



W.P. No.29865 of 2017

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.10.2023

CORAM :

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

W.P.No.29865 of 2017 &
W.M.P. Nos.14974 of 2021 & 32254 of 2017

Jawaharlal Institute of Post Graduate Medical
Education and Research
Represented by its Director
Puducherry

...Petitioner

Vs.

1. JIPMER Hospital Employees Union
Represented by its President
Room No.314, 3rd Floor,
Administrative Block, Puducherry 605 006
2. The Central Government Industrial Tribunal
cum Labour Court
Represented by its Presiding Officer
1st Floor, 'B' Wing, Shastri Bhawan,
26, Haddows Road, Chennai 600 006
3. The Government of India
Ministry of Labour and Employment
SHRAM Shakti Bhavan, Rafi Marg
New Delhi 110 001.



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4. The Government of India
Ministry of Health and Family Welfare
New Delhi 110 001

...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari or any other writ or order or direction in the nature of a Writ calling for the records pertaining to the orders dated 19.07.2017 in I.D. No.5 of 2014 on the file of the 2nd respondent, the Central Industrial Tribunal, Chennai.

For Petitioner : Mr.A.R.L. Sundaresan,
Additional Solicitor General
Assisted by Mr.M.T. Arunan,
Standing Counsel for JIPMER
Mr. M.A.Aruneshe
Ms.Harinisri
For R1 : Mr. T. Sai Krishnan

ORDER

The petitioner is a Multi Speciality Hospital under the auspices of the Ministry of Health and Family Welfare, Government of India, represented by its Director. The respondent is a Trade Union comprising of employees in the petitioner Hospital as their members represented by its President.

2. This petition has been filed challenging the Award dated 19.07.2017 by the Central Government Industrial Tribunal cum Labour



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WEB COURT, Chennai in I.D. No.5/2014.

3. The germane facts of the case are noted below:

3.1. The petitioner Hospital cum Research Institute (JIPMER) is one of National Importance and is directly under the control of the Central Government which gives necessary directions in the matter of Man Power Recruitment.

3.2. The Hospital is a huge one having more than 2200 beds with different specialities and departments other than the Research Institute which imparts medical education to the budding doctors with the need to have all round twenty four hour personnel to take care of house keeping, security, etc. Therefore outsourcing was one avenue which was open to the Institute to get staff on contract basis especially after Group D became non existent consequent upon the implementation of VI Central Pay Commission. In such a scenario there were such contract staff who were paid daily wages and were designated as coolies. The work assigned to them some times was also seasonal and the



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respondent Union which is not a recognised one but claiming themselves to have represented these daily wagers seeking regularisation of the coolies approached the Assistant Labour Commissioner (C), Puducherry, taking up their cause. The Assistant Labour Commissioner (C), Puducherry, conducted conciliation proceedings on different dates without taking cognizance of the fact that the daily wagers were not the members of any union much less the respondent Union and conducting conciliation proceedings with an unrecognised Union that too for the cause of the daily wagers was totally unwarranted. Having failed in arriving at an amicable solution, the Assistant Labour Commissioner (C), Puducherry, prepared a failure report and referred the same to the Ministry of Labour and Employment, Government of India. In the meanwhile those existing employees in Group-D cadre were brought into Group-C level with pay band-I and with grade pay of Rs.1800/- by giving appropriate training. This was consequent upon the implementation of the VI Central Pay Commission which literally abolished the Group-D category.



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3.3. The daily wagers were taken to perform some of the duties hitherto done by the Group-D employees, when the category of Group-D was not in existence. In such a scenario some of the aggrieved daily wagers approached the Central Administrative Tribunal, praying for regularisation in O.A. No.310/137/2014 & O.A. No.310/149/2014. There were also other spate of litigations. The Central Administrative Tribunal, Chennai, ruled that the daily wagers whoever has the requisite qualifications may participate in the selection process to get recruited as 'C-Category employees' and that back door entry cannot be allowed. At this juncture, simultaneously the Ministry of Labour and Employment, Government of India vide its order dated 03.01.2014 referred the matter to the Central Government Industrial Tribunal cum Labour Court, Chennai, for adjudication. The Central Government Industrial Tribunal cum Labour Court, Chennai, after going through and analysing the oral and documentary evidence adduced by both the sides passed an Award on 19.07.2017 directing the present petitioner to regularise all the concerned workmen who have completed 5 years of service as on 05.03.2012 on which date the dispute was raised in Group-D post, which



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is the one under challenge in this Writ Petition.

