



W.P.(MD)No.15293 of 2016

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

<i>Judgment Reserved On</i>	<i>Judgment Pronounced On</i>
20.12.2023	16.02.2024

CORAM

THE HONOURABLE MRS.JUSTICE **S.SRIMATHY**

W.P.(MD)No. 15293 of 2016
and
W.M.P.(MD)No. 11269 & 11966 of 2016

- 1.The Director,
National Institute of Technology,
Trichy – 15.
- 2.The Registrar,
National Institute of Technology,
Trichy – 15.
- 3.The Chief Warden,
Hostel Administration Committee,
NITT Hostels, National Institute of Technology,
Thuvakudi, Trichy – 15.

... Petitioners

Vs.

- 1.The Secretary,
Trichy National Institute of Technology,
All Employees Association,
Reg. No.1369, TRI Registration of Trade,
Union Act-7 F-Mess, NIT Post,
Thuvakudi, Trichy – 15.



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2.The Presiding Officer,
Central Government,
Industrial Tribunal cum Labour Court,
Chennai.

3.The Regional Labour Commissioner (Central),
Government of India / Ministry of Labour and Employment,
Office of the Regional Labour Commissioner (Central),
New No.5, Lady Doak College Road,
Chinna Chokkikulam, Madurai – 625 002.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India for issuance of *Writ of Certiorarified Mandamus*, to call for the records of the second respondent in AWARD dated 08.04.2016 made in Industrial Dispute No.87/2014.

For Petitioners	: M/s.J.Maria Roseline
For Respondent No.1	: No appearance
Respondent No.2	: Labour Court
For Respondent No.3	: Mr.P.Paul Pandi

ORDER

This writ petition is filed for *Writ of Certiorarified Mandamus*, to quash the award, dated 08.04.2016 passed in Industrial Dispute No.87/2014.



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2. The 1st and 2nd writ petitioners are the Director and Registrar of National Institute of Technology, the 3rd writ petitioner is the Chief Warden of the Hostel Administration Committee, NITT Hostels. The 1st respondent is the Secretary of the National Institute of Technology, Trichy, All Employees Association.

3. The petitioner institute is a Statutory body incorporated in the National Institute of Technology Act, 2007. Prior to this incorporation, the Institute was functioning as Regional Engineering College, Trichirappalli started in the year 1964. The College was having 25 Hostels and the same was administered and maintained by the “Hostel Establishment Fees” collected from the students. The administration of hostels was carried on separately out of the student funds and the hostel administration was always kept separate and distinct from the administration of the main Institute. The administration of the institute was jointly funded by the Government of Tamil Nadu and Government of India. Subsequent to the transformation of REC into NIT in the year 2003, the institute administration is entirely funded by the Government of India. The members of the 1st respondent Association were employees of the mess run by the NIT Hostel



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Administration Committee and after 2006 they were engaged as Sweepers without changing their designations. The Institute administration and Hostel administration are two different and distinct administrative set up functioning inside the same campus. The 1st respondent association who were employed in the Hostel messes in the Regional Engineering College Hostels run by the Hostel Administration have filed the claim petition to the 3rd respondent seeking for a direction to the appellants to approve and regularize the members of the 1st respondent association as Central Government employees of National Institute of Technology and further direct the appellants to grant all monetary benefits from 2006 and also family pension including the 6th Pay Commission arrears along with the interest.

4. The 1st respondent association is making their claim on the ground that the members were appointed by the Principal of the erstwhile Regional Engineering College and that their scale of pay has been enhanced periodically and that the monetary benefits due to the members are granted by the authorities of Regional Engineering College and subsequently by the National Institute of Technology. The members of the association are entitled to the protection under



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National Institute of Technology Act, 2007 and there were several instances when the members of the 1st respondent association were absorbed / regularized as regular employees of the erstwhile Regional Engineering College. The contention of the Association is that the hostel mess was run and maintained by the College/Institute. Based on the reference of Central Government, Ministry of Labour and Employment vide its order No.L-42011/77/2014-IR (DU) dated 30.09.2014, industrial dispute between the writ petitioners and the 1st respondent association was referred to 3rd respondent for adjudication.

5. The contention of the petitioner institute is that the members of the 1st respondent association were employed by Hostel Administration for running the mess and that their employment was not at the REC even though the appointing authority was formerly Principal, REC, subsequently the hostel administration committee, NIT has taken over the administration. The employment of the members of the 1st respondent association was only at the Hostel messes run by the hostel administration and their salary was paid out of the hostel funds collected from the students and they were never treated as employees of either under REC or NIT. The further contention of the petitioner is



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that basically the employees in the hostel mess are categorized as 1.Cleaner 2.Server 3.Assistant cook and 4. Cook. In order to avoid stagnation and encourage sincere workers, the hostel administration introduced service benefits like, grant of selection grade in the post of the above said posts. In the Institute administration, there were no posts sanctioned for mess employees. Therefore, there is no question of regularization / absorption of mess employees in the National Institute of Technology. The petitioner submitted that the 1st respondent ought not to have named the 1st respondent association by adding the institute name and the name itself is misleading and hence it is questionable. The NIT Act or the REC Rules are not applicable to the 1st respondent.

