



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.03.2022

CORAM:

THE HONOURABLE **MR. JUSTICE S.M.SUBRAMANIAM**

W.P. (MD)No.20785 of 2021
and W.M.P.No.17399 of 2021

WEB COPY

Little Drops Home for the Elderly
Head Office,
(A public charitable Trust, regd.
Represented by
M.Ramesh (Trustee)

... Petitioner

Vs.

1.The Joint Commissioner of Labour
Dindigul District.

2.M.Ponner

3.The Department of Social Defence
Rep. by its Director
No.300 Purasaivakkam High Road,
Kellys, Chennai

... Respondents

(R3 has been suo-motu impleaded
vide Court dated 22.11.2021)

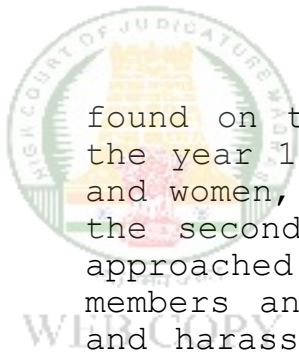
PRAYER: Writ Petition under Article 226 of the Constitution of India, to issue a Writ of Certiorari to call for the records pertaining to the impugned order of the 1st respondent in PWA No.5/2019 dated 07.09.2021 (received on 22.10.2021) and quash the same.

For Petitioner	: Ms.Porkodi Karnan
For Respondents	: Mr.M.Ramesh for R1&R3 Government Advocate Mr.A.Arul Jenifer for R2

ORDER

The order passed by the competent authority under the Payment of Wages Act 1936 (hereinafter referred to as 'the Act') is under challenge in the present writ petition.

2. The petitioner is Little Drops Home for the Elderly, which is a public charitable trust registered under the Indian Trust Act 1882 and the petitioner states that the Trust is engaged in the rescue and rehabilitation of abandoned destitute elderly persons



found on the streets. The petitioner organisation was started in the year 1991 moved by the plight of the countless homeless old men and women, who are in the particular locality. It is contended that the second respondent, who was the native of the particular area approached the old age home of the petitioner along with the family members and relatives on 18.11.2018 and vandalise the entire home and harassed the women staff and residents. It is contended that the second respondent has caused loss to the properties belong to the petitioner organisation and a criminal complaint was filed against the second respondent and his associates at the Nilakottai Police Station, which is yet to be registered.

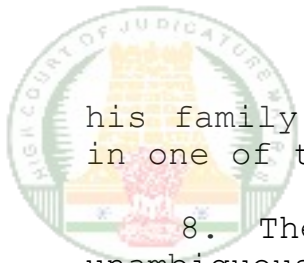
3. This apart, the second respondent filed a petition before the first respondent claiming payment of wages for the period from 15.03.2016 to 31.01.2019 by submitting some forged and fabricated documents.

4. The learned counsel for the petitioner reiterated that the petitioner created forged documents and filed such documents before the first respondent and obtained the orders of direction to pay the wages under the Act, which is not in consonance with the provisions of the Act.

5. The learned counsel for the petitioner made a submission that it is a public charitable trust and therefore, the Act would not be applicable to the petitioner Institution. Secondly, it is contended that the first respondent considered the case of the second respondent and passed orders based on the resolution of appointment, which is forged. Thus, the writ petition is to be considered.

6. The learned counsel appearing on behalf of the 2nd respondent objected the said contention by stating that the service of the petitioner and his family members were availed. The second respondent is partly visually impaired and his family members were also working in the petitioner institution. A resolution for appointment was passed by the trustees duly signed and the said document was filed before the first respondent for consideration. Based on the orders of the appointment, the first respondent granted the relief to pay the wages and therefore, there is no infirmity as such in respect of the orders passed by the first respondent.

7. Considering the arguments as advanced by the respective learned counsel appearing on behalf of the lis on hand, this Court is of the opinion that this Court has to consider the findings of the competent authorities/first respondent for forming an opinion. The reason for the decision is to be considered. Perusal of the findings in the award passed by the first respondent reveals that the second respondent is a differently abled person and he approached the petitioner trust along with his family members and

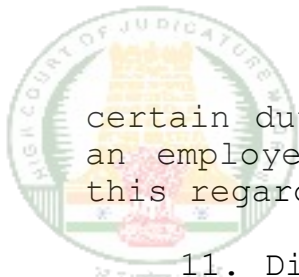


his family members, as they were allowed to perform certain duties in one of the branches of the trust.

