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W.P.No.9314 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.09.2023

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

W.P.No.9314 of 2018

and

W.M.P.No.11117 of 2018

The Managing Director,
M/s.Vinayaga Mission Medical College & Hospital,
Kezhakasakudimedu,
Kottucherry (PO), Karaikal.

... Petitioner

Vs

1.The Presiding Officer,
Industrial Tribunal-cum-Labour Court,
Puducherry.

2.Mr.N.Ramar,
Rep. the VMMC & Hospital Ozhiyargal Sangam,
No.42, Stalin Nagar,
Karaikkal.

3.Vinayaga Mission Medical College & Hospital
Non-Teaching Staff Union,
Rep.by its Secretary,
(Reg.No.1357/RTU/2003),
Kottucherry P.O.,
Karaikal – 609 609,
Union Territory of Puducherry.

... Respondents

[R3 impleaded vide order dated 13.09.2023 made in
W.M.P.No.30911 of 2018 in W.P.No.9314 of 2018]



W.P.No.9314 of 2018

Prayer : Writ Petition filed under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari, to call for the records connected with I.D.(T) No.3 of 2014 on the file of the first respondent and quash the order dated 08.01.2018.

For Petitioner : Mr.S.Ravindran, SC for
M/s.L.Swaminathan
For R1 : Labour Court
For R2 & R3 : Mr.Balan Haridas

ORDER

This Writ Petition has been filed by the petitioner seeking to quash the award dated 08.01.2018 in I.D.(T) No.3 of 2014 on the file of the first respondent.

2. Thirumuruga KirupanandaVariyar Thavathiru Sundara Swamigal Medical Educational Charitable Trust is a registered trust and the said trust has various medical, engineering and other educational services under it, which is imparting knowledge to students and doing yeomen service to society. The said trust has got various institutions in different places and the petitioner/Vinayaka Missions Medical College and Hospital at Karaikal is one among them and it has about 500 employees on its rolls. Out of the total staff, 137 are members of the third respondent union. The petitioner Medical College and Hospital provides the



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employees with wages, which are the highest in the region and in comparison to other colleges and hospitals. The petitioner is running the hospital on a “No Profit – No Loss” basis and giving free treatment and food with accommodation.

2.1. Whiles, the second respondent, who was claiming to be the representative of the union, raised an industrial dispute for payment of 20% bonus on the ground that the casual employees were entitled to it. The claim was based on two judgments namely (i) Bangalore Water Supply and Sewerage Board Vs. A.Rajappa [reported in AIR 1978 SC 548] and (ii) Christian Medical College Vellore Association Vs. Government of India [reported in 1983 (2) LLJ 373]. In the said industrial dispute, the petitioner took a plea that that the second respondent could not raise the dispute in his personal capacity for a trade union that was not at all recognized, that he was not an employee of the petitioner and that the second respondent had no legal right to raise the dispute against the petitioner. According to the petitioner, though Section 36 of the Industrial Disputes Act, 1947 (in short 'the ID Act') provides for representation by an authorized representative, since the dispute had been raised in his personal capacity and as he was not authorized by the members of the union, he had no locus standi to raise



the dispute. Before the first respondent, the second respondent did not produce any

document to show that the petitioner hospital was run with a motive for profit.

After contest, the first respondent allowed the industrial dispute by the impugned award directing the petitioner to pay bonus to their workers for the period from 2012-2013. Challenging the same, the petitioner is before this Court.

3. The learned Senior Counsel appearing for the petitioner drawn notice of this Court with regard to the provisions of Payment of Bonus Act, 1965 (in short 'the Act'), particularly, Section 32 of the Act has specific provisions providing for non application of the Act to certain classes of employees. He also submitted that as per Section 32(v)(b) of the Act, the Universities and Educational institutions are completely exempted from the purview of the Act. Further, Section 32(v)(c) of the Act states that employees employed by institutions (including hospitals, chambers of commerce and social welfare institutions) established not for purposes of profit are also exempted from payment of Bonus Act.

4. Further, the learned Senior Counsel submitted that, it has not been



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properly adjudicated before the Labour that whether the petitioner hospital is running profitably or not. However, he fairly submitted that the petitioner hospital is inclined to pay the minimum bonus of 8.33 per cent to the employees of the hospital for the year 2012 – 2013, less than the amount already paid to the employees. He submitted that liberty may be granted to the employees of the hospital to raise an industrial dispute, if the hospital is running profitably for subsequent years in the manner known to law.

