



W.P.(MD)No.15338 of 2014

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.06.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No. 15338 of 2014

and

M.P(MD)No.1 of 2014

The Dean,
Theni Government Medical College,
Theni.

... Petitioner

Vs.

1. The Presiding Officer,
Labour Court,
Theni.

2. Theni Government Medical College,
Hospital Employee's Sangam,
(Regd.No.87/Theni),
7/8 Railway Station Road,
Theni.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a *Writ of Certiorari*, to call for the records on the file of the 1st respondent pertaining to its order in I.D.No.38 of 2011, dated 13.03.2014 and quash the same.



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For Petitioner : Mr.Veera Kathiravan,
Additional Advocate General,
assisted by
Mr.R.Suresh Kumar,
Additional Government Pleader

For R-1 : Labour Court.

For R-2 : M/s.Srinivasa Raghavan, for
Mr.N.Sekar

ORDER

This writ petition is filed to quash the impugned order passed by the Labour Court in I.D.No.38 of 2011, dated 13.03.2014.

2. The Theni Medical College was established as per the G.O.Ms.No. 404, Health and Family Welfare (E2) Department, dated 03.12.2004. While establishing the Medical College, Theni, the Government was not in a position for run the college due to non-availability of work force. Considering the exigency which arose during the said point of time it was decided to engage a contractor to carry out the work such as Hospital worker, Sanitary worker, Lab Technicians and Drivers. In pursuance to the same, a contractor, namely Society for Education and Women Development, Shiva Industrial Agency (Guj) Private Limited was



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assigned the job of the said work and the said contractor has engaged several people and the work was carried out by the contractor through the said persons. As per the above said G.O., the Director of Tamil Nadu Medical Education and two private agencies, namely Society for Education and Women Development, Shiva Industrial Agency (Guj) Private Limited, entered into agreement dated 12.04.2005 to 30.11.2006 and 30.11.2005 to 29.11.2006, respectively to supply workforce.

3. The contention of the petitioner is that there is no employer and employee relationship between the petitioner and the workmen at any point of time and the petitioner is not empowered to take disciplinary action against the said work force. Moreover, there is no recovery towards gratuity, EPF etc., were made by the petitioner from such persons who were engaged by the contractor. Since the contractor is only for a limited period the contractor did not come forward to renew the contract. Therefore, the said work was continued by another society namely Hospital Maintenance Patient-Welfare Society. Therefore, there is no employer and employee relationship at any point of time.



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4. The contract was expired on 30.06.2006. The Government has issued G.O.Ms.No.59, Health and Family Welfare (2) Department, dated 15.02.2008, wherein it is stated that the Government has decided that outsourcing of para medical may be repealed and all para medical posts may be filled up by time scale and the posts should be filled up through employment exchange. As the out sourced people were engaged only through private agencies and not through employment exchange and rule of reservation was not followed. Hence the contract workers submitted representations to absorb them. The Government has also decided that their request for absorption in Government service may be rejected. Moreover, the Government has not assured at any point of time to the 2nd respondent workers, that they will be regularized in future to this effect. The Deputy Secretary of the Department, vide letter, 24.05.2007 has given a detailed explanation. The 2nd respondent workers have received wages through the contract agency during the contract period and thereafter the 2nd respondent workers received wages from the Hospital Committee.

5. The respondent workers have given continuous work as per letter, dated 30.12.2008 and paid the salary through Hospital Maintenance Patient



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Welfare Society. Though the work done by the workers is of permanent in nature, the 2nd respondent workers are not permanent workers. Moreover, the petitioner is not aware of the 2nd respondent workers qualification and other details, as they were not engaged by the petitioner. The vacancy at the petitioner hospital ought to be filled up through the Tamil Nadu Public Service Commission and through the employment exchange. But the respondent workers are engaged only through “out-sourcing” and hence the Doctrine of equal pay is not applicable to them. Since the workers are working based on the agreement entered between the worker and outsourcing agency, the petitioner is not responsible for any statutory liability. Moreover, at the time of entering the contract, it was made clear that at the end of contract, the service would be terminated automatically. In spite of the same, the respondents have preferred a petition before the 1st respondent. The 1st respondent without considering the explanation of the petitioner had passed the impugned order. Aggrieved over the same, the petitioner is before this Court.

6. The 2nd respondent has filed counter stating that based on the agreement entered between the Director of Public Health and Preventive Medicine, Chennai and the Society for Education and Women Development,



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Chennai, the 2nd respondent members were engaged by the petitioner in the post of Hospital worker and Driver and in the operation and maintenance of the Hospital. They were paid a sum of Rs.990/- and 3,500/- as salary, respectively. The monthly wage was disbursed by the staff of the petitioner. Their daily works were allocated and supervised by the staff of the petitioner, subsequently, the contract was lapsed. But the 2nd respondent continued their employment and also issued service certificates to the members also. Thereafter the petitioner has paid wages without any middleman. The petitioner is the appointing authority. Moreover, the employment is perennial. The petitioner has not registered himself in the Contract Labour System, as a principal employer under Section 7(2) of the Contract Labour (Regulation and Abolition) Act 1970. The alleged contract would be legal, if the principal employer has registered under the Contract Labour (Regulation and Abolition) Act, 1970 and the contractor has to obtain contract license under Section 12(1) of the said Act of 1970. Therefore, the contention that the work is out sourced cannot be accepted. Therefore, the respondents submitted that the impugned order passed by the Labour Court is in accordance with law and prayed to dismiss the writ petition.