6. The 1st respondent had submitted complaint before the Assistant Labour Commissioner, who had conducted a Conciliation proceeding and the same was ended in failure and the report, dated 01.07.2010 was referred to the Government and the Government had issued failure report in G.O.Ms.No.318 Labour & Employment (B2) Department dated 17.07.2013. The 1st respondent in its earlier name had also filed W.P(MD)No. 2411 of 2012 before this Court seeking the same relief and the same was dismissed on 03.01.2014 as there was



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no representation for the association. The said association had also filed claim petition before the Assistant Labour Commissioner (Central), Puducherry on 24.07.2013, both the parties participate and the conciliation failed. Then the matter is referred for adjudication. Therefore, the 1st respondent association disguised in the present form had initiated subsequent proceedings before the 3rd respondent Labour Court.

7. When the earlier writ petition was dismissed, the association cannot re-agitate their claim before the 3rd respondent. All the benefits including salary are being formulated by taking into account the financial position of hostel administration. Further the conditions of service of the 1st respondent association is completely different from the conditions of service of NIT employees and therefore the respondents cannot demand pay on par with the employee of NIT. Until 2005, all the 5 hostel messes were run by the Hostel Administration by engaging the members of the 1st respondent association. The members were not professionally qualified or professional cooks. Initially they were engaged as cleaners and subsequently were promoted to Server, Assistant Cook and thereafter in the Cook cadres. In view of the lack of cooking skills, the food prepared by the



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members of the 1st respondent association were not liked by the hostel students and after numerous complaints about the taste and hygiene and in response to consistent demands and strikes made by the students, from the year 2006, in a phased manner, the hostel messes were out sourced to private catering contractors. As far as the members of the 1st respondent association were rendered surplus. The 3rd appellant on humanitarian grounds did not want to lay off or retrench or terminate the employees. Thereafter, on mutual consent, the 1st petitioner had redeployed the members of the 1st respondent association for sweeping and maintenance work of the Hostel building.

8. At the time of redeployment, it was also agreed there will not be any change in their pay benefits and they continue to get the same monetary benefits as they were getting prior to their redeployment. Infact, the members of the 1st respondent association demanded a food allowance of Rs.1,800/-per month in lieu of the free food that they were getting while working in the mess and the said demand was also considered. After transformation as NIT, the student strength of NIT was increased and consequently the student strength of hostels also increased. As it was no longer possible for the Director of NIT to administer



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the day-to-day affairs of the Hostel, a separate Hostel Administration Committee was constituted to administer the day-to-day affairs of the students' hostels. Subsequent to re-deployment of the workers their working hours reduced from 6 to 7 hours to 3 to 4 hours. But the benefits including the pay hike continue to remain the same. Infact the members of the respondent association are getting more pay than the regular employees of the Institute. The average gross salary inclusive of CPF contribution for the unqualified members of the 1st respondent association is Rs.18,222/- where the salary for Hostel Office Staff (Graduate / Post Graduate) are as detailed below:

Accountant Senior	=	11,000/-p.m.	=3 post
Accountant	=	10,500/-p.m.	=1 post
Steward senior	=	8,000/- p.m.	=10 post
Steward	=	7,500/-p.m.	- 4 post

Hence it is apparent that the salary of unqualified mess employees is very high when compared to the salary of qualified hostel office staff. Annually Rs.2.057 crore is being disbursed towards salary and other benefits of the members of the 1st respondent association and therefore any increase in establishment charges would cost a student more than Rs.3000/- per semester. Further hike in



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establishment charges would invite widespread protest from the students and parents. Further the claim for family pension is also misplaced in as much as the members are covered under Employees Contributory Provident Fund (CPF) Scheme, wherein the Hostel Administration contributes 8.33% of their basic pay, hence the members are not entitled to family pension. Therefore, for all these reasons, the petitioner claims to quash the impugned award and allow the writ petition.

