



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.12.2019

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THE HONOURABLE MRS.JUSTICE **J.NISHA BANU**

W.P (MD)No.23234 of 2015

and

M.P (MD)Nos.1 and 2 of 2015

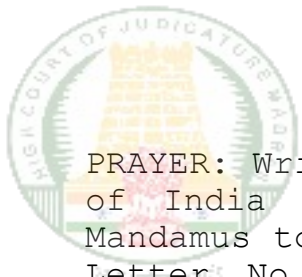
Tamil Nadu Medical Department
All Workers and Sanitary Workers
Association, represented by
the President M.Venkatachalam,
No.4/520-9, Ganga Nagar,
Parasuramanpatty,
Moondrumavadi,
K.Pudur, Madurai.

.. Petitioner

Vs.

- 1.The State of Tamil Nadu
rep. by its Secretary,
Department of Health and Family Welfare,
Secretariat, Chennai - 9.
- 2.The Director,
Directorate of Medical Education,
Kilpauk, Chennai - 10.
- 3.The Director,
Medical and Rural Health Services,
Teynampet, Chennai - 6.
- 4.The Director,
Public Health and Preventive Medicine,
Teynampet, Chennai - 6.
- 5.The Director,
Indian Medicine and Homeopathy,
Arumpakkam, Chennai - 108.
- 6.The Director,
Medical and Rural Health Services,
ESI Scheme, Teynampet,
Chennai - 6.
- 7.The Dean,
Government Rajaji Hospital,
Madurai,

.. Respondents



PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order in Letter No.13815/C1/2015-1, dated 26.06.2015 on the file of the Respondent No.1 and quash the same as illegal and consequently direct the Respondents to provide eight hours duty to all "D Grade Employees" i.e., last grade servants, sanitary workers, hospital workers, cook, Male and Female nursing assistants, Barber, Dobi, Operation Theater Assistant, etc., who were working in medical and its connective departments all over Tamilnadu and pass such further or other orders.

For Petitioner : Mr.T.Lajapathi Roy

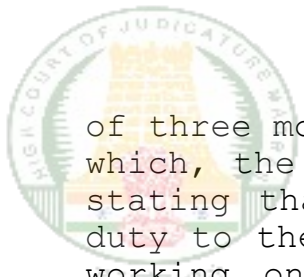
For Respondents : Mr.C.Dhayalan,
Government Advocate.

ORDER

This writ petition has been filed for issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order in Letter No.13815/C1/2015-1, dated 26.06.2015 on the file of the 1st respondent and quash the same as illegal and consequently direct the respondents to provide eight hours duty to all "D Grade Employees" i.e., last grade servants, sanitary workers, hospital workers, cook, Male and Female nursing assistants, Barber, Dobi, Operation Theater Assistant, etc., who were working in medical and its connective departments all over Tamilnadu.

2.Heard the learned counsel appearing for the petitioner and the learned Government Advocate appearing for the respondents.

3.The case of the petitioner is that the petitioner is the Tamil Nadu Medical Department All Workers and Sanitary Workers Association. The grievance of the petitioner is that the 'D Grade' employees like, Sanitary Workers, Hospital Workers, Cook, Male and Female Nursing Assistants, Barber, Dobie, Operation Theater Assistant, etc., are made to work for more than 11 to 13 hours per day and they have not been provided with shift duty. This 'D Grade' employees have been working right from 07.00 a.m. to 06.00 p.m. and from 06.00 p.m. to 07.00 a.m. On account of continuous duty, the 'D Grade' employees are put to great difficulties. Therefore, the petitioner has taken up the matter with the Health Department. The third respondent submitted a proposal vide proceedings in Na.Ka.No.85169.Ni/5/1/10, dated 03.02.2011, to the first respondent to reduce the working hours to eight hours or to give three shift per day, each shift having eight hours duty. Since the same is pending for a long time, the petitioner has filed W.P(MD)No.13206 of 2014 and this Court directed the first respondent to consider and dispose of the proposal sent by the third respondent within a period



of three months from the date of receipt of copy of that order, upon which, the 1st respondent passed the impugned order dated 26.06.2015 stating that there is no possibility to provide eight hours shift duty to the last grade servants and all the last grade servants are working on the basis of on and off duty only and they are not working for 12 hours continuously and ultimately rejected the proposal, against which, the present writ petition has been filed.

4.The learned counsel for the petitioner submitted that on 28.05.2015, the Residential Medical Officer attached with the 7th respondent passed an order regarding working hours for Sanitary workers, MNA duty list, Trauma care centre, Night duty list, stating that they have to work for 12 hours continuously, i.e., 07.00 p.m. to 07.00 a.m., but they are not working on the basis of on and off duty as per the impugned order, dated 26.06.2015. He would also rely on Section 9 of the Tamil Nadu Shops and Establishments Act, 1947 and the Judgment of the Delhi High Court in **Delhi Fire Service Karamchari v. Municipal Corporation of Delhi** reported in **60(1995) DLT 482**.