4. Mr.A.R.L. Sundaresan, learned Additional Solicitor General, assisted by Mr.M.T. Arunan, learned Standing Counsel for the petitioner would contend that the respondent Union which is an unrecognised one has no locus standi in representing the coolies/daily wagers working in the petitioner Hospital. His further contention was that on this sole ground alone the Writ Petition is liable to be allowed and that the Central Government Industrial Tribunal cum Labour Court, Chennai, ought to have taken into consideration this conspicuous factor. It was also his contention that by no stretch of imagination a temporary employee or a daily wager would be entitled to be absorbed in regular service merely because he has put in continuous service. He relied on the Constitution Bench decision of the Apex Court in *Secretary, State of Karnataka and others vs. Umadevi (3) and others* reported in (2006) 4 SCC 1 and contended that unless the appointment is in terms of the relevant rules and after proper competition among qualified persons, the same would not confer any right on the appointee. He added that it was well settled



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that if the original appointment was not made by following a due process of selection, no temporary or casual worker be absorbed or made permanent merely on the strength of continued service. He also relied on the decision of the Apex court in ***Oshiar Prasad and others vs. Employers in relation to Management of Sudamdih Coal Washery of M/s. Bharat Coking Coal Limited, Dhanbad, Jharkhand*** reported in ***(2015) 4 SCC 71*** and contended that absorption and regularisation in service can be claimed and/or granted only when the contract of employment subsists and that in the instant case no such agreement ever existed between the group of daily wagers and the petitioner Institute thereby ruling out the possibility of any regularisation of services as demanded by the respondent Union. It was also pointed out that the restructuring of posts or allocation of duties cannot be construed as unfair labour practice and that consequent upon the implementation of the VI Central Pay Commission the existing category-D employees were stepped up as category-C employees as a result of which there was no more Group-D category. He also emphasised the fact that the petitioner JIPMER was managed by Government of India and is bound by the



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Rules and Regulations of Ministry of Health and Family Welfare and therefore trying to pick holes in their staffing pattern or recruitment policy in isolation does not augur well for the Government policy.

5. Per contra Mr. T. Sai Krishnan, learned Counsel for the 1st respondent Union vehemently argued that irrespective of whether it was Central Public Sector Undertaking or a State owned undertaking or any other organisation, unfair labour practice in the form of denial of the right of regularisation cannot be accepted. In the instant case the Medical Institution (JIPMER) is a huge one and all the daily wagers are being exploited by the petitioner shifting them from one department to another department in the hospital and extracting work which were hitherto done by the Group-D category employees. It was also argued by him that the abolition of Group-D category employees by the petitioner Institute was intended to get the same work done at a cheaper cost from the daily wagers without any risk, responsibility and accountability. It was also contended that the Industrial Tribunal and Labour Court enjoy wide powers under Section 30(1) (b) of the Maharashtra Recognition of



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Trade Unions and Prevention of Unfair Labour Laws Practices Act 1971

(in short "MRTU and PULP Act") and that this power was never disputed in the judgment in **Umadevi case** (cited supra) and it was only the powers under Article 226 & 32 of Constitution of India in the matters of public employment which were curtailed by the said decision (in Umadevi case). In this regard he relied on the following decisions of the Apex Court.

(1) Oil and Natural Gas Corporation Limited vs. Petroleum Coal

Labour Union and others reported in (2015) 6 SCC 494.

(2) Ajaypal Singh vs. Haryana Warehousing Corporation reported in

(2015) 6 SCC 321.

(3) Umrula Gram Panchayat vs. Secretary, Municipality Employees

Union and others reported in (2015) 12 SCC 775.

(4) Durgapur Casual Workers Union and others vs. Food

Corporation of India and others reported in (2015) 5 SCC 786.

(5) Maharashtra State Road Transport Corporation and another vs.

Casteribe Rajya Parivahan Karmchari Sanghatana reported in

(2009) 8 SCC 556.



