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Writ Appeal No.2412 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 02.01.2024

CORAM

**THE HONOURABLE MR. JUSTICE R.SURESH KUMAR
AND
THE HONOURABLE MR. JUSTICE K.KUMARESH BABU**

**Writ Appeal No.2412 of 2019
and C.M.P.No.15833 of 2019**

1. M.Sivakumar
2. A.Venkatesan
3. P. Vivekanandan

... Appellants

Vs

1. Government of Tamil Nadu,
Represented by its Secretary,
Health and Family Welfare Department,
Fort St.George, Chennai – 600 009.
 2. The Project Director,
Tamil Nadu State Aids Control Society,
No.471, Pantheon Salai, Egmore,
Chennai – 600 008.
 3. The Deputy Director of Health Service/Honorary
Secretary of District Aids Prevention and Control Unit
Dharmapuri District.
 4. The Deputy Director of Health Service/Honorary
Secretary of District Aids Prevention and Control Unit
Thiruvannamalai District.
 5. The Deputy Director of Health Service/Honorary
Secretary of District Aides Prevention and Control Unit,
Namakkal District.
- .. Respondents



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PRAYER: Writ Appeal filed under Clause 15 of Letters Patent Act, to set aside the order dated 04.04.2019 made in W.P.No.33651 of 2018.

For Appellants : Mr.P.Ganesan
For Respondents : Mr.K.V.Sajeev Kumar
Special Government Pleader
[R1, R3, R4 and R5]
: Mrs.C.N.G.Niraimathi
Standing Counsel [R2]

JUDGMENT

(Judgment of the Court was delivered by R.SURESH KUMAR,J.)

This Writ Appeal has been directed against the order passed by the Writ Court dated 04.04.2019 made in W.P.No.33651 of 2018.

2. The appellants were the writ petitioners, who had been temporarily appointed as drivers by the proceedings of the Honorary Secretary, Indian Red Cross Society, Dharmapuri District dated 14.11.2007 and accordingly they have been continued as temporary drivers in that Society. That Society become the Tamil Nadu State Aids Control Society being the second respondent herein, before whom these writ petitioners' made a plea to regularize their services as permanent drivers, which plea since has not been considered, as their representation dated 30.11.2018 was not considered and no orders have been passed,



they approached the Writ Court by filing the writ petition seeking for a writ of mandamus.

3. The learned Judge, who heard the writ petition was pleased to dismiss the said writ petition by impugned order dated 04.04.2019. Assailing the same, Mr.P.Ganesan, learned counsel appearing for the appellants though made an attempt to seek indulgence of this Court to interfere with the order impugned, insofar as the prayer sought for by the appellants before the Writ Court seeking writ of mandamus by invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution against the second respondent being a Society was questioned.

4. In this context, it is to be noted that judgments have already been made by this Court declaring that the second respondent Society is not a State within the meaning of Article 12 of the Constitution amenable to writ jurisdiction.

5. When that being so, basically the writ petition cannot be entertained and therefore, the order passed by the Writ Court cannot be found fault with even otherwise.



6. When that being so, when this was specifically asked

Mrs.C.N.G.Niraimathi, learned Standing Counsel appearing for the second respondent Society, in her reply stated that, in as much as there has been a need of the Society to engage these drivers on temporary basis their services can be utilized for temporary basis, however they cannot seek for any absorption or regularisation on permanent basis because the respondent may not be a permanent entity or department permitted to provide jobs to these drivers on permanent basis for which there is no fund.

7. When that was the stand taken by the learned Standing counsel appearing for the second respondent, Mr.P.Ganesh, learned counsel appearing for the appellants has also submitted that, if that is ensured and the services of these appellants as drivers on temporary basis are continued so long as their services are required to the second respondent Society, the appellants would be satisfied.

8. Having considered the said submissions made by both sides, especially the stand taken by the learned Standing counsel appearing for the second respondent, this Court is inclined to dispose of this writ appeal



with the following orders:

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- ◆ That the relief sought for by the appellants before the Writ Court seeking regularisation of their services as drivers at the second respondent Society is not feasible for compliance for two reasons. First, that the second respondent Society is not a State, therefore such a direction cannot be given by this Court invoking the extraordinary jurisdiction under Article 226 of the Constitution by way of mandamus. Secondly, on merits also since it is not a State nor a Department or a Public Sector undertaking that kind of permanency cannot be sought for by the appellants, therefore on that reason also, the plea has to be rejected, therefore, to that extent the order passed by the learned Judge is to be sustained, accordingly it is sustained.
- ◆ However, in view of the stand taken by the second respondent as well as the appellants as recorded herein above, we are inclined to give a direction to the second respondent to retain the services of the appellants as temporary drivers so long as their services are required at the second respondent Society on temporary basis at the present status itself.



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9. With these directions and observations, this writ appeal is disposed of. No costs. Connected miscellaneous petition is closed.

10. It is brought to our notice by the learned Standing counsel appearing for the second respondent Society that, among the three appellants, the first appellant service has already been dispensed with and he is no more employee even on temporary basis at the second respondent Society. However this statement is disputed by the learned counsel appearing for the appellants.

11. We do not want to go into that controversy, if the first appellant continues as on date as a driver, the aforestated direction would be applicable to him also.

(R.S.K.,J.)

(K.B., J.)

02.01.2024

Index: Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No

mp



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Namakkal District.
6. The Sub-Collector,
Mathuranthagam Taluk,
Kancheepuram District.



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