

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION No. 170/00227/2017
DATED THIS THE 04TH DAY OF DECEMBER, 2017

HON'BLE SHRI DR. K.B. SURESH, MEMBER (J)
HON'BLE SMT B. BHAMATHI, MEMBER (A)

Jeffin P.Thankachan,
S/o V.Thankachan,
Aged 30 years,
Working as Staff Nurse in the
Department of Psychiatric Nursing,
National Institute of Mental Health and
Neuro Sciences,
Hosur road, Bengaluru-560 029.

... Applicant

(By Advocate M/s Subbarao & Co.)

Vs.

1. National Institute of Mental Health
and Neuro Sciences,
Rep. by its Director,
Hosur Road, Bengaluru-560 029.

2. The Administrative Officer,
National Institute of Mental Health
and Neuro Sciences,
Hosur Road, Bengaluru-560 029.

... Respondents

(By Shri K. Prabhakar Rao, Counsel for the Respondents)

ORDER (ORAL)

DR. K.B. SURESH, MEMBER (J):

Heard the matter. The issue is Clause 8 of the appointment letter. The agreement Annexure-R1 exposes a very curious state of affairs in our land that even after the abolition of the Contract Labour Act, organized slavery is being carried on. At this point of time Shri K. Prabhakar Rao, learned counsel for the respondents, would submit that the Contract Labour Act may not apply.

We disagree. We had asked the counsel for the applicant whether he had been under training for some time or so so that the applicant could have been adjudged as capable of paying the training fee. Apparently he was employed as a Staff Nurse directly and made use of by the respondents. Since the applicant had joined duty as a fully qualified hand there would be no necessity of any training other than any induction training which is on the job supervision. But that is not chargeable in any of the departments of the government. Therefore this Bond breaches valid provision of the Contract Act and since the employer is in a dominant position and being able to impose their will on the hapless employees. Therefore the respondents are not legally entitled to enforce their Bond which stands vitiated under Contract Act.

Hence under Section 16 of the Specific Relief Act Clause (a) only those who would be eligible to recover compensation for damages suffered can seek to enforce any such agreement. Here they are not competent to do so. There is no question of either actual or notional damages as well as the mere quantification will not enhance the right of the respondents.

2. The Specific Relief Act of India in its Section 41 (e) specifically forbids compelling personal service as this contract seems vitiated. The Constitution of India in its Article 43 would indicate that the State shall endeavour to secure a condition of life where workers are not exploited. The Hon'ble Apex Court in Jacob Vs. Kerala Water Authority reported in 1991 1 SCC 28 had held that in matters like interpretation of Article 41, 42, and 43, the Court should so interpret the Act so as to advance Article 41 where the workers are not exploited. The Courts have an independent jurisdiction to grant or refuse

injunction as reported as early as Govindarajulu Vs. Imperial Bank reported in AIR 1932 Madras 180. The purpose of jurisdiction is to advance equity and justice. The respondents cannot recover any damages from the applicant since no damage in actual sense is imposed on the respondent by the applicant. In fact with the Contract Labour Abolition Act all such slavery nuances are laid to rest.

Under Section 14 (b) and (d) a contract dependant on the personal qualification of the party and a contract which implies a continuous duty cannot be enforced. If this Bond cannot be enforced, damages also cannot flow from it. **Therefore there cannot be a contract for extracting personal labour.**

3. The only ground raised in objection by the respondents seems to be that the Annexure-R1 agreement had been executed along with 2 sureties before the applicant entered his employment. But then, if the object of the said agreement is void under law, that cannot be enforced at all. Since the Specific Relief Act specifically forbids compulsion of personal service, the respondents could not have compelled the applicant and others to execute such an agreement. Even though such issue has not been raised by the respondents that to the effect that if they had spent money on the training of the applicant then the course that is open to them under the law of tort is to obtain compensation for damages suffered under Section 9 of the CPC. Beyond that the respondents cannot compel an employee who had joined with them that they must work for a particular number of years. If the worker is not satisfied as to the working condition or is desirous of obtaining employment elsewhere as in this case we have found that he had obtained employment under the

Government of Kerala whether it is right or not it remains his choice and the respondents has no role to play in this other than seek compensation under Section 9 of CPC if they are eligible to do so. Mere quantification will not help them as the contract seem to be illegal as it compels personal service.

4. That being so, Annexure-R1 is illegal and not maintainable.

5. Therefore it is hereby declared that under the present law of the land there cannot be compulsion for personal service and therefore the respondents have no right to impose any burden of continuance of service. Therefore if the respondents have taken money from him, it will be returned within two weeks from now without interest and, as rightly held by the Hon'ble High Court of Karnataka, beyond that with interest at the rate of 15%.

6. The OA is allowed as above. No order as to costs.

(B. BHAMATHI)
MEMBER (A)

(DR. K.B. SURESH)
MEMBER (J)

/ksk/

Annexures referred to by the applicant in OA No.170/00227/2017

Annexure A1: Copy of B.Sc Degree Certificate of the applicant dated 04.06.2011

Annexure A2: Copy of Post Graduate Degree Certificate of the applicant

- dated 26.03.2014
- Annexure A3:** Copy of the Recruitment Notification dated 16.01.2015
- Annexure A4:** Copy of the order of appointment of the applicant dated 16.09.2015
- Annexure A5:** Copy of the proceedings of the Director of Medical Education, Thiruvananthapuram dated 27.03.2017.
- Annexure A6:** Copy of the Resignation letter dated 03.04.2017
- Annexure A7:** Copy of the Official Memorandum No.NIMH/PER(2)/JPT-SN/RESIG/2017-18 dated 15.04.2017
- Annexure A8:** Copy of the No.NIMH/PER(2)/JPK-SN/Bond /2016-17 dated 24.03.2017
- Annexure A9:** Copy of the agreement bond format
- Annexure A10:** Copy of the Circular No.NIMH/CIR/NS/2017 dated 09.02.2017
- Annexure A11:** Copy of order in Writ Petition (C) No.527/2011 passed by Hon'ble Supreme Court dated 29.01.2016
- Annexure A12:** Copy of the Circular F.No.1-5/GB-CIR/2011-INC dated 29.08.2011
- Annexure A13:** Copy of the information provided on 21.11.2016 under RTI Act by the respondent.

Annexures with reply statement:

- Annexure R1:** Copy of agreement bond executed between the applicant and the respondent.