9. Notice was served on the 1st respondent, who has entered appearance and has also filed counter. Inspite, several opportunities, the 1st respondent has not appeared before Court, therefore based on the counter filed by the 1st respondent this Court proceeded the case. In the counter, it has been stated that the Labour Court has categorically held all the mess employee had been appointed as regular employee and they were working continuously for a long time and removing them from the existence status after so many years would not be justified. If the Institute feels to outsource the mess, they are liberty to do so. However, those regular employees who were in the roll of institute as employees of mess should be retained with the same salary and other benefits and their status



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should be on par with that of other employees of the institute. They are entitled to the relief claimed by them. The NIT Act, 2007 is applicable to all NIT's. The NIT, Warangal had regularized the people who worked in the same category. Hence the members of the Association are demanding the same status from the date of commencement of the NIT Act, 2007. The 3rd writ petitioner Chief Warden, the Hostel Administrative Committee constituted in the year 2011 only. The respondent association workers are continuously working from the year 1989 under the control of REC Thiruchirapalli. They were having separate rules under the Society Registration Act and it was approved by the Government of India, wherein the government had approved the Regional Engineering College Society Recruitments and Service Rules which came into force from 12.09.1963. This Rules had categorically mentioned the procedure for appointment, service qualifications, conduct and disciplinary rules to the teaching and non-teaching staffs. Further Part IV of the rules mentioned that Administrative Post, Ministerial and other related employees.

10. In Clause 72 of the said Service Rules, the appointment of cook and specific pay scale are mentioned. The respondent association employees are



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stratifying the rules, was selected by selection committee and appointed as NMR and thereafter appointed on regular service to the respective post and further granted selection grade also. The respondents further submitted that there is no dispute regarding the appointment, promotion and selection grade granted to the respondents' regular employees till 2007. Under section 5 of the NIT Act, 2007 which came into effect on 05.07.2007 has given protection to employees. Under section 13 provides general superintendence power. The respondent association raised demand before the 1st petitioner, conciliation was conducted before District Revenue Officer and executed written memorandum to take efficient steps to approve and regularize by the Board as a regular employee of the Institute dated 28.07.2008, but the petitioners failed to implement the same. Hence claim petition was filed before the Labour Commissioner under the Industrial Disputes Act, but the negotiations failed. Hence the respondent association had filed petition before the Central Government Industrial Tribunal cum Labour Court at Chennai in I.D.No.87 of 2014 under section 10(2)(A) of the Industrial Disputes Act 1947 and the petition was allowed. Aggrieved over the same the present writ petition is filed.



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11. The demand of the 1st respondent Association is that their member should be approved as regular employee, to grant equal pay for equal work, the respondent had approved some of the 'D' group employees but failed to approve or regularize the association employees, the Canteen was running by the institute and not by the separate authority, the appointment is by the Principal of REC, after appointing the members of the association now cannot state the employees are not qualified, further subsequently the employees have obtained qualification, to deny the rights of the association employees the 1st respondent constituted Hostel Committee, the claim of the petitioner that they spent more than 60% on Establishment and 18% for NMR workers and 20% for establishment charges cannot be accepted. The 3rd petitioner is not the competent person to file the writ petition and he is only a set up for defending the case without having valid right. The Hostel Welfare Committee is only nominating a senior professor for the student welfare, especially in the area of monitoring facilities and service to the students. The employees of the association members were appointed by calling the application from public notification and invitation through the employment exchange.



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12. The REC authorities had formed committee to conduct interview and the Principal of REC appointed the employees. Then the employees were appointed, regularized then granted selection grade. The Hostel is run by the NIT institute. The statement of the petitioner Institute is that salary was paid from Hostel students funds and not from the Government grant is misleading without any proof. The Institute has not produced the service book of the members. The REC Society Rules has given special permission to appoint such kind of employees who run the hostel mess. Therefore, for all these reasons, the respondents prayed to confirm the order of the Labour Court and dismiss the writ petition.

13. Heard M/s.J.Maria Roseline, the Learned Counsel appearing for the Petitioner, Mr.P.Paul Pandi, the Learned Counsel appearing for the 3rd respondent and perused the material documents available on record.

14. The first contention of the petitioner Institute is that the REC was constituted as early as 1964 and from the inception the hostel was managed



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separately and it is funded through the “Hostel and Mess Fees” collected from the students. After constituting NIT, the same system was adopted except for one difference, where the Committee was constituted to manage the Hostel. Initially there are 25 hostels and periodically it was reduced to five. The hostel employees were not recruited through any recruitment process. Most of the people would be engaged even if they are not well versed in cooking. The Learned Counsel appearing for the Institute relied on the Service Rules of the REC and the sanctioned post granted thereunder. On perusal of the same, under Serial No.24, except for “Hostel Manager” there is no other post like Cleaner, Server, Assistant Cook, Cook etc. were mentioned in the list of regular sanctioned post. The Hostel manager is appointed for overall supervisor of the mess. More so to co-ordinate with the people who are managing the mess and the students. Except for this post, the other posts were appointed and their salary would be paid from the amount collected from the students under the head of “Hostel Establishment Fees”.