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7. Heard Mr.Veera Kathiravan, Additional Advocate General, assisted by Mr.R.Suresh Kumar, Additional Government Pleader appearing for the petitioner and M/s.Srinivasa Raghavan, for Mr.N.Sekar, learned counsel appearing for the 2nd respondent. Perused the material documents available on record.

8. It is an admitted fact that the petitioner Hospital has executed contract with private parties as early as 2006. Through the said contract the private parties had engaged the members of the 2nd respondent society. Subsequently, the contract was not renewed. Thereafter the petitioner was continuously engaging the members of the 2nd respondent society without any contract and there was no middle man and was paying the salary to the said workers directly. Because of this changed circumstances, the workers are claiming, there is employer and employee relationship between the petitioner hospital and the workers, consequently the workers claim to regularize the service. It is the specific claim of the workers that if the petitioner hospital is not granting Conferment of Permanent Status, at least the petitioner hospital should grant them regularization. It is also an admitted fact that the members of the



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society were not appointment through selection process and reservation was not followed.

9. The contention of the petitioner is that the Labour Court has no jurisdiction to grant Conferment of Permanent Status since the petitioner is a government institution. The Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 is applicable to the industry stated thereunder and not applicable to any of the Government institution. Under section 3 of the Act has specific definition for “industrial establishment” and the relevant portion of the provision is extracted hereunder:

(3) “industrial establishment” means---

- (a) a factory as defined in clause (m) of Section 2 of the Factories Act, 1948 (Central Act LXIII of 1948) or any place which is deemed to be a factory under sub-section (2) of section 85 of that Act; or
- (b) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (Central Act LXIX of 1951); or
- (c) a motor transport undertaking as defined in clause (g) of section 2 of the Motor Transport Workers Act, 1961 (Central Act 27 of 1961); or
- (d) a beedi industrial premises as defined in clause (i) of section 2 of the Beedi and Cigar Workers (conditions of employment) Act, 1966. (Central Act 32 of 1966); or
- (e) an establishment as defined in clause (6) of section 2 of the Tamil Nadu Shops and Establishment Act, 1947 (Tamil Nadu Act XXXVI of 1947); or
- (f) a catering establishment as defined in clause(1) of section 2 of the Tamil Nadu Catering Establishment Act, 1958.(Tamil Nadu Act XIII of 1958) ; or
- (g) any other establishment which the Government may, by notification, declare to be an industrial establishment for the purpose of this Act;



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The petitioner Medical College cannot be termed as factory, plantation, motor transport, beedi industry, catering and the petitioner institution is not notified by the government. Then only Shops and Establishment Act would be made applicable as per the above definition. Under the Shops and Establishment Act the definition under section 2 clause (6) is stated as under:

(6) 'establishment' means a shop, commercial establishment, restaurant, eating-house, residential hotel, theatre or any place of public amusement or entertainment and includes such establishment as the [State] Government may by notification declare to be an establishment for the purposes of this Act;

Admittedly the petitioner cannot be termed as shop, restaurant, eating house, residential hotel, theatre or any place of public amusement or entertainment and petitioner institution is not notified by the state government. A doubt may arise whether the medical college may be considered as "commercial establishment". The phrase "commercial establishment" was also defined in the Act under sub clause (3) and the same is as under:

(3) 'commercial establishment' means an establishment which is not a shop but which carries on the business of advertising, commission, forwarding or commercial agency, or which is a clerical department of a factory or industrial undertaking or which is an insurance company, joint stock company, bank, broker's office or exchange and includes such other establishments as the State Government may by notification declare to be a commercial establishment for the purposes of this Act.

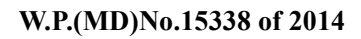


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The petitioner Medical college would never come under business of advertising, commission, forwarding or commercial agency, or clerical department of a factory or industrial undertaking or an insurance company, joint stock company, bank, broker's office or exchange. From the above definition it would be evident that the Legislature intended that government institution should be outside the purview of the Conferment of Permanent Status Act. Therefore, this Court is of the considered opinion that the Labour Court has no jurisdiction to grant conferment when the petitioner is government institution.

10. Having such so, this Court cannot close its eyes since the petitioner has engaged the members of the society. After lapse of the contract, they have served as worker in the petitioner's institution. The members of the 2nd respondent society had lost their job. However, the 2nd respondent members will not have any right to claim to regularize or absorption. Therefore, the Government should sympathetically consider their case, while considering to fill the vacancy. The members of the said society may participate in the selection process and the and Government may consider to grant weightage while considering the members of the society.



Index : Yes / No
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S.SRIMATHY, J

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**Order made in
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13.06.2023