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6. There are two aspects to be decided.

- i. Whether the respondent Union has locus standi to approach the Assistant Labour Commissioner (C), Puducherry, for the cause of the daily wagers.
- ii. Whether there was any unfair labour practice to empower the Industrial Tribunal/Labour Court Act to pass an Award.

6.1. Firstly, the issue of locus standi: The respondent Union represented the daily wagers/daily rated labourers termed as coolies by the petitioner. In this also there are two aspects. One is whether the respondent Union can represent the daily wagers in the light of the fact that they are not members of the Union with no check-off system in place for union subscription. Secondly, whether the employer-employee relationship exists between the daily wagers and the petitioner Hospital. The first question again leads to whether the daily wagers are employees of the Hospital. W.W.1 and W.W.2 are two such daily wagers who deposed before the Tribunal in which they clearly stated that they were not recruited through the employment exchange and that they have no



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appointment orders issued to them. This clearly shows that they have come through the 'back door'. W.W.1 who claims to be the Honorary President of the respondent Union deposed that "the concerned workmen are not qualified educationally but they are qualified on account of their length of service. He also admitted that the concerned workmen have not applied for the post of MTS when recruitment was made one year earlier". With these depositions it is clear that the daily wagers were not employees of the petitioner Hospital. They were only casual labourers. Thus it can be safely concluded that there exists no employer-employee relationship. They were periodically engaged by the petitioner Institution and terming them as in continuous employment does not make any sense.

6.2. In this context it is important to go into the various angles ingrained in the judgment of the Constitution Bench of the Apex Court in Umadevi Case. These aspects are elicited in the following portions of the judgment.



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"The Courts have not always kept the legal aspects in mind and have occasionally even stayed the regular process of employment being set in motion and in some cases, even directed that these illegal, irregular or improper entrants be absorbed into service. A class of employment which can only be called 'litigious employment', has risen like a phoenix seriously impairing the constitutional scheme. Such orders are passed apparently in exercise of the wide powers under [Article 226](#) of the Constitution of India. Whether the wide powers under [Article 226](#) of the Constitution is intended to be used for a purpose certain to defeat the concept of social justice and equal opportunity for all, subject to affirmative action in the matter of public employment as recognized by our Constitution, has to be seriously pondered over."

.....

"Such directions are issued presumably on the basis of equitable considerations or individualization of justice. The question arises, equity to whom? Equity for the handful of people who have approached the Court with a claim, or equity for the teeming millions of this country seeking employment and seeking a fair opportunity for competing for employment? "



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"In this context, we have also to bear in mind the exposition of law by a Constitution Bench in State of Punjab Vs. Jagdip Singh & Ors. (1964 (4) SCR 964). It was held therein,

"In our opinion, where a Government servant has no right to a post or to a particular status, though an authority under the Government acting beyond its competence had purported to give that person a status which it was not entitled to give, he will not in law be deemed to have been validly appointed to the post or given the particular status."

.....

"If for any reason, an ad hoc or temporary employee is continued for a fairly long spell, the authorities must consider his case for regularization provided he is eligible and qualified according to the rules and his service record is satisfactory and his appointment does not run counter to the reservation policy of the State ".

....

"It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of



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his employment. He accepts the employment with eyes open.

It may be true that he is not in a position to bargain - not at arms length - since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment."

These observations of the Apex Court are decisive. But the learned counsel for the respondent Union would contend that nowhere in this judgment the role or powers of the Industrial Tribunal or Labour Court has been commented upon and therefore these observations do not override the powers as envisaged in Section 30 read with Section 32 of the MRTU and PULP Act. Both these acts were meant to curb unfair labour practice. Both were enacted in 1971. There can be no dispute that Supreme Court is the highest Court in the Country and the final Court of appeal. By virtue of Article 141 of the Constitution, what the Apex Court lays down is the law of the land. Its decisions are binding on all courts which includes Labour Courts and Tribunals. Orders which are



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inconsistent with the legal conclusions arrived at by the Apex Court not only create confusions but also tend to usher in arbitrariness. Equity cannot vary with the adjudicators.