5. Per contra, the learned counsel appearing for the respondents 2 and 3 submitted that, even the petitioner hospital is not running profitably, the employees of the petitioner hospital are entitled to receive the minimum bonus of 8.33 per cent. Hence, he submitted that, it would suffice, if this Court issues a direction to the petitioner to pay the minimum bonus of 8.33 per cent for the year 2012 – 2013 and subsequent years, within a time frame that may be stipulated by this Court. In support of his contention, he relied upon the judgment of this Court dated 20.06.2003 made in W.A.No.642 of 2002 reported in **2003 (3) CTC 158**.



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6. Heard the learned Senior Counsel appearing on behalf of the petitioner and the learned counsel appearing for respondents 2 and 3 and perused the materials available on record.

7. It is borne from the records that, this Court, on 05.09.2018, in W.M.P.No.11117 of 2018, granted an order of interim stay on condition that the petitioner should pay 50% of the bonus payable for the year 2012-13 to the eligible employees within a period of four weeks. The said interim order dated 05.09.2018 was taken on appeal in W.A.No.2595 of 2018 wherein a Division Bench of this Court, after noting that even in the award dated 08.01.2018, no quantification was done by the first respondent, modified the said conditional order by directing the petitioner to pay a sum of Rs.1,000/- to each of the workmen covered under the award within two weeks and disposed of the writ appeal by judgment dated 05.12.2018.

8. Admittedly, the second respondent raised an industrial dispute before the first respondent/Labour Court claiming payment of bonus in terms of Payment of Bonus Act. After adjudication, the Labour Court ordered for payment of bonus in



respect of educational institution as well as hospital.

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9. In order to resolve the issue in this matter, Section 32 of the Act is as follows :-

“32. Act not to apply to certain classes of employees. - Nothing in this Act shall apply to --

- (i) 3* employees employed by any insurer carrying on general insurance business and the employees employed by the Life Insurance Corporation of India;*
- (ii) seamen as defined in Clause (42) of Section 3 of the Merchant Shipping Act, 1958 (44 of 1958);*
- (iii) employees registered or listed under any scheme made under the Dock Workers (Regulation of Employment) Act, 1948 (9 of 1948), and employed by registered or listed employees;*
- (iv) employees employed by an establishment engaged in any industry carried on by or under the authority of any department of the Central Government or a State Government or a local authority;*
- (v) employees employed by--*
 - (a) the Indian Red Cross Society or any other institution of a like nature (including its branches);*
 - (b) universities and other educational institutions;*
 - (c) institutions (including Hospitals, Chamber of commerce and social welfare institutions) established not for purposes of profit;*
- (vi) employees employed through contractors on building operations;*

10. A perusal of the above provisions makes it clear that, the Bonus Act shall not apply in respect of universities and other educational institutions.



However, the Bonus Act shall apply in respect of the hospitals, which are established for the purpose of profit. However, the learned Senior Counsel appearing for the petitioner fairly submitted that he is ready to pay the minimum bonus of 8.33 per cent for the year 2012 – 2013 to the hospital employees. However, for the subsequent years, he is disputing, since the hospital is not running profitably and it is exempted under Section 33(v)(c) of the Act. However, inadvertently, the Labour Court directed the petitioner hospital to pay the workers of the educational institution also, which is exempted.

11. In view of the above, the award passed by the Labour Court is modified as follows :-

(i) the petitioner is directed to pay the minimum bonus of 8.33 per cent for the year 2012 – 2013 to their employees within a period of four (4) weeks from the date of receipt of a copy of this order after deducting the amount already paid ;

(ii) liberty is granted to the second respondent to raise a dispute for the subsequent years within a period of four (4) weeks from the date of receipt of a copy of this order. If any dispute is raised, the Labour Court is directed to pass appropriate orders within a period of six (6) months thereafter.



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WEB COPY 12. With the above modifications, this Writ Petition is disposed of. No costs.

Consequently, the connected miscellaneous petition is closed.

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(2/2)

Index : Yes (or) No

Neutral Citation : Yes (or) No

Speaking Order : Yes (or) No

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To

The Presiding Officer,
Industrial Tribunal-cum-Labour Court,
Puducherry.



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M.DHANDAPANI,J.,

sp

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W.M.P.No.30911 of 2018

in

W.P.No.9314 of 2018

M.DHANDAPANI,J

The present writ miscellaneous petition has been filed seeking to implead the petitioner Union as proposed respondent No.3 in W.P.No.9314 of 2018, is ordered as prayed for.

13.09.2023

sp

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