5.The learned Government Advocate appearing for the respondents relying on the counter affidavit filed on the side of the respondents, submitted that the basic service workers of Government Rajaji Hospital, Madurai are working from 07.00 a.m. to 01.00 p.m. at Out-Patient Department, from 04.00 p.m. to 07.00 p.m. at wards, from 07.00 a.m. to 04.00 p.m. (inclusive of lunch time) at operation theatre and from 07.00 a.m. to 04.00 p.m. (inclusive of lunch time) at In-Patient wards. All basic service workers are working for eight hours duty only on the basis of On and Off duty. During the year 1999, one of the associations sent representation to the Government and sought for clarification regarding to provide eight hours duty on three time shift duty per day and the third respondent sent communication to all the Joint Director of Health Services and directed to bring the 'D' grade employees under eight hour working scheme or 3 time shift duty per day from 01.10.1999, which is being followed till today. Therefore, the contention of the petitioner is not acceptable.

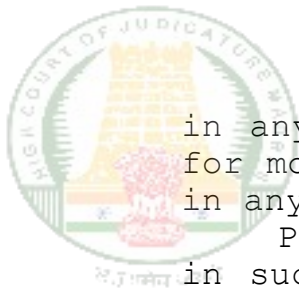
6.The petitioner association has ventilated the grievance that 'D Grade' employees are made to work more than 11 to 13 hours per day, to the third respondent and the third respondent sent a proposal to the first respondent and the first respondent passed the impugned order dated 26.06.2015 stating that there is no possibility to provide eight hours shift duty to the last grade servants and all the last grade servants are working on the basis of on and off duty only and they are not working for 12 hours continuously.

7.Section 9 of the Tamil Nadu Shops and Establishments Act, 1947, reads as follows:

"9.Daily and weekly hours of work in shops.--(1)

Subject to the provisions of this Act, no person employed

<https://hcservices.ecourts.gov.in/hcservices/>



in any shop shall be required or allowed to work therein for more than eight hours in any day and forty-eight hours in any week;

Provided that any such person may be allowed to work in such shop for any period in excess of the limit fixed under this sub-section subject to payment of overtime wages, if the period including overtime work, does not exceed ten hours in any day and in the aggregate fifty-four hours in any week".

8.In **Delhi Fire Service Karamchari v. Municipal Corporation of Delhi** reported in **60(1995) DLT 482** , the Delhi High Court has held as follows:

"44.In the above stated circumstances, I feel the petitioners are entitled to succeed. The writ petition is allowed. Respondent Nos.1, 2 and 4 are hereby directed to introduce three shift system of 8 hours duration each. They are granted six months time to introduce the same. During the above said period the working hours of the petitioner would be governed by the Circular dated April 27, 1995. However, the same would cease to operate after the expiry of the said period of six months and would be deemed to have been quashed".

9.The respondents have also filed a counter affidavit, wherein it is stated as follows:

"9..... It is further submitted that the basic service workers of Government Rajaji Hospital, Madurai are working from 07.00 a.m. to 01.00 p.m. at Out-Patient Department, from 04.00 p.m. to 07.00 p.m. at wards, from 07.00 a.m. to 04.00 p.m. (inclusive of lunch time) at operation theatre and from 07.00 a.m. to 04.00 p.m. (inclusive of lunch time) at In-Patient wards. All basic service workers are working for eight hours duty only on the basis of On and Off duty. It is further submitted that during the year 1999, one of the associations sent representation to the Government and sought for clarification regarding to providing 8 hours duty on three time shift duty per day and the third respondent sent communication to all the Joint Director of Health Services and directed to bring the 'D' grade employees under eight hour working scheme or 3 time shift duty per day from 01.10.1999, which is being followed till today".

10.In view of Section 9 of the Tamil Nadu Shops and Establishments Act, 1947 and the decision of the **Delhi High Court in Delhi Fire Service Karamchari v. Municipal Corporation of Delhi** reported in **60(1995) DLT 482** and also recording the above statement made in the counter affidavit, the impugned order in Letter No.13815/C1/2015-I, dated 26.06.2015 on the file of the 1st



respondent is quashed. Accordingly, the writ petition is allowed.
No costs. Consequently, connected Miscellaneous Petitions are
closed.

Sd/-

Assistant Registrar (Records)

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Sub Assistant Registrar(CS)

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To

1.The Secretary,
Department of Health and Family Welfare,
Government of Tamil Nadu,
Secretariat, Chennai - 9.

2.The Director,
Directorate of Medical Education,
Kilpauk, Chennai - 10.

3.The Director,
Medical and Rural Health Services,
Teynampet, Chennai - 6.

4.The Director,
Public Health and Preventive Medicine,
Teynampet, Chennai - 6.

5.The Director,
Indian Medicine and Homeopathy,
Arumpakkam, Chennai - 108.

6.The Director,
Medical and Rural Health Services,
ESI Scheme, Teynampet,
Chennai - 6.

7.The Dean,
Government Rajaji Hospital,
Madurai.

+1 CC to Mr.T.LAJAPATHI ROY, Advocate (SR-104127[F] dated
10/12/2019)

+1 CC to SPL GP (SR-104206[F] dated 10/12/2019)

ORDER MADE IN
W.P (MD) No.23234 of 2015
06.12.2019

VB(30.12.2019) 5P 10C