8. The findings in this regard in the impugned award are unambiguous that the deposition of the witness reveals that the second respondent Ponner engaged one Mr.P.Sakthi, S/o.Perumal for providing services through his share auto to the petitioner organisation. The said witness in clear terms deposed that the second respondent Ponner is the project coordinator of the Little Drops Old Age Home and he only approached the witness P.Sakthi for providing certain service through his share auto. He has stated that the second respondent Ponner only engaged him and he used to credit the auto charges from the account of the petitioner trust. Therefore, it is clear that the second respondent Ponner was working as a Coordinator. He engaged the share auto for the purpose of providing services to the inmates, who are all old age men and women and the hiring charges were credited by the second respondent Ponner to the account of the auto driver and when the witness is in clear terms deposed the said transactions, the first respondent formed an opinion that the second respondent was engaged as an employee by the petitioner.

9. Further findings of the first respondent in his award reveals that the second respondent employee filed the document, which is marked as Ex.P3 resolution passed by the trustees appointing the second respondent as Coordinator. The competent authority under the wages act considered the said resolution of appointment passed by the trustees and formed an opinion that the second respondent was employed by the petitioner trust and therefore, he is entitled for the relief of wages as prayed for in the petition filed under the Act. Thus, the competent authority formed an opinion and arrived at a conclusion based on the deposition of the witness through P.Sakthi and based on the resolution of appointment passed by the trustees, which is marked as Ex.P3. These two evidences are sufficient enough to hold that the second respondent was appointed as an employee by the petitioner and he worked in the said institution by performing the duties and responsibilities as per the instructions of the management of the petitioner trust.

10. With reference to the submission made on behalf of the petitioner that trust is not amenable to the provisions of the payment of wages act, this Court is of the considered opinion that there is no express exclusion contemplated under the Act. In the absence of any exclusion in the provisions of the Act, the petitioner public charitable trust cannot claim any exemption merely on the ground that they are charitable trust. Even for running a charitable trust, employees are required and the management of public charitable trust are appointing employees for performing duties and responsibilities. Once it is established that a person



certain duties and responsibilities, then he should be construed as an employee for all purposes. Therefore, the submission made in this regard by the petitioner is unsustainable.

11. Distinction is to be drawn in this regard, whether a person is an employee or not. In petitioner's trust old aged people are maintained as inmates and they may also extend certain assistance to the other employees and the management. Therefore, the inmates assisting the management to perform certain work cannot be compared with the person appointed by the trust for performing certain duties and responsibilities. As aged inmates may voluntarily offer certain assistance as they may wish to engage themselves, such services are concerned, the person cannot be treated as an employee. However, a resolution of appointment is passed by the Management of trust to perform certain duties and responsibilities, then, such person is an employee for all purposes, as the wages is to be paid also stipulated in the appointment resolution in the present case. Therefore, the second respondent has established his case before the competent authority that he was engaged as an employee by the petitioner trust for remuneration and the documents more specifically Ex.P3 was not repudiated by the petitioner before the competent authority/first respondent. Thus, this Court do not find any infirmity or perversity in respect of the findings arrived at by the first respondent in granting the relief of payment of wages in favour of the second respondent. Accordingly, the writ petition is devoid of merits and stands dismissed. No costs. Consequently connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

RR

To

1.The Joint Commissioner of Labour
Dindigul District.

2.The Director

Department of Social Defence

No.300 Purasaivakkam High Road,Kellys, Chennai

+1 CC to M/s.POLAX LEGAL SOLUTIONS, Advocate (SR-13260[F] dated 21/03/2022)

+1 CC to M/s.SPL GP (SR-13539[F] dated 22/03/2022)

W.P. (MD)No.20785 of 2021

21.03.2022

MGJ(13.04.2022) 4P 5C

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