gnanasekar, Advocate sr 30364.

W.P.No.8409 of 2019

KK(CO)
SP(02/04/2019)