15. After NIT Act, 2007 the same practice was continued and they were paid salary from the amount collected from the students under the head “Hostel Establishment Fees”. The only difference is under the NIT Act, 2007 the



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Hostel Administration Committee. It is seen that the petitioner was maintaining the hostel and the institute separately. Once REC was converted as NIT, then also the same pattern is followed, until 2012. Subsequently, from 2012 onwards, Hostel Administration Committee was formed. All these would show that the hostel establishment is a separate establishment and it is nothing to do with the main institute. Further the employees working in hostel were paid salary and other increments like selection grade through the funds collected from the students under the head “Hostel Establishment Fees”. Further there are no sanctioned posts like Cleaner, Server, Assistant Cook, Cooks etc., which is evident from the Government of India proceedings, dated 11.07.2012. In the proceedings the government has sanctioned the posts for NIT for the faculty and non-faculty cadres.

16. On perusing the non-faculty cadres, none of the posts belonging to administration of mess is included in the list. The list contains from the Registrar to Senior Attender/Security Guard/Care taker, but the cadre working in mess is not included. From perusing this letter, it is seen that there is no sanctioned post for the administration of mess. Moreover, from the year 2012



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onwards, catering service, mess service and house-keeping service were outsourced. In such circumstances, the claim of the 1st respondent Association cannot be considered. Therefore, this Court is of the considered opinion that the respondent association cannot seek regularization, when there is no sanctioned post.

17. The next contention of the petitioner institute is that the powers and functions of the Hostel Administration Committee and the powers and duties of the Chief Warden in order dated 19.07.2012 would clearly states the mess is outsourced. Under clause (vi) it is stated that from 2012 onwards the Committee shall outsource the catering service, the mess service and house-keeping service of the hostel and any other function necessary for the administration of the hostel and mess. Under Clause (xi) the committee shall fix and revise from time to time the mess charge collectable from the students. Under (xii) it is stated that the committee shall incur expenditure as may be necessary for the day today administration of hostel and messes and such expenditure in a year shall not exceed the total receipts from that year. From these clauses, it is evident that whatever mess fees and hostel fees collected from the students that would be



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spent for maintaining the catering service, mess service and house-keeping service. Especially Clause (xii), where it has been categorically prescribed the expenses shall not exceed the fees collected from the students. Further to substantiate this claim the Learned Counsel had relied on the Auditor's Report.

18. In the Auditor's Report a separate entry is shown for the expenses for the messes and hostels. In the statement of Receipts and Payments it is shown under the head "Mess Collection" to the institute / outsource messes the receipt is Rs.10,36,98,179/-, to Institute Fee Collection (for Rent and Electricity charges) is Rs.2,11,26,100/-. On payment, it has been stated for outsources messes payments made is Rs.8,03,23,706/- and for the purchases of the Provisions, Milk, etc., Rs. 86,05,822/-. Therefore, from the statement of Receipts and Payments it would clearly indicate that the mess is outsourced and the collected receipts were paid for the mess. Therefore, this Court is of the considered opinion that the employees engaged in catering service, mess service and house-keeping service are not paid salary by the REC institute or the NIT institute and it is the students who are paying the same. In such circumstances, the employees engaged in catering service, mess service and house-keeping service are not employees of REC



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institute or NIT institute, consequently the employees cannot seek any regularization.

19. Further the petitioner submitted that after the mess was outsourced, on humanitarian ground the persons who were serving in the messes and who had become surplus, were taken as an employee of the institute and they are granted pay protection. They are receiving the same pay which they were receiving while they were working under the mess establishment. For which, the petitioner's institute is comparing the salary paid to the members of the Association and the salary paid to the regular employee of the Institution. The average gross salary inclusive of CPF contribution for the unqualified members of the 1st respondent association is Rs.18,222/- where the salary for Hostel Office Staff (Graduate / Post Graduate) are as detailed below:

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From the above comparison it is evident the employees of the respondent association are receiving higher pay than the employees of the institute. If the claim of the association is entertained then the employees of the association would receive lesser salary.

20. Therefore, considering all these reasons, the claim of the 1st respondent cannot be entertained. The Labour Court had not considered these factors and hence the Labour Court had erred in granting regularization.

21. Accordingly, the impugned award, dated 08.04.2016 passed in Industrial Dispute No.87/2014 is hereby quashed. However, the petitioner is directed not to disturb the employees who are still serving and they may be allowed to continue until their superannuation.



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22. With these observations and directions, this Writ Petition is allowed. No Costs. Consequently, connected miscellaneous petitions are closed.

Index : Yes / No
Internet : Yes

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To

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S.SRIMATHY, J

KSA

Order made in

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