6.3. In *State of Haryana vs. Piara Singh* reported in (1992) 4 *SCC 118*, it was held by the Apex Court that "the creation and abolition of a post is the prerogative of the Executive". This directly means that the doing away with the Group-D category by the petitioner Institution cannot be read as 'intentionally keeping them vacant'. In the case of temporary or casual or contractual employees it can also not be said that the petitioner has held out any promise to continue them or make them permanent. If that is so it would lead to treating unequals as equals. All the daily wagers accepted the employment on their volition and revision of minimum wages payable from time to time got implemented. But making them entitled to permanency would defeat the basic tenet of public employment which rests on constitutional goal of equality.



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6.4. Nevertheless, the need to go into whether there was unfair labour practice in the petitioner establishment becomes imperative. The learned counsel for the respondent relied on *Umrula Gram Panchayat vs. Secretary, Municipal Employees Union and others* reported in *(2015) 12 SCC 775*, in which it was ruled by the Apex Court that the powers given to the Industrial and Labour Courts under Section 30 is very wide and the affirmative action mentioned therein is inclusive and not exhaustive. It was also agreed that employing badlis, casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent employees is an unfair labour practice on the part of the employer under item 6 of Schedule IV.

6.5. Whether such an unfair labour practice is established in the petitioner establishment has to be answered. It has to be kept in mind that JIPMER is a renowned medical institution with a huge multi speciality hospital and therefore needs to have unhampered services round the clock. It is not a profit making establishment. It is a service



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institution serving the huge population. Any medical institution falls under the essential services category.

6.6. That the Group-D category was literally abolished in this establishment consequent upon the implementation of VI Central Pay Commission is not disputed. Whether it was abolished with the intention of depriving anyone of the status and privileges of the said position is a natural question. The learned counsel for the respondent Union also relied on *Maharashtra State Road Transport Corporation and another vs. Casteribe Rajya Parivahan Karmchari Sanghatana* reported in *(2009) 8 SCC 556*, in which it was opined that the direction of the Industrial Court to accord permanency to the employees against the posts which were available was clearly permissible and within the powers statutorily conferred upon the Industrial/Labour Courts under Section 30(1) (b) of the MRTU and PULP Act 1971 which enables the industrial adjudicator to take appropriate action against the erring employer and as those powers are of wide amplitude abrogating within their fold a direction to accord permanency. However, in the instant case there is no



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such available vacancy.

6.7. The learned counsel for the respondent Union also relied on the ***Oil and Natural Gas Corporation Limited vs. Petroleum Coal Labour Union and others*** reported in ***(2015) 6 SCC 494***, in which the Apex Court observed that "*it would not deter the Industrial Tribunals/Labour Courts from issuing such directions, which the industrial adjudicators otherwise possess, having regard to the provisions of the Industrial Disputes Act specifically conferring such powers. This is recognised by the Court even in the Umadevi Case judgment*". However, his reliance on ***Ajaypal Singh vs. Haryana Warehousing Corporation*** reported in ***(2015) 6 SCC 321*** is not appropriate as this judgment deals with retrenchment and reinstatement thereof.

6.8. From the aforesaid discussions and decisions analysed it is clear that,



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- a) there is no unfair labour practice adopted by the petitioner Institution.
- b) The powers of Industrial Tribunal/Labour Courts are not beyond the powers of Supreme Court or High Court under Article 32 or Article 226 of the Constitution.
- c) The Award speaks about regularisation of the workmen who have completed 5 years services as on 05.03.2012 and fixing them in the pay scale of permanent workmen. Such abstract and undefined Awards is literally arbitrary and unimplementable.
- d) The locus standi of the unrecognised Union is questionable and has not been satisfactorily substantiated by the respondent Union.

7. The petitioner Institution has merit in its case. The Central Government Industrial Tribunal cum Labour Court, Chennai, has erred in concluding that there is unfair Labour practice and making such an Award.



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8. In the result, the Writ Petition is allowed. No costs.

Consequently connected Writ Miscellaneous Petitions are closed. The Award dated 19.07.2017 passed in I.D. No.5 of 2014 on the file of the Central Government Industrial Tribunal cum Labour Court, Chennai, is quashed.

31.10.2023

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
bga



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To

1. JIPMER Hospital Employees Union
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Room No.314, 3rd Floor,
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